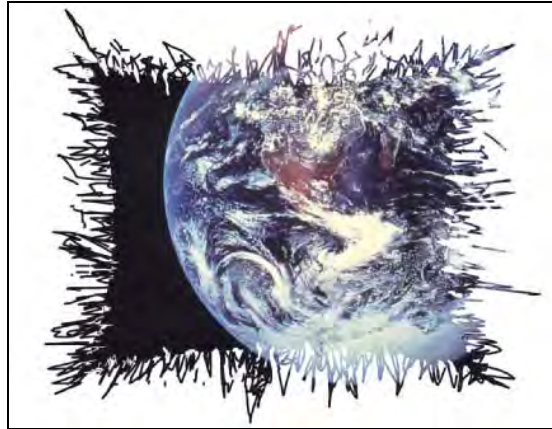


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The Crime & Popular Culture:
A Multi-disciplinary Exploration Conference
October 28-30, 2008

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Message from the Director

In his remarks as the lead plenary session speaker, Dr. Jeff Ferrell outlined the content of the conference and this special conference issue of the Journal. The range of the subject matter and research methodology that cultural criminology has provided for the disciplines criminal justice and criminology has been expansive. These developments were demonstrated at the Fall 2008 Conference, entitled "Crime And Popular Culture: A Multi-Disciplinary Exploration." The Conference participants representing from a wide range of disciplines and institutions witnessed an examination of issues involving the system of criminal justice, wrongdoing, and victimization through the lens of everyday cultural media.

As has developed into a customary practice with conferences, expanded papers from these conferences are submitted and subjected to peer-review. The resulting articles for this special issue reflect the depth and breadth of the conference presentations. Also included in this issue are several edited transcripts from the invited plenary session speakers. The Conference and this issue of the *Journal of the Institute of Justice & International Studies* expand the context for an understanding of the world in which crime is a fixture of our culture.

Much gratitude is extended to the University of Central Missouri staff, faculty, and most importantly, the astounding students who provided invaluable support and assistance to make the Conference a success. A special note of gratitude goes to the conference program co-chair, Dr. Frank Wilson, who continued generously serving as such after he left UCM for a position with the Criminology Department at Indiana State University.

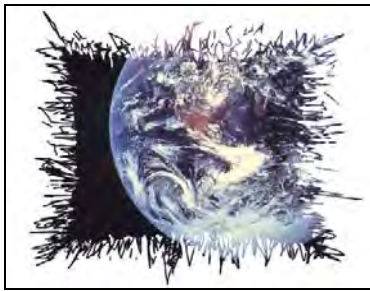
Don Wallace
Director
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Message from the Editors

It is always exciting to be a part of the Institute journal! Each conference on campus provides a unique and stimulating experience for all participants, and this year was no exception. Volume 9 contains a diverse and representative cross section of the papers and plenary speakers from the Crime and Media conference. Many thanks to the authors for their submissions and cooperation with the review process, as well as to the reviewers who provided an essential and much appreciated service to the journal and to the discipline!

Lynn S. Urban
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THE JOURNAL OF THE INSTITUTE OF JUSTICE AND INTERNATIONAL STUDIES is a multi-disciplinary, peer-reviewed journal devoted to the dissemination of information regarding a wide variety of social issues, both national and international, and a wide variety of research and presentation techniques.

MANUSCRIPTS

Manuscripts are typically the outcome of a presentation by the author at the academic conference hosted by the Institute each year. These manuscripts should be submitted via email to cjinst@ucmo.edu. Only original, unpublished manuscripts not under consideration by other journals will be considered. Submissions should follow either the APA style as in the *Publication Manual of the American Psychological Association* or the Uniform System of Citation.

CRIME AND POPULAR CULTURE: THEORY AND METHOD

Jeff Ferrell
Texas Christian University and
University of Kent

Address to the Crime and Popular Culture:
A Multi-disciplinary Exploration Conference
University of Central Missouri, October 28, 2008

It has now been a decade or so since work on crime and popular culture, crime and the media, and cultural criminology began revitalizing research in criminology and criminal justice. The book *Cultural Criminology* (Ferrell & Sanders, 1995) that Clint Sanders and I edited and wrote was published 13 years ago. The journal *Crime, Media, Culture* is finishing its fourth year as a place where this area of work is published. The first Culture Criminology Conference was about six years ago in London. After perhaps a decade, this field is emerging as one of the fastest growing areas in criminology and criminal justice.

What I will do today by way of starting off the conference, given that we are a decade or so into this new enterprise, is appraise where we are in terms of both theory and method. What I want to suggest is that in fact, along with the substantive aspects of this area of study—that is, along with what has been contributed in broadening the subject matter of criminology—there have been some significant gains in terms of how we go about studying crime and popular culture, both theoretically and methodologically.

Certainly and perhaps most obviously, the range of the subject matter of criminology and criminal justice has expanded remarkably in the past decade. I would argue this is largely due to the work of many people in this room. The result is that today to be a criminologist, to engage with issues of crime and justice, is to include in one's work the examination of the photographs that came out of Abu Ghraib prison; the cultural constructions of deviance in Appalachian culture; how the media portrays crime and justice; and the role of comic books, video games, and popular film, or the influence of *CSI*, on our perceptions of crime and justice and forensic investigation. So the whole notion that we would look at everyday culture—film, television, videogames, cartoons, photographs—to this I give credit to my colleagues in this auditorium and elsewhere. This substantive expansion of criminology is both entirely appropriate to the kind of world in which we know live, and is a much needed and long overdue expansion of the intellectual range of criminology in terms of issues involving transgression, crime, and victimization. Furthermore, necessitated perhaps by this broader subject matter, there has also been a remarkable expansion in how we conceptualize what we do as criminologists, and how we understand our approaches to a world in which crime and transgression circulate as part of culture.

So let me begin by examining constellations of theory. I want to point out how important they are for actual engagement with the issues that shape politics these days and that shape our everyday lives. There have been several constellations of theoretical developments over the past decade or so. The first one is what Jack Katz (1988) inaugurated now twenty years ago, with the publication of *Seductions of Crime*. What Jack Katz argued in *Seductions of Crime*, was that for decades in sociology, criminology, and criminal justice, researchers had not really engaged with the subject matter of criminology. That is, researchers had looked at social class, ethnicity, gender, and seen how these shape victimization patterns or types of crimes. But criminology had not actually gone inside the moment of crime; inside what Katz called

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the “seductions” of the “foreground of crime”—the way in which violence emerges in a domestic situation; why a robber pulls a gun one time but not another; how in the street, a challenge is met either with passivity or aggression. This kind of momentary event, the phenomenology of crime, Katz argued, had largely been assumed but not examined. So Katz said famously, that the field had been constituted from back to front. We had examined the precursors of crime but not gone inside the momentary emotions and seductions that make crime meaningful to both victims and to perpetrators. In that sense, Katz began to suggest that there was a link between popular culture and crime, between larger social structures and crime that we had suggested or imagined but not actually explored. Following up on that, Stephen Lyng (2005), I, and others developed the concept of “edgework.” Edgework suggests that in those criminal moments there is more going on than random emotion—that often what we find in moments of illegal street racing, spraying graffiti, robbing banks, or burglarizing homes, is a remarkable sort of incandescent mix of emotion and rationality, of skill and abandon. So what we find often in the moment of crime, for perpetrators of crime, is that what they are bringing to this are highly honed skills. They have practiced and worked out the techniques of crime. But in the moment these skills are tested by the chance of getting apprehended, by the excitement of actually committing the crime, by the thrill of gangbanging or spraying graffiti, or burglarizing an unoccupied house.

So what Steve Lyng and I discussed is that once again we can look at both the background of crime and the moment of crime as a sort of continuum and in turn link that to some broader social issues. For example, the world we now live in, where rules and regulations of bureaucracy define every event we hold, every conference, or every moment of play. Where we increasingly have to get permission to do almost anything we do. We live in a world where risk management is now the driving philosophy of universities, corporations, and governments. Where again the notion is to manage and minimize the risks that are there in everyday life; in a world where increasingly even emotion is sold as a commodity, where we package emotion and buy it through video games or through the allure of perfume or clothing. In that kind of world, it is not surprising that various sorts of criminals and deviant subcultures engage in a moment where they can find skill—skill they often have not brought out in the workplace—that they mix with visceral emotions, with the actual seductions of being a criminal or engaging in transgressive behavior. There is now a theoretical model that can link broader social forces with the actual moments of crime.

In the past decade or so, another constellation of theories that has developed this link is what Jock Young (1999) and others have developed in examining exclusion and inclusion. Jock’s insight fits with this discussion. Young argues that we have a society that neither excludes people nor includes them but instead catches them in a sort of strained dynamic. We have a world where increasingly we see economic exclusion. We see the poor getting poorer while the wealthy get ever more wealthy. We see a world in which millions of people are in prison or jail; seven million people under the control of the state in terms of parole, probation, jail, or prison. We see immigrant populations increasingly regulated by immigration policy. In that sense, we see larger and larger populations excluded from the notion of full cultural citizenship and participation. But those same populations are bombarded by advertisements, Nike commercials, the media, the same films and advertisements that the included watch as well. Young stresses that we increasingly see a world where people are economically, socially, and structurally excluded, while they are ever more culturally included. They are seduced into wanting the jewelry, the cars, the achievement, the signs of success, while increasingly excluded from the ability to get those.

Now if that sounds like Robert K. Merton (1938), it should, because of course that is, in some ways, a restatement of the classic conundrum or strain that Merton discussed in 1938 with social structure and anomie—a society that creates wants and

desires but blocks the channels to achieve those. Young's argument is that we see increasingly a "bulimic society," a society that pulls people in culturally, pushes them out structurally and socially. What this creates then are not only crimes of acquisition--shoplifting, property theft--but crimes of vengeance, where the emotional impact of wanting what one cannot have, the emotional impact of knowing one cannot measure up culturally to those around the individual, leads to hate crimes, to vengeance, to crimes of passion, to heightened emotionality. This has led to the search for a resolution, Albert Cohen (1955) has said, to that strain or that limit. What Young is doing with this model is examining the links between broader cultural forces and actual emotions that animate criminality. Why the anger? Why the vengeance? Why carjacking, when that is not just about stealing the car but about hurting the person who was driving that nice car? Why shoplifting, it is not only about getting the goods to feed one's children but also about beating the system and acquiring the goods that give one status? Why the visceral emotions, the seductive play of those kinds of crimes? Young's model, our model of edgework, the notion of seduction of crime suggests, that again, the emotions, the meanings of criminality not only have to be traced back to, but be intertwined with, the broader social forces and structures in which we live.

A third constellation of theories also explores this. These come together in this emerging field of crime and popular culture. This third would include those developed by European theorists and by Mike Presdee (2000) in his book *Cultural Criminology and the Carnival of Crime*. Here we bring in history. What Presdee argues is that historically, societies have long dealt with and tried to manage the problem of transgression. A transgression is the spur to an invention. In fact, as I tell my students, without transgression we would not have science; we would not have philosophy; we would not have art; we would not have criminology. Intellectual advancement, technological advancement, human advancement, human progress is based on transgressing the assumed boundaries of what we can do as people. But of course transgression is also deeply disturbing and dangerous. As Durkheim pointed out, transgression can unravel social structure. Transgression can lead to anomie where people do not know what the boundaries are, what the limits are, and are therefore eternally dissatisfied, yearning, and unhappy. So transgression is both a grave threat to social order and necessary for the progress of social order.

As Presdee points out, one way in which people have dealt with that dilemma historically is carnival. Carnival is a kind of ritualized moment, maybe lasting a day or a week, in Brazil, or in New Orleans, or in other cultures, where transgression is encouraged and celebrated. These are moments of vulgarity, excess, moments in which the king now serves the servant and the servant is served by the king, moments in which hierarchies are inverted and yet of course, a moment that is closed off because it is ritualized. So when that week is over and the moment of transgression has passed, order is restored. So Presdee's notion is that one way that human cultures, again, have dealt with the dilemma of transgression is by ritualizing it within moments in time and within culturally sanctioned events. But of course, that is lost today. We are not in small societies where there is the ritual of carnival. We now live in a world of mass media and mass culture. So as Presdee argues, in that sense now we are left to deal with transgression as an everyday phenomenon. Now we deal with transgression in terms of sadomasochistic pornography or how we deal with CSI programs or what we do with "snuff" films or footage from Iraq that gets put to a soundtrack and circulated on the Internet. Now we are left to deal with that dilemma of what to do with transgressive acts, not in a way that we can contain it but in a way in which it is never contained, and therefore always up for constant renegotiation. So notice again, it seems to me that these all seem to begin to fit together and what Presdee is doing is giving us a historical sense for why we see that tension between

emotion, pleasure, and the excitement of crime with the larger forces that try to contain it or minimize the harm done by crime.

Now, a final theoretical orientation that has emerged over the past ten years, comes out of Zygmunt Bauman's (2000) work in Europe—which I think should be more widely used in the United States—and is his notion of “liquid modernity.” What Bauman and others argue is that we have to notice the fact that we no longer live in the era of industrial capitalism. We no longer live in the era of straight-line production and the assembly line. That is, we are beyond the notion of social order, or capitalism, or the economy as a machinery of production, and now we live in a world that is liquid—a world of flows and liquidity—where increasingly people move across borders. Their own identities are liquid in a sense. More and more of us come from ethnically mixed backgrounds. Many of us are hybrids of past immigrations and past interminglings of ethnic and cultural groups, living in a world where information moves faster than we do. We can download images from Iraq as quickly as we can press a key. We can share information about the global economic meltdown between London and Tokyo and New York in a nanosecond. We live in a world of informational and human flow that characterizes what many of us call the late modern period, as opposed to early modernism, or late capitalism as opposed to early capitalism. There is a lack of stability, where we as people are *mélanges* of other backgrounds. Information comes and goes. Headlines pop up on our computer screens as soon as we hit the Internet. People are now shooting video and now sharing it, bypassing through *Flickr* and other sharing websites the traditional media.

This is a world where what is definitive is that it is not definitive. What is distinctive about it is a lack of distinct characteristics—the movement, the constant shifting of information, ideas, and images. We can apply this conception to crime and popular culture. Some years ago I coined the notion of the “hall of mirrors” (Ferrell, 1999)—the sense that as we make our way through our lives, we do not walk through a hallway that is straight and narrow. We walk through a hallway defined by images of other images. That is, what we see are images playing off of images, information playing off of information. This has come to saturate our actual daily existence. More recently, Peter Manning, others, and I have spoken of loops and spirals (Ferrell, Hayward, & Young, 2008)—that if we are going to study the link between crime and popular culture, we absolutely cannot simply imagine that crime occurs and the media then reports on it, that there is a kind of linear, static model. Instead what we see is a looping flow of images and information moving in and out of everyday life. For example, in some research I've done recently one observes that gang leaders are often functioning as much as film directors, as they are gang leaders. The leader of the gang is directing the filming of the beatdown. In fact the beatdown was staged so it could be posted on the Internet and then sold as part of a package of street fighting videos to finance the operations of the gang. Also observed is the police officer who investigated this case noting, “Everyone is trying to be famous for 15 minutes.” Thus, this officer is basing his discourse not on Lombroso or Merton, but on Andy Warhol.

Consider that recently in Houston, a murder case was dismissed because the expert witness for the prosecution, who testifies in murder trials, also helps write scripts for television and in testifying about the defendant got confused between one of his scripts and the actualities of the case, thereby confusing the jury as to whether the defendant had watched the TV show or was actually part of the television show. Further, in another recent case, the defense for a young African American, who had shot a state trooper, was that he had been influenced by rap music and was temporarily insane by reason of music and in fact, at the time he did shoot the state trooper, he had on a Tupac Shakur disk—and Tupac was in fact at that moment rapping about the Rodney King beatdown and the way in which it was filmed. In another recent case, the television program, *Cheaters*, set up an interaction between a cheating spouse and her husband, but her husband had a restraining order and

therefore when they set up the interaction, they now had him violating the restraining order and therefore he went to jail for what was called a second victimization of his wife, this time filmed for television, and later the cheating wife's lover was found to be the police detective who set up the sting in the first place. Further, patrol cars have cameras and the footage from those cameras is used in the police academy for training tools while other parts of that footage are sold to the media and compiled into shows like *COPS* and *LAPD*. Interviews with police officers indicated that they watch *COPS* to see what other departments are doing. Recently, a police officer said, "Through *COPS*, we can actually let the public see what it is actually like to be a cop"—yet later in the interview he complained that the only problem was the show's director, who kept telling the officer to keep talking, since more footage was needed. This is not a world in which the media is merely reporting on crime, nor in which the crime is simply being reflected in the media. This is a world in which the media and crime and popular culture have flowed together. This is a world in which a researcher must analyze the way in which these effects loop into each other to understand how crime and popular culture are related.

Thus, what we see with the last ten years in terms of theory, with the notion of the carnival of crime, the notion of the foreground, the seductions of crime, edgework, exclusion, inclusion, media loops and spirals, is that to analyze crime and popular culture, we cannot use the old models. It does not work to simply use classic Marxist structural analysis, to use basic content analysis of how the media reports on a crime, or to look simply at the old media effects models of how images affect behavior. It is wrapped up in a series of ever tightening loops and spirals. All these models suggest the ways we have to understand crime and popular culture, not as a static connection but as a fluid intermingling of emotion, event, and victimization with social structure, media, culture, and popular culture.

These constellations of theory require new methods of examination. The past ten years or so of crime and popular culture studies have had two positive effects methodologically. One is that we have seen an all-out assault on the assumed correctness of mainstream criminological methods. We are seeing, I think, for the first time since perhaps the 1960s, a sustained and intellectual critique of the validity of survey research, of statistical analysis, of the kinds of methods that have come to be dominant in the social sciences. This dominance is due in part to the increasing role of grants and federal grants for research; federal and state granting agencies prefer numbers, so statistics create the kind of grant data that can be reported. Ironically, the media itself often would also rather have numbers from researchers than anecdotes. In that sense, the numbers seem to create a sort of legitimacy. This has come to be on many levels, a taken-for-granted assumption that social sciences, criminology, criminal justice, and sociology, are done through survey research and are measured through quantitative analysis. This critique of the validity of survey research has come on two levels. One is, while those methods are certainly useful, those methods by definition cannot account for the kinds of fluid negotiations of meaning just discussed. There is no room in those surveys for ambiguity, for a reflexive interplay between knowledge and practice, for reflexivity between image and event. Secondly, the culture of that kind of research is one that is not inviting to the public, one that is not generally informative to the students. To reduce human beings to numbers, to reduce the complexity of human conduct to four choices on a survey does an injustice not only to those we study, but also in some ways, eviscerates our own research. It inevitably will become boring and turgid. It will not be engaging to those we hope to reach as public intellectuals.

If nothing else what has happened in the last decade has been both that critique, and second, a resurgence of alternative sorts of research. Central among these is ethnography. Of course, there is a long history of ethnographic research in criminology and social science involving in-depth, immersed involvement in various

social groups. But I think with the advent of crime and popular culture studies, ethnography has come back with a real force, because as Paul Willis (1977) said decades ago, ethnography would be the preferred method if one wants to be attentive to nuances of symbolism and meaning. If one wants to understand why gang members do what they do or how it is that police officers engage in certain kinds of conduct or how news organizations create the news, the researcher needs to be in the newsroom. The researcher needs to be in the squad car when a cop makes a decision about how to handle a speeding motorist. The researcher needs to be in that alley with gang members, graffiti writers, or dumpster divers, to experience what they experience. In my own research, I have been in a series of long-term, years-long ethnographies inside various deviant or criminal worlds. There has been a sort of resurgence of ethnography as a counterpoint or at least a questioning of the primacy of survey research and quantitative analysis.

What I want to discuss today though, is that I think that is not enough. Although I suppose I am known for those kinds of ethnographies inside various subcultures, I would actually like to critique my own research and suggest that what we are seeing now is a re-imagination even of that form of ethnography, partly because we need new techniques for the world we live in and partly because those theories we just discussed, actually tell us that we have to have new kinds of research. Allow me to suggest some alternatives then to not only survey research and statistics but also even to ethnography as traditionally conceptualized. It seems to me if we only imagine that long-term field research should be done within distinctive groups out there, then we misunderstand the nature of popular culture and crime. It is not simply that we need to go out and pay close attention to gang members and police officers and news room editors and graffiti writers and biker crews. We need to go out and pay close attention to ourselves. That is, we need to develop an ethnographic *sensibility* of our own lives. Our lives are as important to study as are the lives of others. Popular culture is not just out there. It is not just out there in the broadcast or in the film or in the news media. Popular culture resides in our own everyday experiences. If it did not, it would not be popular culture. If it were simply in the media, it would not have much effect. One kind of research, some of us have been trying to do lately and write about, is to turn the lens of cultural criminology or crime and popular culture on our own everyday existence. For example we can look around a college campus or an auditorium like this and note how authority, even legal authority, are encoded in the symbols of the room; the way in which the constructed environment reflects assumptions about authority, about learning, about pedagogy; the way in which college campuses are increasingly structured along the lines of crime control approaches that build control into where benches and lights are placed.

In Great Britain and other countries, it is increasingly important to understand that most of what you do is being filmed, and that film will be used by various agencies. So now we see some groups that actually place their behaviors in front of surveillance cameras, performing for the surveillance cameras. We know that life is now a filmic event. Much of what we do will be recorded, our phones may well be tapped, in that sense; even daily life is being mediated by recording devices.

One can look at the coffee in a cup and ask about the crime that may be part of the way in which that coffee has been grown and transported. One must look at the slice of fish at the restaurant and ask what kind of conditions produced it. Martin O'Brien (2006), in the United Kingdom, has done some brilliant work on what we might call the "shrimp sandwiches of crime." O'Brien points out that with shrimp farming in the Third World native farmers are having land taken away by large agri-business where mango groves and healthy shallow land estuaries are being turned into polluted shrimp farms. So even to eat a sandwich is to engage in some ways with criminality. To walk across this campus is to be a part of, or to be forced into being a part of, an environment of surveillance and control. To listen carefully to what people say in a pub or in a

restaurant is to hear the echoes of last night's news broadcasts: To hear Sarah Palin, to hear John McCain, to hear Barack Obama being revisited and re-imagined as people discuss politics, talk about their fears of crime. To go to someone's house is to be able to read their fears of crime by burglar bars, by stickers on the window, by the kind of dog they keep in their backyard. One can analyze the difference in a border collie and a pit bull, between a chained dog and a backyard fence.

So it seems to me that if we imagine ethnography not as something we get a grant for, to go do research for two years elsewhere, but something we can do in our own lives, that becomes one of the most important avenues into the link between crime and popular culture. The fear of crime, perceptions of crime, everyday transgression, rates of crime, and types of criminality that occur in different social settings, all of those are there to be studied. You do not need a Ph.D.; you do not need a research grant. Again speaking especially to the students in this audience, it is a matter of a sensibility that you bring with you as you live, not so much a matter of going and doing research.

There is another way in which I would critique my own practice of ethnography. Consider again Jack Katz's notion that if we only lead ourselves up to crime but do not know the actual emotional dynamics, we do not understand criminality. Think about the notion of edgework, and the way in which edgework is this ephemeral, ineffable moment of excitement and skill coming together as the criminal illegally races that car at 150 miles per hour, or breaks through that door of the grocery store, or illegally parachutes off a bridge. This suggests that it is the moment that has to be studied, not simply what leads up to that moment. Thus, some are beginning to talk about instant ethnography; that is, examining what it means to pay close attention to the actual moment in which crime occurs, to deconstruct the sixty seconds in which a door gets kicked in, or the thirty seconds in which robbers decide whether or not to go for their guns because of their read of the store owner. Bob Garot's (2007) recent research examines, what happens when one lives in a rough neighborhood and on the streets someone says "Where you from." Is this perceived as a gang challenge or an inquiry as to a residential address? Is this a challenge to claim one's gang? If there is a claim of gang membership will there be violence? Because one must determine who is the speaker and how much support there is for that challenge. As Garot found in his research in L.A. and New York, answering the question "where you from" sets in motion a whole series of events that often reify or pull one out from gang membership. The researcher must be there to understand the moment of the challenge, not just through the background research but to understand in that moment gang identity is being negotiated; that in that moment a crime is being made real or not; that in that moment of victimization, emotions change, a sense of self changes, one enacts performances, in order to survive the criminal moment. If we have theories or seductions of crime or the foreground of edgework, it seems we have to have an ethnographer's ability that pays careful attention to those ineffable motions, those incandescent instances in which crime takes on meaning.

In some research that Steve Lyng, Dragan Milovanovic, and I have done (Ferrell, Milovanovic, & Lyng, 2001), we went out with illegal base jumpers--people who jump illegally from buildings and bridges. My knees are not up to it—and not to mention I would have killed myself, since we did not know how to parachute. What we did do was go up on the bridge with people and talk to them as they were getting ready to jump while another of us was at the bottom of the bridge as they landed. We were trying to get at what was going through the jumper's mind as the jumper is doing this? Not tomorrow, not the survey emailed six months later, but as close as we could get without killing ourselves to being in the moment of transgression. How does it feel? What are the emotions that animate that experience? By the way what we found was, without exception, that the emotion was the thrill of living, not a death wish. People say that this is the one time that they feel alive; able to escape the disappointments in

their lives, jumping off the bridge, allows them to feel alive. We had to be there, I would argue, to find out if they were actually telling the truth and I think we did find that to be true by the looks on their faces, by the emotion, by the adrenaline that animated that moment.

I would say one other flaw with ethnography as long-term involvement with others is not only that perhaps we miss ourselves, we also do not actually pay attention to the moment in which crime and popular culture come together. Recall the notion of loops and spirals, the media, Bauman's notion of liquid modernity. It seems to me we also have to imagine, not just of ethnographies of different groups, but ethnographies of movement; that is what I've begun to call liquid ethnography—which to me would be ethnography that pays attention to how groups change and migrate; not how they stay the same. I gesture at many of my colleagues in the audience. We have tended to do ethnographies as if the subjects of these studies, the Skinheads, graffiti writers, or dumpster divers were a unified group. But the dumpster divers may be coming and going out of the community because of the change in INS or immigration policies or economic circumstances. The Skinheads may be recruiting new members during the study. In that sense, the researcher is studying a process, a sort of liquid flow, not a group. If the researcher brings out loops and spirals and what it has to do with ethnography then attention must be paid to images as well. One must think about how people create images of themselves and perhaps as the ethnographer, imagine that part of the job is to create an image of them. A camera becomes as important a tool as a notepad. Looking at televised representations may be as important as being under the bridge or in the squad car.

Many of us are beginning to question the assumption that ethnography is a distinct study of a distinct group. Maybe ethnography in a late modern liquid world is a study of how there are no longer groups that are as distinct as they once were. Today it is perhaps ethnography of movement, ethnography of flow and change as opposed to a study of a distinct entity.

It seems that we need what David Altheide (1987) calls ethnographic content analysis. Of course it is valuable to try to measure the amount of coverage that one crime issue gets or another or the ways in which the *New York Times* characterizes gangs or again the language used in reporting McCain versus Obama. But if we do that, imagining that the media is distinct from the event, it seems to me that we are back to the old problem of linearity and an outmoded sensibility. What David Altheide has developed is what he calls ethnographic content analysis, which is submersing one's self in the reflexive process by which the media and the thing on which the media report feed back into each other. Examined in Jennifer Grimes' (2007) recent Ph.D. research was media reporting on the Three Strikes Law and how it changed its own politics, because politicians were responding to the media coverage, knowing that was changing people's perceptions. This then changed media reporting, which then fed back into the criminal justice system. So again, it is the ethnography of the flow between the media and criminal justice and crime, not simply a sort of quantitative study of how the media reports on crime.

And the final methodological innovation that I think we are seeing, and that I would strongly endorse, is of course visual criminology. I cannot imagine how we can be criminologists in a world that is saturated by images and nonstop communication if we do not have theories and methods that can take us inside images. Researchers must go beyond what they learned in graduate school. We are going to have to study documentary photography and learn what it means to take photos. We are going to have to learn the theories of the visual that have been developed in film studies and elsewhere. We are going to have to imagine as we look at the world that we are looking through a viewfinder and think about how that world was constructed through images. We cannot be good criminologists and only use words. We have to go inside

that world with our eyes open to visual content as well as to written and spoken content.

In conclusion I have two observations. The first one I hope is heretical, and I hope will spawn a discussion or maybe a rebuttal. It seems to me that the greatest value of the emerging field of crime and popular culture is actually not the subject matter. It is easy to be seduced into imagining that what makes us distinctive is that we look at CSI shows or study films or hang out with graffiti writers. In fact that is not really the game at all. One can turn graffiti writers into answers on a survey. A researcher can reduce terrorists to a statistical abstraction through a tobit intercept model. A researcher can take any subject matter and eviscerate it of its emotion, of its excitement through the appropriate theories and methods. The subject matter will only carry us so far. There are sparks of excitement in film and television and deviant subcultures and popular culture but those sparks can either be snuffed out by criminology or fanned into a real flame of analysis. The key then, despite our excitement to be able to share our knowledge about this area that we study, is not the subject matter itself but the innovation we can bring to it theoretically and methodologically.

And finally I would say though that times are tough, and so this is no time to retreat into obscure academic jargon. There is as much on the line now perhaps as there has been in the last century or so. There is economic survivability, environmental sustainability, global injustice, global production, along with the criminal justice system and the way it is drifting; now is no time to only talk to each other. If we use these methods and these theories to engage with popular culture on its own terms, then researchers can bring to it a kind of critical analysis of crime and transgression and victimization. It makes us better public criminologists; it makes us better able to talk to the media, to talk to our students and to have our students talk to us, and gives us an actual hope that our work can have some effect on the world and can push toward a more just and transparent world. Because it seems to me knowledge is only useful when it threatens those who would deny it.

Thank you.

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FROM HIP HOP TO HATE ROCK:
A CRIMINOLOGY OF THE GOOD, THE BAD, AND THE TRULY AWFUL

Mark Hamm
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Paper based on an address to the Crime and Popular Culture:
A Multi-disciplinary Exploration Conference
University of Central Missouri, October 30, 2008

They say that if you can remember the 60s, you weren't there. But I can actually remember quite a bit, including the time I first began to think about a connection between music and crime.

It was actually 1970, August to be exact, when I was a student at Indiana University enrolled in a criminology course taught by Alfred Lindesmith, who later that year would receive the Edwin Sutherland Award from the American Society of Criminology for his pioneering work in drug addiction. Lindesmith was a talented and popular teacher who taught his students, in his words, to "think beyond the orbit of criminology."

On this particular day Professor Lindesmith entered the class chomping on a cigar and carrying his favorite newspaper, *The Louisville Courier-Journal*. Reading from the front page, he railed against President Richard Nixon who the day before had issued a statement decrying what he saw as the media's glamorization of Charles Manson, who was then on trial for the infamous Tate-Labianca murders of August 1969. As Lindesmith saw it, Manson was innocent until proven guilty and Nixon had just ensured that Manson could never get a fair trial.

Lindesmith encouraged us to read a book called *Garbage People* (Gilmore & Kenner, 1971), the first of what was to be many books on the Manson family, written by a *Los Angeles Times* reporter. I found *Garbage People* at a Bloomington bookstore and wound up devouring the thing. This was an insider's account of the family, with "fly-on-the-wall" observations that made your skin crawl. One of the family members, I learned, was a young California guitar player named Bobby Beausoleil, who had murdered fellow musician Gary Hinman in July 1969, a month before the Tate killings, over a drug deal gone badly. On Manson's orders, Beausoleil had tortured Hinman for two days before stabbing him to death with a bayonet.

Now, at the time I was deep into what might be called a psychedelic phase. Among the crowd I ran with, the Stones' *Sticky Fingers* (1971) ruled the turntable, along with Bob Dylan's mid-60s masterpieces, and the Grateful Dead's *American Beauty* (1970). There was also Love, a hippie garage band out of Los Angeles fronted by the great Arthur Lee. Love's *Forever Changes* (1968) was the psychedelic era's magnum opus as far as we were concerned. After discovering that Love's original lead guitar player was none other than Bobby Beausoleil, I became hooked on the idea that popular music and criminology were connected.

I bring this story up for a couple of reasons. First, it shows how far we've come in understanding the importance of what Lindesmith called issues "that lie outside the orbit of criminology." Forty years ago there was no cultural criminology; no *Crime, Media, Culture* [journal], and no one would have considered organizing an international conference on crime and popular culture. Second, and more personally, without Lindesmith's lessons in criminology I would have never become interested in skinheads.

Birth of the Skinhead Nation

The skinhead subculture was born in London in late 1969, around the time that Altamont and the Manson family brought the hippie movement to an end. Essentially, the early skinheads represented a rebellion against the bourgeois influence of the hippie subculture. While the hippies explored the upwardly mobile options produced by the economic affluence of the mid-to-late 60s, the skinheads explored the spiraling downward options presented to them in the economically austere early-to-mid 1970s.

In the beginning, a group of White British working class males became fascinated by the style of a flashy, tough, Jamaican street gang called the rude boys whose criminal exploits were immortalized in a string of early reggae recordings such as the Wailers' "Rude Boy" (1965), Desmond Dekker's "Shanty Town" (1973), and Prince Buster's "Shaking Up Orange Street" (1998). As British sociologist Dick Hebdige (1979) noted, the hero of this music was "a lone delinquent pitched hopelessly against an implacable authority" (p.37). The rude boy style included short cropped hair and a porkpie hat. Rude boys spoke in Jamaican patois, a language developed by West Indian slaves. Onto the rude boy style these White youth fused the image of the traditional British working-class community (much of which had been eroded by a shrinking economy that mocked traditional values). This included a pride in neighborhood, a rough machismo demeanor, obsessions with football and beer drinking, and a stripped-down, regressive approach to consumer capital.

In 1972, Phil Cohen described the skinheads as a "kind of caricature of the model worker" (p.55) and Hebdige (1979) referred to them as a "hard stereotype of the White lumpen male" (p.56). The early skins (also known as suede heads) cut their hair in a short rude boy crop, wore jeans, work shirts, and highly polished dockworker boots called Doctor Martens. From the rude boys, the early skins adopted an argot of street vulgarity and an affinity for reggae, ska and rock steady music. But the skinheads were not ostensibly racist (to the contrary, early skins included Black Jamaicans known as two-toners). Nor did they believe in Nazism. All of that would come later.

Skinhead violence surfaced in the East London dance halls around 1971 with what was then called "idiot dancing" (slam dancing as it is known today)—a wild and aggressive boogie intended to draw blood, or at least render some serious pain. Idiot dancing led to fights between skinheads and hippies; these fights spilled onto the streets, and in time the skinheads identified a second victim: the Pakistani immigrant. Thus was born the style of "Paki-bashing." And shortly thereafter came "queer bashing."

In the mid-1970s, the British economy plummeted to its lowest point since World War II, bringing the nation a host of new social ills. With massive unemployment and daily power outages affecting nearly every London working-class neighborhood, the ominous specter of racial violence became an all-too-frequent feature of British society. It was within this context that the punk music scene was born. Invigorated by such classic punk bands as the Sex Pistols, the Clash, and the Damned, the punk movement defined its sub-cultural space through symbols of nihilism, sexism, anarchy, and violence—violence expressed abstractly against anyone, including each other and themselves.

In 1976, glam rockers David Bowie, Lou Reed, and Iggy Pop entered what they called their Berlin phase. Due to their fascination with these rock icons, punks developed an interest in the decadence of Nazi Germany. Hence the swastika was adopted as a new punk symbol. Like the abstract way in which they expressed their violence, however, the punks themselves did not adopt the ideology of Nazism denoted by this symbol. "The signifier (swastika) had been willfully detached from the concept (Nazism)," wrote Hebdige (1979), "and although it had been re-positioned (as "Berlin") within an alternative sub-cultural context, its primary value and appeal derived precisely from its lack of meaning" (p.117).

Nazi symbolism became fashionable across the youth sub-cultural scene. London youths began wearing swastikas and jewelry emblazoned with the Iron Cross and the SS insignia. Even heavy metal bands got in on the act, as rock god Jimmy Page of Led Zeppelin, on at least one occasion, performed in concert wearing the uniform of a Nazi storm trooper. Offending all sensibilities about the Holocaust, the Sex Pistols released a single entitled “Belsen Was a Gas.” An early skinhead band, the Exploited, dropped one called “Hitler’s in the Charts Again” (2001). These were the days when a band appeared on the streets of London with the name Elvis Hitler (Hamm, 1993).

The Neo-Nazi Skinheads

A second generation of London skinheads came to the fore around 1982 against the backdrop of two key policy initiatives of the Margaret Thatcher administration. The first dealt with immigration. Thatcher inaugurated her tenure as prime minister by declaring that she understood “the feelings of those who fear that the British culture may be swamped by an alien one” (quoted in Bowling, 1990:2n). Such nationalistic rhetoric led a number of analysts to conclude that Thatcherism had facilitated the incorporation of a common-sense form of racist logic into mainstream political discourse. The second policy initiative involved economic reforms intended to ameliorate Britain’s financial woes through the creation of thousands of new low-paying jobs designed to provide goods and services to the affluent upper class. In concert with her most influential global ally, U.S. President Ronald Reagan, Thatcher therefore made important strides in facilitating the pursuit of self-interest in British society.

These crucial historical developments—the introduction into public life of a rhetoric of nationalism with its legacy of racism; the rise of self-interest in British society; and the punk movement with its rage and Nazi fetishism among working-class youth—created the basis for what Stuart Hall (1988) has referred to as Britain’s “new authoritarianism.” The stage was set for the appearance of the neo-Nazi skinheads. Yet their emergence would not have been possible without a deliberate, well-orchestrated recruitment and indoctrination campaign to bring thousands of youth into the ranks of right-wing extremism.

At the center of that campaign was Ian Stuart Donaldson (widely known by his stage name, Ian Stuart), front man for the definitive racist skinhead band, Skrewdriver. Stuart encapsulated the political mood of the times into a form of protest music intended to appeal to legions of English teenagers who had been shoved into a near-lumpen status by the British economy. Yet Skrewdriver’s music was altogether void of English parochialisms; instead, it was designed as world music. Moreover, Stuart appropriated the new authoritarianism and transformed it into a seductive style of lowbrow entertainment that eventually captured the imagination of millions of alienated White kids from London to Berlin, from Stockholm to New York.

This trajectory is traced to the 1980s with the release of a number of seminal Skrewdriver songs, “White Power” (1983), “Race and Nation” (1984), “Rudolf Hess (Prisoner of Peace)” (1985) containing Stuart’s anthems of human survival for White youth of the time. The intention of these songs was to produce a sort of mystical, “bully boy” appeal for a “clean White Britain” in which the Viking—that barbarous Celtic warrior of Led Zeppelin lore—returns once again to rule the British Isles. A music critic wrote at the time: “Skrewdriver turned the clock back hundreds of years and glorified the age where life was a day to day battle for survival, disease was rife, war ever present, and the mass of people lived as virtual slaves” (quoted in Hamm, 1993: 34). *Hail the New Dawn* (1984) and Skredriver’s other albums were not an artistic rebellion *against* Thatcherism and Reaganism; rather, they were a full-throated endorsement of everything those regimes stood for. Assisted by the National Front (a

neo-fascist organization with offices in London, Paris, Berlin, and Rome), in 1983 Skrewdriver became the world's leading White power rock band.

This occurred by dint of the fact that a number of hard-core London punks were still flirting with the violent, reactionary symbols of Nazism. Ian Stuart was suddenly in the right place at the right time. Breathing intentment into the otherwise meaningless punk symbols of Nazism, Stuart and his associates created a homologous paramilitary youth subculture dedicated to intimidation and violence against persons because of their race, religion, or sexual preference. Doc Marten boots were transformed into weapons of street combat. Gluttonous amounts of beer became the elixir. The Viking was converted to a symbol of British nationalism and masculinity. Violence became sub-cultural style expressed in "Paki-bashing," "beserking," and "sidewalk cracking."

By 1990 the number of racial attacks provoked by skinheads was estimated by the British Home Office at roughly 70,000 per year, including a total of 74 murders of Afro-Caribbean and Pakistani men between 1985 and 1989. Skinheads were also implicated in the bombing of some 20 mosques in London (Hamm, 1993). With the collapse of communism, skinhead violence spread to Western Europe and then into former Eastern-bloc countries. German skinheads reportedly injured more than 80,000 foreigners and asylum seekers during the early 1990s. Other European skinheads adopted a more global posture by joining mercenary movements in Croatia, supporting the policy of ethnic cleansing against Muslims, and in Iraq where they supported Saddam Hussein's campaign of genocide against the nation's Kurdish population. In 2004, American neo-Nazi skinheads volunteered for service in the Iraq War. Among them was Douglas Ross, a military intelligence officer, who was caught shipping disassembled AK-47s to the United States from Iraq. Meanwhile, the international marketing of Nazi memorabilia had become a \$100-million-a-year commercial enterprise. Record companies in Germany, France, and the United States created a stable of racist skinhead bands and a thriving market for White power rock music, fictionalizing violent nationalism. Hate crime was now an international commodity.

The American Skinheads

The American skinheads took root in popular culture during the latter half of the 1980s, as the mainstream culture of the U.S. became anchored in conservatism, Republicanism, patriotism, militarism, and traditional "family values" that were at the heart of both Reaganism and a growing religious revival waged by the Fundamentalist Christian Right. Over the years the tally of skinhead hate crimes have run the gamut from homicide and attempted mass murder to cross-burnings and desecrations of Jewish memorials. The skinhead movement is not monolithic, however. It is comprised of numerous sub-cultural entities with wide-ranging values, beliefs, and criminal tendencies. Some skinheads are hard-core racists; some are not. For example, Skin Heads Against Racial Prejudice (SHARP) is an organization of anti-racist youth who embrace first-generation skinhead principles of multiculturalism and tolerance. These young people became skinheads strictly for cultural reasons: they liked the look and the music but not the politics. In fact, SHARP considers itself an enemy of the neo-Nazi skinheads.

Patriots, Skinheads, Klansmen, and Criminals

From 1987 through the mid-1990s, the United States experienced a remarkable surge of hate-crime violence, due in large part to the criminal activity of neo-Nazi skinheads. Once older White supremacists saw that the new generation was willing to carry out their own violent ideals, they rushed to enlist the loyalty of skinheads

everywhere. Once again, the values, style, and music of the skinhead subculture were at the center of this development.

The Aryan Republican Army

The archetypical hate group of this period was the Aryan Republican Army. The ARA was a six-member “cell” responsible for a string of professionally executed bank robberies in the Midwest between 1992 and 1996—the purpose of which was to support a series of terrorist attacks that included armored truck heists, sabotaging public utilities, derailing trains, assassinations and bombings. As incredible as it may sound, the ARA’s goal was to overthrow the federal government.

The ARA was founded in 1993 by Peter Langan, a 35-year-old career criminal once described by a veteran FBI agent as, “One nasty dude” (quoted in Hamm, 2004). Langan defied all the rules of the White supremacy movement. By day, he was known as “Commander Pedro”—the hyper-masculine ARA leader who emulated his hero, Jesse James, by robbing nearly two dozen Midwestern banks with paramilitary precision. By night, he was known as “Donna McClure”—a Kansas City drag queen.

Tactically, the ARA’s bank robbery spree was inspired by popular culture; namely a 1990 B movie starring Keanu Reeves and Patrick Swayze called *Point Break*. In the movie, a gang called the ex-Presidents—so-named for wearing masks of Jimmy Carter, Ronald Reagan, LBJ, and Richard Nixon—pull off dozens of meticulously planned bank robberies, netting millions. At their peak, members of the ARA had at their disposal a quarter of a million dollars in cash gained from robberies. Much can be learned about their personal missions by taking a look at what they did with the robbery money—that is, by focusing more intensely on the cultural criminology of terrorism.

ARA member Scott Stedeford, a skinhead musician from Philadelphia, used his portion of the proceeds to produce a White power CD called *Ear to Ear* (1995), which was dedicated to the martyrs of the American neo-Nazi movement. Each song on the CD is sung by Stedeford in a voice that explodes with rage against the system. Not to overstate the case, but *Ear to Ear* (1995) may represent a singular accomplishment in the history of rock music. Protest singers from Woody Guthrie and Bob Dylan to the Clash have sung about robbing banks with a six-gun. But no one actually *did it*. Stedeford did. In fact, as if to prove the point, during the robberies he carried his assault rifle inside a guitar case. Not only that, he used the bank robbery proceeds to create a wholly unique rock art form. *Ear to Ear* (1995) actually celebrates the phenomenon of terrorism.

As for Langan, he used his share of the money to produce one of the most bizarre artifacts in the annals of American political crime—a videotape entitled, *The Aryan Republican Army Presents: The Armed Struggle Underground* (1995). This was a recruiting video—featuring Commander Pedro dressed in a black ski mask and armed with grenades, chemical weapons, and a Chinese assault rifle—intended to capture the attention of alienated skinheads across the nation. At 1 hour and 40 minutes long, it is a masterpiece of adolescent propaganda. It is, moreover, audacious in intent, dangerous in content, and utterly bad in substance. No matter. Several hundred copies of the video are now floating around the White supremacy movement.

With these sub-cultural products, Langan and Stedeford reached for the same star that has attracted American terrorists since Jesse James and John Wilkes Booth: celebrity. For the ARA, this insatiable need to be famous was, in fact, so strong that it outweighed every other motivational factor. It trumped their ideology, their purpose, and the mission. The constant craving for attention was the true motivating factor behind the recruitment video and the CD. What these terrorists teach us then, is that culture matters. The everyday culture of individuals and terrorist groups contains

powerful dimensions of style and meaning that defines the landscape of religious and political violence.

The Hip Hop Connection

American terrorists are not limited to neo-Nazis, and are still alive and well in the United States. Interestingly, many individuals are recruited from within America's prisons. One active terrorist group operating from a U.S. prison is the Jam'iyyat Ul-Islam Is-Saheed (JIS). This group planned a multi faceted terror plot from within the walls of New Folsom Prison that was to take place on September 11, 2005 in Los Angeles. The plot was discovered and foiled, but included mass murder and attacks on the Israeli consulate and airline. The following case study, from interviews conducted by the author at New Folsom Prison in 2005, provides insight into what motivates this group.

The Pipe Dreamer

Jemahl was born to a Black father and a White mother in Erie, Pennsylvania, in 1974. His father decamped shortly thereafter. Jemahl's mother attended a Protestant church but "religion was no big deal in our family," Jemahl recalls. "I turned bad at eight years old," he continues, "and was sent to juvenile hall." There he was influenced by a chaplain who convinced Jemahl of Jesus' love and after reading the Bible Jemahl became a born again Christian. Yet at 14 Jemahl incinerated that identity and embarked upon a journey that would lead him to atheism. "I began to look at Christianity as brainwashing," he says, "so I started my own quest to find the truth. I read books about Albert Einstein. I became a science man and realized that religion didn't jibe with science. I used my own system of analytical deduction to find the truth."

At 15 Jemahl returned to his mother's home in Erie but things didn't work out. He was sent back to juvenile hall in 1989 on robbery charges and fell into a severe depression. "I did lots of lonely cell time looking out the window," Jemahl explains, "watching the change of seasons. For awhile I didn't speak to anyone. I became introverted. Being introverted caused me to listen to my own desires, my thirsts."

At this point Jemahl was visited by his father, a convert to the Nation of Islam (NOI). Upon his discharge in 1990 Jemahl moved with his father to Los Angeles. "I tried to relieve my pain with sports, women, and drugs," he says. "I had strong desires and was trying to find something. For awhile the drugs worked, sometimes mushrooms, sometimes LSD. [When I took these drugs] I felt myself go up and felt myself at an astral level. I was [also] influenced by people I met in California and started having conversations in spiritual terms."

When he was 17 Jemahl dropped out of high school, joined the Bloods, and was subsequently arrested for a triple homicide. He was remanded to the adult prison system and began serving life without parole. There he continued his search. "I went to the pen at 17," he says. "I joined the Nation of Islam and then became a Five-Percenter"—the Five Percent Nation, a NOI offshoot founded in Harlem in 1964 by Clarence 13X, based on the premise that only five percent of Nation members can call themselves true advocates of freedom and justice.

Through the Five-Percenter I learned that Black power is my roots. I never saw the dynamics of race before. Five-Percenter teach that the message for the Black man is that you must educate yourself to live. The biggest factor is identity. Europeans stripped Blacks of their identity and this went deep into our history.

Jemahl's next transformation occurred in 1993 with the release of *Enter the Wu-Tang Clan (36 Chambers)*, considered by many critics to be one of the most

significant albums of the 1990s and one of the greatest hip-hop albums of all time. Wu-Tang's ethos blended Eastern philosophy expressed in kung fu movies with Nation of Islam preaching and comic book-like characters (Ghostface Killah and Ol' Dirty Bastard) for just the right touch of levity. "Wu-Tang Clan caused me to see that the Five Percenters was the old way," Jemahl says. "I rejected Five Percent philosophy but still saw oppression. The Black man still had his back to the wall." This development, in turn, led Jemahl to search for a more strident religious ideology. "I needed to find justice," he says, "justice that leads to martyrdom."

That search led Jemahl to Sunni Islam. He converted to the faith in 1994 while incarcerated at California State Prison-Calipatria. Jemahl's affiliation with the prison Sunnis, combined with his links to the L.A. Bloods, made him a prime candidate for recruitment into an infamous terrorist group known as the JIS when he arrived at New Folsom Prison in 2003.

Asked to explain how his affiliation with JIS has changed his life, Jemahl replies with what can only be described as millennial fervor: "I can now see one people. The whole planet is on this journey. Before, my life was egotistical. This is what's killing society: Me, me, me! I began teaching the brothers: We need to do away with labels and boxes and follow the Prophet Mohammad."

Today Jemahl is still at New Folsom where he continues to "teach the brothers" by proselytizing hard-line Islamicism. As he says:

People should be worried about us. People in this prison feel there is no way out. It's all about winning and losing. I'm lookin' for justice. That's the difference between me and these other Niggers up in this bitch. When our back is against the wall we [JIS?] will seek justice. This prison is a cauldron of the realities [we face]. Prison is a big business and we're its slaves. This is not so much about Islam. I'm radical. Radical means you're holding to foundation. That's what the suicide bombers do. There's nothing but God left so let's go find a bomb.

Concluding Remarks

All of these examples show how crime and media are intertwined. If you follow the money from crime, crime leads to the production of a sub-cultural artifact such as a video or music CD, which is then recycled and is used to inspire and recruit a whole new generation of alienated youth (White in the case of the neo-Nazis, Black in the case of the JIS). Today's youth are avid consumers of video and other forms of media, thus using popular culture is very useful in studying all forms of terrorism.

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A COMMUNITY UNDER SIEGE:
BRUCE SPRINGSTEEN AND SOCIAL JUSTICE

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Paper based on an address to the Crime & Popular Culture:
A Multi-disciplinary Exploration Conference
University of Central Missouri, October 29, 2009

Abstract

As criminologists, we spend our working lives attempting to explain and improve the criminal justice system. Our level of discourse is high, but does our work reach those outside our small academic community? Bruce Springsteen is a musician, not a criminologist. Over the course of his career, Bruce Springsteen has regularly written about class, inequality, and the criminal justice system. The significance of his work lies in his ability to articulate, on a popular level, the concerns about social justice often expressed by academicians. In this paper I examine the lyrics of Bruce Springsteen, and how they deal with issues of social justice.

Criminal justice scholars seek to understand the causes of crime and the operation of the criminal justice system. Criminal justices teach, conduct research, and work with criminal justice agencies and policymakers. We seek to explain and change the criminal justice system for the better. We debate *ad infinitum* the tenets of social control theory, the efficacy of community-oriented policing, and the like. Our level of discourse is high, but we often find our work ignored by the media, the public, and criminal justice policymakers.

Academics, of course, are not the only ones interested in social justice issues. Artists have devoted a considerable amount of attention to these issues. Indeed, it is a cliché that art imitates life. Upton Sinclair's novels vividly portray the class inequality of the Industrial Revolution, William Faulkner's novels depict the racial conflict in the South in the early 20th century, and Jackson Pollack's paintings reflect the cultural malaise of mid-20th century America. Rock music is a relatively new musical form. While it enjoys immense popularity, it is frequently dismissed by scholars for its failure to address the issues of the day.

The music of Bruce Springsteen is an exception. This paper examines the lyrics of Bruce Springsteen, and how they deal with issues of social justice. Over the course of his musical career, Bruce Springsteen has regularly written about issues of class, inequality, and injustice. Bruce Springsteen is a musician, not a criminologist. The significance of his work lies in his ability to articulate on a popular level (thereby reaching a wider audience), the concerns about social justice often expressed by academicians. Springsteen's audience is not academe, but the wider world. He uses his music to impart his world view and give voice to those often overlooked—the working class, the downtrodden, and even criminals. Springsteen seeks not only to explain the lives of these individuals, but to show why our society needs to change. In this paper I examine Springsteen's lyrics throughout his career, the issues he focuses on, the values he espouses, and the means by which he gets his message out to the world.

Methodology

This paper is a content analysis of the lyrics of Bruce Springsteen. I examine his songs chronologically, beginning with his first album, *Greetings From Asbury Park*, released in 1973 and going forward to *Magic*, which was released in 2007. I present this examination chronologically rather than by topic in an effort to demonstrate how Springsteen's songwriting and choice of topics has evolved over the course of his career.

Space does not allow me to review each song on each album, and I acknowledge that not every song focuses on social justice issues. Indeed, there are a number of songs and even entire albums (i.e. *Tunnel of Love*, 1987) that focus primarily on other topics, such as personal relationships. The fact that Springsteen has written songs that deal with issues other than social justice does not mean we should not focus on that aspect of his work.

The Songs of Bruce Springsteen

Bruce Springsteen grew up in Freehold, New Jersey. His was a working class family—his mother worked as a secretary, and his father held a variety of jobs, including factory worker, bus driver, and correctional officer. He attended Catholic school for a number of years before transferring to the public high school, but he was an indifferent student and a loner. He began playing the guitar at 13, and has often credited rock and roll music with giving him a reason to live. According to Springsteen, "The first day I can remember looking into the mirror and being able to stand what I was seeing was the day I had a guitar in my hand" (Marsh, 1987, p.216). Springsteen began playing in local bands as a teenager. He spent much of his time in the music clubs of Asbury Park, a run-down beach community. In 1972 he signed with Columbia Records.

Bruce Springsteen released his first album, *Greetings From Asbury Park*, in 1973. It contained songs that celebrated the freedom and exuberance of youth, but also hinted at the difficulty of growing up poor, as in: "I swear I found the key to the universe in the engine of an old parked car" ("Growin' Up," 1973). It includes some disquieting moments as well, including a song ("For You," 1973) about someone who has committed suicide.

His second album, *The Wild, the Innocent, and the E Street Shuffle* was also released in 1973. The themes were similar to those found on *Greetings From Asbury Park*. In the song "Rosalita," the singer tells his girlfriend her father should approve of their union, as the record company has just given him a big advance—nothing less than Springsteen's personal version of the American Dream! Both of his first two albums show an awareness of unhappy lives, but there is not much in the way of explication or explanation (Cullen, 1992).

In 1975 Springsteen released *Born to Run*, which gained him a national audience and critical acclaim. The title song became a staple of rock radio, the album sold well, and Springsteen appeared simultaneously on the covers of *Time* and *Newsweek*. The album displayed a clearer, more focused songwriting style. The tone of the album was also somewhat darker than the previous albums. The emphasis was on individuals who felt trapped, whether in dead end jobs, failed relationships, or dying industrial towns. While the lot of these individuals seemed bleak, a sense of hope and joy nonetheless permeated the music.

While the song "Born to Run" was a celebration of escape, it was also an acknowledgment that the characters in the song were left with little choice but to flee, as they were trapped in their present life:

Baby this town rips the bones from your back
It's a death trap, It's a suicide rap

We gotta get out while we're young
 'Cause tramps like us, baby we were born to run
 "Born to Run" (1975)

The theme of the album is escape, of trying to get out and get what you want and deserve. Escape is possible, but only via a limited number of avenues, some legitimate, others not. In "Jungleland" Springsteen revisits his suggestion in "Rosalita" that rock and roll may provide a means of escape, at least for some:

Kids flash guitars just like switchblades
 Hustling for the record machine
 The hungry and the hunted
 Explode into rock n' roll bands
 "Jungleland" (1975).

In "Meeting Across the River," however, he acknowledges that there are other means to achieving the American Dream, including crime. The song details the plans of two low level criminals:

And all we gotta do is hold up our end
 Here stuff this in your pocket
 It'll look like you're carrying a friend
 And remember, just don't smile
 Change your shirt, cause tonight we got style
 "Meeting Across the River" (1975).

While there was an increased sense of desperation on *Born to Run*, the overall feeling of the album was one of hope, of optimism, even in the face of long odds. Springsteen's next album, *Darkness on the Edge of Town*, was released in 1978. It was a continuation of the themes explored on *Born to Run*, but the tone had changed from desperation to anger. The cover of the album was a clear indication that the contents of this album were markedly different from what had come before. Where Springsteen had posed laughing with his saxophone player on the cover of *Born to Run*, he stood alone on the cover of *Darkness on the Edge of Town*, staring blankly into the camera. The songs on the album had a different tone from his previous work. Where *Born to Run* had been largely dominated by saxophone and piano, *Darkness on the Edge of Town* was driven by guitars. The change in the instrumentation gave the music an increased sense of urgency and power.

Lyricaly, Springsteen continued to explore the ways that individuals dealt with the inequities of modern society. Springsteen's focus is increasingly on people who are marginalized by American society. Springsteen admitted that after *Born to Run* he:

wanted to write about life in the close confines of the small towns I grew up in...I was searching for a tone somewhere between *Born to Run's* spiritual hopefulness and '70s cynicism. I wanted my new characters to feel weathered, older, but not beaten. The sense of daily struggle in each song greatly increased. The possibility of transcendence or any sort of personal redemption felt a lot harder to come by...I intentionally steered away from any hint of escapism and set my characters down in the middle of a community under siege (Schoemer, 1996, p.66).

The entire album is populated with the same characters found in *Born to Run*. But where the individuals in *Born to Run* believed that escape was possible, the protagonists in *Darkness on the Edge of Town* have no illusions:

Through the mansion of fear, through the mansions of pain,
 I see my daddy walking through them factory gates in the rain,

Factory takes his hearing, factory gives him life,
The working, the working, just the working life
"Factory" (1978).

Many of the characters on the album are trapped in dead-end jobs, unable to leave but unwilling to quit dreaming of a better life. The protagonist of "Racing in the Street" has a wife and a job, but neither holds his interest. The only meaning in his life is provided by his car, "a '69 Chevy with a 396." He spends his nights racing other cars, as a means of escaping the drudgery of everyday life:

Some guys they just give up living
And start dying little by little, piece by piece,
Some guys come home from work and wash up,
And go racin' in the street
"Racing in the Street" (1978).

The division between the "haves" and the "have-nots" is clear to the protagonists in these songs, and this class division is viewed as illegitimate:

Poor man wanna be rich,
Rich man wanna be king,
And a king ain't satisfied till he rules everything
"Badlands" (1978).

While some of the protagonists appear to accept responsibility for their failed lives, others look elsewhere, placing the blame on their upbringing:

You're born into this life paying,
for the sins of somebody else's past,
Daddy worked his whole life, for nothin' but the pain,
Now he walks these empty rooms, looking for something to blame
"Adam Raised A Cain" (1978).

The anger of the speaker in *The Promised Land* is palpable and clearly directed outward:

Sometimes I feel so weak I just want to explode
Explode and tear this whole town apart
Take a knife and cut this pain from my heart
Find somebody itching for something to start
"The Promised Land" (1978).

Some of the protagonists find what they are looking for, an outlet for their rage and frustration, either in fighting, drinking, or racing cars:

End of the day, factory whistle cries,
Men walk through these gates with death in their eyes,
And you just better believe, boy,
Somebody's gonna get hurt tonight
"Factory" (1978).

The protagonists of the album are not criminals, however. Most of them hold jobs and have families. What unites the protagonists on the album is their anger, and the anger is caused by their frustration with being unable to attain what they believe they have been taught to strive for:

Everybody's got a hunger, a hunger they can't resist,
There's so much that you want, you deserve much more than this,
But if dreams came true, oh wouldn't that be nice,
But this ain't no dream we're livin' through tonight

“Prove it all Night” (1978).

According to the title song:

Some folks are born into a good life,
Other folks get it anyway, anyhow
“Darkness on the Edge of Town” (1978).

The characters on *Darkness* may live in the same small town, but they are not part of a community in any meaningful sense. They are individuals, isolated, anonymous, and alienated. As the narrator in “Streets of Fire” says, “I live now, only with strangers/I talk to only strangers.” What they share is a desire to escape the dead end that is “the workin’ life.” They long to be someplace and someone else (Millman, 2008). Springsteen portrays the lives of the working class as an endless struggle. While the characters on the album talk about their problems, they do not point to specific sources or causes of their problems. It is never clear precisely who the antagonists are (Pitofsky, 2006).

Springsteen’s next album, *The River*, released in 1980, continued to explore the themes enunciated in *Darkness on the Edge of Town*. There was a subtle shift in attitude, however. Some of the anger seemed gone, replaced by despair or resignation. Characters who in previous albums tried to escape, or who turned their frustration outward, seem defeated by life, trapped in an unhappy existence without a solution. Some accept their fate, like the protagonist in the title song:

Then I got Mary pregnant
And, man, that was all she wrote
And for my 19th birthday I got a union card and a wedding coat
“The River” (1980).

Others acknowledge the futility of their situation, but seem unable to do anything about it. Instead they just continue on, living from day to day without hope or purpose:

Do you still say your prayers little darlin’
do you go to bed at night
Prayin’ that tomorrow, everything will be alright
But tomorrow’s fall in number
in number one by one
You wake up and you’re dying
you don’t even know what from
“Point Blank” (1980).

Still others refuse to give up, and fight back as best they can, even as they realize they are still trapped, and that their reaction to their situation is not socially acceptable:

And I’m driving a stolen car
Down on Eldrige Avenue
Each night I wait to get caught
But I never do
“Stolen Car” (1980).

The River sold very well, and Springsteen had his first top 10 hit with the single “Hungry Heart.” On the tour he began performing Woody Guthrie’s “This Land is Your Land,” introducing it as the greatest song ever written about America. He also became involved with the Vietnam Veterans of America, doing a benefit concert for them in Los Angeles. It became clear that Springsteen’s political consciousness was rising, and that he clearly understood the difference between the theory of American equality of opportunity and the reality of American society (Garman, 1996).

Springsteen responded to the popular success of *The River* by releasing *Nebraska* in 1982. *Nebraska* was a complete departure from the style of his previous albums. It was a solo, acoustic album and its tone was almost unbearably bleak. The title song was taken from a real life event, the Charles Starkweather murder spree of 1958. Many of the characters are criminals, and there is a clear sense of class separation running through the album. One protagonist turns to crime after losing his job, and ends up receiving a life sentence for murder:

Well they closed down the auto plant in Mahwah late that month
Ralph went out lookin' for a job but he couldn't find none
He came home too drunk from mixin' tanqueray and wine
He got a gun shot a night clerk now they call 'm Johnny 99
"Johnny 99" (1982).

The protagonist of the title song kills 10 people, is caught, convicted, and sentenced to death. When asked why he committed these senseless, random acts of violence, his answer is both simple and terrifying:

They wanted to know why I did what I did
Well sir I guess there's just a meanness in this world
"Nebraska" (1982).

Not all the protagonists are criminals. One is a highway patrolman, another works the night shift in a factory. But they all share the same sense of despair. One, driving a stolen car late at night, makes a statement that is both plea and threat:

License, registration, I ain't got none,
but I got a clear conscience 'bout the things that I done
Mister state trooper, please don't stop me
Maybe you got a kid, maybe you got a pretty wife,
the only thing I got's been botherin' me my whole life
"State Trooper" (1982).

There is a clear sense of class separation running through the album. The protagonists often speak in the first person, and address the listener deferentially, as "sir." Several songs detail the longing for a better life, a life that seems unattainable:

There's a place out on the edge of town sir
Risin' above the factories and the fields
Now ever since I was a child I can remember that mansion on the hill
"Mansion on the Hill" (1982).

Most of the characters on the album have moved beyond the point reached by the characters on *Darkness*. Where the characters on *Darkness* still believed in the possibility of redemption, the characters on *Nebraska* seem beyond redemption. As with the characters on *Darkness*, there is no community for the people on *Nebraska*. Springsteen does not answer the question of how much personal responsibility the criminals on the album bear (Cullen, 1992). He does not deny their culpability, but at the same time, as the characters in "Johnny 99" and "Nebraska" suggest, there are forces at work that are beyond their control. In every case, however, Springsteen retains a degree of empathy for these characters. He recognizes that people respond to adversity in different ways—some cope, while other hurt themselves and others. What they all share is their victimization by American society—even when this victimization leads them to victimize.

No single was released, and the album did not sell well. In 1984 Springsteen released his next album, *Born in the USA*, which became one of the best selling records in history. Musically, he returned to the full rock band sound, with loud guitars

and insistent drums, but lyrically he remained fixated on the issues of class and justice. The first single, "Dancing in the Dark," played with an up-tempo beat, was actually about a lonely and disaffected man. While many commentators, including George Will (a nationally syndicated political columnist who attended a Springsteen concert), described the album as "celebrating" life in America, a better description would be that the album contemplates life in America (Rauch, 1988). The central theme of the album was the disintegration of traditional American values, as symbolized by America's treatment of Vietnam veterans (Branscomb, 1993). Springsteen's popularity was so great that then-President Ronald Reagan, campaigning for reelection in New Jersey, attempted to link himself to Springsteen. While campaigning in New Jersey, President Reagan declared; "America's future rests...in the message of hope in the songs of a man so many young Americans admire--New Jersey's own Bruce Springsteen" (Marsh, 1987, p.265). Springsteen responded in an interview in which he stated: "I think there's a large group of people in this country whose dreams don't mean that much to him...you see the Reagan reelection ads on TV--'It's morning in America.' And you say, well, it's not morning in Pittsburgh. It's not morning above 125th Street in New York. It's midnight, and...there's a bad moon rising" (Marsh, 1987, p.265).

The title song was about an alienated Vietnam veteran. The protagonist is sent to Vietnam because he has gotten caught engaging in some criminal act. When the protagonist returns to his hometown, he discovers his service to his country has gained him nothing. The protagonist is trapped in the same kind of situation as Springsteen's earlier characters:

Born down in a dead man's town
 The first kick I took was when I hit the ground
 You end up like a dog that's been beat too much
 Till you spend half you life just covering up
 "Born in the USA" (1984).

While the album contained a number of the same themes as his previous albums, *Born in the USA* was a departure. There were more songs about relationships, and the general tenor of the album was not anger, but longing. Characters wanted more out of life, either a meaningful relationship or a decent job--just some reason to live.

Between 1987 and 1992 Springsteen divorced his first wife (who he married in 1985) and married Patti Scialfa, and they had three children. Springsteen's three albums during this time period saw him turn away from an examination of the world at large. He instead focused on the meaning of personal relationships. *Tunnel of Love*, released in 1987, and *Lucky Town* and *Human Touch*, released simultaneously in 1992, explored the complexity of intimate relationships. Whether the issue was blissful new love in "All That Heaven Will Allow," mistrust of self and others in a relationship, as reflected in the songs "Brilliant Disguise" or "One Step Up, Two Steps Back," or mature love in "Valentine's Day," Springsteen explored the full gamut of love relationships in *Tunnel of Love*. The tension and strain was apparent for the characters in many of the songs, but in *Lucky Town* and *Human Touch* the characters experience few problems; rather the theme that runs through most songs is sheer love, even some disbelief by some characters that they could be so happy.

In 1995 Springsteen released a collection of songs, entitled *Greatest Hits*. Included on the album were four new songs. One, "Murder Incorporated" dealt with the fear and paranoia that modern society can create. According to Springsteen:

The idea is that murder has been incorporated into society very systematically, a system that basically has set itself up so that violence is one of its byproducts. The whole idea of a constant class of disenfranchised people seems to be accepted as the price of doing business. (Hilburn, 1995, p.E3).

In addition to the songs he wrote for *Greatest Hits*, Springsteen spent the early part of the 1990s writing songs that were used in movies. These included *Dead Man Walking* and *Streets of Philadelphia*. These movies, and Springsteen's songs, dealt with controversial issues, the death penalty and AIDS. In *Dead Man Walking*, Springsteen sought to depict the murder's perspective:

There's a pale horse comin'
I'm gonna ride it
I'll rise in the morning
My fate decided
I'm a dead man walkin'
I'm a dead man walkin'
Once I had a job I had a girl
But between our dreams and actions
Lies this world
'Neath a summer sky my eyes went black
Sister I won't ask for forgiveness
My sins are all I have
"Dead Man Walkin'" (1995).

In *Streets of Philadelphia*, Springsteen made no overt reference to AIDS, but discussed the impact of the disease on the victim and the community:

I was bruised and battered and I couldn't tell what I felt
I was unrecognizable to myself
Saw my reflection in a window I didn't know my own face
Oh brother are you gonna leave me wasting away
On the streets of Philadelphia
"Streets of Philadelphia" (1994).

In 1995 Springsteen also released *The Ghost of Tom Joad*. The album was recorded without a backing band, similar to *Nebraska*. It marked a return to earlier concerns, what Springsteen has described as "essential music" (Schoemer, 1996), as opposed to music that is simply enjoyable or about personal relationships rather than larger, societal issues. Many of the characters in *The Ghost of Tom Joad* are people at the bottom of the economic and social ladder, the "losers" of society. The music on the album is minimal and the singing is often rough and unmelodic. This is intentional, and forces the listener to focus on the words, the stories, rather than the music. The album "demands that we meditate, however briefly, on the lives of people most of us attempt to keep out of sight" (Alterman, 2001, p.179). The characters on the album share a sense of frustration, and they realize their opportunities for success are limited. Springsteen has acknowledged that this is his world view:

I think that the American ideal of equal opportunity, obviously it hasn't been realized. And I think what's worse, every study that's come out about the division of wealth in society over the past 10 or 15 years has shown that the middle class has been getting smaller and people have been getting farther and farther apart. I think that while it's something that hasn't led to, say, riots, it leads to diminished hopes, diminished expectations, diminished possibilities. (*Columbia Radio Hour*, 1995).

The title song was inspired by the John Ford-directed movie version of Steinbeck's *The Grapes of Wrath*. The reference to the book and movie was intentional, and, according to Springsteen, helped make his message clear: "The film dealt with social

and spiritual issues, the pursuit of justice...saw all these things as interconnected in people's lives" (Hiburn, 1996, p.E1).

Several songs were inspired by a book, *Journey to Nowhere*, written by Dale Maharidge and Michael Williamson (1985). The book examines the collapse of industrial cities in the 1980s and the consequent impact on the inhabitants of these cities. In an interview conducted shortly after the album's release, Springsteen discussed the impact the book had on him:

It documented a lot of what had happened to a group of Americans in the latter half of the '80s—the people that the trickle-down economy never trickled down to. It's a book that makes very real, puts real faces on what it's like if you slip through those cracks. I was very frightened, I remember I read it all in one night and I closed it—my God, you never know what tomorrow brings (*Columbia Radio Hour* 1995)

In "Youngstown" Springsteen describes the decline of a steel town, Youngstown, Ohio:

Well my daddy come on the Ohio works
When he come home from World War Two
Now the yard's just scrap and rubble
He said "Them big boys did what Hitler couldn't do."
These mills they built the tanks and bombs
That won this country's wars
We sent our sons to Korea and Vietnam
Now we're wonderin' what they were dyin' for
"Youngstown" (1995).

The protagonist of the song lost his job and his security when the steel mills closed. He is unable to understand why this could happen to him—hasn't he done what he was supposed to do? He fought in Vietnam, came home and got married and raised a family, and worked at the mill like everybody else had always done. But those who profited from his labor have abandoned him, and his confusion is matched by his anger at those he holds responsible for this unfair result:

Seven hundred tons of metal a day
Now sir you tell me the world's changed
Once I made you rich enough
Rich enough to forget my name
"Youngstown" (1995).

The result is rejection of the values he has been brought up on:

When I die I don't want no part of heaven
I would not do heaven's work well
I pray the devil comes and takes me
To stand in the fiery furnaces of hell
"Youngstown" (1995).

Several other songs on *The Ghost of Tom Joad* were inspired by real life events. "Galveston Bay" is about the conflict between Texas shrimp fishermen and South Vietnamese refugees who came to this country after the fall of Saigon in 1975. The Americans resent the newcomers, who threaten their economic well-being:

He and his friends watched as the refugees came
Settled on the same streets and worked the coast they'd grew up on
Soon in the bars around the harbor was talk of America for Americans

Someone said "You want 'em out, you got to burn 'em out."
And brought in the Texas Klan
"Galveston Bay" (1995).

"Balboa Park" is also based on a real life incident, one Springsteen read about in a series of articles in *The Los Angeles Times*. The song is about Mexican children who sneak across the border near San Diego and live in a city park, making a living selling their sexual services to American men. The boys are just trying to better their lives, to make enough money to get those things they have been taught to value.

He did what he had to for the money
Sometimes he sent home what he could spare
The rest went to high-top sneakers and toncho
And jeans like the gavachos wear
"Balboa Park" (1995).

Many of the songs on *The Ghost of Tom Joad* detail the experiences of Hispanics in America. "Sinaloa Cowboys" is the story of two Mexican brothers who cross the border illegally to work as migrant laborers. The brothers find work in the fields, but an opportunity comes their way that they find too lucrative to pass up—they can go to work making methamphetamine:

You could spend a year in the orchards
Or make as much in one ten hour shift
Working for the men from Sinaloa
"Sinaloa Cowboys" (1995).

Unfortunately, the cost is high, as their father warned--making methamphetamine is dangerous work, and eventually one brother is killed when the drug lab explodes.

The Ghost of Tom Joad is populated with criminals. They are not murderers like Charles Starkweather in *Nebraska*, however. They are more akin to the killer in "Johnny 99," individuals who have turned to crime because their access to conventional means of achieving success are blocked, or who are experiencing the strain caused by exposure to negative stimuli. In "Highway 29" a shoe salesman meets a woman and decides to quit his job and make some easy money by robbing a bank. In "Straight Time" an ex-convict tries to go legitimate, marrying, having children and getting a steady job at the local factory. But after a while the walls are closing in:

Eight years in it feels like you're gonna die
But you get used to anything
Sooner or later it just becomes your life . . .
In the basement huntin' gun and a hacksaw
Sip a beer and thirteen inches of barrel drop to the floor
"Straight Time" (1995).

Not surprisingly, given its somber topics and raw, intentionally unmelodic sound, the album did not sell well. Springsteen went on a solo tour, his first, in support of the album, and then retreated to his home in New Jersey and spent the next few years recording and spending time with his family. He released a collection of previously recorded songs, entitled *Tracks*, in 1999. This compilation of songs included material recorded over the previous quarter century. While fascinating, it by its very nature lacked the thematic coherence of Springsteen's regularly released albums. The album release led to a reunion tour with the E Street Band, however. On the tour Springsteen debuted several new songs, including "Land of Hope and Dreams" and "American Skin (41 Shots)." "Land of Hope and Dreams" became the concert closer, a song that celebrated inclusion and the healing power of community.

“American Skin” tackled a much different topic, the case of Amadou Diallo, a recent African immigrant killed by New York City police officers who mistook his attempt to show them his identification as an attempt to draw a weapon. The police officers fired 41 shots. The song was heavily criticized by the police for what they perceived as its negative depiction of them. This reaction (and particularly its vehemence) was unwarranted. The song is about how innocent actions can be mistaken, in part because of our preconceptions of one another (which are in part influenced by race). Springsteen saw the shooting as the unfortunate, but natural, result of the unhealthy confluence of racial injustice, prejudice, and fear:

Is it a gun, is it a knife
 Is it a wallet, this is your life
 It ain't no secret
 It ain't no secret
 No secret my friend
 You can get killed just for living
 In your American skin

Lena gets her son ready for school
 She says “On these streets Charles
 You’ve got to understand the rules
 If an officer stops you
 Promise me you’ll always be polite, that you’ll never ever run away
 Promise Mama you’ll keep your hands in sight”
 “American Skin (41 Shots)” (2000).

Springsteen released *The Rising* in 2002. It was his first studio album with the E Street Band since 1984, and it was clearly impacted by the terrorist attacks of September 11, 2001. A number of the songs touch on the events of 9/11, either directly or obliquely. The songs were focused primarily on how individuals respond to tragedy and crisis. *The Rising* is full of grief, loss, and regret. The characters seem lost and preoccupied with the futility of their lives in the post-9/11 world. When anger surfaces it is usually targeted at an external enemy, not at community members. The album is intended as a sort of rock and roll catharsis, with an emphasis on faith, hope, love, and strength. This emphasis shows up in a number of the songs, and is highlighted in the chorus of “Into the Fire:”

May your strength give us strength
 May your faith give us faith
 May your hope give us hope
 May your love bring us love
 “Into the Fire” (2002)

Springsteen noted he “didn’t set out to write a 9/11 album. I didn’t want to write literally about what happened, but the emotions in the air” (Hilburn, 2002, p.E3). At the same time, he acknowledged that he was aware of how many of the victims of the 9/11 attacks were fans (he lives in Monmouth County, New Jersey, which lost 158 residents in the attack on the World Trade Center)—many of their obituaries mentioned Springsteen, and his songs were played at a number of memorial services.

Springsteen next released *Devils and Dust* in 2005. This was his third solo record, and like those that preceded it, it focused on depicting how individuals dealt with the loss of a connection to their community. It did not sell as well as his E Street Band recordings, but it did receive critical acclaim, winning Springsteen a Grammy Award for best contemporary folk album (one of 18 Grammys he has received). The characters in the *Devils and Dust* (2005) grapple with the essential question of what is right and wrong to do in an untenable situation. Springsteen notes that all of the songs

focus on the family to some degree, and that "They're all songs where the bond gets severed and people are trying to find out how to deal with the severance of that bond. On the record, some find their way in the world and some don't" (Bream, 2005, p.D1). In the title song, Springsteen depicts an American soldier in Iraq:

I got God on my side
I'm just trying to survive
What if what you do to survive
Kills the things you love
Fear's a powerful thing
It can turn your heart black you can trust
It'll take your God filled soul
And fill it with devils and dust
"Devils and Dust" (2005).

In 2006 Springsteen confounded his fans and critics alike with his release of *We Shall Overcome: The Seeger Sessions*, a collection of folk standards, recorded with a group of folk musicians at the studio in his home in New Jersey. The impetus for the record was the recording of a song for a Pete Seeger tribute album, but the songs on the album were actually not Seeger originals but an assortment of older and more recent folks songs, some famous and some obscure. Springsteen subsequently toured with the aptly named Seeger Sessions Band. On the tour he played most of the songs on the album, and included some others. What seemed a crazy quilt collection of songs on the record became a powerful political statement on the tour. While the songs were different in style, the choices Springsteen made reflected his continuing focus on social justice. "Mrs. McGrath" examined how the burden of war was unfairly carried by the working class:

Mrs. McGraw, the sergeant said
Would you like to make a soldier
Out of your son, Ted? With a scarlet cloak and a fine cocked hat
Mrs. McGraw wouldn't you like that?

Now up comes Ted without any legs
And in their place there were two wooden pegs
She kissed him a dozen times or two
Saying "Holly molly could it be you?"

Now Teddy me boy, the old widow cried
Your two fine legs was your mama's pride
Them stumps of a tree won't do at all
Why didn't you run from the big cannon ball?

Now against all war, I do profrain
Between Don Juan and the King of Spain
And, by herrons, I'll make 'em rue the time
"Mrs. McGrath" (2006).

Another song highlighted the injustices of the American economic system:

I'm a roamin' Oklahoman, but I'm always close to home
And I'll never get homesick 'til I die
No matter where I'm found, my home is all around
My Oklahoma home is in the sky

It blowed away, it blowed away
My farm down upon the Cimarron

But all around the world, wherever dust is whirled
 Some is from my Oklahoma home
 "My Oklahoma Home" (2006).

A song not included on the album, but regularly played on the concert tour, was debuted at the first show of the tour, in New Orleans. Springsteen took a verse from an old folk/blues tune by Blind Alfred Reed, "How Can A Poor Man Stand Such Times and Live?," and added three verses referring to Hurricane Katrina and the woeful response to it by the Bush administration. He often dedicated it in concert to "President Bystander":

Well, the doctor comes 'round here with his face all bright
 And he says, In a little while you'll be all right
 All he gives is a humbug pill, a dose of dope and a great big bill
 Tell me, how can a poor man stand such times and live?

He says, Me and my old school pals had some might high times 'round here
 And what happened to you poor black folks, well it just ain't fair
 He took a look around, gave a little pep talk, said, "I'm with you" then he took a
 little walk
 Tell me, how can a poor man stand such times and live?

There's bodies floatin' on Canal Street and the levees gone to hell
 Martha, get me my sixteen gauge and some dry shells
 Them who's got got out of town, and them who ain't got left to drown
 Tell me, how can a poor man stand such times and live?

I got family scattered from Texas all the way to Baltimore
 And I ain't got no home in this world no more
 Gonna be a judgment that's a fact, a righteous train rollin' down this track
 Tell me, how can a poor man stand such times and live?
 "How Can A Poor Man Stand Such Times and Live?" (2006).

In 2007 Springsteen released *Magic*. It was clear from the first playing that this was his most overtly political album to date. It picked up where *The Rising* left off and addressed the political events of the preceding eight years, particularly the war in Iraq. While the lyrics were full of anger, the music was often incongruously light. Instead of overwhelming the listener with grating guitar solos, the music was reminiscent of 1960s pop music. Furthermore, the lyrics were capable of being read without reference to world events. In case less careful listeners did not catch his meaning, however, in concert Springsteen (again teamed with the E Street Band) made his message clear, introducing the song "Magic" with reference to the Bush administration's assault on civil liberties such as habeas corpus and the right of privacy.

While the music on the album is often buoyant and poppy, the characters portrayed in the lyrics are anything but. They are isolated, alienated, abandoned, and angry. Where on *The Rising* there was a sense of community born of mourning the events of 9/11, here the feeling is one of isolation and loneliness. Several of the songs focus on individual loss and serve as symbols of the country's loss:

The speculators made their money
 On the blood you shed
 The favored march up over the hill
 In some fools parade
 Shoutin' victory for the righteous
 But there ain't much here but graves

Ain't nobody talkin'
We're just waitin' on the phone
Our Gypsy biker is comin' home
"Gypsy Biker" (2007).

You said heroes are needed, so heroes get made
Somebody made a bet, somebody paid
The cool desert morning, then nothin' to save
Just metal and plastic where your body caved
"Devil's Arcade" (2007).

Who'll be the last to die for a mistake
The last to die for a mistake
Whose blood will spill, whose heart will break
Who'll be the last to die, for a mistake
The wise men were all fools, what to do
"Last to Die" (2007).

In "Long Walk Home" Springsteen moves beyond assaying the cost of the war and references the work to be done to reverse the damage of the past eight years.

It's gonna be a long walk home
Hey pretty Darling, don't wait up for me
Gonna be a long walk home
Hey pretty Darling, don't wait up for me
Gonna be a long walk home
It's gonna be a long walk home

Here everybody has a neighbor
Everybody has a friend
Everybody has a reason to begin again

My father said "Son, we're lucky in this town
It's a beautiful place to be born
It just wraps its arms around you
Nobody crowds you, nobody goes it alone.
That you know flag flying over the courthouse
Means certain things are set in stone
Who we are, what we'll do and what we won't."
"Long Walk Home" (2007).

Springsteen's indictment of the Bush administration and its lies is nowhere more explicit than in the title song, which uses a magic trick as a metaphor or the machinations of the Bush administration:

I got a shiny saw blade
All I needs' a volunteer
I'll cut you in half
While you're smiling ear to ear
And the freedom that you sought's
Driftin' like a ghost amongst the trees
This is what will be, this is what will be
"Magic" (2007).

Bruce Springsteen and Social Justice

Bruce Springsteen has spent his career commenting on the issues of class, economic and social inequality, and justice. All of these issues can be collected under the heading of “social justice.” His perspective on these issues has changed over the course of his career, and while he has written a number of songs dealing with other aspects of life, he consistently returns to social justice concerns.

Springsteen has been consistent in serving as a voice for the working class and downtrodden, even when they have been generally without much influence or support (Cullen, 1992). Many of Springsteen’s characters are drawn from the lower classes, from segments of society that seem to have been abandoned by larger society, or who are trapped living Thoreau’s “lives of quiet desperation.” Springsteen has acknowledged the impact of his upbringing in a lower class family in a dying post-industrial town on him and his songwriting:

My memory is of my father trying to find work, what that does to you, and how that affects your image of your manhood, as a provider. The loss of that role is devastating. I write coming from that spot—the spot of disaffection, of loners, outsiders. But not outlaws. It’s about people trying to find their way in, but somebody won’t let them in. Or they can’t find their way in. And what are the actions that leads to? (Corn, 1996, p.22).

Springsteen’s lyrics are filled with images of social injustice and its impact on average working class Americans. This injustice may take the form of a Vietnam veteran being refused his old job at a factory, or a man who turns to crime after losing his job and home, or a child watching his father suffer through the condescending sales pitch of a used car salesman. Springsteen has made it clear in interviews that social inequality is a major concern, and that he feels American society has left many people behind. As recently as the 2008 presidential campaign, at a rally in Philadelphia in support of the candidacy of Barack Obama, he said:

I’ve spent 35 years writing about America, its people, and the meaning of the American Promise. The Promise that was handed down to us, right here in this city of our founding fathers, with one instruction: Do your best to make these things real. Opportunity, equality, social and economic justice. . .I’ve spent most of my creative life measuring the distance between that American promise and American reality. For many Americans, who are today losing their jobs, their hopes, seeing their retirement funds disappear, who have no healthcare, or who have been abandoned in our inner cities, the distance between that promise, and that reality, has never been greater or more painful (Springsteen, 2008).

Many scholars have noted that while Springsteen unsparingly describes the crimes and misdeeds of the working class, he is nonetheless able to empathize with those who are defeated or who deviate (Frith, 1988; Smith, 2005). Smith (2000) goes so far as to describe him as “the working class rock poet supreme” (p.788). Springsteen’s songs, while not dismissive of the social cost of crime for victims and communities, do humanize offenders.

* One time where Springsteen failed to act in accord with his values occurred in 2008, when his management company signed a deal to sell a “Greatest Hits” CD exclusively through Wal-Mart stores, despite Wal-Mart’s poor record in regards to labor unions. This decision caused an immediate outcry among Springsteen fans, and Springsteen very quickly apologized for the deal and admitted it was a mistake. The fact that his fans took issue with his decision to work with Wal-Mart (something a number of other artists have done without any fan complaint) speaks volumes about what they expect from him.

Springsteen's lyrics stress the value of community, of shared responsibility, and interconnectedness. He has gone to some length to promote these values, even using the concert stage as a vehicle. During the *Born in the USA* tour (and subsequent tours) he spoke during each show about the importance of community and then made a large public donation to a local food bank and encouraged concert attendees to become involved in similar local charities. In 1979 he appeared at the MUSE No-Nukes concert in New York. In 1981 he raised \$100,000 to help the Vietnam Veterans of America get off the ground. He headlined the Amnesty International "Human Rights Now" Tour in 1988. He has participated in a number of benefit concerts, for a variety of causes including the Christic Institute (a public interest law firm that filed a lawsuit regarding the Iran-Contra affair), the Rainforest Fund, and the Bridge School (a school for physically challenged students). In 2004 he participated in the Vote for Change tour, which was intended to encourage people to vote for John Kerry, the Democratic candidate for president. He has made several appearances on behalf of, and endorsed, Barack Obama, the 2008 Democratic candidate for president.

Clearly, as Springsteen has developed as an artist and a man, his songwriting has evolved. Bruce Springsteen writes songs for adults, or in the words of one critic, "it's music to grow up to, not out of" (Scott, 2007, p.C1). He has explained what his songs mean to himself, and why he believes they resonate with so many:

I think that a big part of what my songs are about is being who you are, and trying to create the world that you want to live in. Generally, I think people use songs as a way to order their lives in a world that feels so out of order. It's a way of centering themselves and grounding themselves in a set of values, a sense of things they can go back and touch base with (Graff, 1995, p.66).

As Springsteen has grown and matured as a songwriter, the subject matter of his songs has changed. When he began, he sang about "typical" rock music subjects—cars, girls, having a good time, and (not) growing up. But as he grew up, he began to tell different stories. As I have shown in this paper, he moved away from romanticized and idealized depictions of life, and began to examine issues of social justice. He has served as both an observer and a critic of a variety of social justice issues for more than 30 years.

Popular music has been the subject of academic ridicule and public disdain since long before Elvis ever stepped into his blue suede shoes. Blues was dismissed as the illiterate ramblings of poor Southern blacks (Guralnick, 1986). Country and bluegrass music were disparagingly termed "hillbilly music" (Goldrosen & Beecher, 1986). In recent years, however, as the first generation raised almost exclusively on popular music has come of age and moved into academe, the reevaluation process has begun. It is now chic to praise the verbal wordplay of country songwriters (Tichi, 1994) and the intricacies of blues phraseology (Guralnick, 1986). Rock music has been accorded some credit, but even when it is applauded as technically skillful, its substance is still often dismissed as teenage pabulum.

I argue that the music of Bruce Springsteen is much more than that. Like any art form, rock music is both a creation and a reflection of the culture from which it comes. Springsteen has spent a lifetime singing about the issues of social justice. The impact of his music is undeniably substantial--it reaches a far larger audience than the works of most authors or artists, and it certainly reaches a far greater audience than the works of academicians. We can only hope that people are listening.

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Abstract

Forensic animation is the use of digital animation technologies to recreate or simulate an event for use as probative evidence in a court proceeding. Acceptance by courts of this technology varies by jurisdiction. Some courts disallow its use because of the technology's prejudicial impact versus probative value and perceived tendency to bias jurors; such courts typically do not consider the relevant legal psychology research. This paper weighs the body of scientific evidence with respect to value of the technology, with a focus on criminal proceedings. It concludes with a policy recommendation for courts to employ in light of these considerations.

Forensic animation refers to computer generated "movies" created for courtroom presentation. Forensic animation is distinct from most other visual technologies because it is completely orchestrated by one party and intended to be an integration of all relevant evidence. In other words, it is designed to present a party's story in a visually powerful narrative format. Since the mid-80s forensic animation technologies have been increasingly employed by attorneys to present demonstrative evidence in U.S. courts (Breaux, 2001; Burton, Schofield, & Goodwin, 2005); moreover, it has been employed in both criminal and civil cases to recreate murders, automobile accidents, airline disasters, pathological/medical visualization, complex engineering systems, and other physical, environmental, or behavioral events (Kassin & Dunn, 1997). Some applications of technology have greater transformative effects in court proceedings than others—both in terms of the mode of the presentation itself as well as how judges and juries perceive that mode.

My argument is that forensic animation is the first truly paradigm-shifting courtroom technology since the acceptance of photography. Its distinctive characteristics and ability to vividly and powerfully present either party's story will prove, in the long run, to be no less transformative and beneficial than what photography became by the end of the 19th century. Little is known, however, about what prejudicial effects this new technology may have on the perceptions of triers¹. While forensic animation holds the promise of bringing tremendous clarity and efficiency to the understanding of the facts in a case, unlike photography, it has the potential to yield an environment where courts are misled and justice is perverted. Thus, the ultimate question for researchers, legislators, and courts is: *When does forensic animation affect a case's outcome—under what circumstances, for whom, and in interaction with what other factors?*

Clarity on this question will provide courts and legislators the insights needed to make fair and reasonable policy decisions going forward. I believe that forensic animation, as a courtroom aid, is a positive development whose potential for positive

¹ Hereafter, "triers" refers to *both* the trier of fact *and* the trier of law in a case- but *not* attorneys.

far outweighs the downside risks—but that is empirically an open question. The purpose of this article is:

- ◆ To objectively assess the current public policies (*vis-à-vis* jurisprudence and evidentiary rules) concerning the admittance (or not) of forensic animations into trial;
- ◆ To highlight relevant empirical research regarding the presentation of evidence to triers with respect to (potential) bias² and prejudice; and
- ◆ To address what further research is required and provide a ‘best practices’ framework for courts and legislatures who may be confronted with questions of admissibility.

Presentation Technologies in the Modern Court

The idea of incorporating newer modes of technology into courtroom procedures should not surprise anyone. It is neither new nor radical to suggest that lawyers, attempting to win a case for their clients, will use technologies that allow them to communicate their ideas powerfully. The admissibility of photographic evidence in legal proceedings was a paradigm-shifting application of new technology. It provided a means to accurately record events, individuals, and places as they were observed by people—rather than through the interpretation of an artist and her brush. The first known decision admitting photographic evidence in a jury trial was *Luco et al. v. United States* (1859); Prior to this, “legal photography” was already in use as a way for police to identify and document known criminals.³ By the turn of the last century the admissibility of photographic evidence in a variety of circumstances and forms was well established in American jurisprudence; for example, courts consistently held that photography was a fair and reliable approximation of reality and that the photographic process was analogous to the way light reacts with the human retina.⁴ The adoption of increasingly advanced and vivid technologies did not end with photography. Attorneys are progressively using newer and more intense forms of technology, that heretofore were under the strict domain of Hollywood filmmakers. An increasing pool of suppliers and economies of scale are bringing access to these technologies beyond the soundstage and into the courtroom. This has led some legal commentators to advocate that litigators should begin to view themselves as “attorney/producers” (Ryan, 2003). Ryan is not alone in suggesting that future cases will, in part, be decided on the production values of the visual evidence (American Bar Association, 1996; Kalar, 2000; Koppenhaver, 1996; Maher, 2005; Martin, 1999; Rychlak, 1995; White-Lief, 1993). Undeniably, these new technologies are having a transformative effect on the methods of case presentation and management. Today the “standard equipment” in many U.S. courtrooms includes digital overhead and LCD projectors using common office software such as Powerpoint and more advanced software such as Trial Director (Burton, et al., 2005).

The logical conclusion to Ryan’s argument is that attorneys should employ visual and vivid demonstrative evidence in order to persuade a jury of their position. Demonstrative evidence is evidence that, in of itself, has no probative value but is designed to illustrate or help explain oral testimony. It can be used to recreate something tangible such as an event or a thing (Garner & Black, 2005). Examples may include charts, photography, models, maps and “next generation” forensic animation.

² By “bias” I mean issues and factors that predispose a trier to perceive evidence in a certain way (i.e. the “CS/ Effect”). Section 6 details the empirical research covering the issues and factors.

³ For the definitive early history of “legal photography” and its adoption into U.S. legal cases see: Moenssens (1962) and Tuttle (1961).

⁴ See: (Church v. Milwaukee, 1872; Franklin v. State, 1882; Udderzook v. Commonwealth, 1874).

Forensic Animation Defined

Forensic animation refers to a variety of visual technologies arranged along three strata (Burton, et al., 2005; Gold, 2002; *Racz v. Merryman Trucking, Inc.*, 1994; Ryan, 2003; Stuart, 2003; Wiggins, 2006):

- ◆ *Immersive virtual reality and hologram environments.* The same technology used in flight simulators or the famous Star Trek "Holodeck;"
- ◆ *Video footage of a real scene that is digitally augmented.* This refers to the techniques similar to those employed in live-action movies such as "Who framed Roger Rabbit;" and
- ◆ *Computer generated and animated 3D models.* This refers to the techniques employed in popular home video and computer game systems (Microsoft, Inc, 2007)⁵.

Forensic animations are created by gathering data from a variety of sources (i.e. engineering drawings, police reports, crime scene measurements, eyewitnesses, etc.) to build a precise 3D computerized "wireframe" of "reality." However, the greater the complexity of the scenario the more data from multiple sources that is required. Through the building process the digital models are given a "skin" (visual texture), lighting, and other details in order to achieve the level of "realness" sought⁶. Also, the animator can change the perspective of the video and create multiple renderings. What this means is that once the scene is digitally modeled with all of the elements a virtual camera can be placed anywhere within the model thus allowing the same scene to be viewed from a near infinite number of angles. Rendering the animations can take a few seconds or a few days, depending on the length (time) and complexity of images and story. Once completed, each frame of the animation appears for 1/30th of a second, which gives viewers the visual feel of full motion, just as one would expect in a TV show or movie. Finally, these rendered movies are saved onto a DVD or CD for courtroom presentation.

The ability to determine precisely what is seen (or not) in the animation creates an opportunity for potential abuses. One of the most common manipulative practices involves crash scene recreations. A party may adjust the co-efficient of friction such that the road surface simulates ice when the actual conditions were the opposite. In other words the animation would be internally valid but not a true representation of what really occurred. This simple manipulation would likely prejudice triers. As Ward (2002) explains, willful or not, some of the "movie making" requires "guesswork" that has the potential to manipulate. Moreover, frequently lawyers attempt to include more subtle details, such as lighting and camera angles, to further enhance the narrative in their favor (A. Stuart, personal communication, December 20, 2006). The "better" forensic animators are not merely computer illustrators but also have relevant science and engineering backgrounds and will refuse to add embellishments that cannot be reasonably validated (Stuart, 2003).

There is currently no industry governing or accrediting entity. Consequently, there is nothing stopping anyone with the necessary animation skills from creating forensic animations. And while some firms utilize a responsible mix of engineering and artistry skills, not all do (A. Stuart, personal communication, December 20, 2006). The smaller animation "shop" or the one whose clientele is primarily entertainment may be less likely to question a client's request when their client wants to manipulate the animation in a pejoratively prejudicial way. The more likely scenario, however, is that they will not know that what they are animating is a "false narrative."

⁵ All of the cases cited in this report and the bulk of the literature focus on the computer generated and animated forensic animations; henceforth, unless otherwise stated, the use of "forensic animation" will refer to this third stratum.

⁶ The textures can range from "cartoonesque" (i.e. "The Simpsons") to lifelike ("King Kong" [2005]).

Forensic Animation in Court

Simulations versus re-creations

Forensic animations can either be used as scientific evidence (simulations) or demonstrative evidence (re-creations). Simulations are viewed in courts as probative and scientific evidence. Their inclusion must be based on an underlying empirically derived scientific principle; on the other hand, re-creations are viewed as demonstrative. They are generally derived from eyewitness testimony and are admitted if it can be shown that they are accurate and relevant to the issues of the case.

One way to differentiate between simulations and re-creations is with the following example: The biomechanics of how a robin flies is part of accepted physics and science. Moreover, one can simulate the flapping of the wing and show how a typical robin can overcome gravity, drag, lift, and thrust to fly. Illustrating the concept of flight or another scientific principle is a *simulation*. However, if one were to render a *specific* robin, flying from a *specific* house, to a *specific* tree on *specific* day then this is nearly always a *re-creation*. In the latter case the question is not whether the robin *could* fly but did that *particular* robin fly and have an effect that is relevant in the current case. In other words, re-creations are related to the underlying issues being debated and their inclusion in the latter case would be demonstrative of a witness's testimony. Regardless of whether or not the evidence is being used as a re-creation or a simulation the purpose is primarily to illustrate witnesses testimony (expert or not) and/or a complex set of facts (Dunn, Salovey, & Feigenson, 2006; Martin, 1999).

Admissibility

A commonly held misconception/myth among jurists is that since animations are crafted on a computer and the computer is a scientific instrument it follows, therefore, that animations should fall under the same standard applied to scientific evidence (Breaux, 2001). However, setting aside differences in individual state jurisdictions, the admissibility of simulations and re-creations critically fall under *different* Federal Rules of Evidence [FRE] (United States Supreme Court, 2008). Simulations require a higher level of *scientific* validity and reliability. Their admissibility is dependent on meeting the strict requirements of FRE No.s 702 and 901(a):

Rule 702. Testimony by Experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 901. Requirement of Authentication or Identification. (a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Whereas re-creations have to meet the lower threshold of simple *relevancy* requirements in FRE 401, 402, and 403⁷:

Rule 401. Definition of "Relevant Evidence". "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the

⁷ For detailed discussions on admissibility and the relevant legal rules pertaining to scientific simulations versus demonstrative recreations see Breaux, 2001; Kalar, 2000; Martin, 1999; Wiggins, 2006.

determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence that is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Cases where forensic animation was admitted

A belief that all forensic animations are “scientific evidence” is based in large part on a false premise that has been rejected by several courts. One of the earliest decisions to this occurred in a criminal case where the defendant was attempting to illustrate his argument that the weather conditions resulted in his automobile accident rather than his alleged intoxication (*New York v. McHugh*, 1984). The prosecution motioned for a *Frye* hearing arguing that the animation was scientific and not demonstrative; however, the court allowed the animation without a *Frye* hearing citing that it was an illustrative re-creation. The court reasoned that the animation was admissible as long as the evidentiary rules were followed and the expert whose testimony it illustrated was qualified.

The rule of thumb in the illustration/re-creation argument was established in a civil suit (*Datskow v. Teledyne Continental Motors*, 1993). In this case the defense objected on the grounds that the animation was unduly prejudicial. The court allowed the animation so as to aid the jury in understanding the expert’s opinion of the event(s) in question. Several times the court gave cautionary instructions to the jury as to the demonstrative rather than scientific interpretation of the evidence; moreover, the court disallowed the animation’s voice-over so as to minimize the possibility that the jury would interpret the voice-over/animation combination as a simulation. That said, the court acknowledged a potential for prejudice stating that, “the critical difference [is] between a jury believing that they are seeing a repeat of the actual event and a jury understanding that they are seeing an illustration of someone else’s opinion of what happened.”

The *Hinkle* and *Stewart* cases are particularly illustrative with respect to potential for forensic animation to prejudice the outcome of a case. In one case the prosecution and defense had “dueling” animations and the jury was given explicit directions with respect to the animations not being re-creations (*Hinkle v. Clarksburg*, 1996). The jury found the defendant liable. During appeal the defendant contended that the plaintiff’s animation, in the defense’s view, was inconsistent with the conditions at the time in question. The Fourth Circuit rejected the defense’s argument stating, “the jury understood that the very thing disputed in this trial was the condition under which the shooting occurred. In light of this fact and the court’s cautionary instruction, there was no reason for the jury to credit the illustration any more than they credit the underlying opinion.”

In a more recent decision, the State Supreme Court of Minnesota upheld a lower court murder conviction where re-creation evidence was admitted for the prosecution (*State v. Stewart*, 2002). On appeal the defense argued that the animation depicted the defendant with a “scowl” and the jury was not given specific instructions that this was an illustration rather than a simulation. The defense further argued that the scowl was based on conjecture rather than admitted evidence; moreover, the attitude of the

defendant toward the decedent was a hotly contested issue in the case (Godden, 2004). The State Supreme Court agreed with Stewart and ruled that the admissibility of those *portions* of the animation that showed the “scowl” were improperly admitted; however, because of the other evidence offered in the case, the court upheld the conviction. Nonetheless, the court did provide direction (albeit limited) for future courts on admitting animated evidence and jury instruction.

A key case with respect to the prejudice versus probative debate involved the slaying of a woman by her husband, a retired police officer who claimed self-defense and inebriation (*Commonwealth v. Michael Serge*, 2006)⁸. The prosecution’s animation, based on the physical and forensic evidence, illustrated a narrative re-creation, based on the physical and forensic evidence, that showed the implausibility of Serge’s claim. The Pennsylvania Supreme Court, in upholding the lower court conviction, stated that animation(s) must be relevant and, with authenticity, recreate the crime scene. Writing for the majority, Justice Newman stated, “The legal system must adapt...Courts are facing the need to shed any technophobia and become more willing to embrace the advances that have the ability to enhance the efficacy of the legal system”. The decision acknowledged the potential for prejudice with such a vivid presentation; however, in this case the underlying evidence directly supported the animation. She concluded that any prejudice was not because of the animation “but rather was inherent to the reprehensible act of murder”. She concluded by stating that any prejudicial concerns can be mitigated through jury instruction.

Cases where forensic animation was disallowed

Not all courts have been convinced that forensic animations add value to the proceedings. Some have felt that the prejudicial aspects far outweigh the probative (*Racz v. Merryman Trucking, Inc.*, 1994). Other courts seem to have a technophobic bias, or perhaps prudent concerns. For example, the Arizona Court of Appeals reversed the trial court’s decision to admit the plaintiff’s animation by stating that it was not merely a form of illustration (*Bledsoe v. Salt River Valley Water Users’ Association*, 1994). In their opinion the appeals court stated that the animation “depicts a computer expert’s opinion of, among other things, how the accident happened, the location of lighted and darkened areas at the time, and the effect of alternate or additional lighting” [emphasis added]. A secondary reason given was that by not calling the expert who created the animation as a witness the prosecution denied the defense the opportunity to cross-examine the evidence. In a Missouri case (*Missouri v. Starr*, 1999) the appellate court upheld a trial court decision not to admit re-creation evidence proffered by the defense because the defense had already admitted demonstrative evidence, thereby making the animation redundant and prejudicial.

Sometimes the purpose for disallowing the animations is based on the substance of the animation (*Sommervold v. Grevlos*, 1994). In *Sommervold* the defense’s animation went so far as to change the location of the incident, lighting conditions and other elements that were not in dispute but in the animation were substantively different from the facts of the case. Additionally, the court expressed concern that the jury may be unduly prejudiced by what appears to be a “live” version of an event in the past. Upon appeal the higher court upheld the lower-court’s ruling.

Another prudent disallowment occurred when the defendant failed, in contravention to an order by the court, to “provide a full disclosure... to the plaintiff” of their animation’s underlying computer models and data (*Cox v State of Mississippi*,

⁸ The sensational case was featured in national media outlets as a positive use of forensic animations in the court (Kohn, 2003 ; Ward, 2002).

2003). Upon appeal, and citing guidelines provided in *Clark v. Cantrell* (2000)⁹, the upper court affirmed the trial court's ruling that the counter-party and the court should have been given an opportunity, prior to trial, to scrutinize the animation's validity.

Empirical Research: A Starter Kit

Given that it has been over 20 years since the first use of forensic animation as demonstrative evidence in court, it is surprising that there is a paucity of empirical research. Moreover, none of the studies to date have been conducted in the context of a criminal trial. An early experiment assessed the impact that prior knowledge of an event or system impacted whether or not subjects understood an animated sequence with a narration (Mayer & Sims, 1994). In that same study Mayer and Sims (1994) found order of narration (before, during, after) did not affect the subject's understanding of the specific occurrence tested. Arguably the prior knowledge characteristic could have served to confound the results.

However, the bulk of prior research has centered on questions of persuasiveness. Experiments with animation usage found that it can both create bias and clarify information (Kassin & Dunn, 1997). Participants in Kassin and Dunn's (1997) study watched differing versions of a construction accident. They found that the same case could be presented via the animation from several different vantage points with different effects on the participant's perspectives of fault. The purpose was to create biased animations of the events that were not supported by the physical evidence. When biased animations (plaintiff or defendant) were presented to mock jurors against the other parties' verbal unbiased explanation, the mock jurors overwhelmingly sided with the animation.

Another experiment involved having mock jurors watch a simulated four hour car accident trial where evidence was either presented as an animation or by using an overhead projector (Bennett, Leibman, & Fetter, 1999). Unexpectedly the researchers found no impact on juror decision-making between the different media. Bennet and his colleagues (1999) conducted a follow-up study to test for certain confounds and found their results to be reliable.

Dunn's (2000) experiment tested two different scenarios, a car accident and a technically complex airplane crash, and involved two separate 2x2 factorials where she showed mock jurors trial simulations using combinations of animation and static imagery. She found that the jurors were not prejudiced in the automobile case but that the use of animation in the airplane case correlated strongly with the mock jurors findings. She concluded that this was likely due to the familiarity that jurors had with automobiles. Jurors had to make fewer "mental steps" to appreciate the facts of the case and the animations were helpful, but jurors relied on their own experiences to assess the facts. Dunn (2000) further concluded that the opposite was true with the airplane case. However, she did not set out to test this aspect and, therefore, no familiarity measure was included.

Ray (2001) set out to test familiarity and persuasiveness directly. Using a method similar to previous experiments (Dunn, 2000), Ray (2001) conducted two experiments with an automobile accident and a technically complex oil drilling rig case. In his experiments Ray (2001) found that lack of familiarity did not increase prejudice towards the side using demonstrative evidence presented in animation.

Relevant forensic psychological research

To date, experimental research on the use of animations in jury decisions has been confined to a few studies; however there are a wide range of related ideas and

⁹ These are addressed in the Discussion below.

concepts that provide useful insights. Discussed below, these include research on the efficacy of visual evidence, vividness, storytelling, the “CS/ effect,” and related subjects of relevance to courts.

Psychological research provides direction on the efficacy of visual information on jury decision making and that there are three specific ways that it can be critical (Clancy, 1996). For information to be believed it must be “imaginable” (Nisbett & Ross, 1980). This means that it must create some form of sensory imagery. Jargon-filled, esoteric, and technical oral testimony fails to provide a level of information to the jury that is sufficient (Nisbett & Ross, 1980). Jurors provided with illustrative or concrete versions of the same technocratic information are far more likely to understand its meaning (Anderson, 1983; Ray, 2001).

“Proximity” is another way that concrete or visual information assists jury decision-making. This refers to “how close” or how many “mental steps” must be taken by jurors for jurors to understand what is being presented as evidence (Ray, 2001). “Visualization” reduces the number of steps. For example, if a juror is given aural testimony they have to then imagine what they are being told. They may, or may not, imagine incorrectly and this leads to an information problem in their decision-making. However, visual information requires less imagination and is more direct.

Lastly, the human mind is better equipped to store and recall visual rather than aural information (Boyll, 1991; Nisbett & Ross, 1980). Clearly, if a jury cannot remember it they cannot consider it and this reality creates problems in the rendering of justice. Thus, the use of visual data is not inherently manipulative; rather it can be critical. Courts tend to look favorably on the use of visual aids as a means of clarifying demonstrative evidence (Bennett et al., 1999; Berkoff, 1994; Ray, 2001).

How visual is too visual (or not enough) given that sight is the primary means for humans to process information is an important question. The foundation for this is grounded in the psychological concept known as the “vividness effect.” Simply stated: information that is vivid, rather than pallid, has a significant impact on social judgments (Bell & Loftus, 1985, 1988, 1989; Reyes, Thompson, & Bower, 1980; Shedler & Manis, 1986). Bell and Loftus (1985) found with mock juries that they were far likelier to remember, and regard as true, that which was presented with vivid and colorful detail. This idea is also supported by experiments where videotapes of graphic crime scenes (Douglas, Lyon, & Ogloff, 2004; Kassin & Garfield, 1991) and physical evidence (Wasserman & Robinson, 1980), are provided to juries.

If it is true that pallid verbal evidence is less persuasive than vivid and the same is true for graphically presented evidence, then it stands to reason that computer animations in court will be even more so. However, vividness is not likely the only characteristic that lends to its persuasiveness. The ability for animation to showcase moving images may make it more effective than static imagery. Thus, moving imagery is likely to keep people focused and attentive to the presentation (Barry, 1997). It is possible that if one side has this and the other side does not that the side using animation will inherently benefit because the jury will simply pay more attention to their argument.

Motion can play an important role in a number of ways. Studies consistently show that people are much better at interpreting emotional content when images are moving over static (Gitter, Kozel, & Mostofsky, 1972; McLeod & Rosenthal, 1983). Moreover, the impact of motion has been shown to improve the recognition of target faces in experiments (Lander, Christie, & Bruce, 1999). Another issue raised by Ray (2001) is that most people are not familiar with physics and natural laws. Thus, people are usually not good at properly imagining and predicting the motion of something that is described verbally and animations can be a benefit in this regard¹⁰. An extension of

¹⁰ This is especially true in cases where motion and trajectories and their impacts are critical. Psychological experiments on path predictions supports this notion, see McCloskey, Washburn, & Felch, 1983.

this is with respect to research into camera angles used in taping interrogations (Lassiter, Geers, Munhall, Handley, & Beers, 2001). Lassiter and his colleagues (2001) found that the angle of the subject to the camera can affect viewers' prejudices regarding guilt or innocence. Given the animator's ability to put a virtual camera nearly anywhere in the model, the potential problem becomes obvious. The potentially prejudicial nature of this is not unlike the *Stewart* case where the animator included a "scowl" on the face of the figure representing the defendant. For better or worse, the inherent non-static nature of animations may influence triers to decide in the direction of the animation.

The emotional content of demonstrative evidence case can impact a case's outcome. This idea is not revolutionary. However, if motion helps people interpret emotions with greater certainty, it is possible that this can have compounding effects on jurors' attitudes towards one party or another. Experiments testing this have shown that when mock jurors interpreted the victim in a car accident as having blame that they actually expressed *anger* towards the victim (Feignson, Park, & Salovey, 1997).

One argument in favor of (or opposed to) using animation technologies in the courtroom is the widely-held belief by attorneys that people are increasingly reliant on television and moving images for their information (Bennett et al., 1999; Berkoff, 1994; Ray, 2001). Ray's (2001) review of polling data from Gallup and other surveyors of public perception seem to support this notion. However, there is a potential downside related to this in what has been called the "CSI effect." This refers a cluster of phenomenon thought to be a result of the popularity of science-based policing dramas on television. The "CSI effect" argument is that jurors watch these programs and their expectations of what science and scientists are capable of and the timeframes required far exceeds reality (McGuire, 2005; O'Connor, Ravenell, & Hoffmann, 2004; Sullivan, 2005; Thomas, 2005)¹¹. The concern here is that jurors will discount forensic evidence that does not meet their expectations or be influenced by that which does, and perhaps confuse corollary evidence with causal. There seems to be a widespread acceptance in legal and mainstream literature of this. However, whether or not it is a myth has not been adequately studied, at this time there is only one published scientific study (Podlas, 2006). In her survey of college students Podlas (2006) did not find a negative impact on potential juror expectations, which is anticipated by the "CSI effect." However, her survey was a self-evaluation of "jury eligible adults"¹² and their self-perceptions. There is no doubt that future research on this question is required. As far as how it may persuade a jury being presented demonstrative evidence referred to as a "forensic animation" is still unknown.

A powerful argument for the inclusion of animation-based evidence is the role that narratives play in courtroom proceedings. The formalized process of a trial does not typically allow for the re-telling of events in chronological order. Rather, the ordering is based on witness availability and other factors. Thus, jurors must construct a narrative in their mind to fit their perception of the evidence presented (Hastie, Penrod, & Pennington, 1983; Pennington & Hastie, 1981, 1986). Pennington and Hastie have done numerous tests of their "story model" and have consistently found that mock jurors who have been given evidence in chronological order score higher in their understanding and of the evidence and its meaning over those who are not (Hastie, 1999; Pennington & Hastie, 1988, 1992). Therefore, if we accept the impact of Pennington and Hastie's findings then it's clear that the ability for animations to impact a juror's cognitive understanding and organization of the evidence presented at trial is

¹¹ The National Clearinghouse for Science, Technology, and the Law at Stetson University College of Law maintains an extensive "CSI effect" bibliography of sources from peer-reviewed journal to op-ed articles available for download (NSCTL, 2006).

¹² This is not unrelated to general problems and criticisms of juror and jury research such as their typically inappropriate dependent variables and over-reliance on college students. (For a broader discussion see Diamond, 1997; Sears, 1986).

significant. Simply put, animations require less effort of the juries because they no longer have to construct their own narrative, focusing instead on whether or not they accept the presenter's narrative.

Discussion

Forensic animation is a transformative and paradigm-shifting technology for presenting evidence in court; moreover, in the long run it is likely that its benefits will outweigh the perceived costs. That said, there are a number of advantages and concerns regarding the admittance of forensic animation in court cases. The advantages include the ability for triers to comprehend spatial and temporal data. Also, it can decrease the length of a trial by making the translation of complex information more efficient. It is inherently vivid and this can increase the triers' attention to the more persuasive details of a party's narrative. The focal point of the concern is that the inherently vivid presentations can be manipulated to confound and unduly prejudice triers. Another argument is that popular TV shows like *CSI* and *Forensic Files* bias jurors toward evidence that is presented as "forensic." Another criticism is that juries become transformed into pseudo-witnesses because of the "realness" of the technology. And yet another critique is related to cost, which can range from \$5,000 to \$150,000 dollars; therefore, the side with the least resources will be unfairly disadvantaged.

There is no single bright-line regarding admissibility; moreover, trial courts have tremendous flexibility regarding what evidence is presented and how. Even so, at some point legislatures, regulators, and/or judicial counsels will codify a set of guidelines regarding forensic animations. Ideally when those rules (bright or fuzzy) are developed they will be grounded in empirical science rather than the "collective mythological wisdom" that tends to find its way into many policy regimes.

Bridging the research gap

The current state of the art for forensic animation research is in a nascent stage with mixed and inconclusive results. No one has tested these concepts with a criminal case and in none of the experiments did researchers assess jury decision-making. Rather, they focused on the individual juror as the unit of analysis. As such, there are many different directions in which the field should be moving forward. Questions related to jury instructions and how those instructions are followed is important. Suppose the jury sees an animation, or part of one, and the court (for some reason) later throws out that evidence. Will jurors and juries be able to disregard it *post hoc*? With respect to assigning emotional content to the animations, the question that researchers should address is whether jurors inherently do this and how might it prejudice proceedings. In other words, even if the animation designs out all obvious signs of emotive content and utilizes a clinical aesthetic is it "natural" for jurors to assign emotion regardless. Do the same effects related to camera angles that apply with videos work in the same way with digital models.

Since the previous large-scale experiment testing forensic animation (Ray, 2001), there has been an increase in the collective popular culture of science-oriented crime-fighting entertainment in movies and popular culture. There are open questions as to how this may, or may not, impact jurors' expectations of evidence presented in the courtroom. Simply put, there are many facets and permutations that can and eventually should be assessed with respect to what can be a powerful and useful tool.

Policy conclusion: Ad hoc prescription

Philosopher Marshall McLuhan (1964) was famous for his analysis of media and its impact on society's relations and perceptions of what is real. His famous proclamation, "The medium is the message" (McLuhan, 1964) is particularly prescient

given the way media and technologies increasingly impact our everyday lives. Moreover, it is possible, given the current discussion, that the combination of different media has a compounding effect on individuals and their expectations. In particular, and with respect to this current study, how forensic science is portrayed in the media, the courtroom reality of a trial, and what expectations those media presentations generate.

As a way forward, ideally, a policy-oriented “white paper,” grounded in solid empirical data will be produced. However, there is still much work to be done before creation of such a document should be considered¹³. Also, there are questions about who would lead such an effort—given the many different interested parties involved. In the mean time, and outlined below, I recommend that courts employ a multi-step elaboration of the guidelines provided by the upper court in the *Clark v. Cantrell* (2000) appeal:

Step One: Assess authenticity. Prior to being accepted into a court the authenticity must be established. This can be established by providing specific testimony or evidence that forms the basis for the animation. Where animations are intended to demonstrate complex processes—mechanical or otherwise—then the expert(s) who created the underlying data and the animation should be made available for cross-examination.

Step Two: Establish relevance. The court should be satisfied that the animation is germane to the question(s) of fact involved in the case.

Step Three: Establish accuracy. While non-critical nuanced details need not be replicated in the animation, critical elements rendered in the animation should be “identical or very similar to the scene as described in other testimony and evidence” (*Clark v. Cantrell*, 2000). However, merely being inconsistent with the opposing party’s testimony or evidence is not sufficient for exclusion.

Step Four: Establish probative value. The probative value must outweigh the perceived prejudicial effects; merely being a persuasive presentation is not sufficient for exclusion of an animation.

In addition to the four broad steps outlined above there are other actions, based on the prevailing forensic research outlined above, that should be taken or required by courts:

Disclosure. Given the ability for manipulations to occur within the digital models themselves the court and opposing party must be provided access to the animation and the files used to model the animation. This should be done prior to the case being heard by the jury and with sufficient time for the opposing party to validate the models.

Jury Instructions. Cautionary instructions must be provided that expressly state that this evidence is meant to demonstrate a perspective, rather than a factual presentation, of what is “true.” The timing of the cautionary instructions should be at the beginning of the trial. This is to serve as a warning that the jury will be seeing evidence of this nature and, from the beginning, to set the juries’ expectations regarding the demonstrative nature of the evidence. Prior to the beginning of each viewing animation the judge must repeat an abbreviated form of the cautionary instructions; moreover, these instructions should be repeated following each viewing. This is to ensure that the message is fully “captured,” understood, and remembered by the jury. The cautionary instructions must also be restated by the trial court prior to deliberations¹⁴.

¹³ For a thorough break-down of research concepts and open questions that need further exploration see (Feigenson & Dunn, 2003). Also, there is a relevant question about who would author such a document; perhaps the the “white paper” from the NIJ on eyewitness evidence and line-ups can serve as a model (National Institute of Justice, 1999).

¹⁴ The jury instructions from *Commonwealth v. Michael Serge* provide an excellent model.

Emotives. Elements that are likely to increase the emotional response to the crime and are not grounded in the evidence should be disallowed. These are very likely to decrease the probative effects and unduly increase the prejudicial. Emotives include such things as facial expressions and sound effects. Also, the lighting and environmental elements should be minimized to what is necessary; moreover, narratives and voice-overs built into the animations should never be admitted.

Disclaimer subtitle. Throughout the running of the animation a small but appropriately visible strip of black should be included into the rendering. Within the strip the words “For demonstration purposes only” should be constantly visible as the animation is being viewed.

Given what is known, and what still needs to be discovered regarding both the positive and potentially dangerous consequences of forensic animations the steps and actions above seem prudent and responsible.

Conclusion

I began this article by asking a seemingly benign question regarding the use of forensic animation in courts: When does forensic animation affect a case’s outcome—under what circumstances, for whom, and in interaction with what other factors? In many respects the empirical science does not sufficiently provide a conclusive answer; however, there is enough empirical evidence to sufficiently approximate an *ad-hoc* policy framework for courts. What is obvious from this article is that courts have been and will likely continue to admit forensic animations as demonstrative evidence in cases. Also, there will be courts who prudently rule such evidence as inadmissible. There will be others whose technophobia and “mythological insights” will inform their decisions. I hope that courts, moving forward, consider the benefits and evaluate the evidence based on the framework I laid out in the previous section. In the meantime, I hope that researchers will get us closer to answering the ultimate question above.

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About the Author

Vincenzo A. Sainato began his professional career in 1996 working as a designer at Agency.com in New York City. Until 2003 he designed or directed websites and information systems for firms such as Nike, British Airways, Citibank, Kodak, Budweiser, and many others. Academically, he is an alum of the Cleveland Institute of Art ('96), but in 2003 he chose a different professional path—wishing to bring his professional expertise into academic research. Since then he has earned a BA in International Criminal Justice from John Jay College of Criminal Justice (2004) and MAs in both Economics and International Political Economy from Fordham University (2006). In May of 2009 he completed his doctorate in Criminal Justice from John Jay College and his dissertation comprised a new elaboration on Situational Crime Prevention as a tool for oversight and governance of CJ agencies and their design and use of databases and data systems. In the Summer of 2009 Dr. Sainato moved to New Orleans, along with his wife Suzanne, two cats, and his alto saxophone, to take a position at Loyola University in the Criminal Justice Department.

SOCIAL JUSTICE & SOCIAL CONTEXT
IN THE MUSIC OF JOHNNY CASH

Kenneth Tunnell
Eastern Kentucky University

Mark Hamm
Indiana State University

Address to the Crime and Popular Culture:
A Multi-disciplinary Exploration Conference
University of Central Missouri, October 29, 2008

Kenneth Tunnell:

Today, in cultural criminology we recognize, and have recognized for a long while, that the personal is political; that one's politics are woven into one's biography. Johnny Cash's life, which is often characterized as bigger than life, was music and politics in motion. Johnny Cash's biography will be discussed here, not because of romanticism or pedestrian fascination, but by necessity. To appreciate social justice in Johnny Cash's music and his life, we explore the social context of his life, which like many before had both its dark and enlightened sides. Most casual observers' descriptions of Johnny Cash will likely include some of the following characteristics: White, politically conservative, republican, drug abusing, country singer.

But as we show today the personal and political life and music of Johnny Cash was more—much more. And what about these traits? Yes, Cash was White. Well, we think. He sometimes claimed, depending on his audience, to be mixed race. Yes, he was definitely a drug user and sometimes abuser and remained so until the end. That, and his many other vices led his contemporary Merle Haggard to disclose just after Cash's death, "Johnny Cash was out of line all his life. He never walked any line." Republican? If I were a betting man, I'd bet against this, but Personal Libertarian perhaps. Country singer? Not according to Cash, and not according to his biographers and music critics. Politically conservative? Absolutely not. In fact, his politics and social justice became so well known, that by 1969 the New York Times called him, "The first grim and gutsy pusher of social causes."

I want to say a little about his background, his youth, and situate his notion of social justice in his lived experiences. Cash grew up in the Jim Crow South, in Arkansas to be exact, where segregation laws that had sprouted up in the late 19th century remained until the mid 1960s. It was well known that Johnny's father, Ray, was a racist and remained so throughout his lifetime. Ray boasted of attending lynchings, although it is unknown if he actually did. Not that he would have had difficulty doing so. In Arkansas from the time of Johnny's birth in 1932 until he left for the Air Force in 1950 there were 82 reported lynchings. Johnny's uncle, a county sheriff and later a judge boasted of mistreating Blacks. Years later when Ray was an old man, his vile was unleashed towards a young Jamaican boy, who was employed by Johnny Cash. Cash later said about that, "I should have realized that some things would never change about my dad. He grew up in Arkansas." Here we witness Cash transcending his disreputable family origins.

The southern U.S. was hard hit by the Great Depression, and Southern farmers especially suffered. Victims of the world economy, some including the Cash family, signed up for the planned colonies of FDR's New Deal. Each selected family was provided with a farm, a farmhouse, and a barn, and was expected to pay off the loan

from working the farm. As the Cash family and others soon learned, the farm colony was a vast socially progressive program. A social experiment far ahead of its time, envisioned as a community cooperative. Years later, reflecting on his childhood, Cash claimed that he “grew up under socialism.” Yet built within the colony experiment was an ugly component. Mississippi County, Arkansas, was 40% Black. But the colony was reserved for Whites only. Nonetheless, the colony quickly expanded to 350 families, despite floods, and the flood of 1937, that nearly wiped them out and became the story behind Cash’s monster hit “Five Feet High and Rising” (1959). The song describes the flood, and through the song, he asks his mother and father how high the water is. At first it’s two feet then it’s three feet, and eventually five feet.

Here’s one verse from it:

How high is the water mama?
Four feet high and rising.
How high is the water papa?
Four feet high and rising.
Hey come look through the windowpane.
The bus is comin’ gonna take us to the train.
Looks like we’ll be blessed with a little more rain.
Four feet high and rising.
“Five Feet High and Rising” (1959)

In 1950, Cash joined the Air Force, spending most of his time during the Korean War in Germany. Some years after his discharge, he was asked about the prospects of going into war, which he responded, “I can remember the fears I had about going into combat. I didn’t want to kill. I guess I was really a conscientious objector but I wouldn’t have refused had I been called.”

After leaving the military in 1954, Cash landed in Memphis and hooked up with Luther Perkins and Marshall Grant, eventually recording for Sun Records. Cash and the Tennessee Two made their first appearance on July 14th 1956, at the Grand Ole Opry, performing their new Cash composition “I Walk the Line” (1957).

Here’s one verse from that.

As sure as the night is dark and day is light.
I keep you on my mind both day and night
and happiness I’ve known proves that it’s right,
I cross your mind, I walk the line.
“I Walk the Line” (1957).

Opry members offered him unsolicited advice: To stay with them, to stay pure and true to country music, and to not follow Elvis. Some Opry performers supported Cash and his musical vision, which he knew at that time, was not country. But walking just outside the Opry entrance, there were some people that as he says, “would make it a point to let me hear the remarks they were saying as I walked by.” It was the same things they were calling Elvis. It was a racist slur. The dual criticism of not being country enough for the Opry, and embracing rockabilly, with its black R&B roots, drove Cash from the Opry and membership in that elite country club. Here again we see Cash transcending the stereotype of country purists and Southern racists alike.

Now I am going to shift gears and talk more about what I’ve called the politics of his life and his music, in the broadest terms possible. In 1958, less than two years after the Opry performance, Cash told a reporter that he was trying to sell, quote, “authentic folk music.” Cash’s simple, direct delivery often of poetic depth, and his metaphors were much more powerful than plain emotionally descriptive lines.

Consider these lines from the song “Big River” (1958), his composition:

I taught the weeping willow how to cry
and I showed the clouds how to cover up a clear blue sky.

And the tears I cried for that woman, are gonna flood you, big river.
 Then I'm gonna sit right here until I die.
 "Big River" (1958)

This song preceded folk rock by eight years, and inspired folk singers of the day. Bob Dylan has said as much, especially about "Big River" (1958), which he described as "words turned into bone."

Cash began associating with folk singers that were not country and who did not identify with country. His friendship with Dylan is legendary and his defense of Dylan was published as an open letter in *Broadside*, in March of 1964, and this is an excerpt from his open letter: "Don't bad-mouth him until you hear him. Let him start by continuing. He's almost brand new. Shut up and let him sing."

During the early to mid-1960s, Cash made some of his most daring and ground-breaking recordings, a series of folk and concept albums, including *Songs of our Soil*, in 1959, *Ride This Train* in 1960, *Blood, Sweat and Tears* in 1963, *Bitter Tears (Ballads of the American Indian)* in 1964, and the *Ballads of the True West* in 1965. This body of work spoke about the hidden truths as opposed to the perceived myths in American history. These albums also spoke to and about the remarkably diverse range of people including the poor and the violent, exploited laborers, Native Americans, and the dispossessed. *Ride This Train* (1960), *Blood, Sweat and Tears* (1963), and *Bitter Tears* (1964) may still be the most important albums ever made by a country folk artist. These records took on issues of the legacy of Westward expansion, the working man, and the American Indian. Other artists had addressed these themes, yet none had committed three albums to the topics and no one appeared to treat such topics as seriously as Johnny Cash.

Although the country establishment rebuked him for his critiques, he continued weaving into his songs and repertoire the downtrodden and common man. His songs constantly drew attention to the sweat and toil of anonymous blue-collar workers. While some might have dismissed the world's cruelty or had just failed to notice, Cash allowed it to impress him. After Cash became famous, he supported the American Indian, performing shows to draw attention to their cause, recording the somber tale of their plight, and forcefully promoting his recording of the song "The Ballad of Ira Hayes" (La Farge, 1964), which brilliantly illustrated the American Indian's plight. This Peter La Farge composition told the story of the Pima Indian, who was among the U.S. Marines to raise the flag after the Battle of Iwo Jima and who appears in the famous Joe Rosenthal photograph. In that photograph, the soldier on the far left is Ira Hayes, the Pima Indian. Hayes suffered from what we now recognize as PTSD, and later died from alcoholism and exposure, face down in a ditch of water. Although Cash believed the song was one of his best recordings, country radio would not play it. Cash responded with an open letter and a billboard, which he wrote, "DJs, station managers, owners, where are your guts? The Ballad of Ira Hayes is strong medicine. So was Rochester, Harlem, Birmingham, and Vietnam."

That was in 1964. He discussed disc jockeys as being afraid of the truth. People lashed out at Cash, asking him to resign from the Country Music Association because Cash must be, quote, "too intelligent to associate with plain country folks, country artists, and country DJs." Cash continued singing Ira Hayes, and soon released a song about the civil rights struggle as well, "All God's Children Ain't Free."

Here's a verse:

I'd be happy walking down any street,
 but all God's children ain't free.
 I'd have a smile for all I meet,
 but all God's children ain't free.
 I'd whistle down the road,
 but I wouldn't feel right.

I'd hear somebody cryin' out at night,
from a sharecropper's shack or a penitentiary,
all God's children ain't free.
"All God's Children Ain't Free" (1965)

Cash performed "The Ballad of Ira Hayes" (La Farge, 1964) and other Peter La Farge songs he'd recorded about the American Indian at Wounded Knee in 1968, when he, in his words, went there to help the Sioux raise money to build a school. Back then, Indians hadn't started to speak out for themselves and neither had any national figures. Performing at the St. Francis Mission on the Rosebud Reservation in December '68, Cash said, quote, "I've got very little Indian blood in me myself, except in my heart, and I've got a hundred percent for you tonight." Cash would sometimes claim to be one quarter Cherokee, but other times he would say he made that claim when he was "squirrelin' reporters."

Despite all his work for social justice, he was criticized for his patriotism, his faith, his silence on civil rights and women's issues, and his friendliness towards President Nixon. Although later he distanced himself from Nixon, and became stridently anti-war.

Prison reform became Cash's grand crusade. He had this to say about it,
I did not go into it thinking about it as a crusade, I mean, I just don't think
prisons do any good. Nothing good ever came out of prison, that's all I
am trying to say. If I can get some good done by writing and singing
songs about prisons, it's a bonus.

In 1972, Cash met with Nixon in the White House and was soundly criticized for it. But his meeting, perhaps unbeknownst to his critics, was to lobby for prison reform. He also testified before Congress, on behalf of prisoners. Given his attention to prisoners and prisons, Cash was criticized for not giving enough attention to victims, and yet he considered prisoners victimized by society.

A terrifying personal incident, where his biography and politics crashed head-on, is indicative of his passion and social justice. It was Christmas Day, 1982; Cash and his family were vacationing at their home in Jamaica, when three men wearing nylon stockings burst into their home. One had a gun, one had a knife, and one had a hatchet. For a few hours they held the Cash family and terrorized them, holding a gun to Cash's son's head and demanding a million dollars. Cash, according to witnesses there, calmly talked to them, and told them simply that there was just not that kind of money on hand. But he did tell them where the money was, where they could find the jewelry, and the other valuables. The robbers locked the family in the cellar and left. That night, Jamaican police found the gunman and killed him. A few weeks later, the two others were caught and killed in an alleged escape attempt. Cash wrote later, that he had difficulty coming to terms with the fact that,

The desperate junkie boys were executed for their act, or murdered, or
shot down like dogs. My only certainties are that I grieve for desperate
young men, in the society that produces and suffers so many of them.
And I felt that I knew those boys. We had a kinship, they and I. I knew
how they thought. I knew how they needed. They were like me.

This is a progressive response from a crime victim.

In 1970, Cash was invited to perform at the White House. Nixon's aides sent song requests to Cash, including "Okie from Muskogee" (Haggard & Burris, 1969) and "Welfare Cadillac" (Drake, 1970). Tennessee social workers were livid and the State Commissioner for Welfare wrote a letter to Nixon, calling him insensitive, and saying the song's message that welfare recipients are cheats and the rest of us chumps is a grave disservice. Although a flap ensued, Cash was later diplomatic about it:

I think everybody got that whole thing wrong because the President did not ask me to do those songs. One of the secretaries did. I think they wanted me to believe that President Nixon was familiar with my music. But they evidently had picked up a copy of *Billboard*, found a couple songs on the Top Ten, and took it from there. I simply told them look, "Okie from Muskogee" is Merle Haggard's song. It's identified with him, and I won't do it because it wouldn't be proper. As for "Welfare Cadillac," well, I've heard the song once. I don't like it, and it doesn't say anything I want to say. If the request actually does come from the President, tell him that our program is already planned and that I certainly hope he'll be pleased with what we do.

Although Cash refused to play the songs, he said that Nixon's foreign policy should be supported because he was our elected president. Yet only one year later, he questioned the Vietnam War, and released the politically-charged song, "Man in Black" (1971) followed by "Singin' in Vietnam Talkin' Blues" (1971).

Here's a verse from "Man in Black":

I wear the black for the poor and the beaten down,
 livin' in the hopeless hungry side of town.
 I wear it for the prisoner, who has long paid for his crime,
 because he's there, he's a victim of the time.
 Well there's things that never will be right I know,
 and things need changin' everywhere you go.
 But until we start to make a move to make a few things right,
 you'll never see me wear a suit of white.
 I'd love to wear a rainbow every day,
 and tell the world that everything's OK.
 But I'll try to carry off a little darkness on my back,
 till things are brighter,
 I'm the man in black.
 "Man in Black" (1971)

Cash performed a series of concerts for American troops in Vietnam, and after returning home announced that he was "a dove with claws." In 1975, when he was asked about that comment, he responded, "I thought that was awful clever of me at that time, and now I wonder where I got that stupid line. Anyway, please forgive me for saying I'm a dove with claws."

Years later, in his 1997 autobiography, he had claimed he had never voted for Nixon. About the Vietnam War, he said,

The way I feel about it, the only good thing that ever came from the war is a song, and that's a hell of a way to get your songs. I don't know how patriotic I'd be if I was poor and hungry.

More telling is his 1973 interview when he said,

As far as the war in Vietnam is concerned, that war just made me sick. I'm not supporting that war or any other war. We'd like to erase that whole war from our history books. Maybe Vietnam has taught us a hard lesson to not be involved in foreign wars. Maybe that's the lesson we've learned. I hope we have.

He also said, at that same time, "our government scares the daylights out of me." In 1973, during an interview with *Rolling Stone*, Cash was asked about what he was proud of in his work. He pointed to one record, "The Rebel," which contained a song called "The Big Battle" (1962). Cash said it was, quote,

One of the first social comment things I wrote. It was about the needless killing in war. That was in 1961. I thought it was a good record, and I still think it is. The idea being that the big battle comes after the killing, in the conscience, in the hearts and grief of people that suffer the loss.

Here are a few lines from "The Big Battle":

The battle will rage in the bosom of mother, sweetheart, and wife.
Brother and sister and daughter, will grieve for the rest of their lives.
Now go ahead, rise from your cover, be thankful that God let you live.
Go fight the rest of the battle, for those who gave all they could give.
I see the battle's not over; the battle has only begun.
The rest of the battle will cover this part that has darkened the sun.
For though there's no sound of the cannon,
and though there's no smoke in the sky,
I'm dropping the gun and the saber,
and ready for battle am I.
"The Big Battle" (1962)

During a mid-1970s interview when Cash spoke of politics as much as music, he was asked about drugs. He observed, "A lot of prisoners have been convicted of marijuana charges, and I personally do not think they should be in prison in the first place." Regarding marijuana decriminalization, he responded, "Well I think there's a lot of money spent on enforcing marijuana laws when it could be spent for better causes." He was then asked if he was becoming a political radical. To which he responded,

No, I sure don't. I look at it the other way. I'm just trying to be a good Christian. You know, there are three different kinds of Christians. There's preaching Christians, church-playing Christians, and there's practicing Christians. And I'm trying very hard to be a practicing Christian. If you take the words of Jesus literally and apply them to our everyday life, you discover that the greatest fulfillment you'll ever find really does lie in giving. And that's why I do things like prison concerts. Compared to that, the television series I did, for example, have very little meaning for me.

His song, "What is Truth" (1970) defended young people, young people's music, young people's politics, and young people's fashion and hairstyles. He was, like many things in his life, criticized for that song as well.

But I will read one verse from that:

The young girl dancing to the latest beat,
has found new ways to move her feet.
The young man speaking in the city square,
is tryin' to tell somebody that he cares.
Yeah the ones that you're calling wild,
are going to be the leaders in a little while.
This whole world's wakened to a newborn day,
and I solemnly swear that it will be their way.
You better help the voice of youth to find what is truth.
"What is Truth" (1970)

Cash clearly changed across his adult life. He was asked about his changing political and philosophical positions, at various times. One statement from the early 1970s, sums up his evolution and his intellectual development along political and social justice lines:

I feel completely different about a lot of things than I did a year ago. A year ago, I had done a lot less thinking than I have now. Today people say, "but last year you said"... "but didn't you say?" Yes I did, so what? I changed my mind. I changed everything. I'm always changing. I intend to keep changing. I'm building, I'm expanding, I'm still being born. You haven't seen the complete me yet. Don't ever tell anybody how John Cash feels about anything, unless I've told you within the last few minutes.

Yet, we do know that Johnny Cash's personal politics greatly influenced his music and his shifting positions on a multitude of issues. For the most part, he was indeed a gutsy pusher of social causes, whose politics and actions came down on the side of the disenfranchised and the dispossessed.

Mark Hamm:

How many of you students have ever been in a prison? How many want to work in a prison? One hand, good for you! I'm always floored by that. That's where the criminals are, that's where criminologists should spend a lot of time. I will be speaking of the famous Johnny Cash record, first released in 1955 and recorded at Folsom Prison in 1968, *Folsom Prison Blues*, about a man who shot a man in Reno, just to see him die. This was released and became a number one song. This song led to the myth that Johnny Cash had done time in prison. However, he had not; he had done a little time for being intoxicated in public and amphetamine possession in 1955 in Mississippi. But this gave rise to the idea that Johnny is a former prisoner and so prisoners started to write him and ask him to come to prison to perform. The first prison performance was in 1957, in Huntsville, Texas, home of Sam Houston State University. Then he received other requests, and one of those included a date in San Quentin prison. Sitting in that prison audience was a young armed robber named Merle Haggard, who would then go on to form his own career.

This is very important to the cultural criminology of prisons, if there is such a thing. Nobody in this day, not Elvis, Chuck Berry, Fats Domino, or Howlin' Wolf, played in prison. But Johnny Cash, over the next 10 years played 30 dates in prison. Toward the end of this run, he was a man beset with problems. He was out of control with his drug abuse; he had lost a lot of weight over the years due to his amphetamine use. He hadn't had a hit record since 1964. Two things turned his life around. One was his marriage to June Carter. The second thing that revived his career was a date at Folsom Prison. He had been to Folsom Prison before, but wasn't allowed inside. But in 1968, he was allowed inside to record an album with Bob Johnson, who would then go on to record three of Bob Dylan's most memorable albums. The day of this concert, was January 13, 1968, and he arrived at the prison in the morning outside the famous East Gate. Folsom prison is a huge granite fortress, one of the toughest prisons in the United States, built with inmate-labor back in the 1870s. It is a very difficult place to escape from, by design. Johnny Cash went inside and performed with the Tennessee Trio, a series of his famous hits that formed the album: "Cocaine Blues" (Arnall, 1968); a song about a hanging, called "Twenty-Five Minutes To Go" (Silverstein, 1968); the elegant "I Still Miss Someone" (Cash & Cash, Jr., 1968); "Dark as a Dungeon" (Travis, 1968); and, "I Got Stripes" (Cash & Williams, 1968). These are prisoner songs. But he united with these prisoners and there was great affinity between Johnny Cash and the inmates. He closed with a song about the Grey Stone Chapel, which is the chapel at Folsom, a house of worship in this den of sin.

Marty Stewart would later say, "This day, on stage, Johnny was cocky; he was at the top of his game. I mean, he had heaven all over him." Then the album was released, and Johnny Cash's career turned around. He went on to do many great

things. But most importantly, he went on to become a prison reformer and met with politicians, met with inmates, and advocated their cause. Most famously, he sat with Richard Nixon in the White House. Imagine the day Toby Keith and the President meet together, sitting down to talk about the conditions at Pelican Bay. But, of course it would not happen.

But, the question becomes, what's the legacy? What has Johnny Cash left behind? What's happened back at Folsom? This is what you see at Folsom today. What one can see at Folsom today includes: Hepatitis C, ulcerated eyes, and the Aryan Brotherhood. Last year I spent three days at the new Folsom prison. This is a new big maximum-security institution, which sits right next to the old Folsom prison. Here I interviewed inmates and gangs—Aryan Brotherhoods, Cripps, Bloods—about possible ties to terrorism. There is no liquid modernity at Folsom Prison. Racial lines demarcate spaces at Folsom like train tracks would demarcate a city. It's hard to believe, by looking at some of these prisoners that one is talking to a human being. There are no rehabilitation programs at Folsom, cell blocks teem with violence. I was amazed to learn that one out of four prisoners suffers from Hepatitis C. Health care has gone to hell, and the prisoners spend their days pacing the sun-baked yard, banging Cripp, Blood, and Nazi low-rider. The state prison commissioner has described this as a powder keg about to explode. Rehabilitation is a thing of the past.

Where Johnny Cash walked in the hallway, to get to the dining hall to perform his masterpiece, *Johnny Cash at Folsom Prison*, inmates are double and triple bunked by race. There are 500 men living in these hallways. Folsom Prison has a designed capacity of 1,200. When I was there, there were 4,500 men, three times over-capacity. As one walks through there one wonders, what is it, if anything, that Johnny Cash did in his years of prison reform, in trying to bring rehabilitation, reformation, a sense of tolerance and fair play. More than anything, a sense of caring about these prisoners. Is there any of that still at Folsom Prison? There is a little bit. It's not all gone.

If I had to do time in a California prison, I'd do time in old Folsom Prison. Not one of these new places, like new Folsom Prison, a name that Orwell would cherish. This place has three chapels, and they're empty. Except for gangs who go down there and sell drugs, or sell sex, or do gang business. A chaplain told me there's something evil in this prison. Now when a chaplain says there's something evil in his prison, that's a cause for concern. But what I found in old Folsom Prison, in Grey Stone Chapel, that Johnny talked about so long ago, is a sense of tolerance. I was down there interviewing inmates and there were no guards around. The place is so over-crowded all the guards are out on the yard making sure somebody isn't going to shank someone else. Inside the chapel, it's only mutual trust and respect that hold that place together. In the chapel, there is a presence of which Johnny would have been proud, had Johnny gone into this prison in 2007, some 30 years after he last played there in 1977. By then, the prison reform movement was on a downward spiral, which is where we are today.

All of these ideas Johnny had about the prison came out of a particular era. This was when students came out of colleges, and wanted to do good and save the world. One of the opportunities to do that was behind the walls. Johnny Cash was the spokesman of this generation. I am proud to say that I was part of this generation, having gotten into prison work in 1972 simply out of the notion of wanting to try and do some good for some people and carry on the struggle that started the civil rights movement and the protest movement against Vietnam. If I had to say that there's any place in the California prisons I've seen where the legacy exists, the first place is there in the old Folsom chapel. A second place is in a unique institution. Those of you who've been around prisons, will know how unusual it is to find a prison museum. There are several of these, Huntsville has one and San Quentin has a small one. But Folsom Prison has a museum that sits right by the East Gate. So I walked in there

one afternoon and heard Johnny Cash blaring from a boom box with “Orange Blossom Special” (Rouse, 1965). I asked the museum curator how often he listens to this. His reply was, “Every day, all day long.”

Johnny Cash’s image has been tied to the identity of this one prison. For as long as that museum stays there and as long as that record, *Johnny Cash at Folsom Prison* (1968) still exists, the memory of Johnny Cash will remain. I hope all of you one day get to take a summer vacation and tour Folsom Prison or tour some prison, talk to some inmate, keeping your heart alive, this idea of Johnny Cash. Time keeps dragging on, as they say.

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See page 18 for information on Mark Hamm.

VIOLENT APPALACHIA: THE MEDIA'S ROLE IN THE CREATION AND PERPETUATION OF AN AMERICAN MYTH

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Abstract

For more than a century, Appalachians have shared a history of negative representations. Both popular culture and the social science literature have usually depicted Appalachia not only as an extremely poor, less developed area, but also as an especially violent part of America. This paper attempts to explain how and why the damaging stereotypes of Appalachians were developed, highlighting the contribution of the media to the cultural and social construction of Appalachia's image, focusing on interpretations of lawlessness in the region. It is argued that media reports of Appalachian feuds and labor conflicts contributed to Appalachian stereotypes.

Although there is no single definition of Appalachia, the region is generally perceived as the rugged mountainous area which extends from New York to Alabama, crossing 13 states. Appalachians living north of New River have been more likely to share the Northern culture (in terms of folk patterns, speech, and food), while Appalachians living in the area below the New River have been closer to the Southern culture (Eller, 1997). Besides cultural differences, interregional economic differences characterized Appalachia throughout its history as well (Salstrom, 1995). However, in the 19th century, Appalachia started to be erroneously portrayed by the media as homogeneous in economic pursuits, culture, ethnic composition, and distribution of wealth (Dunaway, 1996) and as Shapiro (1978) noted, by 1890, "the idea that Appalachia was a discrete region of the nation became a convention of the American consciousness" (p.xiv).

While acknowledgements of internal diversity or class differences were present in some literary or scholarly works, they were made too late to change the "monolithic perception" of Appalachia (Foster & Hummel, 1997). Even if the mountaineers represented only a small segment of the region's population, they were used to characterize the "otherness" of Appalachia and their perceived characteristics were attributed to all Appalachians. "Appalachia has been identified as constituting not only a separate subculture, but a status group that has been consciously ranked as being low in prestige" (Hurst, 1995, p.51). As Otto (1986) observed, Appalachians were typically portrayed not only as "ill-kempt, ill-educated, and poverty-stricken farmers-cum-moonshiners" (in Hsiung, 1997, p. xi), but, also as individuals prone to violence.

This paper explores the social construction of Appalachian identity. Although, as Hacking (1999) observed, social construction might have a multitude of meanings; in general, any phenomenon (such as money or status) is considered socially constructed when it exists because participants in a particular culture agree to act as if the phenomenon is real (Pinker, 2002). As a quasi-theoretical perspective, social constructionism unites a diverse range of philosophical (see, e.g., Berkeley, 1975; Searle, 1995) and social-scientific theories (see, e.g., Durkheim, [1912]1995), which posit that social constructions are created through an extended series of individual interactions wherein individuals' views of reality are established and reinforced. Berger and Luckmann (1966) argue that actors interacting over time will form mental representations, or typifications, of each other's actions, which ultimately become

habitualized into reciprocal roles which the actors play in reference to each other. Institutionalization occurs when typifications and roles become reified into social reality by being embedded into society's fabric and structure.

Appalachia was gradually typified and institutionalized as a backward, deviant, and violent place in need of state intervention. It is in this sense that it can be said that Appalachia's reality was socially constructed. We first briefly discuss the problematic empirical status of Appalachian violence. Then we trace the development of the Appalachian stereotype through post-bellum literary and journalistic representations of Appalachia. Although this paper addresses two main sources of media reported violence (feuds and labor conflicts), feuds tended to be confined to a smaller area of Appalachia and were more limited in time, thus our discussion will focus on interpretations of violence and lawlessness associated with labor warfare, which we consider had a stronger and longer-lasting effect on current representations of Appalachia.

The Known Reality of Appalachian Lethal Violence

Criminologists have long recognized that certain American geographical regions exhibit consistently higher homicide rates. High Southern homicide rates in general have been observed for more than 125 years (Brearley, 1932; Nisbett & Cohen, 1996; Redfield, 1880). Lane (1997) noted that during the 1920s the national homicide rate of 8.4 per 100,000 people was 5 times higher than Ontario's homicide rate, 10 times higher than Japan's, and 47 times higher than the murder rate in Switzerland. Only Sicily had a higher average homicide rate than the United States. After the army withdrew from the South in 1877, the South appeared to be the most "murderous section of the country" and continued to have the highest murder rate among U.S. regions in the 1920s (Zahn & McCall, 1999).

Cultural theorists (Gastil, 1971; Hackney, 1969) argued that Southern culture must factor into any explanation of regional variation in lethal violence and aggressive behavior. Hackney (1969) contended that violence emerged as a Southern tradition during the Civil War. The defeated South and its subsequent subjugation and exploitation by the North gave rise to collective grievances and encouraged aggression. Consequently, the social climate in the South allowed for violence to become an acceptable form of conflict resolution. Gastil (1971) found that "Southernness," an index the author developed, accounted for a significant amount of variation in homicide rate, when controlling for other indicators, and concluded that Southern culture can be considered a critical explanatory factor of the high homicide rates in the South, on both qualitative and quantitative grounds.

In a more recent version of the Southern subculture of violence theory, Ayers (1984) argued that the existence of a certain "culture of honor" in the South can explain the higher levels of violence in the region. In Southern subculture of honor theories, Southernness itself explained elevated homicide rates: Southerners adhered to an external code of honor which predisposed them to lethal violence (Ayers, 1989; Fischer, 1989; Nisbett, 1993;). Nisbett and Cohen (1996) argued that the South developed this culture of honor due to its settlement by violent herding peoples and its unprotected frontier status. This honor-based culture emphasized protecting oneself and one's property and cultivating a reputation for fierceness and unreasonableness. Southerners were thus hypersensitive to insults and threats and more likely to respond to such affronts with lethal violence.

While it is possible, even likely, that portions of Appalachia exhibit culture of honor effects, available data do not support the well-accepted belief that Appalachia was/is uniformly more violent than other American regions. Although there is no doubt that violence existed in Appalachia in the late 19th and early 20th centuries, no data have been collected so far to compare the level of violence in the entire region with the rest

of the United States at the time. Additionally, data on Appalachia's violence in the 1990s, when lethal violence in the U.S. reached the most recent peak, show that while 1990-1995 average U.S. homicide rates were 9.2 per 100,000 people, average murder rates in Appalachia were 6.68 per 100,000 people (Andreescu & Shutt, 2008). Although considerable interregional variability was registered among Appalachian sub-regions, Appalachian states considered part of the Deep South (Alabama, Georgia, Mississippi, and South Carolina) had the highest average murder rate (8.30 per 100,000 people) in the area, yet still had lower levels of lethal violence than the national average. northern Appalachia (Maryland, New York, Pennsylvania, and Ohio) had the lowest average murder rate (3.33 per 100,000 people) in the region while Central Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia) registered on average 7.15 homicides per 100,000 people. It should be noted that the average murder rate (5.0 per 100,000) for all federally defined Appalachian counties (N=406) was significantly lower than the murder rate (7.11 per 100,000) in Non-Appalachian counties (N=695) belonging to Appalachian states (Andreescu & Shutt, 2008). Nevertheless, unlike other American regions, Appalachia itself is commonly viewed as a homogeneous, backward, and violent area.

The Genesis of the Appalachian Stereotype

Similar to other less known areas in the country, Appalachia received increased public attention after the Civil War, when several writers and urban journalists responded to the literary demands of the middle-class urban Northerners eager to learn more about the peculiar life in the "little corners" of America. Mark Twain and Bret Harte wrote about the West, George Washington Cable wrote about Cajuns in Louisiana, Sarah Orne Jewett wrote about rural Maine, and Hamlin Garland and Willa Cather wrote about the Great Plains. At least 125 short stories and over 90 travel sketches were written in that period about Appalachia's mountains and people (Drake, 2001; Eller, 1997; Hsiung, 1997).

Some "writers who disliked modernity saw in Appalachia a remnant of frontier life, the reflection of a simpler, less complicated time that ought to be preserved and protected," while other writers thought Appalachia needed to change, develop, and modernize (Eller, 2008, p.1). Despite differences in arguments, all explanations and descriptions of the area since 1870 (Shapiro, 1978) have focused on a principal characteristic and cause of Appalachia's "otherness"—its isolation—defined as a "state of mind, an undesirable provincialism resulting from the lack of contact between the mountaineers and outsiders." Appalachians did not seem to fit the American cultural pattern and gradually became what psychologists call the "out-group" as opposed to the "in-group" (see Farley, 1995), represented by the rest of Americans.

Although missionaries were among the first to write about Appalachia (Drake, 2001), writers associated with the local color movement that dominated the American literature from about 1870 to 1900 are considered nowadays an important source of certain negative stereotypes related to Appalachia. Fiction and nonfiction articles, published during the three-decade period in popular periodicals such as *Lippincott's Magazine*, *Harper's*, or *The Atlantic Monthly*, described the mountain life of the South as "vastly out of step, culturally and economically, with the progressive trends of industrializing and urbanizing 19th-century America" (Billings, Pudup, & Waller, 1995, p. 1).

At first, Appalachia was used as a neutral setting for upper-class romance and lower-class passions, and represented an attractive, interesting, picturesque "past." Highly standardized tales usually included descriptions of the beautiful scenery and more or less condescending portrayals of the mountain people. In 1873, Will Wallace Harney, considered Appalachia's first colorist, published in *Lippincott's Magazine* "A Strange Land and Peculiar People." In 1884, eight stories written by Mary Noailles

Murfree (Charles Egbert Craddock) and previously published in the *Atlantic Monthly* appeared in a single volume, *In the Tennessee Mountains*, a book that quickly went through 14 editions in the first two years (Parks, 1941). Joel Chandler Harris published pieces about Georgia. In Harris's ([1887]1998) story *Trouble on Lost Mountain*,

the majesty of the mountain was voiceless; its beauty was forever motionless. Its silence seemed more suggestive than the lapse of time, more profound than a prophet vision of eternity, more mysterious than any problem of the human mind (p.100).

Miss Babe Hightower, the mountain heroine, is "poised," has an "inspiring presence," and her ignorance is found "original" by the young, handsome and educated Northerner who came to visit the region for business reasons (Harris, [1887]1998, p. 100). James Lane Allen, a Louisville journalist, wrote about eastern Kentucky during the 1890s. Among his published writings are *Thru Cumberland Gap on Horseback* (1886), *Mountain Passes of the Cumberland* (1890), and *The Blue-Grass Region of Kentucky and Other Kentucky Articles* (1892). Charles Dudley Warner wrote several travel accounts of trips into the Blue Ridge and into eastern Kentucky (e.g., "On Horseback" published in *Atlantic Monthly* in 1888), emphasizing the backwardness and poverty of mountain life. From 1895 to 1915, John Fox, Jr. wrote many stories, lectures and books about eastern Kentucky and southwest Virginia and Fox's novels, *The Little Shepherd of Kingdom* and *The Trail of the Lonesome Pine* (1908) became national best sellers. According to Silber (1993), Fox shaped the middle-class perceptions about Southern Appalachia more than any other writer.

Local color writers built up literary reputations on the presumed mountain people's peculiarities in speech and custom. They were able to convince the public of the reality of their stories, even if they did not actually have direct contact with people living in the remote mountain areas their writings were describing (Shapiro, 1978). However, it seems that those who first perceived differences between the mountain people and the outside world were not media representatives, but the local Appalachian elites. According to Hsiung (1997), local color writers just reinforced some of these perceptions and the American public internalized them eventually.

Using upper East Tennessee as an example, Hsiung (1997) noted that in a period when Americans were experiencing the effects of the Industrial Revolution, Appalachia was not a homogeneous society. At the time, the Tennessee Mountains hosted two worlds: one centered on the larger towns and more open valleys, where people were interacting with the rest of the country, and another world of the steep-mountain residents, where people had limited social contacts, focused on their "immediate affairs," and were relatively isolated from other places of upper East Tennessee. This geographical separation fostered self-perceptions of difference that became stronger when "the better-connected inhabitants tried to overcome mountain geography, bad roads, soil infertility, and other economic disadvantages by campaigning for the East Tennessee and Virginia Rail Road," while the mountain people, focused on their immediate concerns and daily lives, did not emulate their neighbors. Consequently, "the railroad advocates came to see people who did not support their efforts as being ignorant and backward." This sense of difference, articulated by the inhabitants themselves, was transmitted to the local colorist writers who used as a source of information for their stories the "more accessible town residents, tapped into these local perceptions, and publicized an image of Appalachia that has persisted ever since."

In a study about the effect of industrial development on the transformation of agriculture in West Virginia's "back counties," Ronald Lewis's (1995) description of pro-industry newspapers' portrayals of "conservative agrarians" resembles Hsiung's (1997) account of the manner local urbanites perceived mountaineers. In 1884, a

Wheeling Register article described farmers opposed to deforestation and railroad construction as “musty elements of old foggyism,” who serve as “a retardant to progress and prosperity” (in Lewis, 1995, p.303). However, as Lewis (1995) explained, farmers had several legitimate reasons to resist railroad construction. First, railroads wanted to shift the financial burden for their construction from themselves to farmers. Second, farmers were worried that railroads would undermine their individual well-being by destroying fields and livestock, and by depressing the price of agricultural products in the local markets. Third, agriculture did not enjoy legislative and judicial preference in West Virginia as it did in Virginia. In West Virginia, courts tended to give priority to industrial developers and protected the railroads from suits brought by farmers.

Media's Interpretations of Violence and Lawlessness in Appalachia

The metamorphosis of the feud stereotype

Presentations of Appalachia as the “American past” or as “a land which had slept a Rip Van Winkle Sleep” were not the only distinctive themes in the 19th century literature focusing on the region. Journalists and almost every local color writer referred in their writings to Appalachians’ violence and lawlessness. Toward the end of the 19th century, feud conflicts in Appalachia, highly publicized by the national press, “gripped the popular imagination and fastened on the people of Southern Appalachia a cultural stereotype of violent irrationality that is still potent today” (Waller, 1995, p.348). In addition, moonshining or conflicts between mountaineers and revenue officers over enforcement of the excise tax on whiskey were considered peculiarities of the mountain life and were, by the turn of the century, part of any mountain fiction. In 1900, a New York reporter used the word “hillbilly” for the first time in a journal article to define “the free and untrammelled white citizen, who lives in the hills, has no means to speak of, dresses as he can, drinks whiskey, and fires off his revolver as fancy takes him” (Drake, 2001, p.121). Soon the term would become a common appellative of Appalachians.

American literature has shown a particular fascination with violence for almost two centuries. Before the Civil War, the historical romance of the American Revolution was the most popular literary genre. By the 1820s and 1830s, “young Americans professed unquestioning allegiance to the Founding Fathers and anything that seemed to threaten the public welfare was pictured as a betrayal of tradition.” In the popular image, the War of Independence was not a challenge to sovereignty but rather a struggle between peers, usually symbolized by good and bad brothers, for the possession of land and women. “This effort to identify rebellion with a defense of tradition and lawful order provided a model for later imaginary struggles for America’s destiny” (Davis, 1968, p.73).

In the first half of the 19th century, the “westerner” started to be widely accepted and celebrated in American culture as a folk hero. Despite the fact that between 1860 and 1900, 500 out of 700 known homicide victims nationwide were found in the plains and far west, the Western hero became a symbol of self-sufficiency and omnipotence. He could use any kind of violent means in the never-ending quest for positive goals (Gerson, 1968; Lane, 1997). The American public interpreted his “aggressive self-reliance” as a “constructive and wholly natural force” (Davis, 1968, p.74).

At the other end of the spectrum and as a reflection of historic tensions in American values, Southern and Appalachian violence received a different treatment in American literature, especially after the Civil War. As Merton (1968) and others have pointed out, the American society always placed a high premium on economic affluence and social ascent. The defeated and impoverished South, as well as Appalachia, were definitely unable to symbolize the type of success praised by the

American culture. Frequently, terms such as “grudge, feud, and vendetta were included in stories about lynching, mobs, Ku Klux Klan activity, riot, and murder” (Waller, 1995, p.353). They were part of literary and journalistic accounts meant to point out the Southerners’ cruelty and unjustifiable violence.

After the War of Independence, the media tended to compare American feuds to Corsican vendettas. They were considered conflicts between gentlemen of property, were surrounded by some romantic aura, and were seldom associated with the Southern mountains. However, the feud stereotype suffered a metamorphosis after the Civil War. With a rash of Appalachian feuds occurring between 1874 and 1879, feud violence started to be differently perceived and depicted by the media (Waller, 1995). Hundreds of casualties and repeated interventions by the state militia, especially in eastern Kentucky (see Shapiro, 1978), also contributed to the general perception of Appalachia as an untamed and particularly violent place, characterized by severe lawlessness.

The Louisville Courier-Journal reported 41 feuds in Kentucky alone from 1874 to 1895. Half of them were between people living in the mountains. These newspaper accounts of feuds in Appalachia were “almost always sensational and inaccurate [and] the magazine articles were worse” (Pearce, 1994, p.1). By 1885, the mountains and impoverished mountaineers began to be singled out as the unique locus of family feuding. John Fox, author of *A Cumberland Vendetta*, was one of the writers who contributed the most to the construction of the “hillbilly feudist” as a stock character in the American popular culture and literature.

It was indeed an outbreak of unusual violence in Appalachia, especially in Kentucky, in the mid-1880s and it is understandable why modern American images of feuding are defined by the highly publicized Hatfield-McCoy feud that ran off and on from 1863 to 1891 (see Waller, 1988, 1995; Williams, 1976). However, different from media accounts, scholars acknowledged that all the classic Appalachian feuds (i.e., French-Eversole in Perry County; Howard-Turner in Harlan County; Turner-Parton-Sawyer in Bell County; Martin-Tolliver in Rowan County) were not just caused by a Civil War legacy, ancient hatreds, or family vengeance, but rather by the advent of economic and political modernization, whether fostered by local elites or by outsiders (Pearce, 1994; Waller, 1995).

Labor Conflicts in Appalachia: Between Fiction and Reality

Nineteenth-century feuds and violent conflicts related to moonshining in southern Appalachia are not singular examples of mountain violence fueled by the media that contributed to the standardized conception of Appalachia. Labor conflicts that started in the 19th century and continued for decades, especially in the mining regions of Appalachia (i.e. Pennsylvania, West Virginia, or Kentucky) continued to accentuate the public perception of Appalachians’ violence. The first major strike in the anthracite industry occurred in 1842, when approximately 1,500 miners from Minersville in Schuylkill County, Pennsylvania marched on Pottsville to protest low wages. The strike was broken up by the Orwigsburgh Blues, a local militia company. In the summer of 1849, 5,000 miners, members of the “Bates Union,” engaged in a strike and asked for higher pay. However, the movement, as well as the union, quickly dissipated. The Bates Union was the first formal mine workers’ organization recorded in the anthracite industry. It disintegrated in 1850, when its leader, John Bates, disappeared with the organization funds. In general, antebellum strikes tended to be localized and short-lived (Adams, 2003; Keil, 1982).

The Civil War and an increase in the power of the federal government introduced a new dynamic in the anthracite region of northern Appalachia. After the military draft that excluded the rich, class bitterness and class-motivated violence became especially notorious in the coal towns of northern Appalachia. The number of mine

workers more than doubled during the war and the production of coal increased three times. But the U.S. mine workers were divided by cultural identity, language, experience, and national loyalty. More than half of them were foreign-born immigrants from Europe. The rest of the miners were mainly native whites. In the pre-Civil War era, every mine boss in the anthracite region was English, Welsh, or Scottish. When English and Irish mine workers met in the coalfields of Pennsylvania, national antagonism fed the increasing class tensions (Long, 1989).

In the second half of the 19th century, with corporate reorganization and technological advances introduced in the mining industry, the role of the skilled miners started to change. Prior to the Civil War, skilled miners were employed as subcontractors and had a higher degree of autonomy, yet after the war many mining firms employed managers to supervise the miners' activity. Miners continued to be paid per ton rather than an hourly wage and were severely affected by the falling prices of coal. In response to the restructuring of the mining industry, mine workers formed local unions and benevolent societies that were supposed to assist their members during sickness. In 1868, the Workingmen's Benevolent Association (WBA) was founded in Pennsylvania. The organization united English, Irish, Scottish, and Welsh anthracite miners. Although for a brief period WBA won some concessions from the coal companies, class tensions, insufficient wages, and poor living conditions generated the miners' discontent and sporadic violence occurred in northern Appalachian coalfields (Adams, 2003). Those considered responsible for much of the violence that occurred in the Pennsylvania anthracite region in the 1860s and 1870s were the Irish (see Kenny, 1998).

In the early 1860s the public became aware of the existence of a "secret terrorist organization" of Irish mine workers, the Molly Maguires, that presumably operated in the anthracite fields, threatening, assaulting, and occasionally murdering mine guards, foremen, superintendents, and owners (Brecher, 1972; Long, 1989; Rifkin & Rifkin, 1979). In 1873, Franklin B. Gowen, District Attorney for Schuylkill County, Pennsylvania, president of the Philadelphia and Reading Railroad, and president of the Philadelphia and Reading Coal and Iron Company hired the Pinkerton Detective agency to investigate and bring to justice the members of the "mysterious order" of Molly Maguires. Described by Gowen as "the most desperate class of men," the Mollies were also considered "guilty of a majority of all the murders and other deeds of outrage," which for many years had been committed in the county (Pinkerton, [1877]1973, p.13-14). From 1863 to 1866, there were 52 murders registered in Schuylkill County, Pennsylvania (Long, 1989).

In a biased and self-serving period piece, Pinkerton ([1877]1973) published a detailed account of the Mollies' activities during a three year period that ended with the Mollies' trial and hanging. This was the largest mass execution in the nation's history. Pinkerton ([1877]1973; [1878]1969), a labor-union opponent and one of the few direct observers who wrote about the late 19th century social conflicts and violence in Appalachia's mining regions, was mainly interested in promoting his detective agency and proudly stressed in his works the effectiveness of his agents in suppressing labor warfare. However, although highly subjective, Pinkerton's work provides important historical evidence and "invaluable insights into the power and politics of industrial arrogance" (Elliott, 1973, p.ii).

Even if a pattern of Irish collective violence unquestionably existed at the time in northern Appalachia's mining fields, there was always a considerable disparity between what the Molly Maguires did and how contemporaries described and interpreted it (Kenny, 1998). The miners labeled Molly Maguires were members of WBA and were also members of a national Irish fraternal association, the Ancient Order of Hibernians (AOH) that opposed the British rule in Ireland but had nothing in common with the real interests of U.S. workers (Bimba, 1932). Rayback (1966) contended that the Molly Maguires episode was deliberately manufactured by the coal

operators with the express purpose of destroying all vestiges of unionism in the region. Despite the fact that there is some evidence that the "crime wave" registered in the anthracite fields followed the Pinkertons' arrival in the area and many murder victims were union leaders and ordinary miners, the Mollies' trial reinforced the public perception that miners were by nature criminal in character. Even if "none of the 20 hanged miners were ever apprehended in an act of violence," "the miners' fate was preordained by a rabid press and by juries which excluded Catholics" (Elliott, 1973, p.iii). According to Pinkerton ([1877]1973), the only media outlet that had openly taken the part of the Molly Maguires at the time was the *Irish World*, a New York newspaper.

The actions directed against the northern Appalachian miners, labeled Molly Maguires, demonstrated the increased domination of corporations in Appalachia. For instance, the miners' investigation was initiated by a private corporation through a private detective agency. A private police force arrested the alleged offenders, and private attorneys hired by the coal companies prosecuted them, while the state, as courtroom and gallows provider, had only a minimal involvement in the case.

Bimba (1932), who considered the existence of Molly Maguires "a fiction created in the course of a fierce class battle" (p.9) noted that the legend of crime around the Mollies was cultivated in order to provide a convenient label for the militant miners in the Pennsylvania anthracite fields. Similarly, Kenny (1998) argued that "Molly Maguireism" offered an omnipresent and convenient explanation for the wide variety of social, economic, and political ills that characterized the anthracite region in the mid-19th century. Although Kenny (1998) acknowledged the existence of an organized conspiracy of certain Irish immigrant workers who adapted to local conditions in Pennsylvania a strategy of violent protests against nativist and antilabor attitudes, the historian claimed that this "conspiracy was nowhere near as vast and as ominous as contemporaries claimed."

From 1873 to 1879, the nation was marked by a severe depression, caused by economic overexpansion, a stock crash, and a decrease in the money supply. By 1877, the unemployment rate in the country was approximately 20% and only one fifth of the labor force had full-time jobs (Rayback, 1966). Miners' short lived and ineffectual struggles for better living conditions culminated with the Pennsylvania "Long Strike" of 1875, that resembled a real war between two social classes. The miners were defeated, the wages were cut again, and the union was destroyed (Bimba, 1932). According to the 1889 volume of the Mineral Resources of the United States, from 1881 to 1886, Pennsylvania coal miners engaged in 800 different strikes (Long, 1989). The militant activity of the northern Appalachian miners continued into the first decades of the 20th century.

Unlike much of the rest of the South, the central Appalachian coalfields, particularly in West Virginia, have a long tradition of strong trade unionism. Bloody confrontations over union recognition erupted at Matewan, Paint Creek, Harlan, and elsewhere during the first decades of the 20th century. Unionization represented a vehicle not only for protecting miners around work place issues, but also for challenging the coal industry's monolithic domination of health care delivery, school systems, county governments, and other community institutions (Gaventa, Smith, & Willingham, 1990).

In a book that chronicles the 1891-1892 action of what appeared to be "very much a New South rebellion" against usage of convict labor in mines, Shapiro (1998) also described "incidents of industrial conflicts that collectively verged on class war" (p.13) in Tennessee. The rebellion that lasted over one year involved thousands of Tennesseans and Kentuckians from five mining communities in east and mid-Tennessee.

Lee's (1972) book about "bloodletting in Appalachia" is a detailed account of the social and political conditions surrounding West Virginia's four major mine wars in the early 20th century and of their effects on other coalfields in central Appalachia.

Starvation wages, illegal, oppressive, and often dishonest practices of the early coal operators frequently brought on bloody revolts that on four occasions required the presence of the national regular army troops to restore order (Lee, 1972).

Similar to Pennsylvania, the coalfields in central Appalachia gathered a large group of workers with different ethnic, national, and cultural backgrounds. West Virginia mine operators were immigrant coal miners from England, Scotland, and Wales, or experienced miners from Pennsylvania. The politically active operators were able to form a "coal oligarchy" that for half a century prior to the unionization of the miners in 1933 represented the dominant force in all county and state political affairs (Lee, 1972). According to Lee (1972), the region was characterized at the time by a state of lawlessness. There were no state police or county sheriffs able to control all the mining camps and there were no adequate mining laws meant to guide or restrain the mine workers. In addition, a large part of the miners who came to the region's coalfields were labor convicts and Europeans with criminal records who worked only briefly in mines and soon engaged in criminal ventures, from petty theft to murder for profit. The legislature had to create special courts in a number of West Virginia coal counties to try criminal cases only.

Lee (1972) contended that violence and the law of the jungle were stimulated in the mountain coalfields by the Baldwin-Felts Detective Agency which, similar to the Pinkerton Detective Agency, was an anti-union and strikebreaking organization. The agency was composed of "fearless gunmen, many with criminal records, who had the duty to intimidate the miners, to beat up, arrest, jail, and even kill if necessary, any worker suspected of union activities" (Lee, 1972, p.11).

The first major strike started in the region in April 1912 (Lee, 1972). Participants were from the 96 mines along Paint Creek and Cabin Creek, where 7,500 miners were employed. With their families, they formed a population of 35,000 people. The immediate cause of the strike was the operators' refusal to offer a one-half cent per ton increase in pay for mining coal that would have amounted to 15 cents a day for each miner. In September 1912, at the climax of the strike, the Governor declared the entire strike district under martial law and 1,200 state militia troops were sent into the territory under military rule. The soldiers disarmed the mine guards, sent some to jail and drove the others from the district. Operators and miners were ordered to hand over their arms and ammunition and Governor Hatfield stated that no congregating of the miners was permitted (Lee, 1972).

In August 1919, miners from the Kanawha River and New River fields decided to impose their union in Logan County by force. Lee (1972) recorded that,

(s)ince Don Chafin, a mountain feudal lord to whom every coal operator paid tribute, began his reign in Logan County in 1913, the county has had a tradition of lawlessness, and much of that criminal activity has been traceable directly to the Sheriff's office (p.122).

In August 1919, miners from the Kanawha River and New River fields decided to impose their union in Logan County by force. The armed march failed. In 1920, following the "Matewan massacre" in "bloody Mingo County" a "long train of violence (e.g., 'a murder or two every few days')," which the state was unable to suppress, started in Tug Valley (Lee, 1972, p.73-77).

In 1920 and 1921, during the nationwide recession that followed WWI, there were strikes in many other industries as workers and union leaders tried to preserve the gains made during the war. The ferocity of the struggle and the character of the violence that ensued in the West Virginia coalfields were, however, incomparable (see Williams, 1990). During September and October of 1921, special and regular grand juries in Logan County returned 1,217 indictments for complicity in the insurrection, including 325 murder charges and 24 indictments for treason against the state of West Virginia. The weakened strike in Mingo County continued until October 1922,

when the executive committee of the United Mine Workers of America (UMWA) finally called off the strike. After the defeat of the strike, the number of the UMWA members substantially dropped from approximately 50,000 in 1920 to about 600 in 1929 (Savage, 1990).

In the bituminous coalfields of Pennsylvania, Ohio, and West Virginia, 40,000 miners took up the struggle under the leadership of the National Miners' Union, which had first entered the region in 1928. In the coalfields of Kentucky, the National Miners' Union led the workers in a bitter fight against the same semi feudal conditions which roused the resistance of the Molly Maguires in Pennsylvania over a half century before. Strikers were shot down and their homes raided. They were thrust in prison, framed on murder, charged and tried for criminal syndicalism (Bimba, 1932). Beginning in 1933, miners were unionized under the New Deal Legislation of the Roosevelt Era. Although unionization did not end strikes in the industry, it ended the lethal violence that surrounded so many of the labor conflicts in the region.

Homicidal violence in Appalachia is often perceived in association with decades of bloody struggles for a better life of those who worked in the coal industry. However, historical accounts indicate that labor disputes in the United States were frequently associated with violence and were part of the American industrial context in the late 19th and early 20th centuries. The mining wars of West Virginia and other strikes in Appalachian coalfields were not isolated events at the time in the country. Railroad strikes, for instance, were at the core of the 1877 and 1894 mass strikes.

Because railroads were so dominant and reached every industrial center, railroad strikes tended to spread rapidly to national proportions and to workers in all industries. ... In 1919, the basic industries of steel and coal, along with other mass employers of the unskilled formed the mass strike storm center (Brecher, 1972, p.243-244).

It should be noted that miners as well as other members of the working class involved in the conflict between labor and capital were more likely to be victims than perpetrators of violence (see Lane, 1997).

A 1924 federal study showed that 80% of West Virginia miners lived in company-owned towns, compared with 9% in Indiana and Illinois. Appalachian miners experienced the worst housing and working conditions in the industry. Aggravated social tensions arising out of economics and labor relations explain why the worst violence seemed to be found in the Appalachian states (Williams, 1990). Nowadays, miners are viewed as some of the most militant and class-conscious workers in the United States, who were able to build a strong oppositional culture in the mountains and to provide leadership for industrial unionism (Banks, 1995). Their sometimes-aggressive actions were not genetically induced or irrational. Appalachian miners' violent acts were an inevitable result of the working class struggle for political, social, and economic fairness.

The Media Role in the Perpetuation of the Appalachian Stereotype

Almost one century after post-Civil War writers first presented Appalachia to the American public as the "antithesis of an emerging national culture," journalists of the 1960s rediscovered the region focusing on images that would help in labeling Appalachia a national socioeconomic problem area (Eller, 2008, p.62). The negative perceptions of Appalachians were reinforced by the nonfiction literature of the 1960s as well. Harry M. Caudill, a prominent national spokesman for Appalachia and a critic of the region's economic exploitation, considered, for instance, that frontier attitudes, ignorance, and isolation have produced in Appalachia a "backwoods culture," rooted in a certain genetic deficiency of those who settled in the region. Caudill (1962) stated that the earliest pioneers into the mountains were degenerate social outcasts of the

English society whose lack of will and ambition were perpetuated through years of seclusion in Appalachian hollows.

Following the literary path of a Washington Post reporter who in 1960 described Appalachia as the “country’s worst blighted area,” a wave of articles, books, and television documentaries flooded the media in the early 1960s with descriptions of the region’s poverty (Eller, 2008, p.64-65). Appalachia suddenly became an icon in the nation’s “war on poverty.” In addition, Appalachia was the only American region to benefit from a special governmental program for infrastructure development. From 1965 to 1968, the media coverage of the region intensified and continued even after the war on poverty collapsed in 1972. As Eller (2008) observed, Appalachia was definitely a marketable media commodity. Critical but superficial commentaries inculcated in the public’s mind the lasting idea that the region was “a burden on an otherwise progressive nation” (Eller, 2008, p.89). In September 1967, Canadian filmmaker Hugh O’Connor visited the mountains of Central Appalachia to document poverty and was shot and killed by a local landlord who was angered over the media’s demeaning portrayals of Appalachia; the public was reminded how dangerous and violent Appalachians could be. In a relatively recent discussion of the locals’ reaction to this tragic event, Stock and Johnston (2001) noted that many residents from Letcher County, Kentucky defended their neighbor Hobart Ison, who committed the crime,

not because they approved of murder and not because of an innate, clannish suspiciousness of outsiders, but because they perceived the prying eyes of reporters to be an assault on manners, common decency, and the integrity of their communities (p.270).

Since the passage of the Economic Opportunity Act of 1965, there have been notable improvements in Appalachia’s socioeconomic conditions. Yet, uneven development continues to persist. In 2008, the Appalachian Regional Commission (ARC) still reported 81 counties out of 410 as being economically distressed. Although in order to prevent corruption, federal funds typically bypassed local politicians, ruling Appalachian families as well as outside developers who benefited from the vast network of highways recently built in the region are still considered by locals the most important beneficiaries of the money spent in Appalachia to fight poverty. Many of the interior, rural counties received no federal funding until the 1980s, while fringe cities, like Atlanta and Pittsburgh have been helped for almost 30 years. Only in 1994 did ARC’s attention shifted toward the poorest Appalachian counties (see Jones, 2000). During this time, Appalachians continued to appear as main characters in many newspaper stories about poverty, welfare, crime, and violence.

With only few exceptions (e.g., the motion pictures “*Coal Miner’s Daughter*” (1980); “*Fire Down Below*” (1997); “*October Sky*” (1999); “*Cold Mountain*” (2003); and Appalshop documentary films), America’s popular image of Appalachia has been constantly reinforced by the media in the last decades. From comic strips (e.g., Al Capp’s “*Li’l Abner*” and Billy De Beck’s “*Barney Google and Snuffy Smith*”) to popular television series, such as “*The Beverly Hillbillies*” and “*The Dukes of Hazard*,” movies (e.g., “*Deliverance*,” based on James Dickey’s novel and even the 2000 movie “*Songcatcher*,” directed by Maggie Greenwald) or plays (e.g., Robert Schenkkan’s Pulitzer Prize winning play “*The Kentucky Cycle*”), the Appalachian cultural stereotype created in the 19th century continuously recurs (Hsiung, 1997; Tunagur & Britt, 2007). Following the trend of the late 1990s based on the tremendous success of several TV reality shows, CBS planned in 2002-2003 to produce “*The Real Hillbillies*.” The weekly series meant to chronicle the life of five rural lower middle-class family members from Appalachia as they moved into a luxurious Beverly Hills mansion. Although the CBS producers and executives argued that this reality show would not be about prejudice

or Appalachian stereotypes (see Hollis, 2008), numerous protests forced the network to abandon the project.

Social constructs are often unintended and unconscious by-products of countless human choices (see Burr, 1995). Although it is difficult to conclude that Appalachia as a social construct was consciously invented, one cannot ignore the benefits enjoyed by so many who deliberately contributed to the region's persistent negative image. For instance, local color writers and their publishers, as well as many journalists who took advantage of the American public's fascination with violence, built literary reputations and gained financially from the book or newspaper sales. More importantly, as one anthropologist observed (Buck, 2001), the Appalachian stereotypes served to disguise economic, political, and social exploitation in the region. Highlighting elements of the so-called Appalachian culture, such as feuds, drinking, incest, early pregnancy, family violence, and general backwardness, local elites, the corporate capital, and the media instruments they controlled managed to shift the public's attention from the real causes of Appalachia's problems.

However, stereotypes die hard and it is unlikely that thoughtless cultural references regarding Appalachia and the mountaineers will completely disappear in the near future. Yet, socially constructed reality is an ongoing, dynamic process that requires human practices to sustain its existence. With an increase in the number and visibility of internet media outlets created and maintained by the new generation of Appalachians (e.g., The Appalachian Front Porch blog; Appalachian Voice Newspaper) that monitor and sanction biased and prejudiced comments regarding Appalachia transmitted by traditional media, and also tell the Appalachian story from the insiders' perspective, the intellectual discourse and the current public thinking about the region and its people could change.

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THE STUDENTS' PERCEPTION OF SEXUAL HARASSMENT AND SEXUAL
ASSAULT DEMONSTRATED IN A STUDY OF DIFFERENT COMMUNICATION
FORMS BETWEEN THE BOOK *CLASS ACTION: THE STORY OF LOIS JENSEN*
AND THE LANDMARK CASE THAT CHANGED SEXUAL HARASSMENT LAW AND
ITS FILM ADAPTATION *NORTH COUNTRY*

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Abstract

*The main purpose of this study is to explore four different conditions of exposure in two different communication forms: the book *Class Action: The Story of Lois Jensen* and the Landmark Case That Changed Sexual Harassment Law and its film adaptation, *North Country*. It is a true story of sexual harassment and violence. This study is based upon data collected from qualitative in-depth interviews. Four groups of college students were exposed to different procedures and interviewed to probe the different effects of mode of communication as well as analyze the gender differences regarding their interpretations and ideas of sexual harassment. The findings of the study have shown that the book does not have the same impact as the film. The interviewees' perception of sexual harassment and sexual assault was mainly conservative, inhibited, and distanced before being exposed to the story. After reading the book and watching the film, most of participants realized the gravity of the issue and learned about asserting their rights. There were no gender differences found between the interpretations of the story, but they did differ in the intensity of reactions.*

Adaptations of books are very common in the film making industry. Yet, text and film are two different types of media. This study will focus on the film *North Country*, which is based on the first successful court case of sexual harassment in the United States. I shall discuss the crime in film media design and text media design and the difference in their effects. This study also analyzes the different opinions of the readers/audience of different genders on the issue of sexual harassment. The aim is to determine if the different media will cause different receptions (either reading the book or watching the film only; watching the film first and then reading the book; or reading the book first and then watching the film). The purposes of this study are:

1. To discuss the differences between the book and its film adaptation;
2. To see if the different media will generate different kinds of perceptions of sexual crime on the part of the audience/readers;
3. To see if the different media will influence specific responses to the issue of sexual harassment and sexual assault among the audience/readers.

Literature Review and Theory

Relationship between film and text

Both text and film share an important feature, storytelling. The difference is that the former tells a story through words, and the latter through images (Liang, 1986). A text is able to describe a character's feelings, emotions, and thoughts in detail, but a film needs to attract the audience with its visual effects (Chang, 2006).

The purpose of the visual design

A visual design should be both appealing and thought-compelling, and it should also have certain implications. If a visual effect is only a beautiful presentation without any implications, it gives almost nothing in terms of practicality to the audience, even if they are attracted by it (Shen, 2003). A visual design should be interpretable, too. A good visual design should contain as little interference as possible so as not to distort it. The audience should be able to easily interpret the message behind the visual images (Heinich, 1996).

Relevant documents related to sexual harassment

Can-ying Luo (1999), in her study on sexual harassment in the workplace in Taipei City, Taiwan, indicated that among 493 female interviewees, 36% of them had experienced such harassment. Joyce Yen Feng (1992) also noted that among 1,316 randomly sampled females, more than 40% had experienced sexual harassment, and 15% were seriously troubled by it (Feng, 1992; quoted in Wang, 1999). When being harassed, more than 50% of women would just accept it silently, and only 12% of them would make complaints (Chen, 2005). All these documents show that sexual harassment in the workplace has been a serious problem in Taiwan.

Theory of audience research

This study used Hall's (1980) theory of encoding and decoding with my own proposal for an extension of the theory (suggestive interpretation, which may or may not occur during the decoding process; Chang, 2006) to explain the result of this study. In 1980, Hall proposed three positions between encoding and decoding. The first one is the dominant-hegemonic position, in which the audience was controlled by a preferred meaning to decode the meaning of the text. The second is the negotiated code or position; the preferred meaning of the text is accepted, but negotiation of the local condition is maintained for a particular situation. The third is the oppositional code; the meaning of the design of the text is understood, but the preferred meaning is de-totalized and re-totalized via a referential frame (Hu, 2001).

The preferred reading of the text suggests that when interpreting a text, the readers are not restrained within the frame produced by the text itself to accept, negotiate, or resist it. The readers should think outside the frame and come to their own interpretation of the text. This study analyzed the effect of gender differences in interpreting the text of the story and the film based on the theory of the preferred reading.

According to my proposed theory of suggestive interpretation, Hall's (1980) theory of decoding and encoding does not explore the readings of the modern audience in full depth. Hall's theory assumes the audience's readings are confined to the frame imposed by the author's preferred reading (in this case, the writer or the film director). However, according to my proposal, the audience may go beyond this frame in its readings. It is because, regardless of the position (even if the audience's reading is oppositional), the reading still has to be dominant at least as far as the frame proposed by the author is concerned. In my opinion, the audience may go beyond that frame, in spite of (at the extreme point of the oppositional reading), or even because of (in the case of dominant reading), the preferred reading suggested by the author. The author's frame is not absolute to the modern audience, and instead of passively accepting the author's preferred reading, the readers may want to be active not only in response to this reading but also in defining the frame of discussion.

Methodology

This study used in-depth interviews in a qualitative research design. The subjects were divided into four groups. The first group read the book only; the second group watched the film only; the third group read the book first and then watched the film; and the fourth group watched the film first and then read the book. Each group consisted of ten people, five males and five females. The interviewees were all college students with part-time job experience. Each subject underwent an in-depth interview for two to three hours. Through a set of questions (see Appendix), the interview explored the different effects of the two media. The study analyzed if the audience/readers of different genders would interpret the story and the film differently in regard to the issues of sexual harassment and sexual assault.

The situation of aberrant decoding was also considered when the interviewees were chosen. Aberrant decoding occurs when the interviewees are of different social background, life experience, gender, education, etc. (Tung, 2000). In order to avoid the situation of aberrant decoding, all the interviewees were college students with similar age and part-time job experience. Because of the sensitivity of the information provided in some of the answers, the list of the interviewees was not included to protect their anonymity. Since all of them are of similar age, the only useful variable for this study is gender.

The interview consisted of four questions (see Appendix), two related to the interviewees' experience before the exposure and two related to their reactions after the exposure. Because of this, the interview was divided into two stages: the two questions related to the past experience of the interviewees were asked before the exposure, and the two questions related to the reactions to the assignment were asked after the exposure. The time between the stages depended on the conditions of the exposure, as explained in Table 1.1. Questions were worded specifically for each group regarding the mode of communication (book or film), but contained the same basic components: 1) What was your opinion of sexual harassment/assault before watching/reading? 2) What would you have done to protect yourself before watching/reading? 3) What is your opinion of sexual harassment/assault after watching/reading? and 4) What will you do in the future to protect yourself after watching/reading?

Table 1.1

| | Stage One (Q1 & Q2) | Assignment and time frame | Stage Two (Q3 & Q4) |
|--|------------------------|--|------------------------|
| Group one (book only) | 1 hour | 14 days to read the book | 2 hours |
| Group two (film only) | 1 hour | 3 days to watch the film | 2 hours |
| Group three (book first, then film) | 1 hour | 14 days to read the book, 3 days to watch the film | 2 hours |
| Group four (film first, then book) | 1 hour | 3 days to watch the film, 14 days to read the book | 2 hours |

The analysis of the answers was based on the juxtaposing of questions 1 and 3 to assess the interviewees' reactions to the assignment according to Hall's theory of encoding and decoding. This process was used for questions 2 and 4 as well to assess reactions according to Hall's theory with my extension of suggestive interpretation.

Discovery and Discussion

Differences between the book and film

The study shows that both the film and the book follow the principles of design and are capable of effectively sending the information to, and influencing, the receivers. Yet, there are some differences between the two media. First, the book is able to describe the background and the thoughts of the characters in detail, which is more difficult for a film. For example, the book describes that there is no heating in a temporary female locker room, but the film, for obvious limitations, skips this information. The scenes in the film are unable to present the solitude in the story, and the props are incapable of providing description in detail.

Second, the book describes the protagonist's personality, preference, height and weight, but the film cannot do this as effectively. Third, the book describes the protagonist's experience of being sexually assaulted. The film, however, develops its own fictional part of the story, which makes the whole plot more attractive. For example, in the film, the protagonist was sexually assaulted by her teacher in a high school classroom, which resulted in the protagonist's pregnancy. Despite seeing this, her boyfriend was too afraid to intervene, and eventually he ran away. Since then, she bore the reputation of being a reckless girl and she was blamed by her father.

Fourth, the book describes sexism in the workplace in detail, such as the inconveniences for the female miners having access to the toilet (they had to tolerate abusive language from the male miners). Also, the male miners could be excused from work if they were intoxicated, but the female miners could not be excused even if they had to care for their sick children. Such descriptions are not found in the film. It only shows that the male miners did not want the women to take their jobs away. If the women wanted to stay, they had to tolerate humiliation and harassment by their male co-workers.

Fifth, the book discusses many real examples related to legal action against sexism, which are not found in the film. The book describes in detail how to win such a legal action and describes numerous real cases of sexism in the workplace. The film omits most of such scenes because of the limitation of time.

Sixth, the book presents different kinds of problems and creates an atmosphere of suspense. The book vividly represents the real situation in court through the attorneys' reactions. Yet, the atmosphere and the pace of the film affect the audience even more intensely. Finally, the book often focuses on each character's physical and mental condition. For example, a female miner was absent for several days because of her fear of retaliation. She then suffered from mental illness and terminated the relationship with her boyfriend. This part of the plot is omitted in the film.

Interviewee perceptions

Overall, the different perceptions of sexual harassment and assault before watching the film and/or reading the book among the four groups were different from their responses after the assignment. There was no significant difference between the male and the female interviewees before watching the film or reading the book in terms of their opinions concerning sexual harassment and assault. However, a small number of male interviewees felt that some sexually-abusive language would not cause a huge problem, without realizing that they might hurt some female interviewees' feelings.

There was a significant difference between the males and the females in their possible reactions and ways of self-protection against sexual harassment or assault if they had experienced it before reading the book or watching the film. Some male interviewees believed that they would not allow such a situation to happen.

"I am tall and strong. How can anyone dare do that to me?" (Group one male)

Some female interviewees said that they felt uncomfortable at the moment but did not dare to speak out publicly (Group two female). Before watching the film or reading the book, most female interviewees would have preferred to remain silent if they had encountered sexual harassment or assault.

The following paragraphs describe the different influences from the film and the book on the four groups. The gender of each interviewee is noted, and their response is categorized according to Hall's theory.

Group one: Reading the book only

The female interviewees responded more strongly on the issue than the male interviewees did. However, responses in this group were generally not as emotionally strong as those in the groups who watched the film.

Selected answers to question 3:

1. (female) *A woman miner was groped from behind and touched by a male coworker, at the same time being unable to move. This made me extremely angry.* (Hall: dominant)
2. (male) *I feel sexual assault is an extremely disrespectful act. It hurts the victim not only physically but also emotionally.* (Hall: dominant)
3. (female) *When I finished the book, I identified with the female characters from the story. At the same time, I think I would not be able to stand the shame because of being harassed by my coworkers. Before that, I saw sexual harassment as another kind of male approach to females, but now I know it is one of the worst things that may happen in a female's life.* (Hall: dominant)
4. (female) *After reading the book I felt extremely angry. How could they do that?! It's so unfair! These things keep repeating in my mind. The more I think about it, the more angry I get. Before reading the book, I was quite indifferent to the topic – just another case of sexual harassment at the workplace. After I read it, I not only realized sexual harassment is something real in the world I live in, but also some males believe they have the right to abuse females because of their (male) gender superiority.* (Hall: dominant)
5. (male) *Gender inequality at the workplace is unfair, but it is a result of the distribution of power. In a place like a coal mine, where the main scope of the job is done by males, females' position may seem less important, and this is what makes male workers treat females as inferior.* (Hall: negotiated)

The book provided a detailed record of the character's collection of evidence and preparation for a legal action, thus the interviewees in this group demonstrated a more rational (less emotional) approach toward self-protection against sexual harassment or assault.

Selected answers to question 4:

1. (female) *I would not tolerate such insults and harassment even if I had to lose my job.* (Hall: dominant)
2. (female) *If I encounter such a situation, I will contact the police, and seek psychological counselling to quickly recover from this traumatic experience.* (Hall: negotiated/suggestive interpretation)
3. (female) *I would go to the court, just as the protagonist did. I had an experience like this in elementary school, and I feel hurt until now.* (Hall: dominant)
4. (male) *If I am in such a situation, I will try the possibilities in the court.* (Hall: dominant)

5. (female) *After reading the story, I learned how to protect myself by taking the correct actions.* (Hall: dominant)

According to Hall's theory of encoding and decoding, most interviewees in this group fall into dominant/hegemonic position that they agree with the book's arguments. However, two male interviewees, though agreeing with the author's condemnation of sexual harassment, point out that females must be aware of risks involved when functioning in a predominantly male environment. Most of this group does not fulfil the criteria of my proposal, extending Hall's theory by suggestive interpretation (Chang, 2006), because most of the interviewees agree that legal action is the most effective weapon against sexual harassment, as it was presented in detail in the book. Two female interviewees suggested some sort of psychological comfort from specialists or family would be helpful as well.

Group two: Watching the film only

In contrast to the group that read the book only, both female and male interviewees responded strongly on the issue. Also, their reactions were emotionally stronger than in the group who read the book only.

Selected answers to question 3:

1. (female) *Before the movie, my opinion, similar to many Asian women, was that all you can do is to silently tolerate sexual harassment, but now I think the abusers should be punished.* (Hall: dominant)
2. (male) *I never thought that dirty jokes could be so offensive to women.* (Hall: dominant)
3. (male) *I never thought touching women's hair or putting my hand on their shoulders would be considered sexual harassment.* (Hall: dominant)
4. (female) *Before the film, I didn't realize that certain kinds of behavior could actually be a kind of sexual harassment, for example some forms of touching (whether by strangers or relatives) that I interpreted as being kind now look totally unacceptable to me.* (Hall: dominant)
5. (female) *How can any male boss, teacher, or co-worker treat a female like a sex-object? Don't they have mothers, sisters, or daughters? How can people keep quiet about this for so long, even though everybody knows what is really going on?* (Hall: dominant)

The film does not provide many details on how to prepare for legal action but gives a vivid example of the character's traumatic experience, thus the interviewees feel the need for immediate, but not necessarily the most effective or rational, action.

Selected answers to question 4:

1. (female) *If I encounter sexual harassment, I will immediately let him/her know that I am offended. If this doesn't stop him, I will try to record the scene with my cell phone as evidence. Then I'll try to call for help or draw attention if there are people around.* (Hall: negotiated/suggestive interpretation)
2. (female) *If this happens to me, and I am unable to effectively resist, I will pretend I'm giving in to the abuser's demands, but, at the same time, I will try to run and call the police.* (Hall: negotiated/suggestive interpretation)
3. (female) *If I get hurt in the event, I will get the evidence from a doctor's examination and go to the court.* (Hall: dominant/suggestive interpretation)
4. (female) *If I am sexually assaulted, I will remain calm and keep the evidence (refraining from washing in order to keep the offender's semen), and call the police.* (Hall: negotiated/suggestive interpretation)

5. (male) *I will call the police if I encounter this situation, even though I am a man.*
(Hall: negotiated)

According to Hall's theory of encoding and decoding, all interviewees in this group fall into dominant/hegemonic position that all agree with the film director's viewpoint. Also, most interviewees in this group meet the requirements of my proposal extending Hall's theory by suggestive interpretation, as the film does not explain the details of the legal action presented in the book, therefore leaving a lot of space for the interviewees' individual suggestive interpretations. Similarly, the degree of emotional involvement of the audience seems to play a role in determining their answers to question 4. The two interviewees in the negotiated position without suggestive interpretation were males, who provided very few details as far as what their reactions would involve, except the fact that they would react immediately.

Group three: Reading the book first and then watching the film.

The initially strong emotional response to the book was further aggravated by watching the film. Similarly to the group who read the book only, the female interviewees responded more strongly on the issue than the male interviewees did.

Selected answers to question 3:

1. (female) *After the book and the movie, I feel it is very important to introduce laws protecting against sexual harassment. I can't tolerate the fact that many abusers go unpunished, just because the law doesn't clearly state what sexual harassment is.* (Hall: dominant)
2. (male) *The topic of sexual harassment should be discussed already at the school level, including not only behavior but also language.* (Hall: dominant)
3. (male) *I began to wonder if my jokes or behaviours might offend my female colleagues.* (Hall: dominant)
4. (female) *I never knew that sexual harassment was such an irritating issue.* (Hall: dominant)
5. (male) *I realized that anybody can experience sexual harassment, that is, men also. What makes me particularly annoyed, is that most often it's the victims, and not the abusers, to be blamed for what happened.* (Hall: dominant)

Because the group was familiar with the events in the book and the possible actions to be taken in the case of sexual harassment or assault, some of the interviewees were able to distance themselves from the emotional approach that the film might suggest (as demonstrated in the second group). Yet the fact they were exposed to a much more vivid visualization of the events that they anticipated, in most cases made their approach toward their own possible steps against the sexual harassment or assault much more radical.

Selected answers to question 4:

1. (female) *If I am sexually assaulted, I will seek legal counsel and will not remain silent.* (Hall: dominant)
2. (male) *There are many ways to deal with sexual harassment. Never blame yourself.* (Hall: dominant)
3. (female) *If I was assaulted by a teacher, I would shout, bite him, and run away.* (Hall: negotiated/suggestive interpretation)
4. (female) *When attacked, I would try to spray paralyzing gas into the abuser's eyes.* (Hall: negotiated/suggestive interpretation)
5. (female) *If assaulted, I would use something sharp, like a pen, to hit the abuser's eyes.* (Hall: negotiated/suggestive interpretation)

The positions of the interviewees' reading are the same as in the first group (reading the book only), but their distribution is significantly different. According to Hall's theory of encoding and decoding, only four interviewees in this group fall into dominant/hegemonic position (which is only half of the number from the first group) and agree with the book's arguments; the subsequent watching of the film only reinforces it. The remaining six interviewees take the negotiated position with suggestive interpretation (which is very similar to the second group, that watched the film only). The suggestive interpretations seem to be very emotional, which may indicate a stronger influence of the subsequent watching of the film (again, similar to the second group).

Group four: Watching the film first and then reading the book

There was one important difference between this group and the other ones: because of being familiar with the events from the film, the subsequent reading of the book did not appear attractive to the interviewees, and all of them admitted they read the book reluctantly, and only because this was part of the assignment.

1. (male) *After watching the film, I have no patience to read the book. It doesn't mean that I don't like to read, but now I know the plot already.*
2. (female) *The book describes everything in detail, but it cannot and need not be done in the film, because it would be very boring.*

The reactions of the interviewees after watching the film first were very similar to those who watched the film only, they were very strong emotionally. The subsequent reading of the book did not temper the emotional strength of their reactions. Also, there were no major differences between the female and male interviewees.

Selected answers to question 3:

1. (male) *I realized sexual harassment is not a joke, and it is an extremely annoying issue, especially for a female. (Hall: dominant)*
2. (male) *The protagonist's suffering made me understand the pain these women had to endure. (Hall: dominant)*
3. (female) *Now I will be much more sensitive and responsive to sexual harassment at the workplace than before. Keeping quiet will make you even more angry. I couldn't believe that the characters in the movie tolerated this situation for so long, but when I recall my own experience, it was the same, though the males' behaviour was not so vulgar. (Hall: dominant)*
4. (male) *What I found innocent jokes and behaviour, must actually appear very offensive to my female colleagues. The film and the book made me re-think these issues. (Hall: dominant)*
5. (female) *I realized the way my male classmates "play" with other females, is, in fact a hidden form of sexual abuse. I often felt uncomfortable about it, but I kept quiet because nobody said anything. I can't understand why women can be so cowardly. We should talk loudly about this! (Hall: dominant)*

Similarly to the third group (who read the book and the watched the film), this group demonstrated a mix of rational and emotional approaches toward self-protection against sexual harassment or assault.

Selected answers to question 4:

1. (male) *I'd never tolerate it. I would fight to protect myself. If I didn't fight, this would only encourage the abuser. (Hall: negotiated/suggestive interpretation)*
2. (female) *I was sexually assaulted before, and I let the abuser release outside my*

- body in order not to get hurt. After the film and the book, I would do the same, but this time, I'll try to get evidence (pictures, semen sample, etc.) and go to the police.* (Hall: negotiated/suggestive interpretation)
3. (female) *I would keep quiet not to get hurt one more time. I'm afraid that when the police ask detailed questions, it will hurt much more as I have to re-live the event one more time.* (Hall: oppositional)
4. (female) *In such a situation, first I would talk to my parents and the teachers I trust. Then, I'd contact the police.* (Hall: dominant/suggestive interpretation)
5. (male) *If my boss is a female and she wants to sexually abuse me, I will resist, and if she still continues to try, I will quit the job.* (Hall: negotiated/suggestive interpretation)

Again, according to Hall's theory of encoding and decoding, all interviewees in this group also fall into dominant/hegemonic position, and all agree with the film director's viewpoint and with the book's arguments. Also, like the other two groups that watched the film, most interviewees in this group take a negotiated position with suggestive interpretation. Interestingly, two interviewees take a dominant position with suggestive interpretation (trying to develop the reading suggested by the authors even further). Also, the only case of oppositional reading in the entire study was found in this group, but it can be credited to a traumatic experience from the interviewee's past.

For collective results of the study regarding the application of Hall's theory of encoding and decoding and my proposal for suggestive interpretation to questions 3 and 4, see the tables below (Table 1.2 and Table 1.3)

Table 1.2

| Question 3 – Only Hall's Theory applies | | | | |
|---|---------------------|---------|---------|---------|
| Category | Number of responses | | | |
| | Group 1 | Group 2 | Group 3 | Group 4 |
| Position 1 (dominant): | 8 | 10 | 10 | 10 |
| Position 2 (negotiated): | 2 | 0 | 0 | 0 |
| Position 3 (oppositional): | 0 | 0 | 0 | 0 |

Table 1.3

| Question 4 – Hall's Theory and Suggestive Interpretation Extension | | | | |
|--|---------------------|---------|---------|---------|
| Category | Number of responses | | | |
| | Group 1 | Group 2 | Group 3 | Group 4 |
| Position 1 (dominant with suggestive interpretation): | 0 | 1 | 0 | 2 |
| Position 1 (dominant without suggestive interpretation): | 8 | 0 | 4 | 0 |
| Position 2 (negotiated with suggestive interpretation): | 2 | 7 | 6 | 7 |
| Position 2 (negotiated without suggestive interpretation): | 0 | 2 | 0 | 0 |
| Position 3 (oppositional with suggestive interpretation): | 0 | 0 | 0 | 0 |
| Position 3 (oppositional without suggestive interpretation): | 0 | 0 | 0 | 1 |

Discussion and Conclusions

The first purpose of the research in this study was to show that differences between the perceptions of the message do exist depending on the conditions of

exposure to the two different communication forms, the book and the film adaptation. Some interviewees believed that the book elicits greater tension. Although the description through language of the text is less powerful than the visual images in the film, it permits more imaginative reaction on the part of the readers than does the visual effect. Some interviewees also indicated that the communication form of the book is not limited by time and space, and so it is able to describe everything in detail. At the same time, the film is limited by its length and can only present selected parts of the plot. However, due to the fact that these selected parts are, to a high degree, emotionally charged, the direct visual presentation in the film draws the audience closer to the protagonist, and thus creates a greater identification with her. Although the film was inspired by the book, the script writer made a huge adjustment and chose the most drastic cases for the film. The book describes every incident in detail, which in fact cannot be done in the film.

Regardless of the conditions of exposure, all interviewees (with the exception of two) reacted in the same way according to Hall's theory of encoding and decoding; they all agreed with the interpretation of the issue presented by the given media in the given conditions (question 3).

The second purpose of this study was to see whether the different media would cause different kinds of perceptions regarding sexual crime among the audience/readers, and whether there were differences by gender. There was no significant difference between the four groups on the issue of the sexual harassment before watching the film or reading the book, the issue did not evoke any particular emotions nor draw special attention. However, after reading the book and/or watching the film, a strong feeling of indignation appeared, especially among the female audience. The male audience, although less emotional than the females, also became no longer indifferent to the issue and started to perceive sexual harassment in definitely pejorative and disapproving ways.

The results of application of Hall's theory in this purpose are similar to the first purpose. Regardless of the media, all interviewees (again, except two) reacted in the same way according to Hall's theory of encoding and decoding, all agreed with the interpretation of the issue presented by the given media (question 3).

The third purpose of this study was to see if the different media would influence specific responses to sexual harassment and sexual assault among the audience/readers (question 4). Before the exposure, almost all of the interviewees had a conservative opinion concerning sexual harassment and assault. The female interviewees would generally remain silent if it had happened to them, whereas many male interviewees simply excluded the possibility of such an event. Although these interviewees knew that they should not be influenced by external incidents, most of them still thought that fighting back would cause more problems. Therefore, they chose to remain silent to keep everything quiet. However, after reading the story and/or watching the film, most interviewees felt prompted to act against it. Their reactions depended on the group they were in. The interviewees who read the book demonstrated a very rational approach toward further actions, preferring a careful preparation for a legal case rather than fighting back or simply complaining to the police. On the other hand, the interviewees who watched the film (regardless of the fact whether it was the film only or connected with the reading of the book) appeared to react more emotionally and take an immediate action without much deliberation.

This shows that the extension of Hall's theory of encoding and decoding by my proposal for suggestive interpretation applies mainly to the groups who watched the film. Only two (20%) interviewees who read the book went beyond the frame suggested by the authors, while more than 70% of those exposed to the film took positions with suggestive interpretation (both dominant and negotiated). This may imply that because of the limitations of the film (i.e. incomplete psychological portraits of characters, their motivations, and decisions), not only can the audience find space

for themselves in the frame of the exposure, but also at the same time, project its own ideas and solutions to the problems posed by the authors, and doing so, they often go beyond the frame assumed by the authors.

The study focuses on the four groups of college students to see if the film and the book influence the audience/readers differently. The results show that, regardless of the media, the interpretations of the issue by both genders are generally similar, although they differ in intensity. However, there is a significant difference between the influences of the two media, which manifests mainly in the different approaches toward the action to be taken following the event of sexual harassment. In this case, the gender of the audience, in contrast to the media they were exposed to, seems to have little influence.

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Appendix: Interview Questions for each Group

Group one (read the story only)

1. What was your opinion concerning sexual harassment or assault before reading the story?
2. Before reading the story, what would you have done to protect yourself if you had encountered sexual harassment or assault?
3. What is your opinion concerning sexual harassment or assault after reading the story?
4. What will you do to protect yourself if you encounter sexual harassment or assault after read the story?

Group two (watched the film only)

1. What was your opinion concerning sexual harassment or assault before watching the film?
2. Before watching the film, what would you have done to protect yourself if you had encountered sexual harassment or assault?
3. What is your opinion concerning sexual harassment or assault after having watched the film?
4. What will you do to protect yourself if you encounter sexual harassment or assault after having watched the film?

Group three (read the story first and then watched the film)

1. What was your opinion concerning sexual harassment or assault before watching the film and reading the story?
2. Before watching the film and reading the story, what would you have done to protect yourself if you had encountered sexual harassment or assault?
3. What is your opinion concerning sexual harassment or assault after watching the film and reading the story?
4. What will you do to protect yourself if you encounter sexual harassment or assault after having watched the film and read the story?

Group four (watched the film first and then read the story)

1. What was your opinion concerning sexual harassment or assault before watching the film and reading the story?
2. Before watching the film and reading the story, what would you have done to protect yourself if you had encountered sexual harassment or assault?
3. What is your opinion concerning sexual harassment or assault after watching the film and reading the story?
4. What will you do to protect yourself if you encounter sexual harassment or assault after having watched the film and read the story?

RIPPED FROM THE HEADLINES:
THE USE OF REAL CRIME IN *LAW & ORDER* EPISODES

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Abstract

This qualitative article examines the use of real crime stories as inspiration for storylines within the Law & Order franchise. Using cultivation theory as an anchor, the author explores motivations behind viewers' fascination with the "ripped from the headlines" episodes featured on Law & Order, Law & Order: Criminal Intent and Law & Order: Special Victims' Unit. Parallels are made between the fictional stories and real crime news. In addition, entertainment media strategies are studied as the means by which crime drama writers attempt to meld fiction with reality in a fashion that is both entertaining and informative for the audience. Among the most significant of the strategies employed by the L&O franchise is its ability to turn out stories mere weeks after crime news hits the streets. Finally, the author demonstrates that, in some cases, when the crime drama serves as tutorial for potential offenders, fiction inspires real crime.

One of the most popular forms of media entertainment is the television crime drama. Even more compelling perhaps, are crime dramas based on actual events. Since *Dragnet* debuted on American television in 1951, audiences have been fascinated by stories of true crime played out by actors.

Today, *Law & Order*, *Law & Order: Special Victims Unit* and *Law & Order: Criminal Intent* draw millions of viewers into a fictional world of crime drama which features both original story lines and tales based loosely on actual events. The *Law & Order* franchise uses crime stories it claims are "ripped from the headlines." Thus, crime news is the basis of these semi-fictional storylines. In many instances, the actual crime stories on which the episodes are based are only a few months or even weeks old. In this way, the body of *Law & Order* seasons resembles a timeline of American crime references.

Theory

Media form a social matrix and are often at the center of family entertainment. The functions of the media include the reinforcement of social norms, advertisement of products and services, transmission of popular culture, and escape from everyday cares. Media shape the lives and the perceptions of the audience—providing perspectives on everything from criminal acts to fashion. Shows like *Law & Order* often provide commentary on such diverse issues within the course of just one episode. Unlike crime programs of decades past like *Dragnet*, today's crime dramas feature rich characters, current cultural references and complex backstories in addition to the crime itself (Frutkin, 2006).

Of course, with the power to reflect culture comes the potential to distort that image. One of the motives for this may be that television—in particular television drama—is driven by a need to entertain. This is a two-way street, as the majority of television drama viewers are seeking escape when they tune in to this type of programming. Some of the reasons viewers may be seeking escape through television may be stress, psychological problems, financial worries, social conflicts, or physical troubles. Other gratifications may draw people to watch television as well,

including a desire for social comparison and a need for knowledge of events (Nabi & Riddle, 2008).

Law & Order meets all of these goals, at least to some degree, for its audience members. Its compelling one-hour storylines provide an escape into a world of complex relationships and dramatic crime stories. The opening sequence, which usually features the crime that will be the focus of the episode, always holds the promise of being more than it appears on the surface.

Social comparison is the idea that what audiences see in the media is at least a somewhat accurate approximation of what they may expect in real life. Programs with low social comparison levels include science fiction programs and shows about the paranormal. These programs do not depict life in ways that the audience recognizes as potentially realistic. On the other hand, the social comparison aspect of *Law & Order* is well established on several levels. Audience members can identify with any number of characters on the program, as the show includes people from the all strata of society. Lawyers, judges, and detectives are the principle players from episode to episode but the characters that cross their paths range from the homeless to the billionaire and everyone in between.

In addition, while the program does challenge social norms from time to time, it frequently features arguments about the values of American society, thus enforcing those norms. As for the audience members' need for knowledge of events, *Law & Order's* adaptation of real-life crime stories into fictional storylines does bring some crime stories to the forefront of the public arena, often just weeks after they occur.

Cultivation Theory and Mean World Syndrome

The reason media content, even fictional media content, should be taken seriously is because it does have the potential to have long-term effects on the audience. One idea that explains how this works is the theory of cultivation. Cultivation theory states that small, incremental effects accumulate over time, and added to other sources, change the way the audience perceives the real world (Gerbner & Gross, 1976).

Because *Law & Order* uses real-world crime stories—specifically stories that get a lot of press—as the basis for its “ripped from the headlines” episodes, how the audience has been affected by crime news is important to understand in the context of this paper.

Specifically, the focus of the media on violent crime news may create the false sense in the audience that violent crime is more prevalent than it actually is. Concentration of coverage on violent crimes also creates the illusion that violent crimes are the most prevalent form of criminal act. In fact, property crimes account for the largest percentage of crimes committed in the United States (Federal Bureau of Investigation, 2009).

Often, news of breaking violent crime is placed more prominently than news of resolved crimes (Schudson, 2003). Resolved crimes, while timely and accurate, lack the appeal of a torrid tale of violence or the unfolding of a good mystery. They also lack the element of danger inherent in reports of unsolved crimes. This focus on violent and unsolved crimes to the exclusion of less violent and solved crimes may also lead to the audience assumption that the police are unable to protect their citizens.

Such media routines may foster the public's perception that the world is a more dangerous place than it actually is. This phenomenon is called the “mean world syndrome” and stems from media research of the 1960s by George Gerbner, who pioneered “cultivation theory.” While cultivation theory is the idea that long-term, heavy media exposure results in cumulative effects that change the audience's view of the world, mean world syndrome is one such effect. Mean world syndrome occurs when heavy media consumers perceive the world as more dangerous than do light

consumers. It is believed that their increased exposure to violent content affects their perception of real world events. Media tend to depict the world as a mean and violent place and therefore, heavy media consumers are overly frightened and more cautious of the real world than is perhaps warranted (Phillips & Bonds, 1999).

The implications of this distorted view of the prevalence of crime are self-perpetuating. The more crime there allegedly is, the more fearful people are of crime; the more fearful people are of crime, the more crime they perceive exists. The effects are heightened by certain other factors as well, such as a person having been the victim of a previous crime.

Scholars have found that crime news coverage in the media is a better barometer of the public's perception of crime than are objective indicators like actual crime-rate statistics. Exposure to crime news coverage was also found to be a better predictor of attitudes about crime than even personal experience (Nabi & Sullivan, 2001).

Crime Drama and *Law & Order*

Where once the crime drama was, for the most part, an escape from the real world, today crime news has crept into that genre by way of the "ripped from the headlines" episodes of *Law & Order*. Everything that crime news is, and more, can be found in a slick prime-time package on network and cable channels almost any day of the week. However, first and foremost, *Law & Order* remains a crime drama. The show's primary goal is to entertain the audience, to present a story in a compelling fashion, to keep the viewer on the edge of his seat ... and get him to come back next week to watch the show again.

The "drama" in crime dramas ranges from the use of conflict-language, such as the simple "power of the last word" to the complex "confessional voice" (Lorenzo-Dus, 2008) to depictions of graphic violence. For example, the drama may be in the way a line is delivered by one of the characters. Perhaps a detective on the program spouts a witty one-liner as the perpetrator is carted off to jail. The power, therefore, belongs to the "good guy" by way of his having the last word. This is a common crime drama ploy. In more complex scenes, the drama may stem from exchanges between the crime fighters and the suspects in which bits of information are revealed about each of them. These "confessional voices" create the rich tapestry of an ongoing crime drama like *Law & Order* and serve to establish "relationships" between the audience and the characters (Plew, 2007). The crimes represent everything from graffiti and other vandalism to kidnapping and murder. Usually, violent acts in crime dramas are committed by characters on both sides of the law (Comstock, 2008).

Like most other types of television programming, and indeed many crime news stories, crime dramas employ a number of strategies to increase audience involvement. The most compelling of these is crisis. The crisis or threat in *Law & Order* is the crime and the criminal at large. These are the elements that drive the stories. The effects of these elements are enhanced when an essence of truth is infused into the storyline, as is the case in the "ripped from the headline" episodes.

Another strategy is "non-closure." This is achieved by attending to three goals: maintaining suspense, creating plot intricacy, and the survival of the protagonist. Such elements are critical to the continued involvement of viewers (Wittebols, 2004; Weinblatt, 2008). Increasingly, television programs are turning to these strategies to build long-term loyalty among their audiences. While the crime of the week is resolved within the one-hour episode, the characters and the stories of their lives are woven into the series in a manner that transcends not only episodes but seasons as well. *Law & Order* has employed such strategies from its debut in September of 1990. Indeed, the departure of a beloved character on *Law & Order* is an event. *Law & Order*, like some other programs, also uses the "cross-over" technique—in which characters from one program sometimes appear on another show within the

franchise. Such strategies ensure that crime drama audiences not only return week after week but that they avail themselves of other programs within the franchise. *Law & Order* has two sister programs: *Law & Order: Special Victims Unit* (launched in September of 1999) and *Law & Order: Criminal Intent* (which debuted in September of 2001). Created by television veteran Dick Wolf, *Law & Order* is currently the longest-running crime drama on American television (NBC, 2009).

Like other examples of storytelling on American television, the crimes explored on *Law & Order* are resolved, with rare exception, within the one-hour format. Though many of the crimes on which some of the storylines are based go unresolved for months or years, and in some instances even decades, the cases on *Law & Order* are almost always wrapped up by the time the credits roll. *Law & Order* does deviate from other programs, in that the “good guys” do not always prevail. On occasion, someone gets away with murder.

Law & Order is unique among crime dramas in other ways as well. In the 1950s, television did a poor job of mirroring the racial demographics of American society. That remains true of most television programming today. The *Law & Order* franchise is a notable exception. *Law & Order* episodes have featured people of many races, cultural backgrounds, religious beliefs and lifestyles. No single episode features only the ubiquitous young, White male with unknown sources of endless income. *Law & Order* explores topical subjects ranging from same-sex marriage to religious cults to copy-cat crimes, and its regular cast includes racially diverse characters.

Along with the desire to escape real-life challenges, people sometimes turn to the media—even fictional media—to solve problems. From television, audience members may get ideas about retribution, punishment, and justice. *Law & Order* is a viable source for such ideas. Because it is a reality-based program, with situations that are plausible, even when they are entirely fabricated, the stories told on *Law & Order* resonate with many viewers. In them, people see themselves from time to time. Sometimes, they see something more. As will be noted in the next section, shows like *Law & Order* have the potential to cross over from fiction to reality.

“Ripped From the Headlines”

Law & Order harvests crime stories from the past and the present for its “ripped from the headlines” episodes. Its storylines bring to life obscure capers and famous crimes. The episodes feature allusions to celebrities and make use of big-name stars as characters. The show frequently provides commentary on crime trends through its stories. *Law & Order* dialogue even makes reference to the media itself and how media affect the show’s fictional cases. In turn, *Law & Order* has affected the audience.

While all of the *Law & Order* “ripped from the headlines” episodes bear striking similarities to the real-life cases from which they draw their inspiration, the resolutions on the program are almost always different than the outcomes of the actual cases. This is the trademark “twist” that keeps *Law & Order* viewers on the edges of their seats.

Each of the “ripped from the headlines” episodes opens with a disclaimer: “*Although inspired in part by a true incident, the following story is fictional and does depict any actual person or event.*” The appearance of these words at the beginning of an episode practically guarantees that the viewer will recognize the story or the characters as having counterparts in real life.

Crimes Current and Past

Sometimes it seems as if the newspaper is scarcely dry before *Law & Order* has wrapped production on the latest crime story it has taken from the annals of American

crime news. On January 16, 2008, NBC aired the *Law & Order* episode “Bottomless,” about a dry cleaner that had lost a pair of pants and was subsequently sued for an outrageous amount of money. The real-life case received sporadic press in the fall of 2007 when the \$67 million lawsuit was settled in favor of the dry cleaner. In true *Law & Order* fashion, there was more to the fictional case than a lost pair of pants, but the similarities to the dry cleaning case were clear.

On January 23, 2008, NBC aired “Driven.” This episode centered on two groups of children of different racial groups who were involved in a violent dispute. The altercation had been sparked by a noose. This episode aired just five months after the Jena, Louisiana, incident in which high school students were involved in an assault case that started when a noose was found hanging from a tree on school grounds.

Sometimes *Law & Order* is ahead of even the real world. In February of 2002, *Law & Order* aired an episode entitled “Missing.” It was about a 24-year-old Senator’s aid who disappeared and was later found murdered. The episode closely resembled the story of Washington intern Chandra Levy, who went missing on April 30, 2001. Her remains were found on May 22, 2002, in Rock Creek Park in Washington, D.C.

Law & Order: Criminal Intent draws stories from current and past events as well. On October 31, 2006, “Masquerade” aired. The episode featured *CI* detectives traveling to Thailand to arrest and return a self-exiled pedophile who claimed to have murdered a school-age beauty queen. The episode aired just three months after John Mark Karr was arrested in Thailand on suspicion of murdering JonBenet Ramsey. *Law & Order: CI* also aired an episode called “Offense,” in November of 2007 that was about a college sports team, several of whose members were accused of raping two women hired to dance at a party. The facts of the fictional case closely resembled details of the Duke University rape case of 2006.

Law & Order: Special Victims Unit’s 2004 episode “Outcry” was about a college student who feigned her own kidnapping. The episode aired seven months after Audrey Seiler, a University of Wisconsin-Madison student staged her own abduction. The episode included many details that mirrored the Seiler case, including the detectives’ discovery of store surveillance video that showed the young woman purchasing items used in the “kidnapping.”

Law & Order also reaches into the past, bringing old headlines and nearly forgotten crimes into its storylines. On January 2, 2008, in its 18th season, *Law & Order* aired “Called Home.” The episode featured a Dr. Jack Kevorkian character. Though Kevorkian had recently gotten some press after his release from prison in June 2007, his assisted suicides had not been in the news for many years. The episode rekindled interest in Kevorkian’s original crimes, focusing on assisted suicide rather than on the reason the doctor was in the news in 2007, for his release from custody.

In one of the most dramatic episodes of *Law & Order*, “Absentia,” Mandy Patinkin plays “The Griffin.” He is a character who, more than 20 years ago, murdered his girlfriend and then fled the jurisdiction. Tried in absentia, he has now come to the attention of the New York City police by chance, as a witness to a jewelry store robbery and murder. Patinkin’s character is undoubtedly based on Ira Einhorn, known as “The Unicorn,” who murdered his girlfriend, Holly Maddux, in 1977 and then fled to Europe. He, too, was tried in absentia.

Banking on Fame

The placement of famous people—both as characters and as actors—is also a strategy employed by *Law & Order* in its “ripped from the headlines” episodes. Sometimes the famous are both the character and the actor. *Law & Order: CI*’s “Bombshell” and *Law & Order*’s “In Vino Veritas” are perfect examples. In “Bombshell,” Kristy Swanson of *Buffy the Vampire Slayer* (Kuzui, 1992) movie fame

plays a character that closely resembles Anna Nicole Smith. In "In Vino Veritas," the legendary Chevy Chase recreates an incident that mirrors Mel Gibson's 2006 DUI arrest, complete with an anti-Semitic tirade. *Law & Order's* 2007 episode "Murder Book" was a reference to O.J. Simpson and his ill-fated attempt at a literary career. "Fame" is about a Britney Spears-like character caught on film by the paparazzi almost dropping her infant. The real-life incident of Spears almost dropping her baby made headlines for months.

In addition, several famous criminals have been referenced on *Law & Order*. "Disappeared" is an episode whose story includes many details similar to those of Theodore John Kaczynski, also known as the Unabomber. In the episode, the suspect's brother is torn when confronted with the realization that he is the only person who can put an end to his brother's reign of terror, if only he is willing to turn him over to authorities. The Unabomber's brother, David Kaczynski, faced a similar dilemma. "Sheltered" features snipers who share many personality traits and criminal habits with John Allen Muhammad and Lee Boyd Malvo, the D.C. Snipers. In the episode, the snipers took shots at targets unknown to them from the modified trunk of a sedan, exactly the way Muhammad and Malvo had.

Social Commentary

Law & Order, *Law & Order: SVU* and *Law & Order: CI* also tackle social trends in their "ripped from the headlines" stories. Several episodes deal with the ongoing dissension in the world of rap music, including "Bling," "Flipped," and "3 Dawg Night."

Law & Order provided its take on the baseball steroid scandals in a 2002 episode entitled simply "*" and told its own version of the Boston foul ball tale in an episode called "Vendetta."

Law & Order: CI aired an episode in 2002 about the killing of abortion doctors called "The Third Horseman." The Biblical reference in the title set the tone for the episode, which ended with the idea that no one deserves to be murdered.

In *Law & Order: SVU's* "Game," the detectives explore the link between youth violence and violent video games. They conclude that the murder suspect was motivated by greed and jealousy but not before several characters have attempted to blame his criminal behavior on his choice of entertainment media.

We Are the Media and the Media Are Against Us

The *Law & Order* franchise is self-aware. The characters frequently comment on the effects the media have on their cases. The detectives and their superiors discuss, often with disdain, the reporters who attempt to gain access to information about ongoing investigations. The prosecutors and defense attorneys carefully plan how and when they will release details of their cases to the press. On occasion, the characters even show each other mock newspapers with headlines about their cases and talk about the implications of the coverage.

Some episodes even specifically address media effects. In *Law & Order: SVU's* episode "Unorthodox," a defense attorney stands outside of the courthouse in front of a throng of reporters. "Just look at this feeding frenzy," she laments, though she has stopped to talk to them. "You are all part of the problem."

Inside the courthouse, the defense attorney and the assistant district attorney talk to the judge about a juvenile rapist.

"The media are sexualizing our children," the defense attorney claims.

"You're going to argue that the boob tube made J.T. (the suspect) a rapist?" the assistant district attorney asks.

The defense attorney then cites a Kaiser Family Foundation study that found, according to the script, that 77% of television content has sexual references. She

goes on to say that it is not just television that has affected her client but sexualized song lyrics and online pornography. She further argues that lines between media portrayals and reality have been blurred in the mind of the boy she is representing.

"The sex and violence glorified on TV has no consequences," the defense attorney argues, "so J.T. didn't think there were any in real life."

True Crime

In June of 2004, the Burnet County Sheriff's Department came across a gruesome scene in central Texas. A 1990 Chevy Cavalier had plunged down an embankment and was ablaze. Inside were charred human remains. The car was registered to Clayton and Molly Daniels of nearby Leander, Texas. Family members identified items found at the scene as belonging to Clayton and investigators tentatively identified the body as that of the 24-year-old unemployed Daniels.

However, many details of the case troubled investigators in the weeks and months to come as they waited for DNA to be processed and a formal identification to be made. Unlike crime dramas, DNA matches in the real world can take months. In the meantime, Daniel's widow Molly collected \$110,000 in life insurance, and within a month had a new boyfriend who bore a striking resemblance to her late husband. Investigators also discovered that Clayton Daniels had recently been convicted of sexually assaulting his 7-year-old cousin and was due to report for incarceration just three days after the accident occurred. In addition, the body in the car was missing its head and hands.

When the DNA results came back five months later, they revealed that the body in the car had not been that of Clayton Daniels. Molly Daniels and her "new boyfriend" Jake Gregg were arrested. Gregg was really Clayton Daniels with a new Texas driver's license and his hair dyed black.

Molly told investigators that she and Clayton were seeking a way to overcome the obstacles that Clayton's sex-offender status would present in their lives. Once released from prison, Clayton would no longer be able to live with Molly and her two young children in their home across the street from an elementary school. So the Daniels, in the dead of night, had exhumed the body of 81-year-old Charlotte Davis from Pebble Mound Cemetery and staged the car accident in an attempt to fake Clayton's death.

Molly told detectives that she and her husband "watched a lot of *Law & Order* and *CSI* and got the idea (to commit the crime) from those shows." Investigators asked Molly if she ever watched the end of those programs "because usually the criminals get caught" (Thomas, 2006).

Molly Daniels pled guilty to insurance fraud and hindering prosecution and was sentenced to 20 years in prison. Clayton Daniels pled guilty to insurance fraud, arson and desecration of a corpse and was sentenced to 30 years. He received an additional 20 years for the sexual assault charge. Investigators for the Burnet County Sheriff's Office called it one of the most bizarre cases they have ever encountered.

Conclusion

As *Law & Order* nears its 20th anniversary on American television, it would be interesting to see if any cultivation effects can be measured in terms of this program in particular. If television is a social institution, the *Law & Order* franchise is certainly one of its oldest and most visible, and perhaps one of its most influential, residents.

In the decades since George Gerbner proposed the idea that people's view of the world may be distorted by what they see in the media, many studies have confirmed that, in terms of violence and crime, this is true (Hetsroni & Tukachinsky, 2006). The *Law & Order* franchise is a part of the media system in which violent crime is

presented week in and week out, and in syndication on a daily basis, as a common occurrence in society. Seldom does a *Law & Order* episode center on a simple property crime. Yet, in reality, a crime victim is more likely to be affected by this type of offense than any other (Federal Bureau of Investigation, 2009).

The infusion of real-life facts from actual crime cases heightens the effect of social comparison in *Law & Order* episodes. As the audience recognizes the characters and crimes as people and events that exist in the real world, they are more and more inclined to see themselves and the world as a reflection of the program. Though *Law & Order* episodes are not documentaries, the inclusion of characters based on real people and crimes inspired by actual events lends them a credibility not found in many other crime dramas. This “perceived realism” contributes to the cultivation outcomes in which the audience perceives violent crime as more prevalent than it actually is (Grabe & Drew, 2007, p.148).

Law & Order appropriates stories and characters from real-life crime and, sometimes, real-life crime borrows ideas from *Law & Order*. In this set of crime dramas, characters reference real people, cite actual media studies and talk about current social trends. The characters sometimes have real-life counterparts and the crimes mirror stories the viewer has seen in news media. As the audience watches the “ripped from the headlines” episodes, it is sometimes difficult to know how much of the narrative is fiction and what is actually “true crime.” This grey area is the place in which viewers become lost and may easily be susceptible to mean world syndrome.

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HIP-HOP, NARCOCORRIDO, AND NEO-NAZI HATE ROCK: A COMPARISON OF ALIENATED CRIMINAL GROUPS

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Abstract

From the youth gang and drug dealing culture that has developed in American criminal society, three distinct forms of musical expression have come forth from different criminal groups. African-American youth gang members have adopted hip-hop or "gangsta" rap as their musical style of expression. Performers such as Snoop Dogg (Rolling 20s Crips) or DJ Quik (Tree Top Piru Bloods) were former or current gang members. Among the Hispanics, narcocorrido music has groups singing the praises of Pablo Escobar and the hazards of drug dealing. The neo-Nazis have largely adopted a death metal or hate rock theme that screams a call of White revolution and racial purity. The music of these three very different groups has several similarities: violence, angst, dissatisfaction with the "normal society" and a view that the end justifies the means. These styles of music fuel the street wars that occur in the cities of America.

From the youth gang and drug dealing culture that has developed in American criminal society three distinct forms of musical expression have come forth from different criminal groups. African-American youth gang members have adopted hip-hop or rap as their musical style of expression. Among the Hispanic gangs, narcocorrido music has groups singing the praises of Pablo Escobar and the hazards of drug dealing. The neo-Nazis have largely adopted a death metal or hate rock theme that screams a call of White revolution and racial purity.

The music of these three very different groups has several similarities:

- Violence,
- Angst,
- Dissatisfaction with the "normal society," and
- A view that the end justifies the means.

Also expressed in their music are their views of social norms, a view of manhood, a view on the status of women, and their view of society as a whole. Music is a powerful and unique form of social expression. As such, it is protected under the First Amendment of the United States Constitution as a type of freedom of speech. Music affects moods and ideas. Many forget that singing "Yankee Doodle" was once a revolutionary act in itself. These styles of music fuel the street wars that occur in the cities of America.

Social Norms

While expressing the angst and anxiety caused by the perceived lack of opportunity for achieving legitimate success, these styles of music showcase the illusion of a social norm that in effect says the end justifies the means. The idea that violence is an acceptable way to resolve problems flows through all three of these musical styles. Another common theme is that if someone has something that you

want, take it using any means necessary! A neo-Darwinian view of the survival of the fittest on the streets is a prominent theme of music in these styles.

Using violence as a means of achieving social or economic success falls within the “illegitimate means theory” of Richard Cloward and Lloyd Ohlin (1961). Cloward and Ohlin’s (1961) theory states that those who can achieve legitimate success do so using conventional means such as work, education, or family. Those who are blocked or unable to access success using legitimate means may turn to illegitimate means to achieve success (i.e. crime). For those that fail to achieve success by using either legitimate or illegitimate means, they often enter into a retreatist culture involving substance abuse, mental illness, sex, or rebellion.

The common theme of using criminality to achieve economic and social success is reflected somewhat differently in each style of music. In hip-hop and narcocorrido, the ideas are expressed that success can be achieved by dealing drugs and other related crimes. In hip-hop, the related crimes include pimping. While in narcocorrido, the related crime is often human trafficking. Neo-Nazi hate rock follows Cloward and Ohlin’s (1961) view of a retreatist gang and advocates armed revolution to achieve success. The road to success as illuminated by these three styles of music provides the listeners with a false sense of what is normal. This can lead to social problems that affect society as a whole.

Hip-Hop Music

Hip-hop music developed in the Bronx, New York in the 1970s as a form of rap music. The musical form consisted of a rhyming stanza of lyrics that told a story to a bouncing type of beat. By the late 1980s the version known as “gansta” rap was coming of age in Los Angeles with such groups as Niggaz With Attitude (NWA). Gansta rap was much more violent than traditional hip-hop. Some of the groups that played this style of music had either real or implied gang affiliations that they did not deny or discourage. The Los Angeles version was considered to be crude by New York standards. (Shaw, 2000)

Noting the influence of the gangsta rap variation of hip-hop on African American youth, Marhari and Conner (2003) observed that, “The core areas of gangsta rap are extremely troubling in their glamorization of violence, material consumption, misogyny, and sexual transgression” (p.123). In their study of middle school African American youth, Marhari and Conner (2003) found that gangsta rap music often portrayed social norms that were at odds with the larger part of the African American community that is mostly non-criminal. However, they found that this style of music made violence seem more acceptable in the group of middle school youth that they investigated.

Elizabeth Grant (2002), in her examination of gangsta rap and its effect on African American identity, found that, “Labeled ‘gangsta rap’ by industry chiefs and music critics for its seeming glorification of street gang activity, LA’s rap regime hypnotized the nation with tales of territorial rivalry, drug dealing and brutalizing sexual relations in the south central boroughs of Los Angeles” (p.7-8).

Examining the effect of hip-hop on the perception of Black masculinity, Hopkinson and Moore (2006) observed that,

Someone birthed hip-hop, whose entire aesthetic—at least as promulgated on cable and radio—seems to be based on the world’s oldest profession; all men are P-I-M-P-S and all the women are hos. As a whole, the hip-hop generation has found prostitution to be an apt metaphor for American capitalism, which under our generation’s watch has taken the literal and figurative pimping of black culture to new depths (p.106).

Social Norms Advocated

As practiced by some of the hip-hop artists, the view is expressed in the lyrics that:

- You are a street warrior.
- You are fighting for your hood and your rightful place in society that is being denied or blocked by the police and corporate interests of the majority group.
- Violence is an acceptable, expected tactic against your enemies or the police.
- Possession of a weapon is a symbol of manhood and your warrior status within the group.
- The quest for money is a central theme (*Money Over Bitches*).
- Women are objects to be used at will.
- Pimping and drug dealing are glamorous professions.
- It is cool to be a gang banger (Stallworth, 1992, p. 3).

Selected Artists and Known or Alleged Gang Affiliation, if Any

- 50 Cent, aka Curtis Jackson. A New York gansta rap artist whose 2003 album, *Get Rich or Die Tryin* has been quoted as symbolizing the hip-hop/gangsta rap era. So much so, Byone (2006) observed that:
However, unlike many of his peers, 50 Cent lived the life that he rapped about experiencing first-hand the drug trade, incarceration, and assaults on his life which included stabbings and shootings. Like the mythical bad men of African American folklore, 50 Cent's appearance replete with bulging biceps, six-pack abdomen, tattoos, bulletproof vest and diamond encrusted crucifix visually represented his hardcore demeanor (p. 131).
- Snoop Dogg (Rolling 20s Crips), aka Calvin Broadus Jr. Shown on his website giving a Crip hand sign. Recordings include: *Doggystyle* (1993).
- Daz Dillinger (21st St Crips), aka Delmar Drew Arnaud. California solo rap artist who partnered with Krupt for a while to form a group called Tha Dogg Pound.
- Dresta (Nutty Blocc Compton Crips), aka Andre De Sean Wicker. A California gangsta rapper who sang "Real Muthaphuckkin G's" (1993) with Eazy-E on a single.
- Eazy-E (Kelly Park Compton Crips), aka Kelly Wright. Original member of Niggaz With Attitude (N.W.A.), a California gansta rap group. Titles included: "Boyz-N-The-Hood" (1988a) and *Straight Outta Compton* (1988b).
- Jayo Felony (NHC 47 Blocc Crips), aka James Savage. A California gansta rap musician whose most famous album was *Crip Hop* released in 2001.
- MC Eiht (Tragnew Park Compton Crips), aka Aaron Tyler. California solo artist and former member of Compton's Most Wanted. Records include: *Music to Driveby* (Byone, 2006; Slip, 1992).
- Tone Loc (South Side Compton Crips), aka Anthony Terrell Smith. California gangsta rapper. Loc albums include: *Loc-ed After Dark* (1993) and *Cool Hand Loc* (1991).
- Ice Cube (100 Rolling Crips), aka O'Shea Jackson. N.W.A. gangster rap group member and independent solo artist from California.
- Spider Loc (97th St East Coast Crips), aka Curtis Norvell Williams. California gangsta rapper. He recorded the DVD *Brainless: The Prequel* (2006) and the album *Da 1 U Luv 2 Hate* (2008).

- DJ Quik (Tree Top Piru Bloods), aka David Blake. Shown on his website giving a Piru hand sign. Albums include: *Way 2 Fonky* (1992) and *Under Tha Influence* (2002).
- Damu Ridaz (Denver Lane bloods). Blood gansta rap group. Albums include: *Bangin' on Wax* (Phillips & Loc, 1993) and *How Deep is Your Hood* (Phillips & Loc, 1999).
- The Game (Cedar Block Priu Bloods). California rap artist born Jayceon Taylor.
- Ice-T. Actor and gangster rapper cited as one of the originators of gangster rap. Although he became famous in California, he was born Tracy Lauren Morrow in New Jersey. The song "Cop Killer" (1992) was controversial because of the lyrics advocating violence towards law enforcement.

The Message Sent by the Lyrics

The hedonistic lifestyle portrayed by the obscenity-laced lyrics gives a false social norm to the listener of this type of music. Drug trafficking, pimping, gang banging, and other forms of violence are considered to be normal everyday activities. To be a success, a Black male is told by the lyrics that he must be a hustler and a player (Hopkinson & Moore, 2006). Women are portrayed as whores, bitches, and sluts to be used, abused, and abandoned at will. The lifestyle portrayed is all about the acquisition of wealth and power by any means necessary. Thus, illegitimate means are seen as the only smart or viable means to success. Those that choose legitimate means to achieve success are viewed as fools, suckers, and race traitors (Oreos – Black on the outside/White on the inside).

Examples of Hip Hop Lyrics

I'll wear a shiny suit for a minute like I'm the L.O.X.
Then get gangster with a swap meet bag and a Jordon box
And when I die, bury me with the glock and a bucket of shells
In case Niggaz want drama in hell

Yeah, so when Compton Niggaz
And Filmore Niggaz get together
Shit happens mayne, real talk from ya nigga Fig'
Doin' it big and don't wanna split yo' wig

I'll give you anything you ask for, money over bitches
Tell me what 'chu blast for? Fuck around with snitches
What you had to smash fo'? Nigga tried to play me man
Anything you ask fo', representing Bay Game
"Money Over Bitches" (Tom & Taylor, 2005)

*** **

They say I walk around like got an "S" on my chest
Naw, that's a semi-auto, and a vest on my chest
I try not to say nothing, the DA might want to play in court
But I'll hunt or duck a nigga down like it's sport
Front on me, I'll cut ya, gun-butt ya or bump ya
You getting money? I can't none with ya then fuck ya
I'm not the type to get knocked for D.W.I.
I'm the type that'll kill your connect when the coke price rise

Gangstas, they bump my shit then they know me
I grew up around some niggas that's not my homies
Hundred G's I stash it (what), the mack I blast it (yeah)
D's come we dump the diesel and battery acid
This flow's been mastered, the ice I flash it
Chokes me, I'll have your mama picking out your casket, bastard
"What Up Gangsta" (50 Cent, 2003)

Record Companies

There are 276 recording companies that produce hip-hop or gansta rap music and the number is growing (Hip-hop Directory (HHD), 2008) The production of hip-hop and gangsta rap is a multi-million dollar industry. Some recording companies such as Death Row Records (with alleged gang affiliations) have become enmeshed in the hip-hop wars and other controversies that surround this type of music.

Live Musical Venues

Hip-hop and gangsta rap are played at clubs and concerts throughout the United States. Because of the drug, gang, and violence-related lyrics of this type of music, violence has sometimes broken out at these musical venues. Recognizing this, some police agencies (especially those in the eastern United States) have gone so far as to form hip-hop squads in their police forces, although this function is usually called gang intelligence.

Media

Hip-hop music and gangsta rap have become mainstream in the African American community. You will find gangsta rap and hip-hop played on mainstream radio stations, television, BET, MTV, concerts, YouTube, and the internet. These types of CDs are sold in mainstream record stores. It is a popular style of music with a crossover audience in some parts of the White and Hispanic communities. In spite of some social conflict with the content of the lyrics (some songs have different street and radio versions because of obscenity) these artists continue to sell music across the United States.

Narcocorrido Music

A corrido is a ballad in traditional Mexican music. Narcocorrido is a ballad that sings about drug trafficking, Mexican Drug Trafficking Organization's operations, human trafficking, and other types of violence or smuggling. Morales (2008) found that:

The influence of gangs upon music, and vice versa, goes back to the *Bandito* days of the 1800s. *Corrido* songs were written about the exploits of Mexican rebel leaders (banditos) and what many sympathizers felt was "gringo oppression" during the Mexican-American War. These songs became even more popular during the Mexican Revolution (1910-1923). In the Pachuko days, big band songs were based upon the 1940s Zoot Suit Riots in L.A. and major cities. The *Pachuko Hop* was released by Chuck Higgins who grew up in the Aliso Village barrio. Higgins released another song, "Wetback Hop." This title would undoubtedly cause quite a commotion nowadays. "Chico" Sesma promoted L.A. area concerts and had a radio program that was popular with Chicano youth in the 1950s, including gang members (p.1).

Wald (2001) observed that some early singers began to sing about the cross-border drug trade as early as the late 1930s and early 1940s with such songs as: "El Contrabandista" (The Smuggler) and "Carga Blanca" (White Cargo). However, the narcocorrido style of music really came into its own with the 1972 release of *Contrabando Y Traicion* (Contraband and Betrayal) by Los Tigres del Norte (Wald, 2001). Narcocorrido music glamorizes the gangster lifestyle south of the border. A *Mi Vida Loca* (My Crazy Life) philosophy is present throughout this style of music.

In a strange twist, at least 20 narcocorrido musicians were murdered between May 2006 and February 2008 in separate incidents. Lazarski (2007) cited College of the Northern Border musicologist, Miguel Olmos who said:

Sometimes there is a direct relationship between the musician and the narcotics trafficker, but also there are a lot of passionate crimes. That is to say, the musician establishes some sort of segmental relationship with people who are linked to this culture of violence and narcotics trafficking, and somehow it gets out of hand. They always touch some nerve of the trafficker (p.1).

Singing the praises of the wrong side has its hazards.

Morales (2008) observed that while the African-American music scene was developing gansta rap, a parallel Latino rap movement began to develop within the Chicano community. However, while this style of music seems to have taken root on the West coast (particularly among Latino prison inmates), it is the narcocorrido music that has gained universal acceptance across the United States and Mexico.

Social Norms Advocated

As practiced by the narcocorrido artists, the view is expressed in the lyrics that:

- You are a street warrior.
- You are fighting for your dignity, your people and your rightful place in society that is being denied or blocked by the police and corporate interests of the majority group.
- Violence is an acceptable, expected tactic against your enemies or the police.
- Possession of a weapon is a symbol of manhood and your warrior status within the group.
- A strong sense of Machismo is essential to maintain manhood.
- Luck and fate are central themes to achievement of success or failure.
- Women are to be romanced or honored, but they may betray you in the end.
- Drug dealing, coyotes (human trafficking) or other types of crime that require you to live by your wits are glamorous professions.

Selected Artists and Known or Alleged Drug Trafficking Organization Affiliation, if Any:

- Los Tigres del Norte is among the bands that sing narcocorrido music. Originating in Sinaloa and now residing in California this band is often considered to be one of the original bands that practiced the narcocorrido style of music. Their song "Contrabando Y Traicion" (Contraband and Betrayal) is considered to be a classic among the songs of border crossing and drug trafficking that make up this style of music (Herlinghaus, 2006).
- Sergio Gomez, lead singer of the band K-Paz de la Sierra was murdered December 4, 2007 in the Michoacan capitol of Morella after a concert (Stevenson, 2007).

- Valentin Elizalde wrote lyrics to his narcocorrido songs that praised Los Zetas. According to Freemuse (2006), Elizalde also wrote lyrics honoring one of Mexico's most notorious drug lords, Joaquin "El Chapo" Guzman, who is the leader of the Sinaloa cartel. In 2005, Elizalde sang one of his *narcocorridos* – ballads honoring the exploits of drug dealers – to a crowd of more than 3,000 convicts at the Puente Grande prison in the central state of Jalisco. Guzman escaped from a neighboring prison in 2001 and remains at large. His Sinaloa cartel is battling the Gulf cartel and other criminal groups for control of key smuggling points across the U.S.-Mexico border (p.1).

Elizalde's narcocorrido "El Escape Del Chapo" lionizes the escape of El Chapo from prison. Elizalde was murdered November 25, 2006 in Reynosa.

- Jesús Rey David Alfaro Pulido, aka "El Gallito" (The Little Rooster) was murdered in Tijuana on February 20, 2008. Larsen (2008) reported that: Rivalry between powerful drug cartels seems to be the reason behind the killings. "We believe he had links with the Arellano Felix cartel," said an official of the Prosecutor's Office of Baja California. The Arellano Felix cartel is the leading drug cartel in Tijuana and it is currently waging a brutal war with rivaling drug cartels to gain control of territory with key smuggling points across the US-Mexico border, reports CNN. Associated Press reports that all cadavers bore signs of torture and had been marked with aggressive messages from the killers such as "you are next"—presumably directed at the Mexican police forces which seek to undermine the encompassing drug trade in the area (p.1).

This was a typical killing in a string of killings that have plagued the narcocorrido musicians in Mexico.

The Message Sent By the Lyrics

The lyrics are rife with images of danger, weapons, betrayal, the Mexican drug trafficking organizations, and los tres animales. Los tres animales are the three animals that often are used to represent drugs in Mexican slang: cocaine (parakeet), marijuana (rooster), and heroin (goat) (Wald, 2001, p. 28). Alvarez (2007, p.55) observed that the message of this type of music in Mexican and Chicano culture was a type of rebellion. It was a search for dignity and an expression of the politics of refusal: "a refusal to accept humiliation, a refusal to quietly endure dehumanization and a refusal to conform." Illegitimate means are seen as a viable route to success.

Examples of Narcocorrido Music translated to English

| | |
|---------------------------|---|
| Dicen que venian del sur | It is said that they came from the south in a |
| En un carro colorado | red car, |
| Traian cien kilos de coca | They carried one hundred kilos of cocaine, |
| Iban con rumbo a Chicago | they were headed for Chicago, |
| Asi lo dijo el soplón | That's what the squealer said who had |
| Que los habia denunciado | informed on them. |

"La Banda del Carro Rojo" (Los Tigres del Norte, 2000, cited in Wald, 2001, p. 34)

**** **** ****

El estado de Jalisco los hechos los
presencio
del penal de Puente Grande el Chapo se
les pelo
de acuerdo con los custodios que el Chapo
Guzman compro

La policia federal junto con los de la DEA
buscan al Chapo Guzman por debajo de
las piedras
en el fondo de los mares y en el filo de la
sierra

El Chapo con su poder todo el penal
corrompio
dicen que en el aeropuerto ya lo esperaba
un avion
pa sacarlo de Jalisco y en Sinaloa aterrizo

Y ahi le va pa mi compa Borrego que en
paz descanse
y arriba Culiacan Sinaloa compa Jorge

El director del penal mas de 3 horas tardo
en notificar la fuga quien sabe que le paso
o es que quiso darle tiempo de que
abordara en avion

La ciudad de Culiacan de nuevo estara de
luto
pues con la fuga del Chapo muchos
moriran de susto
y los que lo traicionaron ya no dormiran
agusto

Ya me voy ya me despido no se les vaya
olvidar
del penal de Puente Grande nadie ha
podido escapar
pero al Chapo le ayudaron para poderse
fugar

Ese rancho de la tuna cerca de Bairiguato
tierra de puros valientes
ahi es donde nacio el Chapo

“El Escape Del Chapo” (Elizalde, 2001)

Record Companies

In the state of Jalisco, the facts I am
presenting to you of the happenings at the
penitentiary de Puente Grande. El Chapo
escaped. They're in agreement with the
guards who he bought, Chapo Guzman.

The federal police along with those of the
DEA look for Chapo Guzman below stones
at depth of the seas and in the edge of the
mountain range.

Chapo, with his power, all the penitentiary
he corrupted. They say at the airport a
plane was already waiting to remove him
from Jalisco and in Sinaloa it landed.

And here it goes to my friend Borrego, may
he rest in peace, and above Culiacan
Sinaloa my friend Jorge

The director of the penitentiary wasted
more than three hours in notifying of the
escape. Who knows what happened to him
or it may be that he wanted to give him
time to board the airplane

The city of Culiacan is ready for looting
anew. With the escape of El Chapo, many
will die of fright and those that betrayed
him will no longer sleep in peace.

Now I'm saying my goodbyes, but don't
you forget about the penitentiary of de
Puente Grande which no one has been
able to escape but El Chapo ,who had help
in his escape

That ranch at del la tuna near de
Bairiguato. Land of pure honorables. That
is where El Chapos was born

The record companies that produce narcocorrido music are mainly mainstream record companies that deal in Latin music such as Avana Musical, Bci, Discos Fama, and Universal Latino.

Live Musical Venues

On the Mexican side of the border, narcocorrido music is played in clubs, concerts and all normal live venues. On the United States side of the border, narcocorrido music is often found in clubs and concerts that are patronized by the large Hispanic population in the United States. It is druggie music that you can dance to.

Media

Narcocorrido music is very popular along both sides of the border. It is played on radio stations, Spanish television, videos, and the internet. CDs are sold in mainstream music stores. However, Summers and Bailey (2004) observed that some Mexican government officials were attempting to negotiate "voluntary" bans of narcocorrido music with individual radio stations on the Mexican side of the border because they felt that this style of music "justified" drug trafficking. It is estimated that narcocorrido music has a \$300 million a year market in the United States among the Hispanic population.

Neo-Nazi Hate Rock Music

The skinhead movement of the 1960s and 1970s in the United Kingdom was built around music (Brown, 2004). Much of the music was of the death metal and oil varieties. Skrewdriver was formed in the United Kingdom in 1977 as a punk rock band and converted in the late 1970s to a skinhead band (Hamm, 1994). They had a major influence on hate rock music in the United Kingdom and the United States especially with their song "White Power." Leader Ian Stuart Donaldson described himself as a British National Socialist to the press and was involved with the British National Party (BNP). They disbanded in 1993. This style of music traveled over to the United States in the late 1970s with the works of Skrewdriver. Many skinhead and White supremacist bands have followed in their footsteps in this country. White supremacist ideas and philosophy permeate this style of music. Brown (2004) noted that the music began to turn racial and neo-Nazi in the United Kingdom during the late 1970s and early 1980s. The White supremacists call this style of music "racially aware" music. The style of music has become very popular among the neo-Nazis, especially among the skinheads. Neo-Nazi bands from Australia, Canada, Germany, and the United States quickly joined those from the United Kingdom in this musical style. According to Shannon (1997):

The most disturbing aspect of this music is that it serves as inspiration for violent racial attacks. Many of the leading figures in the international music industry have faced or are facing charges relating to violent activities, sometimes against rival racists (p.4).

Social Norms Advocated

As practiced by neo-Nazi hate rock bands, the retreatist view is expressed in the lyrics that:

- You are a race warrior. You feel that a race war is coming and you must fight to preserve the future of your race. You believe in the philosophy of the “14 words” of David Lane, and that “we must secure the existence of our people and a future for White children (Shannon, 1997,p.3).”
- You view yourself as being “working class.” The reasons that you have not achieved economic or social success are because all of the jobs and promotions have been usurped by minorities under affirmative action or by illegal immigrants who will work cheaper than a White worker.
- No legitimate or illegitimate means are seen as a viable means to achieve success.
- Violence is an acceptable, expected tactic against your enemies or the police.
- Possession of a weapon is a symbol of manhood and your warrior status within the group.
- Superiority is a birthright because of your race.
- White women are to be coveted and protected from the lustful incursions of non-Whites and immigrants.
- White revolution is viewed as the only viable solution.

Selected Artists and Known or Alleged White Supremacist Group Affiliation, if Any

There have been 122 neo-Nazi bands identified as of 2007 (Knox & Etter, 2008). The group names often indicate the type of music offered. With other groups it is the lyrics which are racist, homophobic, anti-Semitic, anti-immigrant or call for a White revolution.

- Angry Aryans (Myrder City Skinheads) Hatecore band formed in Detroit in 1994. Albums include: *Too White for You* (2000) and *Old School Hate* (2003).
- Brutal Attack (Skinheads) A British Punk rock R.A.C. (rock against communism) band formed by Ken McLellan. Active 1980-1997. Albums include: *Tales of Glory* (1989) and *Resurrection* (1992).
- Bully Boys (Skinheads) A Florida hatecore band formed in 1983. Albums include: *White Kids Gonna Fight* (1999) and *Best of the Bully Boys 1984-1999* (1999).
- Fist of Steel (Skinheads) Formed in 1998 popular also in Germany and Brazil. Albums include: *Skinhead* and *Smash the Reds*.
- Grinded Nig (Nazi) A Texas Neo-Nazi hatecore band formed from the remains of a band called Bloodstained Boots. Albums include: *Freezer Full of Nigger Heads* (2004), *Shriek of the Mutilated* (2005) and *Hate Grind vs. Hate Punk* (2006).
- H8Machine (Skinheads) A New Jersey hatecore band formed in 1996. Albums include: *Cheated* (1996) and *Hardcore for Life* (2008).
- Max Resist (Hammerhead Skinheads) Detroit-based hate rock band. Albums include: *Klymax* (2006) and *Keep Fighting*(2002).
- Rahowa (World Church of the Creator) A Canadian neo-Nazi goth metal band, 1993-1995. Albums include: *Declaration of War* (1993) and *Cult of the Holy War* (1995).
- Skrewdriver (British National Party) English death metal band, 1977-1993. Albums include: *Blood and Honour* (1986) and *Boots and Braces/Voice of Britain* (1983).

The Message Sent By the Lyrics

The lyrics of this style of music promote hatred. Some lyrics, such as the Blue Eyed Devils in their song "Final Solution," praise the Holocaust as a good idea. Many lyrics advocate violence against other racial or religious groups. An anti-immigrant theme is often present. Many songs support one of the four primary White supremacist religions: Christian Identity, World Church of the Creator or Creativity, Norse/Germanic Paganism, or Satanism. Most lyrics call for a "White revolution." According to Shannon (1997) it is not just the music but the message sent by the lyrics that promotes the neo-Nazi ideas. He observed that:

The continuing propagation of Nazi ideology in recent times has relied heavily on music. Rock music has been the neo-Nazi movement's most direct means of enlisting and developing youth support. The music sounds much like other heavy metal, trash and grunge, but the lyrics are venomous. The dominant themes are violent attacks, race war, White supremacy, Nordic and teutonic mythology and the pure hatred of all non-Caucasians, especially Blacks and Jews (p.2).

Examples of Neo-Nazi Hate Rock Lyrics

I stand watch my country, going down the drain
We are all at fault now, we are all to blame
We're letting them take over, we just let them come
Once we had an empire, and now we've got a slum
(chorus)
White Power! For England!
White Power! Today
White Power! For Britain
Before it gets too late
"White Power" (Stuart, 1983)

*** **

A warrior is in prison, he's in jail
23 hours locked down in his cell
Can't get out, no way to escape
His heart and his spirit
They can't break

David Lane he fought with honor,
Bruder Schweigen he was part of The Order
Gary Yarboro, he fought with honor,
Bruder Schweigen he was part of The Order
"14 Words" (Max Resist, 1995a)

*** **

We like to party in a violent way,
I guess it's just a symptom
Of the youth today
We get drunk on the violence we cause
With total contempt and disgust for the law

Bootparty, bootparty, bootparty
It's you we invite to war

Bootparty, bootparty
 You'll feel the heat of our boots tonight
 "Boot Party" (Max Resist, 1995b)

Record Companies

Their music is produced on CDs by labels such as Resistance Records (National Alliance) founded by George Burdi (aka George Eric Hawthorne, a Canadian who was active in the World Church of the Creator run by Matt Hale), NSM 88 (National Socialist Movement), Panzerfaust Records (Hammerskin Nation and Volksfront), Micetrap Records, and Tighrope Records (Stormfront); record companies that are often wholly owned or subsidized by various White supremacist groups. The sale of neo-Nazi hate rock music and CDs are a major source of income for the White supremacist groups.

The tale of the rise and fall of Panzerfaust Records is a most interesting one. Panzerfaust Records was a Minnesota-based neo-Nazi record company that had been formed by Anthony Pierpont, Ed Wolbank and Eric Davidson in 1998. Davidson was a former employee of Resistance Records. Pierpont was a master musical promoter. He appeared at Aryan Fests, promoted prison outreach music to incarcerated White supremacists, and even offered free White supremacist music CDs to elementary, middle, and high school libraries in "project schoolyard." Panzerfaust Records was supported by (but not owned by) the Hammerskin Nation and Volksfront. All of this dissolved when it was discovered that Pierpont's mother was Mexican and Pierpont had dated women and transgendered individuals outside the White race. Race mixing is considered to be a cardinal sin among most of the White supremacist community. His musical partners and neo-Nazi supporters had quit the label and Panzerfaust Records dissolved into history with the arrest, conviction, and incarceration of Pierpont on drug charges in 2005 (Southern Poverty Law Center, 2005, p.1).

Live Musical Venues

An Aryan fest is a neo-Nazi rock concert and meeting featuring hate rock bands. Political speakers are usually present to present their ideas to the faithful. White Aryan Resistance leader Tom Metzger and Aryan Nations leader the late Rev. Richard Butler often attended and spoke at such events. Merchandise such as patches, posters, flags, Nazi items, t-shirts, and CDs are usually sold at Aryan fests. Skinheads like to drink beer and there is usually lots of beer present. At Aryan fests, they often raise money for neo-Nazi groups or causes.

Neo-Nazi hate rock bands often play their music at alternative clubs that offer death metal style music. Mosh pits (a style of dancing where males smash into each other bare-chested) are often present in this type of venue (Knox & Etter, 2008, p. 41-42).

Media

The bands that sing this type of hate rock do not get much air time on mainstream radio stations. However, they thrive on CD sales (mostly sold through the internet or at concerts), YouTube, internet radio broadcasts, and playing alternative clubs or Aryan fests. According to Shannon (1997):

It is hardly surprising that virtually all groups promoting and distributing this music do so indirectly, publishing neither their street address nor a phone number. Very few music shops will stock the music. But through post office

boxes and internet sites all over the world, the business is flourishing to the tune of millions of dollars annually. And so the bands play on (p.4).

Summary

There are many commonalities among these three styles of music. Each of the three styles of music falls within Cloward and Ohlin's "illegitimate means" theory. Hip hop and narcocorrido music advocate the usage of illegitimate means to achieve success and neo-Nazi hate rock takes a retreatist stand by advocating a White revolution. Each of the three music styles shows violence as a legitimate tactic. Each advocates or praises criminality. Issues specific to each of the groups are addressed in the lyrics of each style of music. The styles and types of tunes used in the music vary widely between hip-hop, narcocorrido, and neo-Nazi hate rock to please their respective audiences. The lyrics used in these styles of music are often offensive and controversial. However, these offensive lyrics play well with the audiences that the music is intended for. The ideas expressed in these three styles of music and their views of expected social norms fuel the street wars that have spread across America over the last 25 years.

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THESE ARE THEIR STORIES: HOW THE PORTRAYAL OF CAPITAL PUNISHMENT ON *LAW & ORDER* CAN HELP ABOLITIONISTS ARGUE AGAINST THE DEATH PENALTY

Christopher Hill¹

Abstract

Law & Order addresses many issues related to the criminal justice system, including several episodes where capital punishment was the central criminal justice focus. Capital punishment is most often dramatized on television through stories of innocent people charged or convicted with capital crimes. *Law & Order* is an exception to this narrow portrayal of the death penalty. This paper will explore the portrayal of capital punishment in *Law & Order* through a review of several episodes that address death penalty issues not often discussed. Through these episodes, it will be shown how abolitionists can use popular culture to make arguments against capital punishment.

Law & Order is an amazingly popular television program.² Several spin-offs have been created from this “ripped from the headlines” drama.³ One of the reasons the show is so popular is that it is unashamedly based on stories that are current and newsworthy.⁴ The original series has been in first run episodes since September 1990.⁵ The show follows a crime, usually a homicide, from investigation to prosecution.⁶ It is set in New York City.⁷

During the nine years New York had the death penalty from 1995 until 2004, *Law & Order* focused on capital punishment several times. Often, the only stories of capital punishment on television are those portraying an innocent person who may be executed. There are, however, many more nuances to the death penalty that make it a controversial topic. *Law & Order* speaks to some of the more controversial issues in capital punishment. For example, given that some of the main characters in *Law & Order* are prosecutors who have discretion to charge a suspect with a crime, the death penalty is often used on *Law & Order* as a threat in order to obtain confessions and convictions. Another complex but often overlooked issue in capital punishment that was addressed on *Law & Order* is the psychological effect on those who witness an execution. The show also focused on the controversy over the lethal injection process, among others. While *Law & Order* episodes are fictional portrayals, they highlight important issues in the death penalty debate and provide a platform for abolitionists to argue against the death penalty.

Statement of Purpose

This survey began with the hypothesis that most television programs do not address all of the issues surrounding capital punishment. When television programs have storylines about the death penalty, they most often address the innocent person

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² NBC, *Law & Order*, http://www.nbc.com/Law_and_Order/about/ (last visited April 19, 2009).

³ The spin-offs are *Law & Order: Special Victims Unit*, *Law & Order Criminal Intent*, *Law & Order: Trial by Jury*.

⁴ TNT, *Law & Order*, <http://www.tnt.tv/stories/story/?oid=602> (last visited April 19, 2009).

⁵ *Law & Order: Prescription for Death* (NBC television broadcast Sept. 13, 1990).

⁶ *Id.*

⁷ NBC, *Law & Order*, http://www.nbc.com/Law_and_Order/about/ (last visited April 19, 2009).

charged or convicted of a capital crime. However, if abolishing the death penalty depends upon support from the masses, then it is important for dramatic television programs to concentrate on a more complete picture of the death penalty. Television is the source that is most accessible to people, and it provides both entertainment and information.

Death penalty stories other than those focusing on innocence are important to tell because they provide a more thorough description of the problems with the death penalty.⁸ The use of popular culture can provide abolitionists a platform to tell stories that are beyond innocence. When a show with the popularity of *Law & Order* tells uncommon capital punishment stories, it provides abolitionists the opportunity to use a respected source to tell similar stories because they will start from a place of familiarity.⁹ Through an analysis of *Law & Order* episodes that deal with capital punishment issues, this paper will demonstrate that abolitionists can use popular culture to provide reasons other than innocence to end the death penalty.

Methodology

A review of all *Law & Order* episodes was done to identify those episodes that addressed capital punishment. The episodes were narrowed again to essentially focus on those episodes that were televised during the time period when New York's death penalty was constitutional. The review, however, also includes two episodes outside of this timeframe because the episodes addressed extremely important issues that support the abolition of capital punishment. One episode takes place before New York reinstated capital punishment and concerns the reaction of a murder victim's family members. The second episode is set after New York's death penalty was found unconstitutional and deals with another major issue supporting the abolition of capital punishment—botched executions. Finally, the episodes were again narrowed to those episodes with plots that focus on rarely discussed death penalty issues for the purpose of illustrating the complexities in the death penalty dialogue and ultimately providing examples for abolitionists to use to show why the death penalty is wrong.

Capital Punishment in New York

One of the *Law & Order* episodes foreshadowed the future of the death penalty in New York. In "Act of God,"¹⁰ a person was wrongfully convicted of setting off a bomb at a construction site killing a young boy. After the conviction, new evidence came to light that a couple conspired to have the building explode to recover insurance money. The prosecutors discovered the hoax and worked to get the wrongfully convicted man out of prison. When one of the prosecutors remarked about how frightening it was that the wrong person was convicted of a crime, Adam Schiff, the District Attorney of New York County said, "Could be worse. We could have the death penalty." On September 1, 1995, it got worse because New York reinstated the death penalty.

New York Governor Mario Cuomo repeatedly resisted a push to reinstate the death penalty during his three terms as Governor of New York.¹¹ The New York Assembly passed several bills to reinstate capital punishment, only to have them

⁸ David R. Dow, *Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film*, 17 Const. Comment. 511, 512-513 (2000).

⁹ Kimberlianne Podlas, *Guilty on All Accounts: Law & Order's Impact on Public Perception of Law and Order*, 18 Seton Hall J. Sports & Ent. L. 1, 8-9 (2008).

¹⁰ *Law & Order: Act of God* (NBC television broadcast March 22, 1995).

¹¹ Kevin Sack, *The 1994 Campaign: New York Governor; Deep Discontent With Cuomo Strengthens Pataki, Poll Shows*, N.Y. Times, Oct. 5, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9C07E2DA153DF936A35753C1A962958260&sec=&spn=&pagewanted=2>.

vetoed by Cuomo twelve times.¹² The 1994 New York Gubernatorial Campaign saw Cuomo, the three-term Democratic Governor, face off against Republican State Senator George Pataki.¹³ One of the major issues of the campaign was the reinstatement of New York's death penalty.¹⁴ In the gubernatorial race, Pataki made Thomas Grasso a campaign issue.¹⁵ Grasso was convicted of killing people in New York and Oklahoma.¹⁶ While Grasso was imprisoned in Oklahoma, Cuomo went to federal court to have Grasso extradited to serve his New York sentence of twenty years to life before he could serve his Oklahoma death sentence.¹⁷ While Grasso was housed in a New York prison, he wanted to be extradited back to Oklahoma so he could be executed because he believed life in prison was worse than death.¹⁸

Although Cuomo was an incredibly charismatic and popular political figure, he lost the 1994 election.¹⁹ Part of his loss was blamed on his stance on the Grasso case.²⁰ The new Governor promised to sign a death penalty bill into law when it came across his desk.²¹ On March 8, 1995, Governor George Pataki signed a bill into law that reinstated capital punishment in New York and it became effective on September 1, 1995.²² He also extradited Grasso to Oklahoma.²³

The reinstatement of the death penalty in New York was relatively short lived. In the case of *People v. LaValle* (2004), the New York Court of Appeals ruled that New York's capital punishment statute was unconstitutional.²⁴ The statute required a judge to instruct the jury that if it deadlocked, the judge could sentence the defendant to life without parole or a term of life with parole after at least twenty years in prison.²⁵ Jurors in a capital trial could choose death or life without parole,²⁶ but either decision had to be agreed upon by all twelve jurors.²⁷

At the time of the *LaValle* decision, New York was the only state that provided that the judge could sentence a defendant to lesser punishment than the two choices the jury had.²⁸ The *LaValle* court found that the jury instruction was coercive because, in

¹² *Id.*

¹³ Sack, *supra* note 11.

¹⁴ Ian Fisher, *The 1994 Campaign: Issues; Clamor Over Death Penalty Dominates Debate on Crime*, N.Y. Times, Oct. 9, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9F05E4D8113DF93AA35753C1A962958260&sec=&spn=&pagewanted=1>.

¹⁵ Kevin Sack, *The 1994 Campaign: The Campaign; Endorsement? Pataki Seeks Other Topics*, N.Y. Times, Oct. 26, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9900E5DB153FF935A15753C1A962958260&sec=&spn=&pagewanted=1>.

¹⁶ John Kifner, *Grasso's Farewell: 'Life Without Parole' Worse Than Death*, N.Y. Times, Mar. 21, 1995, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE7D91E3FF932A15750C0A963958260&scp=5&sq=%22thomas%20grasso%22&st=cse>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Kevin Sack, *the 1994 elections: the overview; New York Voters End a Democratic Era*, N.Y. Times, Nov. 9, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9B03EFD8103EF93AA35752C1A962958260>.

²⁰ Kifner, *supra* note 16.

²¹ *Pulse; Death Penalty*, N.Y. Times, Nov. 21, 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE7D71E31F932A15752C1A962958260>.

²² James Dao, *Death Penalty In New York Reinstated After 18 Years; Pataki Sees Justice Served*, N.Y. Times, March 8, 1995, available at <http://www.nytimes.com/1995/03/08/nyregion/death-penalty-in-new-york-reinstated-after-18-years-pataki-sees-justice-served.html?scp=55&sq=%22death%20penalty%20bill%22%20+%20%221995%22&st=cse>

²³ Kifner, *supra* note 16.

²⁴ 3 N.Y. 3d 88 (2004).

²⁵ *Id.* at 115.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 117.

the event of a deadlock, jurors would be more likely to sentence a person to death to break the deadlock rather than have the judge impose a sentence that could release a guilty person after twenty years.²⁹ The argument over constitutionality was nearly irrelevant, however, because New York did not execute anyone in the nine years it had a functional death penalty statute.

The Issues

Families of Murder Victims

The first episode of *Law & Order* to contemplate the death penalty aired in the second season of the program before New York reinstated capital punishment.³⁰ In the episode, the parents of a woman did not want New York to prosecute their daughter's murderer because the state did not have the death penalty. The parents wanted the man extradited to their home state where capital punishment existed. This episode was based on the Thomas Grasso story. One of the most telling moments of the episode was when Ben Stone, Executive Assistant District Attorney, argued about the extradition with Assistant District Attorney Paul Robinette. Robinette told Stone that the family members might be entitled to vengeance. Stone responded by asking rhetorical questions about whether it was right to burn the homes of arsonists or to sexually assault rapists. Stone's response goes to the heart of what capital punishment is: state sanctioned revenge.

It is understandable that emotions run high when a family member is murdered. It also is understandable that people want revenge. Some people may believe that the death penalty is warranted in certain cases because the family deserves closure. Unfortunately, it is unlikely that capital punishment provides closure for families.

The film *Love Lived on Death Row*,³¹ focuses on the children of Elias Syriani, who was sentenced to death in North Carolina for the murder of his wife. The Syriani family had to deal with the fact that not only did their father kill their mother, but that he had been sentenced to death for the crime. Elias Syriani stabbed his estranged wife while his ten-year old son was in the car. At first, Syriani's four children, who were all minors at the time of the murder, wanted their father executed for the crime. Eventually, the children began writing to their father and then visiting him.

They soon realized that the execution of their father would not bring them closure. In fact, their father's execution would leave them without both parents. The children went on a media blitz to highlight their situation. They appeared on Good Morning America and Larry King Live. These appearances were an attempt to get the attention of Mike Easley, who was the Governor of North Carolina at the time. They wanted the Governor to grant their father clemency and commute his sentence to life in prison. Easley decided to meet with the Syriani children. After an emotional meeting, the children were hopeful that their father's life would be spared. However, Easley denied Elias Syriani's clemency petition. Elias Syriani was executed by the State of North Carolina on November 18, 2005. His children did not receive closure from the execution. They only lost the chance to get closer to their father.

It is important for abolitionists to show that many families are not looking to avenge a family member's death with another death. In fact, Murder Victims' Families for Reconciliation³² and Murder Victims' Families for Human Rights³³ are both groups whose members have had family members murdered but still believe capital

²⁹ *Id.* at 117-119.

³⁰ *Law & Order: Vengeance* (NBC television broadcast Feb. 18, 1992).

³¹ *Love Lived on Death Row* (By the Brook Films 2007).

³² Murder Victims' Families for Reconciliation, <http://www.mvfr.org/> (last visited Apr. 29, 2009).

³³ Murder Victims' Families for Human Rights, <http://www.murdervictimsfamilies.org/> (last visited Apr. 29, 2009).

punishment should end. Abolitionists can tell the Syriani story to show that, for some, closure is not achieved with another death.

Psychological Effects of Witnessing Executions

In the sixth season of *Law & Order*, the show dealt with the psychological effects of witnessing an execution. In the episode "Aftershock,"³⁴ the prosecutors and police officers witnessed an execution. Each of the characters' lives was thrown into turmoil after the execution. Detective Lennie Briscoe, a member of Alcoholics Anonymous, began drinking again. Detective Rey Curtis, a devout Catholic, had an extramarital affair. Executive Assistant District Attorney Jack McCoy spent the rest of the day in a bar talking to strangers about his abusive father. McCoy was waiting for his girlfriend to arrive at the bar. McCoy's girlfriend, who was not revealed until the end of the episode, was Assistant District Attorney Claire Kincaid. Kincaid spent the episode considering a resignation from her position as ADA after witnessing the execution. She finally reached the bar where she is expected to meet McCoy, but he had already left. Kincaid spotted Briscoe in the bar, and upon noticing that he was drunk, offered him a ride home. As they were driving, Kincaid and Briscoe were hit by a drunk driver, and Kincaid died in the accident. The episode illustrated how the character's lives were significantly and negatively changed after witnessing the execution.

Like the characters in *Law & Order*, some of the real people who deal with the death penalty in their lives also are negatively impacted by the process. People who work in the corrections field in states with the death penalty are often asked to participate in executions. Some suffer psychological problems after exposure to the death chamber. The movie *At the Death House Door*,³⁵ illustrates this issue. The film focused on the experience of Reverend Carroll Pickett. Pickett was the chaplain in Texas's death house. He attended ninety-five executions. Pickett attended the execution of Charles Brooks on December 7, 1982, which was the first death sentence carried out by lethal injection in the United States. After the execution, Pickett made a cassette tape about the execution. He recorded a cassette tape after each of the 95 executions because it was such a stressful experience.

Before his experience as Texas's death house chaplain, Pickett was a supporter of capital punishment. After his career in the death chamber, he became an outspoken opponent of the death penalty. Pickett witnessed the effects that participating in executions had on corrections staff. He noticed that wardens would not come to work the day after an execution. He also saw people vomit after an execution.

One of the people Pickett worked with was a corrections officer named Fred Allen. Allen participated in 130 executions.³⁶ He volunteered to be a member of the execution team. One day, Allen broke. He began crying uncontrollably because he thought about an execution in which he had participated two days prior. Allen retired because he was suffering with post-traumatic stress disorder.

Jerry Givens was the chief executioner in Virginia from 1982 through 1999.³⁷ During that time, he executed sixty-two people.³⁸ Once a supporter of capital punishment, Givens now opposes it.³⁹ With so many exonerations, Givens worries that it is possible that he may have killed an innocent person. "You're the American people ... [y]ou sentenced a guy to be executed. You give him a trial, then you send him to me to be put to death ... then later on you [say] that this guy was innocent. You

³⁴ *Law & Order: Aftershock* (NBC television broadcast May 22, 1996).

³⁵ *At the Death House Door* (Kartemquin Films 2008).

³⁶ *Witness to an Execution* (Sound Portrait Productions 2000).

³⁷ Jim Avila, Mary Harris & Chris Francescani, *Interview with an Executioner*, ABC News, Dec. 17, 2007, <http://abcnews.go.com/print?id=4015348>.

³⁸ *Id.*

³⁹ *Id.*

didn't put him to death. I did ... I performed the execution. So you might suffer a little. I'm going to suffer a lot, because I performed the job."⁴⁰

The stories of Pickett, Allen and Givens show that even the staunchest supporters of capital punishment can become abolitionists after their experiences in the death chamber.

Redemption and Strange Bedfellows

Karla Faye Tucker's real life prison conversion was "ripped from the headlines" in the *Law & Order* episode "Bad Girl."⁴¹ Tucker was condemned to die in Texas for a double murder.⁴² While on death row, Tucker became a born-again Christian.⁴³ Death penalty opponents and those who believed in Tucker's conversion were hopeful that then Texas Governor George W. Bush would commute her sentence, but he did not.⁴⁴

In the *Law & Order* episode based on Tucker, a young woman who killed a police officer confessed to the crime on the witness stand. She said she had come to peace with her fate because of a religious experience. In both the episode and the Tucker story, strange bedfellows tried to save the women—a civil liberties group and a legal group representing Christian evangelists. Tucker received support from the ACLU and televangelist Pat Robertson.⁴⁵ The ACLU opposes the death penalty in all instances.⁴⁶ Robertson only opposed the death penalty in Tucker's case.⁴⁷ Robertson used his Christian Broadcasting Network to bring Tucker's fate to his viewers.⁴⁸

Controversy surrounded Robertson's and other evangelicals' support of Tucker.⁴⁹ Many thought Tucker received support because she was white, attractive and Christian.⁵⁰ Death penalty opponents said that people were finally humanizing a condemned inmate.⁵¹ Despite the controversy, or perhaps because of it, abolitionists can use the *Law & Order* episode and Tucker's story to show that no one is beyond redemption and that allies can exist in even the most unexpected places.

Threat of the Death Penalty

When prosecutors have the death penalty as an available sentence, they can threaten the use of the death penalty to obtain confessions or convictions. *Law &*

⁴⁰ *Id.*

⁴¹ *Law & Order: Bad Girl* (NBC television broadcast April 29, 1998).

⁴² *Texas Set to Execute First Woman Since 1863*, N.Y. Times, June 21, 1992, available at <http://query.nytimes.com/gst/fullpage.html?res=9E0CE7DC1238F932A15755C0A964958260>.

⁴³ *Id.*

⁴⁴ Sam Howe Verhovek, *Texas, in First Time In 135 Years, Is Set To Execute Woman*, N.Y. Times, Feb. 3, 1998, available at <http://query.nytimes.com/gst/fullpage.html?res=990CEFD1F3AF930A35751C0A96E958260>.

⁴⁵ Sam Howe Verhovek, *Execution In Texas: The Overview; Divisive Case of a Killer of Two Ends as Texas Executes Tucker*, N.Y. Times, Feb. 4, 1998, available at <http://www.nytimes.com/1998/02/04/us/execution-texas-overview-divisive-case-killer-two-ends-texas-executes-tucker.html?pagewanted=all>

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Gustav Niebuhr, *Execution In Texas: Religious Debate; Tucker Case May Split Evangelical Christians*, N.Y. Times, Feb. 4, 1998, available at <http://query.nytimes.com/gst/fullpage.html?res=9500E0D9163DF937A35751C0A96E958260&sec=&spn=&pagewanted=1>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Order has used this device in several episodes. In the episode “Causa Mortis,”⁵² Jack McCoy’s new assistant Jamie Ross used the threat of the federal death penalty to get a person to confess. After the team was unable to use certain evidence in the state’s carjacking case, they remembered that carjacking is also a federal crime. Since the New York case could not be made without the evidence, Ross called a friend who was a United States Attorney. The friend threatened the suspect with the federal death penalty, which ultimately led the suspect to confess to the state crime rather than face the federal death penalty.

In another *Law & Order* story, when McCoy wanted to get a serial killer to confess to where and how he murdered women, he used the threat of capital punishment. In “Agony,”⁵³ McCoy asked ADA Abbie Carmichael if she had any letterhead from her previous job as a prosecutor in Texas so he could threaten the suspect with extradition to the busiest death penalty state in the country. The suspect confessed to the murders and accepted a deal for life in prison. In another episode, McCoy threatened a person who was serving two life terms with the death penalty if he did not cooperate with McCoy’s investigation.⁵⁴ The person gave McCoy the information he wanted.

The problem with threatening the death penalty is that it may make innocent defendants plea to crimes they did not commit. A study in New York after it reinstated the death penalty showed DAs had better bargaining positions than defendants.⁵⁵ This unequal bargaining power has the chance of getting a person who is innocent to take a plea to avoid the death penalty. In Texas, two men were convicted of a crime they did not commit because the police told one of the men that he would be sentenced to death if he did not confess.⁵⁶ Christopher Ochoa had a pen poked into his arm and was told that he was going to get a lethal injection if he did not confess to the murder of Nancy DePriest. Ochoa confessed to the crime and said that he committed the murder with Richard Danziger. They were sentenced to life in prison. They would still be there if Achim Marino did not confess to the crime after attending meetings of a twelve-step program. Marino sent a letter explaining the crime to the police and DA. Ochoa still confessed to the crime because he believed that the police were going to involve him in other crimes.⁵⁷ Eventually, Ochoa asked for help from the Wisconsin Innocence Project.⁵⁸ Ochoa and Danziger were cleared.⁵⁹ Danziger’s life was not only changed by his wrongful conviction, but he also suffered brain damage after he was attacked in prison.⁶⁰ The very threat of the death penalty made a man confess to a crime he did not commit and implicate his friend. Abolitionists can show how death scared a man to a life sentence.

Felony Murder

One of the most confusing concepts in capital punishment is that of felony murder.⁶¹ If a person participates in a felony and someone is killed during

⁵² *Law & Order: Causa Mortis* (NBC television broadcast Sept. 18, 1996).

⁵³ *Law & Order: Agony* (NBC television broadcast Nov. 4, 1998).

⁵⁴ *Law & Order: Who Let the Dogs Out* (NBC television broadcast Sept. 26, 2001).

⁵⁵ Ilyana Kuziemko, *Does The Threat Of The Death Penalty Affect Plea Bargaining In Murder Cases? Evidence From New York’s 1995 Reinstatement Of Capital Punishment*, 8 Am. L. & Econ. Rev. 116, 140 (2006).

⁵⁶ The ACLU Freedom Files, *Freedom to Live: The Death Penalty*, (ACLU 2007).

⁵⁷ Alan Berlow, *Texas Justice*, Salon, Oct. 31, 2000, <http://archive.salon.com/politics/feature/2000/10/31/ochoa/print.html>

⁵⁸ *Id.*

⁵⁹ *Freedom to Live*, *supra* note 56.

⁶⁰ *Id.*

⁶¹ Adam Liptak, *Serving Life for Providing Car to Killers*, N.Y. Times, Dec. 4, 2007, available at http://www.nytimes.com/2007/12/04/us/04felony.html?_r=3&pagewanted=1

commission of the felony, everyone involved in the felony is liable for the murder even if they did not intend for a murder to occur or was not the person who caused the death of the murder victim.⁶² This concept is so perplexing that the United States Supreme Court has dealt with it in two different cases. In 1982, the Supreme Court held in *Enmund v. Florida*⁶³ that the death penalty was a disproportionate sentence if a person took part in a felony where a person was killed, but the defendant did not kill and did not intend to kill. In 1987, however, the Supreme Court revisited the issue in *Tison v. Arizona*.⁶⁴ The Court upheld two death sentences of brothers who did not kill anyone nor intend to kill anyone, but in the course of a felony showed “reckless disregard to human life.”⁶⁵

Law & Order dealt with the issue of felony murder in the episode “Tragedy on Rye.”⁶⁶ In the episode, three men were accused of the robbery of a drug dealer. The dealer was also murdered. Two of the men were videotaped by tourists taking a large screen television to a sport utility vehicle. During the investigation it became clear that the men did not participate in the murder. The DA charged them with a capital crime based on the felony murder rule. ADA Serena Southerlyn was uncomfortable with charging the men with murder. They were convicted and sentenced to death. Later in the episode, Southerlyn discovered that all of the people involved in the robbery could not have murdered the drug dealer and were, in fact, innocent of murder.

The problem of felony murder is illustrated in the real life case of Kenneth Foster. Foster was convicted of a 1996 murder.⁶⁷ He was sentenced to death under Texas’s Law of Parties.⁶⁸ Foster was driving a car with three friends as passengers.⁶⁹ While they were riding around, they were drinking, getting high and they committed two armed robberies.⁷⁰ After the robberies ended, the men were driving around and they encountered a young woman in a car with her boyfriend.⁷¹ The woman asked the men to pull over because she thought they may know her since they seemed to be following her car.⁷² Mauriceo Brown exited the car with a gun and got into a confrontation with Michael LaHood, who was in the young woman’s car.⁷³ Brown murdered LaHood.⁷⁴ Even though Foster was in the driver’s seat of the car about eighty feet away from the murder and did not kill nor intend to kill LaHood, he was convicted of capital murder under the Law of Parties.⁷⁵

A massive movement to save Foster’s life began because it seemed unjust to execute a man who did not pull the trigger.⁷⁶ Even one of Michael LaHood’s best friends wrote an article for the Huffington Post discussing the injustice.⁷⁷ Foster was a day away from execution when the Texas Board of Pardons and Paroles voted six to

⁶² *Id.*

⁶³ 458 U.S. 782 (1982).

⁶⁴ 481 U.S. 137 (1987).

⁶⁵ *Id.* at 157-58.

⁶⁶ *Law & Order: Tragedy on Rye* (NBC television broadcast Oct. 30 2002).

⁶⁷ William Marra, *In Rare Move, Texas Gov. Commutes Inmate's Death Sentence*, ABC News, Aug. 30, 2007, <http://abcnews.go.com/print?id=3541391>

⁶⁸ William Marra, *He Didn't Kill, but He Will Be Executed*, ABC News, Aug. 14, 2007, <http://abcnews.go.com/print?id=3475381>

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Democracy Now, *The Case of Kenneth Foster: Texas Prepares to Execute Man for Driving a Car Near Scene of Murder*, Aug. 9, 2007, http://www.democracynow.org/2007/8/9/the_case_of_kenneth_foster_texas

⁷⁷ Sean-Paul Kelley, *Kenneth Foster, Jr.: An Innocent Man Texas Will Soon Execute*, Huffington Post, July 31, 2007, http://www.huffingtonpost.com/seanpaul-kelley/kenneth-foster-jr-an-i_b_58655.html

one to commute his sentence.⁷⁸ The Governor of Texas cannot commute a sentence without a recommendation from the Board of Pardons and Paroles.⁷⁹ Texas Governor Rick Perry commuted Foster's sentence not because the Law of Parties was unjust, but because he believed it was unfair that Foster was tried with Brown.⁸⁰ The abolition movement scored a major victory when they were able to help save Foster's life because it would have been wrong to execute a man who never killed nor intended to kill.

Botched Executions

One of the most recent controversies in capital punishment is the issue of lethal injection. The Supreme Court of the United States was asked to decide if the three-drug lethal injection cocktail used in Kentucky caused a substantial risk of unnecessary pain.⁸¹ The three-drug cocktail is used by most states.⁸² The major concern is about the effectiveness of this process.⁸³ The first drug, sodium thiopental, is supposed to make the prisoner unconscious.⁸⁴ It is important that the first drug works because the second and third drugs can cause extreme pain.⁸⁵ The second drug, pancuronium bromide will paralyze the condemned.⁸⁶ The third drug, potassium chloride, causes cardiac arrest. The problem is that if the first drug does not make the inmate unconscious, the second paralytic drug will keep the inmate from screaming in pain when it and third drug are injected.⁸⁷

The Supreme Court held that Kentucky's process was not unconstitutional.⁸⁸ The Court, however, did not prohibit challenges to lethal injection from other states.⁸⁹ Even though the Court ruled Kentucky's lethal injection protocol constitutional, there are many stories of botched lethal injections. *Law & Order* tackled lethal injection after the death penalty was ruled unconstitutional in New York. In the episode "Executioner,"⁹⁰ a doctor botched an execution in South Carolina. The inmate did not die but became comatose. A relative of the inmate went to New York to kill the doctor believed to carry out the lethal injection, but killed the wrong doctor.

The problem of botched executions is well documented. In Florida, it took 34 minutes to kill Angel Diaz.⁹¹ Two doses of drugs were necessary to kill him.⁹² An autopsy showed that the needle went completely through his vein, and the drugs went into his soft tissue.⁹³ In Ohio, Joseph Clark exclaimed, "it don't work" as the execution team tried to find a suitable vein.⁹⁴ It took twenty-five minutes to find the first vein and

⁷⁸ Marra, *supra* note 67.

⁷⁹ Marra, *supra* note 68.

⁸⁰ Marra, *supra* note 67.

⁸¹ *Baze v. Rees*, 128 S.Ct. 1520 (2008).

⁸² Lethal Injection.org, <http://www.law.berkeley.edu/clinics/dpclinic/LethalInjection/LI/overview.html> (last visited Apr. 17, 2009).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Baze*, *supra* note 81.

⁸⁹ *Id.* at 1537.

⁹⁰ *Law & Order: Executioner* (NBC television broadcast Feb. 20, 2008).

⁹¹ Chris Tisch & Curtis Krueger, *Second dose needed to kill inmate*, St. Petersburg Times, Dec. 14, 2006, available at http://www.sptimes.com/2006/12/14/State/Second_dose_needed_to.shtml.

⁹² *Id.*

⁹³ Lethal Injection.org, <http://www.law.berkeley.edu/clinics/dpclinic/LethalInjection/LI/QA/16.html> (last visited Dec. 21, 2008).

⁹⁴ Erica Ryan, *Botched execution fires up opponents of death penalty*, Columbus Dispatch, May 4, 2006, available at <http://www.dispatch.com/live/contentbe/dispatch/2006/05/04/20060504-E9-00.html>.

an additional forty minutes to find another vein after Mr. Clark's cry.⁹⁵ The entire process took an hour and a half.⁹⁶ Christopher Newton, also in Ohio, had a similar experience.⁹⁷ The team could not find a suitable vein.⁹⁸ His execution took so long that he was given a bathroom break.⁹⁹

Many medical professionals refuse to participate in assisting the state in carrying out a death sentence because the American Medical Association has a policy against physician participation in executions.¹⁰⁰ North Carolina has a moratorium on executions because the North Carolina Medical Board created a policy so physicians will not be involved in the process.¹⁰¹ Since North Carolina requires physician participation in executions, the state Department of Corrections is suing the Medical Board.¹⁰²

Not all physicians follow the AMA's policy. Dr. Alan Doerhoff claims that, "no one will do as many [executions] as I have."¹⁰³ Doerhoff presided over the last three federal executions, including Timothy McVeigh's execution, as well as the last executions in Arizona and Connecticut.¹⁰⁴ The problem is that Doerhoff is not a very good doctor. He was sued for malpractice at least twenty times.¹⁰⁵ He lost his privileges in several hospitals in Missouri.¹⁰⁶ Doerhoff stated in a deposition that he was dyslexic and as a result transposes dosage numbers.¹⁰⁷ Doerhoff was banned by a federal judge from participating in executions in Missouri.¹⁰⁸ Dr. Jay Chapman, the man who developed the three-drug cocktail said, "it never occurred to me when we set this up that we'd have complete idiots administering the drugs."¹⁰⁹

Conclusion

The cruelty of capital punishment is often highlighted by abolitionists. Popular culture can provide useful stories to support the argument that capital punishment is wrong. Programs like *Law & Order* can and should be used to illustrate the problems with the death penalty. Abolitionists can use faulty Supreme Court cases to show why the death penalty is unconstitutional; however, the real life damage done by the death penalty is powerful. The more the stories are told, more people who are undecided or

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Longest delay ends; Man executed for cellmate murder*, Hamilton Journal News, May 24, 2007, available at <http://www.journal-news.com/hp/content/oh/story/news/state/2007/05/24/ddn052407ohdeathpenalty.html>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ American Medical Association, http://www.ama-assn.org/ama1/pub/upload/mm/Code_of_Med_Eth/opinion/opinion206.html (last visited Apr. 25, 2009).

¹⁰¹ Posting of Ryan Teague Beckwith to Under the Dome blog, *Supreme Court dives into execution case*, http://projects.newsobserver.com/under_the_dome/supreme_court_dives_into_execution_case (Nov. 18, 2008, 12:30 EST).

¹⁰² *Id.*

¹⁰³ Cheryl Wittenauer, *Execution doctor: 'Nothing will go wrong'*, Columbia Missourian, Aug. 15, 2008, available at <http://www.columbiamissourian.com/stories/2008/08/15/execution-doctor-nobody-will-ever-do-many-i-have/>

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Michael Kiefer, *Doctor banned from executions in Mo. now in Ariz.*, Arizona Republic, July 24, 2008, available at <http://www.azcentral.com/arizonarepublic/news/articles/2008/07/24/20080724deathpenaltydoc0724.html>

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Elizabeth Weil, *The Needle and the Damage Done*, N.Y. Times Magazine, Feb. 11, 2007, available at <http://www.nytimes.com/2007/02/11/magazine/11injection.t.html?pagewanted=3>

apathetic may be moved to action. The real life stories told through popular culture should be used to bolster the claims of the dangers of state-sponsored death.

Films, documentaries, and literature are good ways to tell the stories. Television dramas, however, have a power that may not be carried in other forms of popular culture. People need not leave their homes to have the images of capital punishment shown to them. *Law & Order* is shown in first run episodes and re-aired on NBC. It is also shown on TNT twice a day, every weekday. During some holidays, TNT runs *Law & Order* marathons. As these “ripped from the headlines” stories are told, people are confronted with issues that may make them uncomfortable, or they are confronted with issues they have not considered. Once people are told about the real life stories on which the episodes are based, they may be driven to at least contact an organization to fight capital punishment.

Popular culture is powerful. When abolitionists use images from fiction to connect to actual issues that are not often discussed, there is one more arrow in the quiver to make people understand the cruelty of capital punishment. People learn that opposition to capital punishment is not solely about innocent people, although the risk of executing an innocent person is a strong reason to oppose the death penalty. They learn that there are more complex stories in the capital punishment process. The complex stories need to be told.

Whether the writers and producers of *Law & Order* intended to show the problems with capital punishment, they have. The way prosecutors obtain confessions and convictions by threatening a person’s life is dangerous and cruel. The way people are executed is cruel. Executions are even cruel on the people who participate. Cruelty is the key word. When holding Nebraska’s electric chair unconstitutional, Judge William Connolly of the Nebraska Supreme Court said, “[w]e recognize the temptation to make the prisoner suffer, just as the prisoner made an innocent victim suffer. But it is the hallmark of a civilized society that we punish cruelty without practicing it.”¹¹⁰ The only way to ensure our society is civilized and that we no longer practice cruelty is to abolish capital punishment.

About the Author

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¹¹⁰ State v. Mata, 275 Neb. 1, 69 (2008).

THE (TRANS)FORMATION OF ABUSIVE RELATIONSHIPS:
REPRESENTATIONS OF DOMESTIC VIOLENCE IN JOYCE CAROL OATES'S
SOLSTICE AND *FREAKY GREEN EYES*

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Abstract

This essay illustrates how literary depictions of—and society's views about—abusive relationships have changed since the 1980's. This change becomes clear by, among other things, how Oates leaves the ending of Solstice ambiguous and, to some critics, frustratingly indeterminate, but concludes Freaky Green Eyes by resolving many of the book's dilemmas. Their dissimilar endings help to signal a paradigm shift in the way views about domestic violence have changed over the almost 20 years between their publication dates.

Henry Louis Gates, Jr. once said of Oates's fiction that "a future archeologist equipped only with her oeuvre could easily piece together the whole of postwar America" (Gates, 1990, p. 27). Indeed, the fact that much of Oates's fiction reflects many of the broader debates of contemporary America is a trait about which Oates herself seems keenly aware. As she told an interviewer, she is "more or less of the school of the writer as witness. Witness to history and society" (Germain, 1989, p. 177). It is in this role, as witness to history and society, that Oates addresses the complex and still prevalent problem of domestic abuse in two very different novels, *Solstice* (1985) and *Freaky Green Eyes* (2003). *Solstice* portrays the abusive relationship between Monica Jensen, a recent divorcée who was married to a physically and emotionally abusive husband, and Sheila Trask, an older widow. This novel tells the story of the obsessive, tense, and nearly fatal relationship between these close friends. In *Solstice*, Oates depicts female abusers alongside male abusers and thus departs from the strictly (and stereotypical) male-on-female pattern of abuse. *Freaky Green Eyes* centers on Franky Pierson, a teenager who witnesses her father's escalating abuse of her mother. In this novel, Oates shows the relationship between a mother and daughter who are both victims of domestic abuse. Looking at these two novels side by side illustrates how Oates's literary portrayals of intimate abuse reflect broader social perspectives about the myriad problems related to it as they have changed over the almost 20 years between these two novel's respective publication dates. *Solstice* and *Freaky Green Eyes* are interesting cases in point because their dissimilar endings help to signal a paradigm shift in the way society's views about domestic violence have changed over this time span.

If discussions about domestic abuse in the 1980s characterized it as a hidden problem, the debate in the 21st century is far more complex. On the one hand, public opinion has shifted to the point where most people recognize it as a serious issue; this can be seen by the media frenzy and public outcry surrounding high profile domestic violence cases,¹ the attention the legal and medical² communities have paid to the

¹ Just in the last five years, numerous high-profile domestic violence cases have captured the media and public's attention. Examples include the murder of Laci Peterson and her unborn son in December, 2002 and her husband Scott Peterson's trial and subsequent conviction on November 12, 2004. The news coverage of these crimes monopolized the airwaves as did the coverage of the murder of Lori Hacking, who was also pregnant at the time of her death on July 19, 2004 (her husband Mark Hacking did not receive the same attention that Peterson did during his trial, in part because he ended up pleading guilty

problem, the advent of a National Domestic Violence Hotline in the 1990s,³ and resources made available in communities nationwide to assist battered women and children.⁴ At the same time, even in the 21st century there remains considerable resistance by certain sectors of the population when it comes to recognizing and dealing with problems related to domestic abuse. Several recent legal cases⁵ point to this, including, for example, some cases that touch on the debate about how victims of domestic violence who defend themselves should be dealt with. These include a Missouri case, which Fox News reported about on May 1, 2007, where two women who had been imprisoned for their roles in killing their abusive husbands had their sentences commuted in 2004, yet were not officially paroled until 2007.⁶ This case suggests there is still a significant degree of ambivalence about domestic violence in the 21st century and specifically, that only so much has changed since the 1980s when there was so much disagreement over to what lengths abused women could go to defend themselves.

Solstice directly responds to issues associated with domestic violence as the problem manifested in the 1980s. This novel shows Oates challenging stereotypes about violence, including the notions that males are always the perpetrators and that domestic violence is something other people deal with—the mindset that it doesn't affect “people like us,” a sentiment that *Solstice*'s Monica, herself a victim of domestic abuse, echoes. In *Solstice*, Oates makes us reconsider, or at least recast, how we view the relationship(s) between gender, power, and domestic violence. Since some of the violence represented here is between two women and since the novel implicates both women in the suffering the other endures, *Solstice* departs, at least to a degree, from the male-on-female pattern of abuse that is both stereotypical of domestic violence and what we typically encounter in fiction. In the 1980s, domestic abuse was seen by many as a non-issue; that is, it was treated as a private matter and a family dispute, rather than as a criminal case, and thus remained a largely hidden problem. Law enforcement was often reluctant or slow to intervene. *Solstice* reflects these mindsets even as Oates seeks to challenge that position. *Solstice* also speaks to the broader debates about both gender and domestic violence that were taking place in the 1980s, including the tension about what constitutes domestic violence and who normally perpetrates it. Thus, Oates questions and complicates traditionally held assumptions about the gender/sex binary at the same time as she

as part of a plea bargain on April 15, 2005). More recent cases that have received an incredible amount of media attention include the case of Mary Winkler, the Tennessee preacher's wife, who fatally shot her abusive husband on March 22, 2006 (she ended up serving only a two-month sentence for this killing) and the (still ongoing) investigation into Drew Peterson, who is suspected of killing at least two of his wives (Kathleen Savio and Stacy Peterson).

² This includes the increasing trend of pathologizing women who are abused through such syndromes as Battered Women Syndrome.

³ In 1996, a National Domestic Violence Hotline was founded. Today, the hotline continues to serve victims of domestic violence.

⁴ For example, in Tuscaloosa, Alabama, there is a nonprofit outreach organization called Turning Point, which exists to assist women and children who are sexually and physically abused; this organization helps abused women and children with counseling services, housing, and clothing, among other things. Organizations of this sort can be found in communities nationwide.

⁵ In addition to the Tennessee case of Mary Winkler, examples from recent years include the appeal (and the range of public and legal sentiment about this appeal) made by April Rose Wilkens (which was presented in court in August, 2008) in reference to her 1998 killing of her abusive fiancé, Terry Carlton in Oklahoma and the California case (which made headlines in 2006) of Ny Nourn, who was accused of murdering her abusive boyfriend Ronald Barker.

⁶ Both men were killed in the 1980s. Former Missouri governor Bob Holden commuted the two women's sentences in 2004. Although Gov. Holden had commuted the women's sentences in 2004, the parole board refused to release the women for over two years because they feared that releasing them “would depreciate the seriousness of their crimes.” Consequently, they were not actually released from prison until 2007.

uses her novel as a literary lens in which she can address and critique the degree to which domestic abuse was still largely treated as both a private matter and socially acceptable practice during that decade.

Solstice begins with Monica Jensen taking a position as a teacher at an exclusive boys' school, Glenkill Academy. She is looking for a fresh start, but she carries with her the visible and symbolic reminder of what she has tried to leave behind in the form of a scar along her jaw-line that was left by her abusive ex-husband; it is described as a "barely visible three-inch wound, her prize" (Oates, 1985, p. 9). A contemporary reviewer suggested that the scar was "accidentally inflicted during an argument" (Lehmann-Haupt, 1985, C-35). I do not believe that her ex-husband "accidentally" split her jaw open, but his misreading of the text works to underscore both my broader concern about how American society circa 1985 dealt with domestic abuse and how Monica herself views the abuse she suffered.

Monica remains reluctant to characterize her marriage as abusive, despite the outward emblem of the violence her husband inflicted on her. When her new friend Sheila asks if Harold, Monica's ex-husband, is responsible for her scar, she at first says, "No, it had been an accident" (Oates, 1985, p. 59). Despite this claim, the version of events she gives moments later belies that characterization:

They were quarrelling and [...] he shoved her and she stumbled and fell and struck her jaw on the sharp edge of a counter—no it hadn't [...] entirely deliberate—the pain was remarkable—the pain was a stroke of lightning and he was as appalled as she: blood streaming down her throat and chest, soaking into her clothes. They weren't the sort of people who did such things. (Oates, 1985, p. 59)

As Monica reveals here, Harold forcefully shoving her is what led to her striking her jaw along the counter's edge. The force of the shove is made clear by the severity of the injury, Monica's intense pain, and the amount of blood lost. Monica's remarks also point to both her denial of the abuse she suffered and a broader tendency to conceal domestic abuse in the 1980s. Monica tries to minimize this encounter and is reluctant to describe her dysfunctional marriage as abusive, which highlights how bound up the issue was, and still is, with social class, race, and education.

Sheila enters Monica's life at a time when she is lonely, insecure, and vulnerable and Monica is therefore susceptible to Sheila's domineering nature. Monica notices "how bullying Sheila was" (Oates, 1985, p. 50). Though Sheila seems the dominant one at first, later "Monica [...] begins to exercise control over Sheila" (Dean, 1989, p. 54). She actually proves to be the aggressor when she discovers that Sheila hired a private investigator to look into her past. Monica confronts Sheila: "How dare you, how *dare* you [...] Monica slapped her, Monica even punched her on the shoulder" (Oates, 1985, p. 175). As this is happening, Sheila makes "no attempt to defend herself" (Oates, 1985, p. 175).

If the power Sheila once had over Monica was temporarily eclipsed by Monica asserting control over her in passages such as the one just described, Sheila begins to regain her power when she plans and hosts a large dinner party some months later. There, Monica finds herself very much in Sheila's sphere. It is at this party where she meets Jackson Winthrop ("Win"), a man who will prove to be quite violent. Nothing actually happens the night of the party, but there are nonetheless undertones of violence in their encounter; Monica considers: "most of their exchange would have struck Monica, by day, and in the impartial light of sobriety, as insincere, even dangerous" (Oates, 1985, p. 185). The potential danger in their interaction comes across as something Sheila, to a degree, encourages and, indeed, Win proves to be quite capable of violence.

We never learn how he lures Monica away, nor how their encounter turns violent so quickly and, even, Monica herself seems unsure about this. What happens is Win

suddenly grows angry and then demands she answer his questions. Oates does not show the entirety of what transpires, but what she reveals makes it clear that Monica is raped. The gaps in the narrative that conceal some possibly crucial details about the attack are consistent with literary representations of sexual trauma.⁷ Monica is clearly traumatized afterwards; she cries and stays “huddled in Sheila’s arms” (Oates, 1985, p. 203). Sheila offers to take her to the doctor and says that they should report him to the police since “technically and legally it was rape” (Oates, 1985, p. 203). Though Sheila says some of the right things—recommending they seek help from a doctor and law enforcement, for instance—other aspects of her behavior, including her characterization of what might have led to the attack, suggest her complicity and/or that she blames Monica to a degree:

Sheila held her; rocked her [...] stroking her hair, murmuring, telling her she should never have consented to see Jack Winthrop—she should have never introduced them—it had all been a bloody mistake. If Monica had only— (Oates, 1985, p. 203)

The callousness of these implications is not lost on Monica, who interrupts Sheila, pulls away from her, and tells her to go home. Sheila’s reaction, though disappointing, is in keeping with both what we have come to expect from her as a character and representative of a mindset that seeks to blame rape victims for their victimization.

Though sad, the downward spiral Monica experiences after Win rapes her is in keeping with how women confronted with extreme and/or repeated violence frequently react. MacKinnon (1989) explains that women who are assaulted often disassociate as a coping mechanism. She notes “women often begin alienating themselves from their” bodies (MacKinnon, 1989, p. 148). The end of the novel shows Sheila reappearing in Monica’s life by barging into her home, where she finds Monica sick, emaciated, and a total mess. Though she is clearly taken aback about her friend’s appearance and although she acts worried about Monica, her demeanor here, too, suggests the violent ties between them. Sheila yells and demands of Monica, “Why didn’t you answer your fucking telephone?” (Oates, 1985, p. 223). She admits the sight of Monica causes her to roughly grab her wrist and she confesses that she is overcome with a desire to “pummel Monica, how she burned to slap that burning face, hard—” (Oates, 1985, p. 223). The novel ends just a page later with Sheila riding along with Monica in the ambulance to the hospital, reassuring her that they will remain “friends for a long, long time,” thus closing *Solstice* on an ambivalent note (Oates, 1985, p. 224).

This indeterminate ending works in terms of this novel’s themes and broader societal anxieties about intimate abuse. A passage occurring roughly half-way into the novel speaks to these issues—and functions as a clue to the political message that Oates wants to convey through this novel. When Monica visits the Philadelphia Museum of Art, she sees what she interprets as a “totally perplexing work of art,” Marcel Duchamp’s painting on glass, *The Bride Stripped Bare by Her Bachelors, Even (Large Glass)*, 1915-1923. Monica also notices the “quotation affixed to the wall”—an inscription by Duchamp stating “There is no solution because there is no problem” (Oates, 1985, p. 131). The society depicted in *Solstice* does not have a solution to the problems depicted because they are not recognized as problems by society-at-large.

⁷ In her 1994 study, *Intimate Violence: Reading Rape and Torture in Twentieth-Century Fiction*, Laura E. Tanner examines how rape can function in a text as a narrative gap or blank. Tanner borrows the notion of “narrative blanks” from Wolfgang Iser, who elaborates on their function in his book *The Act of Reading: A Theory of Aesthetic Response*. As Tanner (1994) puts it, “rape becomes a gaping hole in the text that the reader must fill in” (p.18-19).

Oates tackles some of these same issues, but does so from a markedly different angle, in *Freaky Green Eyes* (2003), a novel that centers on the teenaged Franky, a girl who witnesses her father's escalating abuse of her mother. Though *Freaky Green Eyes*, like *Solstice*, is also a book about abusive relationships, its narrative tone, style, structure, characters, and ending are all quite different from those found in *Solstice*. For one thing, *Freaky Green Eyes* is a re-imagining of a real case—in fact, it is a re-envisioning of arguably the biggest domestic violence story in recent history: the O.J. Simpson case. Reviewers have picked up on the connection between the O.J. Simpson case and *Freaky Green Eyes* and Oates, herself, has admitted that it was indeed an inspiration for the novel. In a 2003 interview, Oates reveals “*Freaky Green Eyes* obviously turns upon something like the O.J. Simpson case without the whole racial angle” (Pavao, 2003, p. 65). Oates uses a real case as a starting point for this novel, but she changes many of the details to better adapt them to the story she wants to tell.

Freaky Green Eyes ends with the murder of Franky's mother, Krista Pierson, somewhat resolved. Reid Pierson, her husband and killer, is not only eventually convicted, but he is also implicated in the death of his first wife, Bonnie Lynn Byers⁸ (a woman the police previously thought had died accidentally). Unfortunately, the degree of closure attained by the survivors of this tragedy and what it takes to achieve any sort of resolution forestalls a truly happy ending to this story. Adding to this sense, it takes young Franky doing some serious detective work on her own, putting herself in harm's way, standing up to and going against her abusive father, a man she knows first-hand to be capable of extreme violence, cooperating with the police, and testifying in court before Oates allows Reid to be brought to any sort of justice for his crimes. Oates enables Franky to achieve some sort of resolution, but makes her work hard to get it. By hinging *Freaky Green Eyes*' resolution on these things, Oates makes an ambivalent statement about the roles law enforcement plays in criminal justice with respect to domestic violence cases in the 21st century. Finally, in regards to specific characters, and especially when considering characters' agency and complicity, Oates sends a mixed message.

If the way Oates represents violence in *Solstice* suggests that many people in American society circa 1985 were in denial about domestic abuse, *Freaky Green Eyes* portrays an America that has begun to recognize domestic abuse as a serious issue, but has nonetheless failed to fully come to terms with it. In addition to the O.J. Simpson case, *Freaky Green Eyes* also shares many similarities to other real life domestic abuse cases that have made the news. Something these all share (other than the domestic abuse angle) is that they are cases with shock value—they tend to involve either an especially gruesome murder,⁹ a suspect who is an alleged repeat offender, a celebrity, or some combination of these. In *Freaky Green Eyes*, Oates depicts murders that include all of these traits: the murders of Krista Pierson and her male friend, Mero Okawa, are quite gruesome; Reid Pierson, we discover, is almost certainly a repeat offender since we learn he quite likely killed his first wife, too; and, he is a celebrity,¹⁰ as well. Thus, Oates both reflects and critiques the fact that our

⁸ For many years the death of Bonnie Lynn Byers (Reid Pierson's first wife and the mother to his son, Todd) was thought to be “accidental.” Once Pierson is convicted of killing Krista Pierson (Franky's mother), the investigation into Bonnie's death is reopened: “the Seattle district attorney has reopened the investigation into the ‘accidental’ death of Bonnie Lynn Byers in 1985” (Oates, 2003, p. 338).

⁹ Two of the victims mentioned earlier, Laci Peterson and Lori Hacking, fit this description since they were pregnant at the time of their deaths. Nicole Brown Simpson and Ron Goldman fit the bill, as well, because of the especially brutal manner in which they were killed.

¹⁰ In the novel, Reid Pierson's status as a celebrity is depicted as almost iconographic. We learn that he first achieved fame as a professional athlete (an NFL player, who we know at one point played for the Seattle Seahawks) and currently works as a CBS sportscaster.

society's interest in domestic-violence-related crimes tends to increase in direct relation to the case's shock value.

The early 21st century marks a shift in our thinking—the public, instead of wanting to deny that domestic abuse occurs, recognizes it as a problem. Yet, how concerned the public truly is remains contingent on certain crucial elements: there must be a public interest angle to the story and the abuse must be severe enough or obvious enough to garner any real type of public outcry. The domestic violence represented in *Freaky Green Eyes* meets these conditions, so Oates allows a degree of resolution yet she doesn't allow it to come easily (thus, an important aspect of *Freaky Green Eyes*, and one that is largely missing from *Solstice*,¹¹ is the role played by law enforcement and the criminal justice system in cases of domestic abuse). That so much is required to bring about resolution underscores how domestic abuse is a problem we are reluctant to adequately address.

For much of the novel, these characters refuse to address the issue of domestic violence, even when they witness it. Franky herself is abused by her father and, when he assaults her in front of others, they are reluctant to intervene as the following passage, which shows a public confrontation between Franky and her dad, reveals: "Dad kept ... telling me to apologize, and I had to shake my head no ... and finally Dad lost control, ... and shook, shook, shook me so hard my teeth rattled in my head. 'Damn you. I'm telling you. Apologize to these people, Francesca, or I'll break every bone in your miserable body!'" (Oates, 2003, p. 124-125). Mr. Blount, a family friend, eventually steps in by tugging at her "father's fingers until he released" her, but that is the extent of his (or anyone's) involvement (Oates, 2003, p. 125).

As Horvitz (2000) emphasizes, remaining quiet about abuse helps to perpetuate the problem; she stresses, "silence is *not* a neutral act; rather, it is a politically regressive one that passively permits the continuation of violence against women and children" (Horvitz, 2000, p. 4). Franky herself keeps quiet for most of the novel about what she witnesses. When the police first question her about her mother, who is missing at this point, she lies about hearing her parents arguing. Only after a dream frightens her and jogs her memory about details she had suppressed, does she have a change of heart. At this point, Franky takes extreme measures to unearth the grisly truth about her mother. Skipping school, she takes a Greyhound bus to Skagit Harbor where her mother had a cottage retreat and quite literally starts digging around her mother's yard for clues, which she finds in the form of her mother's hidden diary.

The diary allows us to, for the first time, hear Krista's uncensored story of the abuse she had suffered. Confronted with this terrifying story of abuse and with the knowledge that her father had gone as far as threatening that he would kill Franky, Samantha (Franky's younger sister and Reid's other daughter), and himself as well, Franky decides to stand up for her mother by speaking out against her father. She quickly contacts her aunt Vicky, her mother's older sister, and the two of them immediately meet with law enforcement. Franky revises her testimony and with it, along with the bodies which the police were able to recover thanks also to Krista's diary,¹² they are able to charge Reid Pierson with the murders of Krista and her friend, Mero Okawa.

Thus, unlike in *Solstice*, the person responsible for horrendous violence is brought to some sort of justice. *Freaky Green Eyes* presents, nonetheless, a disheartening

¹¹ Law enforcement does not get involved when Harold assaults Monica by shoving her, nor in any other of the violence depicted within *Solstice*. The only time law enforcement is mentioned at all is when Sheila suggests calling the police to report that Win raped Monica. Though Sheila makes this suggestion, the police are never called, nor is Win ever held legally accountable for raping Monica.

¹² Krista's diary also recorded a threat by Reid in which he specifically states where he would dump her body if he ever followed through on his threat to kill her: "DUMP YOUR BODYFROM DECEPTION PASS. IT'S A LONG WAY DOWN—NOBODY WOULD EVER FIND YOU" (Oates, 2003, p. 293). This location is, indeed, where her body is recovered.

view about how domestic violence is dealt with. That so many in the novel are willing to turn a blind eye to the misdeeds of Reid Pierson suggests that public denial of the problem and concern about privacy still work to excuse and allow the problem. Though *Freaky Green Eyes* shows those in law enforcement as publicly going on record to speak up for victims of domestic abuse, their role only seems to begin once the murders happen, and thus they enter the scene too late to help Krista Pierson. Even then, their ability to bring Reid to justice rests on Franky doing much of the investigative legwork.

On some levels, *Freaky Green Eyes* depicts a society that has moved beyond the one depicted in *Solstice* in terms of how the perpetrator of domestic abuse is brought to justice. On the other hand, that only a degree of justice is achieved and that Oates makes her characters endure so much and work so diligently to get any kind of resolution, suggests problems in how American society circa 2003 sees the issue. The roughly 20 years between the publication of *Solstice* and *Freaky Green Eyes* do represent a paradigm shift in our thinking, but the ultimate message of *Freaky Green Eyes* is that American society still has a long way to go in terms of how we deal with the problem.

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DEVELOPING CRITICAL AWARENESS OF MEDIA, VIOLENCE, AND MASCULINITY FOR CRIMINAL JUSTICE EDUCATORS

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Abstract

*Media critics have argued for years regarding the power of certain media in shaping images of youthful masculinity in a fashion that is harmful to boys. Through textual analysis this article examines how forms of popular media shape the deep-seated norms, values, and moral codes of destructive patterns of mediated boyhood and manhood. World Wrestling Entertainment (WWE), MTV, and the films *The River's Edge* (1986), *Kids* (1995), and *Bully* (2001) are explored concerning destructive images that are portrayed. Findings reveal that violence lies at the center of many films and television programs, is portrayed as a demographic issue, particularly a male gender issue, and is an issue of power. In addition, findings reveal that destructive behaviors are often directed against women and little if any meaningful consequences to the violence are depicted which normalizes the violence. An important outcome of the study involves insight for those in criminal justice as they address issues of the social construction of a violent youthful masculinity. As a result, this article may enable criminal justice educators to become aware of the impact of the increasingly violence-saturated media culture on young males. It may also encourage criminal justice educators to develop media literacy among their students so that they learn to critically evaluate various forms of media. This understanding may facilitate criminal justice professionals to understand the messages embedded in various types of media providing them with tools for helping future criminal justice professionals relate to boys in our culture they may encounter through their criminal justice careers.*

Media critics have argued for a number of years concerning the power of a media culture in shaping images of youthful and adult masculinity and femininity in a fashion that is harmful to young people in our culture. We acknowledge that the use of media, specifically film, is a viable medium that not only entertains and informs, but also educates (Roden, 2007). Yet, we concur with other media theorists and critics that mainstream television and film not only function as the dominant cultural storyteller (Gerbner, 2003; Roden, 2007) but also create powerful negative and degrading images of masculinity and femininity within the cultural environment of the mass media (Giroux, 1996, 1997; Benshoff, 2004; Katz, 2004). Cultural critic Henry A. Giroux (1996, 1997) argues that the electronic media in the forms of television, movies, and music are powerful because they shape the social imagery of youth regarding how they view themselves and how the larger society often views, demonizes, or minimizes them. The purpose of this article is to explore how certain popular mass media artifacts construct stories of a "glamorized dangerous masculinity" and conversely show regressive images of femininity that teach boys and young men destructive and violent ways of treating themselves, other men, and women in our society. As a result, our research question examines: How do certain forms of select pop media culture shape the norms, values, and moral codes of destructive patterns of masculinity?

Focus of Study

Our research focuses specifically on the literature concerning gender and the media that may prove useful to criminal justice educators as it focuses on: (1) the social construction of masculinity in film, (2) an analysis of masculinity and violence in the popular programming of World Wrestling Entertainment (WWE), and (3) an analysis of gendered images on the popular televisual music media of MTV. We analyze the stories revealed in a variety of media formats that seem to shape the deep-seated norms, values, and moral codes in the destructive embodiments of masculinity that are often learned from these popular cultural forms. It should be noted that it is impossible to talk about media representations of gender without discussing both the representations of women and men in the cultural environment. While the social construction of femininity in advertising (Goffman, 1979; Steinem, 1990; Faludi, 1991; Kilbourne, 1999; Bordo, 1997) and film (Byars, 1991; Clover 1992; Cavell, 1996; Butler 2002) have been given a great deal of attention, the dominant role of masculinity in the media has until recently remained largely invisible. Instead, masculinity in the media is simply seen as a form of entertainment. In addition, masculine-identified violence in the media often codes Black and White lower class youth as criminals, sexually predatory in their behavior, and the city or urban environment as a site of degeneracy and decay (Kleeman, 2008). As Giroux (1996) points out, this form of violence passes itself off as entertainment and thus need not be judged for what it is teaching younger people about themselves and others.

Mode of Inquiry

This qualitative study explores how destructive patterns of masculinity are portrayed in specific forms of popular media artifacts. In qualitative research there are different forms of empirical materials. Empirical materials include "interviews and naturally occurring materials" where naturally occurring materials "constitute specimens of the topic of the research" (Perakyla, as cited in Denzin & Lincoln, 2005, p. 869). Naturally occurring empirical material provide an avenue to directly explore research questions (Silverman, 1991). Naturally occurring material are found in recorded interviews and texts of various kinds, including texts and images found in films, documentaries, and videos. Many indicators of social and cultural realities are reflected in different forms of texts, particularly written texts and more recently in texts from films and television programs (Denzin, 2009).

This study involves the exploration of empirical material involving the visual scenes and texts of specific films and television programs. The scope of findings and analysis of this paper consists of a textual approach as supported by Seale (1998). In this inquiry, textual analysis of selected films, videos, and television programs is an appropriate approach to explore how masculinity is depicted in certain forms of media. More specifically, this study involves discourse analysis of the spoken texts of selected films, videos, and television programming. Discourse analysis "refers to the research that aims at uncovering the features of the text" that relate to the purpose of the study and research questions under investigation (Perakyla, as cited in Denzin & Lincoln, 2005, p. 874). Since this study includes discourse analysis within a qualitative study framework, it does not involve variables or quantitative data, but rather examines the language as text to provide support for mental, social, and cultural realities being revealed. A particular form of discourse analysis involves critical discourse analyses in which key concerns come forward from the text (Fairclough, 1995). With critical discourse analysis inequalities and power issues within the discourse are revealed.

Through critical discourse analysis this article examines how the current popular cultural terrain of certain media shapes the deep-seated norms, values, and moral

codes of destructive patterns of mediated boyhood and manhood. Specific texts and the related visual images of sex and violence of boyhood and manhood are analyzed through televisual media and films. Specifically, this study examines empirical material drawn from television programming in the World Wrestling Entertainment Network (WWE) and MTV. In addition, this inquiry explores the empirical material from the films *The River's Edge* (1986) and two of Larry Clark's juvenile delinquent films: *Kids* (1995) and *Bully* (2001). Within these television programs and films, this investigation explores texts that depict sex, violence, and crime especially involving young boys and young men. Using discourse analysis themes, in the form of issues, emerged concerning how young males are depicted. Deconstructed through the lens of Sut Jhally (1999, 2002, 2007) and Jackson Katz (1999, 2007) and the videos produced by their Media Education Foundation (MEF) the findings are analyzed. The MEF videos utilized for this study consist of:

- 1) *Tough Guise: Violence, Media, and the Crisis in Masculinity* (1999)
- 2) *Wrestling with Manhood: Boys, Bullying and Battering* (2002)
- 3) *Dreamworlds 3: Desire, Sex, and Power in Music Video* (2007).

Jhally (2009), a professor of Communication at the University of Massachusetts, is founder and executive director of Media Education Foundation. Katz (2009), an educator, author, and filmmaker, lectures nationwide as a social critic and leading activist in gender violence, prevention, and education where he considers violence and sex in relation to boyhood and manhood.

Through the lens of Katz and Jhally and the MEF we encourage educators of students as well as professionals in criminal justice to analyze forms of popular culture such as films, television, and music videos about the construction of violent masculinity.

For the purpose of this paper, the videos will be referred to as *Tough Guise*, *Wrestling with Manhood*, and *Dreamworlds 3*. Each of these MEF-produced videos reflects the research and theories, including media criticism, of Jhally and Katz.

Findings from Empirical Materials of Films, Videos, and Television

Findings from the empirical material utilized for this study reveal violence at the center of the film and television genres examined for the purpose of this study. Findings also reveal four primary issues concerning aggressive and destructive actions and behaviors of males in the media: 1) issues of demographics, particularly gender, 2) issues related to power, 3) issues concerning consequences of behavior, and 4) issues involving women.

Issues of Demographics

The empirical material selected for this study reveal certain demographics concerning aggressive and violent behaviors. The primary demographic issue concerns the issue of gender. Boys and young men were involved in the incidences of violence, particularly involving aggression and sexual dominance. In addition to the issue of gender, the males depicted were young and poor, without socio-economic advantages. Further, our findings indicate a portrayed perception of lower class young males as sexually out of control, rampant drug users, and nihilistic in the content of their social behaviors especially in films such as *River's Edge* (1987), *Kids* (1995), and *Bully* (2001). In media selected from the WWE and MTV, aggression and degrading behaviors were observed among young males. Findings revealed that some MTV videos depicted young inner city minorities as "thugs" in rap and hip hop

music reinforcing the stereotypes that young, Black males and other minority men are deviant. In the WWE, young males were depicted as tough, brutal, and dominant.

Issues Related to Power

Within the empirical material of the films and television programs, the issue of power emerged in relation to young boys and men. The issues concerned use of: 1) physical strength, 2) intimidation, and 3) control of others. Physical strength was equated with power and was used to both intimidate and control others. Using physical strength in a violent manner was depicted as either the next step or the natural response. The issue of power was revealed when boys or young men attempted to control or intimidate others, particularly girls and young women, through their behaviors. Controlling others was glamorized in the films, and it was used to minimize others. Controlling others was also depicted as normal, anticipated, and acceptable. Gaining access, privilege, and recognition appeared to be among the reasons power was exerted. The texts also revealed violence as a way to avoid or resolve conflict.

Issues Concerning Meaningful Consequences

Findings revealed that in both film and television programming there were few, if any, direct, meaningful consequences to the violent act. Instead, in films consequences were minimized and glamorized as brave, strong, humorous, and/or powerful. Furthermore, masculine violence was depicted as normal and expected. In the MTV and the WWE episodes instead of revealing the criminal consequences of violence, violence was depicted as simply entertainment or as a way to solve conflict. The issue of meaningful consequences of violence actually involved the *absence* of meaningful consequences to violent acts of behavior. In fact, the lack of natural consequences for clearly inhumane behavior was not reflected in the media examined for this study. Rather than portraying consequences for violent acts, the films and television programs focus on the sensationalism of the acts themselves and the power and control experienced with violent acts.

Issues Involving Women

Finally, the findings reveal specific issues concerning violent treatment of women. Women depicted in the media examined were viciously confronted as well as physically, emotionally, and intellectually minimized. In addition, women were degraded, humiliated, and harassed in various films and television programs. The programming depicted men securing their dominance by exerting power, often acting in a violent manner, and asserting physical and emotional control over women. Rather than reflecting meaningful relationships, females often were violently denied access, respect, voice, and safety. As revealed in the empirical material for this study, violent interactions and relationships are portrayed as normal.

Critical Discourse Analysis of the Findings

Analysis of the findings revealed that images from certain media portray males in destructive, harmful ways, and in turn depict potentially harmful images for boys and young men to model. While the issues that emerged did not always reflect reality concerning those who are involved in crimes, it did provide negative visual images of young boys and men in our society. This provides an unfortunate model for these young males. It also marginalizes both young men and women negatively in these mediated representations to society. In fact, these stories of masculinity portray what

Bell Hooks (1990) calls a “brutish masculinity” that is harmful to both women and men as the stories serve to reinforce what is called in our culture the “tough guise” (Jhally & Katz, 1999). Albert Bandura (1973), a leading proponent of social learning theory, supports this notion that aggressions are learned primarily through modeling and sustained through reinforcement. Bandura (1986) asserts that visual media provide a strong influence on modeling and reinforcing aggressive behavior that leads to delinquency because 1) the media have an effect on attention and memory because of the sensory components, 2) the media shows few normal social restraints regarding aggressive behavior, 3) the media desensitizes youth to violent behavior, and 4) the media rationalizes and excuses responsibility for aggressive behavior.

Interpretive Lens for Critical Discourse Analysis

To examine how pop media culture models and reinforces destructive patterns of masculinity the findings are first considered by way of critical discourse analysis through the lens of the *Tough Guise* (1999). The tough guise image is analyzed in relation to the violence and masculinity observed in the films: *River's Edge* (1987), *Kids* (1995), and *Bully* (2001). Next through the lens of Jhally (2007) and Katz (2007) as discussed in *Wrestling with Manhood* (2007) the findings concerning violence and masculinity in the WWE are explored. Finally, through the lens of Jhally's (2007) production of *Dreamworlds 3* (2007) the empirical material as viewed on MTV is analyzed. With these we provide outside research reports to support the concerns that emerge. We also provide implications for those in criminal justice, especially educators and those involved in training young professionals in criminal justice. Through the lens of Katz (1999, 2009) and Jhally (1999, 2002, 2007, 2009) as part of this critical discourse we encourage educators of students or young professionals in criminal justice to analyze forms of popular culture such as films, television, and music videos about the construction of violent masculinity.

Critical Discourse Analysis of Violence & Masculinity in the Media through *Tough Guise*

Stereotypical perceptions of masculinity retains its dominance in media culture by remaining unexamined and unquestioned. In the video *Tough Guise*, Jhally (1999, 2009) and Katz (1999, 2009) maintain that many forms of media have constructed a version of masculinity that emphasizes strength and the ability to dominate others through hyper-masculine aggression. Boys learn that if they do not achieve the “tough guise” image, they are not masculine and will be labeled a “wimp” or worse (Katz, 1999, 2009). Dyer (1997) maintains that the stereotypical view of masculinity retains its dominance in our culture because it is allowed to be considered the norm since it remains unexamined. In the United States masculinity retains its dominance since people are generally influenced, even educated, through forms of media from perspectives of the dominant culture. Our findings reveal that primarily White directors construct media from their perspectives of lower class White youth and minority males as sexually out of control, rampant drug users, and nihilistic. These perceived images are then portrayed on screen allowing the dominant group to remain invisible while minority groups remain marginalized by associating gender, class, and race with power, violence, and aggression. By focusing on marginalized groups the stereotypical image of masculinity retains its dominance in media culture.

Because the video *Tough Guise* (1999) vividly examines specific scenes depicted in the media of young males engaged in violence and aggression, it has transformative potential in the classroom. Katz (1999) maintains that the tough guise image must be examined. With the video *Tough Guise* (1999) students have opportunity to critically examine what they view in the media. As a result, students

become aware of how masculinity is portrayed in much of media culture as they learn to question and examine what they view.

The findings in this inquiry concur with Jhally (1999) and Katz (1999, 2007, 2009) who contend that violence should be regarded as a gender issue. According to Jhally (1999) and Katz (1999, 2009) men commit over 90% of violence in the United States. This is illustrated by the pervasiveness of rape, child molestation, and assault by men in our society (Katz, 2009; Tajden & Thoennes, 2000). According to The Juvenile Offenders and Victims: 2006 National Report the number of juvenile males identified in a murder investigation increased more than 200% while the number of females increased less than 40% (Snyder & Sickmund, 2006).

However, the national conversation about violence is rarely referred to as a gender issue. According to Jhally (1999) and Katz (1999, 2009), violence is de-gendered in our society when newspaper headlines speak about the problem of "youth violence," rather than directly revealing the reality of the preponderance of male violence. Instead of engaging in serious discussion about male violence, discussions in the media, often with politicians, law enforcement, and educators focus on issues that may be less frightening to society (Katz, 2009).

Critical Discourse Analysis of Violence & Masculinity in the Media through Selected Films

The media glamorizes violent images by sensationalizing the power of the perpetrators and minimizing the consequences of delinquent behavior including violence, most of which are against girls and women. This problem is evident in the glorification of sex and violence as depicted among young juvenile delinquents in films from the 1980s and 1990s. Juvenile delinquent (JD) films have a long history going back to the film noir movement during the 1940s and the 1950s. JD films portray boys as careless, reckless, and destructive with cavalier attitudes toward sex, violence, and crime (Shary, 2005). In *River's Edge* (1987) a group of boys hide the fact that their friend, Samson, known as John, (Daniel Roebuck), killed his girlfriend. For some time the friends kept the murder a secret. The film opens with John who is shown leaving his dead girlfriend's naked and strangled body by the river. The film then turns to depict the lives of John's friends who minimize the violent act, undisturbed by the girls' death. As Shary (2005) suggests, the dead girl by the river's edge "is the victim of ultimate teen anomie without an identity; and she is the spectacle of a sadistic male fantasy in which boys truly fail to comprehend the significance of their actions" (p. 32). While *River's Edge* is a film of fiction it is based on the actual 1981 murder of Marcy Conrad, 14 years old, who was murdered by Anthony Broussard of Milpitas, California; he showed his girlfriend's body to at least 13 other peers who did not report the crime (Klinger, 1982). The boys portrayed in the film are dour and hopeless youth who lack parental supervision, are misguided, and display delinquent ways of living. This is illustrated in scenes portraying Matt (Keanu Reeves), John's friend, and Matt's 12 year old brother who is seen stealing beer for John. Matt's mother not only makes light of her sons' delinquent behaviors, but provides inadequate supervision, paying no attention to behaviors that are destructive. Instead, the mother supports delinquency as revealed in a scene where the mother shares pot with her son.

Other films revealing the juvenile delinquent plight are Larry Clark's *Kids* (1995) and *Bully* (2001). Larry Clark's films of juvenile delinquent boys are examples of films portraying lower-class White kids. These films represent the destructive nature of these boys as violent, nihilistic, and delinquent. Each of these films glamorizes juvenile behavior by seemingly portraying few consequences, especially in the minds of the boys, for the violence against others (particularly against females). Sudhir Mahadevan (2005) contends in his essay, "*Perfect Childhoods*": *Larry Clark Puts Boys Onscreen*, that these films, "mark a recurrent grim investment in the male teenaged

body, whether it is threatened by AIDS in *Kids* . . . actually knifed to death by its own peers in *Bully*, or finally annihilated by suicide in *Ken Park* (p. 98).

In *Kids*, Clark portrays the life of two, White, lower class juvenile delinquents in New York City. The film depicts reckless, uninhibited sexual and drug activity of teenagers, particularly that of Telly (Leo Fitzpatrick) and Casper (Justin Pierce). Furthermore, it depicts violence, recklessness, and aberrant behaviors as a way to minimize, control, and intimidate others. A voyeuristic quality to the film is depicted in the very first scene where Telly, the self-proclaimed "virgin surgeon," seduces the 12 year old virgin Jennie (Chloe Sevigny). Even though Jennie discovers that Telly has infected her with the AIDS virus, he remains unconcerned and unaffected by his reckless behavior which is reflected by Telly having sex with another girl and claiming that sex is one of his few worldly pleasures. Giroux's (1996) critique contends that in *Kids* (1995) Clark provides a 1) glamorization of predatory adolescent male sexuality and 2) construction of adolescent female sexuality as sexual objects to be taken up or put down at will or they are sex-crazed and on the make, 3) demonization of inner city African Americans in the film as the kids talk in stereotypical African American slang calling themselves "niggers" and appropriating "blackness" as a signifier of dangerous youth. Giroux (1996) maintains that the youth are "stripped of any critical capacities, youth are defined primarily by a sexuality that is viewed as unmanageable and in need of control, surveillance, legal constraint, and other forms of disciplinary power" (p. 13).

In Clark's film, *Bully* (2001), he juxtaposes class dynamics such as the typifications of lower class youth in *Kids* (1995) with "wealthy brats turning to delinquency out of boredom and in retaliation for their privilege" (Shary, 2005, p. 33). This film is based on the Jim Schultze novel depicting a real-life 1993 Florida murder. Much like *River's Edge*, this film depicts aggressive, depraved, reckless, and caustic behaviors of teenagers that lead to violent crimes including murder. These films portray the destructive nature of juvenile delinquency. Clark (1995) depicts this through the minds of young males portraying their lack of morality, their use of control and intimidation over others, their violence against females, and their lack of regard for their destructive actions, as well as the consequences for such behaviors.

Glamorizing the destructive nature of juvenile delinquency is a concern as we consider it in relation to its prevalence in society. According to The Juvenile Offenders and Victims National Report, 1 in 12 murders involved a juvenile offender. Moreover, 48% of juvenile offenses involved multiple offenders (Snider & Sickmund, 2006).

Critical Discourse Analysis of Violence & Masculinity In the Media through the WWE

Stories told in the WWE are about the aggression and violent behavior which we believe contributes to the glorification of violence in the lives of young males. Episodes of the WWE include a series of wrestling matches interspersed with out-of-the-ring confrontations, interviews, and the exhibition of women. The sporting aspects of wrestling are exaggerated and include violent acts. Losers on WWE are humiliated and appear injured by actions that would be considered assault and battery in the real world. Jhally (2002) maintains that children and teenagers emulate violent behaviors and acts they view on the WWE. In *Wrestling with Manhood* (2002) we see incidences of young boys who re-enact carefully choreographed stunts that were seen on the WWE which have resulted in injuries or death of boys who were simply modeling what they saw on the show. This has become relevant recently in light of a number of incidences where children and teenagers were killed or seriously injured allegedly imitating wrestling moves. While some cultural analysts compare the WWE to "happy violence" as seen in cartoons, others recognize the risks (Gerbner 2003). Jhally

(2002) highlights the risks to young WWE fans through the dialogue in the video, which is interspersed with interviews from fans going to the shows. The comments are revealing and do not leave the impression of happy violence.

Fan: (A parent says) They wrestle and they wrestle hard. They come up crying, so what are they gaining out of it. And these are actors, they act for this. These are kids that sometimes get hurt out of it.

Fan: Well, being that my little brother clothes-lined a kid the other day ... yeah. And said, "Hey I'm the Rock," so. My friend DDT'd another one of my friends in the hall the other day, so...Yeah, there is a big connection.

Fan: They put don't do this, don't try this at home on their shows

Fan: They say don't try this at home but they do it anyways.

Fan: That doesn't work at all. It doesn't. No, because I still have fun fighting and playing on the concrete.

Fan: I got up in the tree, right, shit, jumped right down, nearly broke the kids' back, it was all worth it though. Got it on film and everything (Jhally, 2002).

These comments seem to suggest the media industry has little idea about the real and tragic consequences of actual violence that shows such as this have on society, especially the youth that view their programming. The stories told in the WWE are about the glorification of violence which contributes to the glorification of violence in the lives of our youth. Young people who watch this do not identify with the victims, but they identify with the biggest and strongest wrestlers or those who "trash talk" and physically assault others. This was illustrated in the aforesaid dialogue of the young fan that mentioned his little brother who self-identified as "The Rock" as he was hurting another kid in a stunt he learned off the WWE. These comments also suggest that youth do model what they view. This causes us to consider the consequences of the violence that shows such as this have on society, especially the youth that view this type of programming. If young fans model the choreographed stunts, what else are they modeling?

Amidst the scripted, choreographed production women are degraded as wrestlers use derogatory and demeaning phrases toward and about them. For example, in the episode, *Raw is War*, (aired May 29, 2000) a wrestler yells, "Stephanie, you slut." On *Monday Night Raw* (January 31, 2001) a wrestler refers to "Stephanie" as a: "two dollar walking slut" and later called her a "filthy, dirty, disgusting, brutal, skanky, bottomfeeding, trashbag ho." Furthermore, Jhally (2002, 2009) contends that the women are "hyper-sexualized" as they accompany the wrestlers as part of the storyline in the WWE episodes. Sut Jhally (1997) contends that images such as these portrayed by the WWE evoke the "pornographic imagination" when women are reduced to sexual objects (Jhally, 2002; 2009).

In addition, Jhally (2002) and Katz (2002) assert a number of ideas concerning the WWE relative to this study. First, wrestling in the WWE is a staged production for the purpose of entertainment, yet it is portrayed as reality. Second, the popularity of the WWE reveals values and morals that shape society's attitudes and behaviors. Third, the WWE reveals regressive images of a masculinity that links intimidation, degradation, control of others, and violence with manhood (Jhally, 2002; 2009).

This normalization, not to mention glamorization, of masculine aggression and violence toward women is especially troubling given that men's violence against women in the real world remains at elevated levels. The National Violence Against Women Survey revealed that 1.9 million women are "annually assaulted in the United States" (Tjaden & Thoennes, 2000, p. iii). In addition, of the 1.9 million women, 1.3 million females are assaulted each year by an intimate partner (Tjaden & Thoennes, 2000).

Critical Discourse Analysis of Violence & Masculinity In the Media through MTV

MTV involves a form of entertainment media that glamorizes seductive behaviors to represent today's youth. Music videos function as advertising for the music industry and entertainment for viewers; however, in the process, MTV relies on provocative images of female sexuality, and as a result, teaches young boys about dominance, power, and control while providing images of seductive submission of girls and women. Because of this and in light of the findings, we are concerned with the perceptions young men develop from MTV. Deconstructing MTV, we turned once again to a video produced by MEF, *Dreamworlds 3* (2007), writer and editor, Sut Jhally (2007; 2009).

Episodes of MTV reveal that much can be learned from behaviors and activities of how women are shot by camera angle, the roles they play, and how they are defined, in what Jhally (2007) calls the "male dreamworld." As our analysis of the WWE reveals, the stories being told about women on MTV glamorize seductive aggression and power through demoralizing images. More problematic are the behaviors and activities of the dreamworld that are taught to boys and young men about relating to the opposite sex. Camera angles of women on MTV often reveal seductive poses without any other meaningful purpose. Panoramic shots of female bodies are "gazed" at by the camera constructing females in a dreamworld through camera angles. To illustrate, women surround men in the band but serve no other function than to be an object of desire for the male gaze. Jean Kilbourne (2007) discusses these types of portrayals of women as "dehumanizing images."

In essence, the stereotypical roles the women played on MTV are often dehumanizing images as they depict distorted or idealized images of women fulfilling male fantasies. A specific example comes from the music video *Superman* (2003), where the rap star, Eminem, displays sexual dominance with women in sexually explicit poses. These roles deprive women of any perceivable critical agency providing the plot for male pornography. Often, as with the WWE, the "pornographic imagination" goes even further, defining women as sexual objects or sexually obsessed (Jhally, 2002). Women are defined as both sexually aggressive and sexually submissive with their primary role aimed at serving the desires of men. Men are defined as sexually aggressive and dominant with the expectation of sexual submission on the part of the women or with the ability to conquer what he does not have.

In one music video on MTV, *Cry Me a River*, (2002) a young man invades the home of his ex-girlfriend and watches her shower and strip. This video glamorizes real-life stalking and depicts stalking as a "normalized" form of entertainment. Yet, statistics reveal the seriousness of the problem. Data from the National Institute of Justice and Centers for Disease Control and Prevention (2000) reveal that over 1.4 million women are stalked annually. While stalking does occur for both men and women, the incidence for stalking is greater for women than men. Approximately 1 in 12 women in the U. S. are stalked some time in their life as compared to 1 in 45 men. Accordingly, 81% of women stalked by a current or former partner are also assaulted by that partner. In addition, 76% of women killed by their intimate partners were stalked by the same partner before they were killed (Tajden & Thoennes, 2000). Thus, the concern is that images in videos such as *Cry me a River* (Timberlake & Storch, 2002) are problematic, since these images communicate to young men and boys that stalking behavior is normal and acceptable.

MTV has very similar representations of Black men being surrounded by women with piles of money being thrown at them. Racist imagery abounds with the glorification of the stereotypical "gangsta" figure of African American males that

perpetuates the cycle of classism and racism in society (Watkins, 1998). In one music video on MTV, *Candy Shop* (2005), 50 Cent poises as a pimp type figure, singing a song that refers to females using degrading language to depict images of sex (Storch, 2005). Music videos such as these shape boys' ideas about sexuality contributing to violent treatment against women. It also normalizes other provocative imagery seen in films and other forms of media. As a result we ask: What are the consequences of these images when we begin to observe the way men relate to women in real-life?

As a result, we turn to statistics as we consider the consequences of these images on the way men relate to women in society. The National College Women Victimization Study (2000) reveals that sexual assault occurs every 2.5 minutes in America (Fisher, Cullen, & Turner, 2000). Accordingly, approximately 1 in 5 college women experience rape or attempted rape during their college years. Of these incidences on college campuses, 90% of rape victims report knowing their attacker (Fisher, Cullen, & Turner, 2000).

Implications for Criminal Justice Educators

These issues of masculinity and violence, that are depicted in mainstream popular films as well as other forms of media entertainment such as the WWE and MTV, cause us to consider the need for educators to think about how students learn about gender roles and violence as a solution to solve relationship problems, as a way to express themselves, and as a way to treat women. One way to understand the meaning and value of something in American society is to look at how it is represented in the media and to understand that the media both reflect and reproduce these meanings and values. Educators have the opportunity to teach their students to analyze forms of popular culture such as films, television, and music videos regarding the construction of a violent masculinity.

The value of teaching students to critically analyze popular culture artifacts of film, television, and music create awareness and understanding about how issues of masculinity are depicted in these forms of media and the resulting social construction of masculinity. For example, after students analyze the popular film *Addicted to Love* (1997), students may realize that masked behind the dark comedy are behaviors that trivialize stalking women and as a result glamorize and normalize women being marginalized through the degrading and humiliating acts of stalking. In *A History of Violence* (2005) with Viggo Mortensen and Maria Bello, as Tom and Edie Stall, violence against women was romanticized as Edie struggles when her husband begins to rape her. Later in the scene Edie yields and appears to enjoy the sexual encounter. When discussed with students, the real-life effects of rape versus rape fantasy may become more concrete and less glamorized.

Many films such as these are simply interpreted as having a comedic effect and enjoyed for their humor, and other films are viewed for their dramatic action sequences and are revered for their spectacular effects. However, the glamorized effect of these films, while not always immediate, are far reaching, and have profound influence on what is justified as appropriate or funny in the minds of boys and young men. We propose that when students have the opportunity to discuss these films and television programs ideas with others, insight and awareness may occur.

In addition, if much of the music industry is critically explored in a classroom setting, students may gain insight into the influence of the messages that are communicated. For instance, hip hop and rap music may be examined in relation to sexist and racist imagery involving women who are seen as nothing but objects. Films may be explored in terms of who is portrayed as inner city criminals. Through discussion students may come to realize that the "tough guise" or "dreamworld" mentality is not natural; it is a pose or an act. It is important for students to realize that

these images are not natural, but social constructions of a glamorized and dangerous masculinity that should not be taken as normal.

A Call for Media Literacy

We suggest that the nature of the findings and the analysis of popular television and films concerning violence in the media may help criminal justice educators understand the issues at stake in the social construction of a violent masculinity in our media culture. It is our belief that the more criminal justice educators are aware of these issues the more they can enable students to become media literate in an increasingly violence-saturated media culture. According to the Alliance for a Media Literate America, media literacy requires critically thinking about information in a variety of formats such as film, television, print, radio, and computer, including the production of those messages (Center for Media Literacy, 2009). It involves not only viewing but analyzing messages conveyed in the film or program. We suggest that criminal justice educators have the opportunity to develop media literacy among their students in which students are encouraged to “watch carefully, think critically” (Center for Media Literacy, 2009).

Research reveals that the use of media in the classroom is a viable teaching tool that captures students’ attention, creating connections to social, emotional, cultural, cognitive, and personal experiences of learning through the experiences of aesthetics and awareness, as well as the shared experiences of film and video in the classroom (Roden, 2007, 2008). Because of how students are drawn to film and television as an integral part of popular culture, students are eager to be engaged in discussions concerning these popular forms of media. This means that in the classroom we have an audience who is receptive to viewing films and becoming media literate. Media literacy can be used by criminal justice educators in the classroom to help students analyze the rhetorical messages embedded in various types of verbal and visual arguments and, in particular, can be a tool for helping students recognize the coding of images in visual communication from a critical perspective (Kleeman, 2008). For example, the films portraying juvenile delinquency can be used in the classroom to discuss the misrepresentations of youth and how they become scapegoats for social ills such as drug addiction, promiscuity, and violence. Film clips can be used to develop media literacy to provide opportunity for students to discuss provocative images of female sexuality and masculine portrayals of dominance, power, and control. Furthermore, media literacy can be used by criminal justice educators in the classroom to help students understand the issues at stake in the social construction of a violent masculinity in our media culture.

Concluding Comments

Based upon the findings and analysis of violence in the media and its influence on masculinity in our society we propose that criminal justice educators develop critical awareness of how violent masculinity is portrayed in a variety of forms of visual communication. It is our hope that students in a media-saturated culture will be taught by criminal justice educators to be media literate regarding the social construction of violence and masculinity in media culture so that they come to understand depictions in the media that glamorize destructive male behaviors. Educators can provide opportunity for students to consider the forms of destructive masculinity in the media by shedding light on the destructive meanings and values imparted in the media environment. As Katz (1995) elucidates, “violence on-screen, like that in real life is perpetrated overwhelmingly by males . . . [and it is] not only ‘violence,’ but rather a glamorized form of violent masculinity” (pp. 139-140). This understanding among criminal justice educators may facilitate understanding of the messages embedded in

various types of media and provide tools to help future criminal justice professionals critically evaluate the media, resulting in an increased ability to relate to boys in our culture whom they may encounter in the future.

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FAUX SCIENCE AND THE SOCIAL CONSTRUCTION OF A RISK SOCIETY:
A BURKEAN ENGAGEMENT WITH THE CSI DEBATES

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Abstract

The theoretical scholarship of Kenneth Burke's "dramatism" is the framework through which this paper demystifies the justifications for public policy created to contend with or neutralize the cultural impact of CSI. I suggest that the productions of such policies are authorized by particular economic and political social orders, which is missed by the CSI literature as it is presently framed. The purpose of this paper is to bridge the apparently divergent foci within the literature by suggesting that both sides are speaking to the concerns of theorists, such as Beck (1992), who understand our political climate as one shaped by perceptions of risk and its management. I reframe the problem of CSI by exploring the social construction of risk, which is absent from the debates. I suggest the concept of "faux science" as a helpful concept for bracketing off the construction of social control and risk within mainstream dramas over the quality of juror knowledge. I demonstrate how faux science is implicated in the rhetorical construction of potential jurors as scapegoats to legitimize increasing formal social control and the expansion of the American criminal justice industry, a problem that I suggest requires more critical attention.

Since its television debut, *CSI: Crime Scene Investigators (CSI)* has taken standing in popular culture. *CSI* has quickly expanded from its 11th place inaugural ranking in the NBC prime time ratings in 2000 (Allen, 2007) to maintaining a top 5 ranking from 2002-2007 (Spadoni, 2007). *CSI* has franchised two other TV spin-offs (*CSI: Miami* and *CSI: New York*), board and video games, novels, clothing, as well as DNA, skull re-creation, and fingerprint analysis sleuth kits. The forensic crime drama has found purchase within institutional discourse. Public safety and forensic studies programs entice potential students to get "[i]nside the world of *CSI*" (Algonquin College, 2007). More importantly, the referential value of *CSI* has entered arenas of public policy. For example, William Peterson, the actor who plays lead *CSI* character Gil Grissolm, spoke to the U.S. Senate in support of The Paul Coverdell National Forensic Sciences Improvement Act, which sought increased federal funding for private DNA crime labs² (United States Senate, 2001; Pyrec, 2007). *CSI* is historically situated amidst popular genetic preoccupations with mapping the genome, the establishment and expansion of DNA databases in North America, as well as the use of DNA in identifying victims of the events of September 11th 2001 in New York City. Consequently, its cultural relevance demands critical attention, especially in terms of the relationship between science and social control in late modernity.

¹ I would like to thank my colleagues at the 2008 Crime and Popular Culture Conference in Warrensburg MO, who offered further "food for thought" on this topic in our lively end-of-day conversations. I would also like to thank the anonymous reviewers as well as Neil Gerlach, Isher-Paul Sahni and Michael Overington who provided me with valuable suggestions and critical observations on earlier drafts of this paper.

² The bid for increased funding was successful, with federal funding for crime labs jumping from \$35,000,000 in 2001 to \$85,400,000 in 2002 and over \$135,000,000 in 2003-04 (Pyrec, 2007).

The purpose of this paper is threefold. First, I provide an overview of apparently dissimilar literatures to note that which is absent from the debates—the social construction of risk. *CSI*, as a cultural text, attracts researchers yet divides their interests. Largely centered on the visual aesthetics of *CSI*, with its autopsies and re-creations of body trauma, cultural communication scholars focus on the ideological construction of secure knowledge and identity that play out in the forensic fantasies of crime narratives. Behavioral and legal scholars, anxious about media contaminated jury pools, demonstrate how dramatic representations of science, “juror incompetence,” and “expertise” have been taken up by many stakeholders within the American criminal justice system as a legitimate threat to jurisprudence. The *CSI* Effect has provoked a debate that motivates contemporary understanding of criminal justice and social control—the policy and practice through which they are manifest. A Burkean bridge for this divide suggests that both sides are speaking into the concerns of contemporary theorists, such as Beck (1992), who understand our political climate as one shaped by perceptions of risk and its management.

Kenneth Burke’s theoretical approach of “dramatism”³ (1968) is a valuable tool for expanding contemporary understandings about mass media. Dramatism is a theoretical framework founded in the tradition of American pragmatism (Overington, 1977). It takes language and symbolic communication as the basis for human reality and legitimation of particular relationships of power, where “associations between and among terms reveal much about associations between and among people” (Cheney, Garvin-Doxas, & Torrens, 1999, p.135). Symbols are drawn upon and arranged in particular hierarchies of logic that convey a particular explanation (what Burke calls “motivation”) for human behaviour. These explanations are taken by the audience and “speaker” as legitimate only insofar as they are founded upon and contain the implied relations of authority (Burke, 1968; Brummett, 2006; Cheney et al., 1999). Symbols link to some messages, and discourage others; as Giddens (1984) postulates in the tradition of Dewey and Mead, particular processes of meaning make for some actions that are either constrained or made possible within particular cultural frameworks.

Kenneth Burke’s (KB’s) understanding of social interaction as an ordering drama is helpful here, where there is conflict over the moral legitimacy of this authority or that (1968; 1969; 1989). Loyalties to particular institutions of power and social order are contained in popular cultural texts such as *CSI*, wherein “reasonable positions within the social order” are explained (Overington, 2001, p.97; Burke, 1962). Both sides of the *CSI* debate offer evidence that the dramatization of science—what I call faux science—is an explanatory framework that holds currency within popular media, criminal justice and social science research.

Hence, the second purpose of this paper is to expand the theoretical work on the social construction of risk, which presently limits its focus to discourses of war, “terrorism,” and fear of the unknown Other, wherein scapegoats are constructed to explain (or motivate, in Burkean terms) the war in Iraq and similar Western military interventions (Denzin, 2007; Kellner, 2007, 2004; Engles, 2007; Engle, 2007; Althiede, 2006; Ivie, 2005). A critical examination of risk in popular culture remains largely unexamined. The missed opportunity to integrate popular media meaningfully into the discussion about risk ripples throughout the literature. Hamilton (2003) concurs:

While identifying scientific expertise as a site of increasing public debate, theorists of risk society have generally declined to explore the specific cultural venues where this debate takes place. In particular, they overlook media and popular culture as significant sites for the

³ Despite being a foundational thinker for the sociological scholarship of Goffman (1959), Mills (1959), and Duncan (1962; 1969), Burke’s contributions remain largely neglected by contemporary thinkers within the social sciences (Overington, 1977; Overington, 2001). It is my hope that the value of his scholarship to contemporary mass media studies will be made relevant again through research such as this.

negotiation of scientific meaning in general, and the meanings of biotechnologies in particular. (p.268)

The third purpose of this paper is to demystify justifications that motivate public policy created to contend with or neutralize the cultural impact of *CSI*; I suggest that such policies are authorized by consumption and risk. Faux science is implicated in the rhetorical construction of potential jurors as scapegoats to justify increasing formal social control and the expansion of the American criminal justice industry by social scientists. I demonstrate how the academic literature on *CSI* is complicit in the rhetorical construction of jurors as scapegoats who bear the blame for institutions of justice and science that appear to be failing to keep us secure. The exclusion of potential jurors based on their consumption of popular culture and the expansion of the forensic empire, which KB understands as rhetorically motivated human action, are afforded legitimacy within the debate as it is currently framed.

Some may wonder why *CSI*, arguably one of the least realistic crime dramas, is my focus here when popular documentary-style crime dramas such as *The Wire* are also available. Despite its unrealism, or perhaps because of it, *CSI* instills an anxiety, in legal experts and scholars alike over the legitimacy and effectiveness of justice and science, in a way that other shows have not.

Who are you? The Aesthetics of Secure Knowing

The preliminary literature on *CSI* is established by critical cultural theorists, such as Gever (2005), who consider *CSI* as an object of inquiry into the spectacle of crime: the interconnected “media loops” of deviance that are orchestrated, circulated, and institutionalized discursively between media, agents of social control, and deviant subcultures (Ferrell, 1999). This segment of the literature attributes particular cultural implications to the way in which forensics and science is represented within *CSI*. First, *CSI* marks a shift in the social construction of identity and subjectivity. Second, the dramatization of science establishes a framework of secure knowledge in which the autopsy stands as a primary tool of social ordering. Humanity and society are translated into objective data that are used to identify criminogenic threats.

A shift in who the “bad guy” is and how we might go about securing her or his identity is revealed in Burton-Harrington’s (2007) comparative analysis of Sherlock Holmes and *CSI*. Both narratives offer similar stories of security easily established through the use of science in criminal mysteries. Unlike contemporary narratives, which respond to vague ideals of what poses the greatest threat to society, traditional mystery genres present historically specific individual threats shrouded in race, nationality, and fear of the Other. The political threats offered up on *CSI* materialize from unknowable sources and attack politically organized social groups or ideas, such as democracy or justice (Burton-Harrington, 2007). While both crime mysteries presume that all bodies leave evidence behind, the rhetoric of *CSI* dramatizes science as the only “agency” (to borrow KB’s terminology) through which criminals can objectively be known; science is explained as an essential component to the maintenance of a “fair” justice system (Burton-Harrington, 2007).

The dramatization of science is also necessary to secure knowledge about identity (Gever, 2005; Turnbull, 2007). The intensely visual aesthetics of *CSI*’s Computer Generated Imagery (CGI) fuels the authority of image-driven mass media where “seeing is believing” (Gever, 2005, p.450). Modern science and entertainment merge forces as forensic dramas, such as *CSI*, order the social commotion of crime with “machine intelligence,” which elevates technology and forensic procedure as mechanics of truth (Gever, 2005), through which all knowledge (worth knowing) can be revealed. For example, many episodes of *CSI* feature the criminal confession on the heel of evidence laid bare by scientific interpretation of the crime scene by crime

scene investigators. Even the most devious and cunning character concedes to the complete power of science to offer what appears to be a full explanation of the moral act of crime and violence. Confessions unfold without the narrative addressing the problem of interpretation or the messy business of prisoner rehabilitation or harm prevention (Gever, 2005; Tait, 2006).

One of the most compelling visual (and aural) elements of *CSI* is the autopsy. Cultural captivation with the corpse is not new, however; cultural enthrallment with the procedure of autopsy dates back to the edifying fascination of dissection during the Renaissance period (Jermyn, 2007; Tait, 2006). The contemporary obsession with dead bodies as objects of scientific inquiry is different, though, because it is visually explicit (Burton-Harrington, 2007; Nunn & Biressi, 2003; Gever, 2005; Turnbull, 2007; Jermyn, 2007); *CSI* epitomizes the degree to which popular culture has “become enchanted by the dramatic possibilities of forensic detail” (Jermyn, 2007, p.79). The technological presentation of the “*CSI*—shot” suggests a truth telling quality authorized by visual realism (Jermyn, 2007; Weissmann & Boyle, 2007). For many scholars, the depiction of a bullet plunging through flesh, tearing at arteries and organs, places *CSI* within the realm of genres that capitalize on excesses of the body (Jermyn, 2007; Weissman & Boyle, 2007; Lury, 2005; Gever, 2005). Likened to pornography (Tait, 2006; Weissmann & Boyle, 2007; Lury, 2005; Jermyn, 2007), the body is represented as truth, lying in wait to be read (Gever, 2005). The autopsy provides a representational regime that orders the unreasonableness of violent death in such a way to permit the audience a fascination with violence while sidestepping its social and political contexts (Tait, 2006).

The *CSI*—shot works beyond the image as the autopsy stands as a metaphor for the social body in terms of a scientifically knowable cadaver:

The success of the *CSI*s in every episode is premised upon knowledge guaranteed by scientific inscriptions and is itself an inscription of ways of seeing human bodies and the social body, represented by police scientists working to ensure public safety—a healthy social body. And it is also about how bodies, individual and social, are constituted as information, made knowable and validated by scientific instruments and procedures used to produce evidence. (Gever, 2005, p.445)

An evidentiary framework is imposed on social and physical bodies (Tait, 2006). The spectacle of the corpse authorizes the reconfiguration of humanity into data (Gever, 2007; West, 2007): “With *CSI*, knowledge has a glossy aesthetic, simulation makes up evidence, the invisible assumes visibility, the internal is externalized, and object subjectivity replaces the subject’s psychological perspective” (Panse, 2007, p.166). The body is rendered an object when it is rhetorically disconnected from its humanity. Consequently, criminal cases are reinterpreted in the narrative as games or puzzles that have a single solution (Panse, 2007). In a Burkean sense, the rhetorical order of this narrative mystifies the violent result of complex human relationships and social structure, and in the process make the claims about crime as a concrete objective thing seem logical.

Detecting the *CSI* Effect

The *CSI* Effect is defined by the literature in terms of how key stakeholders in the criminal justice system and mainstream news accounts make sense of the relationship between the forensic prime time phenomena and legal process; accordingly, they are concerned with three social outcomes: the “prosecutor effect,” the “defendant effect,” and the “lay knowledge effect.” Fueled by anecdotal evidence, comments by authorities, and trials such as the Robert Blake acquittal in 2005, the

prosecutor effect emerges as the most prevalent theme within mainstream narratives (Tyler, 2006; Cole & Dioso-Villa, 2007; Mopas, 2007).

CSI is charged with increasing jurors' expectations for forensic evidence at trial in order to secure a conviction; consequently, criminal cases are becoming increasingly difficult for lawyers to successfully prosecute. The feared consequence of the prosecutor effect is an increase in mistaken acquittals of violent criminals (Podlas, 2006; Tyler, 2006; Shelton, Kim, & Barak, 2006; Schweitzer & Saks, 2007). While mainstream popular discourses on forensics may contribute at least in part to an overall increasing demand for scientific evidence in the courtroom, there is "no indication of a link between those inclinations [in individual jurors] and watching particular television shows" (Shelton et al., 2006). Given that jurists have been charged with determining one's guilt and that forensic science has been accepted by the courts as valid, this might be a positive thing for the justice system (Ghoshray, 2007). Nevertheless, the fear of increasing acquittals and decreases in convictions of violent offenders remains empirically unfounded (Podlas, 2006; Tyler, 2006), but sociologically significant.

The second effect, the defendant effect, focuses on the proliferation of science as an infallible mechanic of truth, which ignores the reality of forensic analysis (Hughes & Magers, 2007). At issue is the bolstering of prosecutor's claims with forensic evidence, which also enhances the credibility of forensic scientists in the sphere of legal expertise; so the logic goes, trials that present forensic evidence will be biased towards conviction (Podlas, 2006; Tyler, 2006; Shelton et al., 2006; Schweitzer & Saks, 2007; Jermyn, 2007; Weissmann & Boyle, 2007). Critics (Stephens, 2007; Nolan, 2007; Cooley, 2007) within the criminal justice system allege *CSI* makes forensics and science in crime fighting look "quick, easy, and without budgetary constraints" (Mopas, 2007, p.110). *CSI* conceals the political and economic reality that forensics is a pro-prosecutorial industry, developed within the criminal justice system, which has been implicated in serious social harms such as wrongful convictions (Ghoshray, 2007; Difonzo & Stern, 2007; Cooley, 2007; Ungvarsky, 2007). Indeed, it is not *really* science at all.

The third effect supposes that *CSI* provides mass lay knowledge about forensics, thus making highly technical findings more accessible to jurors during trial. The perceived outcome is higher public interest in processes of evidence, jury duty, and careers within criminology and forensics. This argument suggests that the popularity of *CSI* has resulted in popular responses similar to those attributed to the legal dramas *L.A. Law* and *Law and Order* in the 1980s, which contributed to an influx of students applying to law school (Podlas, 2006; Schweitzer & Saks, 2007).

Cole and Dioso-Villago (2007) judge the significance of the Lay Knowledge Effect as harmless, a position that Stephens (2007) and Cooley (2007) dispute fervently. The third effect, they argue, has resulted in a general malaise within the U.S. forensic industry as it struggles with managing unaccredited labs, uncertified technicians ignorant of the scientific method, and an overall "dumbing down" of the discipline as forensic and criminological instruction remain a lucrative industry. This argument assumes there has been an overall degradation in the quality of knowledge among regular people. Curious to me, however, is the why the lay knowledge effect remains empirically unattended to, given the literature's implication of its importance in the role of inciting potential juror mis-education.

Treatment or Termination of *CSI*-Addicts: Social Construction of Risky Knowledge and Scapegoats

To review, both literatures frame the problem of *CSI* as a negative cultural influence that exists separate from the political context in which the television series emerges. The work of cultural theorists is guided primarily by the visual elements of

the forensic crime drama. In this sense, the literature has yet to give consideration to other relative elements of the narrative such as the historical context in which the text emerges, a critique made more generally of cultural studies (Doyle, 2003; Fetveit, 1999). However, the contribution of cultural theorists to the problem of *CSI* is significant; these investigations capture the complex patterns of motivational explanations missed by the legal behavioral investigations. However, the cultural theorists stop short of explaining why these ideological frameworks—and *CSI*—emerge as they do, when they do, thus missing the opportunity to understand *CSI* within its political context as part of the discursive legitimization of a consumer and risk society.

Legal and behaviorist literature similarly fails to consider the political and historical context of the anxiety derived from an assumed *CSI* Effect. More specifically, the research does not address how this concern over the relationship between media and jurors is different from pre-*CSI* concerns. Before *CSI* took the prime time world by storm, Greene (1990) argued that media representations of the justice system might influence jurors' expectations and decisions. Others have been similarly concerned with the impact mass media have on processes of law (See Hans 1990 for a review of the literature) and more specifically on juries in particular cases (Kramer, Kerr, & Carroll, 1990). However, the focus traditionally has been on asking how best to control media, not individual jurors.

Further, behavioral and legal researchers presume *CSI* to be a social problem unto itself. The solutions that are offered up in response to this assumption only make sense when presented within the cultural framework of a risk society, which is sensed, but not made explicit, by cultural theorists. Largely transparent about its epistemological leanings towards cultivation theory, proponents of the behavioural perspective suggest that heavy consumers of forensic crime dramas such as *CSI* are predisposed to understanding their social world, and institutions of crime control, in relation to what they watch; moreover, audiences have little choice or understanding of how they are negatively affected (Podlas, 2006; Gerbner & Gross, 1976). Most of the *CSI* Effect research approaches the problem through the lens of behaviorism, a perspective founded on Adorno's (2005) hegemonic thesis whereby values are injected into a passive audience through the media, inducing negative reactions in thought and deed (Jewkes, 2004). Podlas (2006) suggests such explanations of the *CSI* phenomena assumes too much about those who watch *CSI* and their behaviour on juries (Podlas, 2006; Shelton et al., 2006).

The overall contribution of research that focuses on empirically capturing the *CSI* Effect is that it establishes *CSI* as an important social text complicit in the communication of risk, science, and formal social control. When the research on *CSI* is framed by the assumption that the program is a tool of mis-education about science and the process of justice, an assumption initiated and perpetuated by stakeholders in the criminal justice industry, some responses are legitimized while others are mystified. To demonstrate this point, let us consider two formal approaches in American criminal justice policy that rely on the construction of potential jurors as scapegoats, authorized by anxieties surrounding the *CSI* Effect.

Jury Rehabilitation

The *CSI* scholarship ponders a crisis within criminal justice that relies in part on a jury system composed of people whose "judgment of evidence is influenced a great deal by what they watch on television" (Robbers, 2008, p.100). Cole and Dioso-Villa (2007) contextualize the importance of juries as a non-expert democratic body endowed with the ultimate authority to decide who "can terminate free individuals' life and liberty, and...bestow or deny justice to free individuals who have been terribly victimized" (Cole & Dioso-Villa, 2007, p.434). A symbolic institution, the jury ritualizes

the sanctity of deliberative democracy, majority as well as common sense. While the information that a jury receives during a trial is highly regulated by the courts, its role in the deliverance of jurisprudence is a representation of “the people.” Therefore, a crisis in the quality of the people’s common sense about the possibilities of science in the justice system appears, at least on the surface, to be a reasonable concern.

Media coverage of the *CSI* Effect describes potentially problematic jurors as *CSI* junkies with a crime drama addiction, which links the problem of jury contamination with other established moral problems (Cole & Dioso-Villa, 2007). Jurors are similarly framed within academic discourses as disabled by dramatized science (Robbers, 2008; Nolan, 2007; Stephens, 2007); subsequently, the overall *CSI* Effect is investigated as a problem of cultural debasement, which motivates institutional responses. As we have seen historically with the eugenics movement and genocides, when a social problem is framed as a problem of degeneration, “logical” responses aim to rehabilitate or eradicate those who are afflicted (Jackson, 1991). Viewers of *CSI* become targets of re-education or eradication from the jury pool.

[There needs to be] the introduction of a compulsory, nonpartisan briefing for jurors in criminal trials that provides an accurate depiction of criminal trials and criminal investigation procedure. This could also be done with citizen’s police academies, which in turn could help educate the public about actual criminal investigative techniques, or could be done with an educational video shown to all potential jurors. (Robbers, 2008, p.100)

Some members of the criminal justice system consider the *CSI* Effect potential when selecting members of juries (Hughes & Magers, 2007). Stephens (2007) extols the virtues of the Albuquerque Police Department’s Citizen Academy, a program designed in direct response to the assumed *CSI* Effect aimed at “educating potential jurors” (p.605) by countering the dramatic representations of forensics in shows such as *CSI*. And if we cannot educate or segregate them, then we must create a forensic empire that meets the imagined possibilities of forensic fantasies held by potential jurors. An unlikely problem of juror contamination, created largely by media-savvy prosecution lawyers, is responded to as if potential jurors create criminogenic pressures upon the justice system to reproduce the promises of faux science “as seen on TV.” So, the idea goes: If we can’t beat ‘em, lets buy some new (forensic) stuff!

Build a Better Forensic Empire

DiFonzo & Stern (2007) assert that the most significant problem arising from *CSI* is “the misleading presentation of forensic evidence in the guise of scientific truth” (p.507). The literature struggles to address what is essentially a threat to the legitimacy of the criminal justice system: what do we do when jurors discover forensics on TV looks nothing like the pseudo science that dominates the evidentiary realm of the criminal justice system? Some scholars tackle the issue of managing misinformation by promoting the advancement of the forensics industry in the U.S. as a rigorous industry.

The problem of forensics is well documented as a discipline tethered to criminal prosecution, functioning without the “burden [of] adhering to scientific norms” (DiFonzo & Stern, 2007, p.507). Nevertheless, the rigors associated with DNA testing and analysis gets artificially bestowed (legitimized as science) upon other forensic analysis such as ballistics, fingerprinting, bite-mark, and voice recognition that essentially rely on “eyeballing” comparisons (DiFonzo & Stern, 2007; Cooley, 2007; Ghoshray, 2007; Ungvarsky, 2007). Despite this, the crisis in forensics is ironically attributed back to ignorant jurors: “the entertainment media’s distorted representation of forensic science has placed forensic science credibility in serious jeopardy” (Colley,

2007, p.493). An assumed “irrational” faith in *CSI* by jurors motivates claims that false witness induces criminogenic pressures on forensic examiners to fabricate physical evidence or exaggerate the significance of their conclusions. Assumptions about an unhealthy demand to include such evidence in all trials is heard throughout the Effect literature; so the logic goes, a criminogenic pressure is created (by “duped” jurors) within a system that is inadequately funded (Stephens, 2007). Structured in this way, the logical response is increased funding and a call to arms: “Everyone can help resolve this problem by joining the Crime Lab Project. Those interested in encouraging the legislature to distribute the promised Coverdell funds can join the Project” (Stephens, 2007 p.591).

CSI Effect critics charge declarations of the forensic industry as an essential element in the security of the criminal justice system in need of immediate and massive funding as exaggerated and biased towards prosecution (Ungvarsky, 2007; Ghoshray, 2007). Hinting to the mystification of displaced fears, jurors are blamed by some within the criminal justice system for expecting too much, when perhaps it is the criminal justice system that has over-extended the usefulness and promises of forensic evidence, which predates the emergence of forensic crime dramas (Ghoshray, 2007). Although not explicit, this critic suggests that the responses to a *CSI* crisis illustrate an act of crisis management within complex contemporary capitalism, a point that I will expand upon in the concluding section.

Stepping Back from the Drama: Concluding thoughts on Faux Science, Risk and Social Control

The literature on the cultural implication of *CSI* has become part of the drama of science; it has, at least in part, given authority to the construction of faux science, which informs the logic of particular responses to anxieties about *CSI*. To find a way out of this drama, I suggest that KB’s scholarship on human communication is useful. By providing an overview of the academic literature thus far, I demonstrate that both sides are missing the cultural and political context in which the problem of *CSI* emerges. By considering how faux science is implicated in the social construction of risk within the American criminal justice industry,⁴ it is my hope that we can start thinking more critically about what motives are drawn upon to legitimize the adoption of more social control and expertise within the jury system in particular, and in criminal law more generally. It is through such critical reflections on rhetoric, where people can demystify social control within popular communication, that Burke (1969) and Habermas (1970) believe change to institutional structures, such as law, is possible (Edgar, 2006).

Social structures and control are mystified by cultural frameworks of consumption, risk, and science such that responsibilized consumers are framed as not accountable for what is perceived as others’ self-harm—a self-inflicted ignorance caused by an addiction to *CSI*. Burke (1969) recognizes this as a process of scapegoating, which permits us as social actors to be comfortable with particular social orders; scapegoating creates the conditions under which a particular group or individual is held responsible for our own failures or moral offences (Overington, 2001; Burke, 1969). Scapegoating allows us to be comfortable with labeling particular groups as deviant (or perilous), thus remaining uncritical of our own personal and professional

⁴ The reader will note that I do discuss the *CSI* Effect in terms of an American, not a North American, phenomena. This is because the *CSI* Effect seems to be a relative non-issue in the Canadian Justice System. I suspect this owes in part to systemic differences between the U.S. and Canada in terms of how structures of forensics (private versus public services), legal process, jurisdictional controls, culture, and mass media function. This stands as more evidence that the historical and political context of this issue requires further critical consideration.

investment in a justice system which many critics persuasively assert is an industry that thrives on the mass incarceration and human misery of marginalized populations (Herivel & Wright, 2007; Herivel, 2002; Dyer, 2000; Wacquant, 2002). In this case, potential jurors duped by forensic fantasies are framed within popular and academic debates as a threat to the security of the criminal justice system. In essence, the problem is explained in such a way as to divert attention away from the problems of a criminal justice system complicit in overextending the promises of science to keep us all safe at the expense of marginalized populations that fill prisons.

In this paper, I suggest that the faux science, the dramatization of science in popular discourse, is a persuasive narrative that suggests the acceptance of the *CSI* Effect by stakeholders in the criminal justice system as a reasonable conclusion. Faux science is successful as a framework because it is founded upon and maintains dominant political orders of risk and consumption. By using this Burkean inspired concept, I demonstrate how we can bracket the *CSI* Effect so that we are not drawn into the drama, tempted to simplify the complexities of living in a mediated world. It pushes us to be more critical of the assumption that large social institutions of official social control are at risk of being compromised by individuals who consume a particular genre of entertainment. Limiting one's research to examining the *CSI* Effect or the aesthetic qualities of *CSI* without considering the complex communication of ideologies of crime and social control in our everyday lives is problematic. Once we step back from the dramatization of science, we can see how social constructions of risk circulate through popular culture as well as expert discourses in the processes of legitimating human actions such as creating juror rehabilitation programs.

In this paper I illustrate how mass media circulate explanations of manufactured risks and deliver messages of security that citizens may otherwise not knowingly experience firsthand, such as the delayed effects of global warming, pollution, or the *CSI* Effect (Beck, 1992; Mythen, 1990). The literature on *CSI* cloaks anxieties about a loss of faith in systems of expertise by discrediting the public as tragically misinformed by forensic fantasies, or holding *CSI* accountable for securing such spectacular fantasies. The outcome of narratives shaped by risk is the reproduction of conflicting messages that bear out that "science with too much imagination is false science; it also reaffirms scientists as experts who are beyond the public's ability to assess them" (Hamilton, 2003, p.274). Discourses about potential jurors who are dangerously misinformed by *CSI* coincide with calls for increasing the power of experts to hold influence over jurors within the criminal justice system.

The possibility of a *CSI* Effect suggests a loss of faith in the criminal justice system, a core feature of risk whereby the state no longer promises to protect its citizens. As such, we are all responsible for the security of the nation, the protection of ideologies such as democracy, as well as our own personal security. The rhetorical processes of individualization and turning bodies into secure information are essential to the social construction of risk (Beck & Beck-Gernsheim, 2002). The weaknesses of institutions of science and technology are exposed when uncertainty becomes the hallmark of progress (Taylor-Gooby & Zinn, 2006). In effect, expert systems of knowledge are treated with increased skepticism (Hamilton, 2003). Risks are never concrete; as such the management of risks is ongoing. The case of the *CSI* Effect demonstrates how some social scientists as well as state actors participate in the drama or dealing with yet another risk. I suggest the dominant framework of risk is what is different in the ordering of contemporary understandings of juries and popular culture. Although anxiety surrounds a loss of effectiveness in the criminal justice system to secure convictions of violent criminals, the *CSI* Effect discourse presents the individual juror as the primary threat to larger social institutions of law and, ironically, democracy. Subsequently, the commodification of risk informs attempts to manage or neutralize the effect of *CSI* on individual jurors.

Although the focus of social control seems to be the same as it ever was, upon the vulgar classes and the decline of *kultur*, anxieties about the integrity of jury pools and the ideology of democracy are mystified through popular media as a “new” crisis. Habermas (1970; 1976) suggests that crises of authority within mainstream institutions, such as law and science, can be absorbed by Weberian subsystems of cultural legitimation that generate social meaning and values through other social institutions such as education and media. The threats jurors are feared to pose on the system of law, potentially undermining critiques of the justice system are systematically individualized within academic, popular, and forensic discourse; increased consumption of expensive services, social control, and surveillance in the form of forensic funding and juror treatment programming sits comfortably as a reasonable explanation. Perhaps underlying this crisis is an inappropriate reliance on the application of science to deal with social and moral issues (something a natural scientist would not recognize) which ultimately threatens the legitimacy of forensic services in the justice industry. Drawing upon a Weberian framework, Habermas (1976) agreed that rational bureaucracies would dominate the processes of legitimation in the West, and with this would come to a loss of individual autonomy and responsibility. Modern science in particular, he suggested, would be a dominant framework that would authorize the proliferation of “specialists” endowed with legal-bureaucratic legitimacy, which would impose further on individual autonomy (Kalberg, 2005). Here we witness how faux science provides justifications for displacing traditional ideologies within the juror system in favour of ideologies of expertise. This, I argue, is problematic.

To conclude, I suggest it is time to move towards more critical discussions about restrictive formal social control and the perpetuation of unsound criminal justice policy that emerges when narratives of faux science move into the realm of public policy. Pressure to inject “expertise” into a symbolic representation of the democratic public body demands more critical attention. Permitting policy to reconstruct such systems is an assault on the traditional ideals the juror system seeks to uphold in an impossible effort to secure popular knowledge. Some of us have been pulled into the dramatization of science when we accept the CSI Effect and the aesthetic qualities of CSI as a problem or tool of mass mis-education without considering the historical and political context in which the cultural text and reactionary public policy is legitimated.

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THE TERRORIST AS FOLK DEVIL AND MASS COMMODITY:
MORAL PANICS, RISK, AND CONSUMER CULTURE

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Abstract

This paper argues that understanding the terrorist as a kind of mass commodity can help explain the lasting power of the terror threat in American social and political life, and help bridge the gap between risk society and moral panic frameworks. Both moral panics and risk assessments rely increasingly on a public imagination that is inseparable from consumer culture. Terrorism today is consumed like a brand, with a host of spin-off products, and terrorists are recognized as a distinct and dangerous social type through advertisements, rumors, and staged public relations pseudo-events. Americans are left to negotiate the discontinuity between the real and manufactured aspects of the war on terror, and use those negotiations to evaluate the authenticity of proposed folk devils.

The construction and utilization of stereotypes have long been a part of mass media and popular culture. Efforts to classify and rank others based on systematic observation of human appearance were at the heart of popular amusements such as scientific cabinets, phrenological centers, and freak shows (Altick, 1978; Fiedler, 1978). Eugenicists and criminologists both employed new media technology such as photography to document and classify various human types (Ewen & Ewen, 2005, pp. 211-234). Lippmann (1965), whose work was an early inspiration for the field of public relations, found stereotyping to be a natural part of human relations in complex modern societies. Since we cannot have direct experience with all the people and events that confront us through mass media, he believed that we come to rely on stereotypical assumptions about the world to shape our perceptions. "We do not first see and then define; we define and then see" (Lippmann, 1965, pp. 54-55).

Still, processes of human classification take on unique forms under the influence of contemporary media culture. Today, mass-mediated moral panics focus on certain vulnerable groups who are perceived as threats to social values or interests and are defined in a stylized and stereotypical manner as "folk devils: visible reminders of what we should not be" (Cohen, 1980, p. 10). In Cohen's model of moral panics, the mass media sensitize us to problematic social types and allow experts and authorities the opportunity to suggest various solutions. His definition of a moral panic, in some ways almost taken for granted now, is nonetheless worth repeating:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person, or groups of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians, and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved (or more often) resorted to; the condition then disappears, submerges, or deteriorates and becomes more visible (Cohen, 1980, p. 9).

Although the mass media play a major role here, the initial emergence of a threat in the moral panic framework is often viewed as the work of the very institutions tasked with controlling that threat. This was the case in the pioneering study by Hall, Critcher, Jefferson, Clarke, and Robert (1978) of a British panic over the crime of “mugging” that was largely initiated by changes in police procedure, rather than an actual increase in the frequency of the crime itself.

There are many other examples of moral panics and accompanying folk devils throughout American and world history. Cohen’s study focused on the panic over clashes between British youth gangs known as “Mods” and “Rockers” in the 1960s. But moral panics have historically occurred around a variety of drugs and their users (Goode & Ben-Yehuda, 1994; Reinerman, 1994), as well as a more diverse set of folk devils such as Communists (Ungar, 1990), Satanists (Victor, 1991), homosexuals (Heatley, 2007), and young black men (Glassner, 1999). Moral panics generally are thought to consist of five elements: a heightened level of concern over the threatening behavior of a certain group or category of people; an increased level of hostility toward the group or category in question; a wide consensus across society that the threat is real and is caused by members of the offending group; disproportionality—a degree of concern that is far greater than other, more serious or more realistic threats receive; and, volatility—moral panics erupt suddenly and may subside just as suddenly, although some moral panics may become routinized or institutionalized. The notion of disproportionality provides the concept of moral panic its critical bite and also its most nebulous element, since it is not always clear how to, or who can, determine what the proportionate amount of concern over particular criminal groups or deviant behaviors should be (Goode & Ben-Yehuda, 1994).

“Fear of crime” has more generally been an object of social-scientific concern in the United States since the mid-1960s, when the first national victimization surveys were administered (Lee, 2007). Early researchers in this field struggled with a kind of disproportionality problem as well, in the form of a disconnect between actual rates of crime victimization and individuals’ often exaggerated perceptions of the crime problem (Jackson, 2004). Much subsequent research on this apparent paradox has implicated the mass media; for instance, Romer et. al. (2003) found that viewing crime-saturated local television news was related to an increase in fear of crime, while Van den Bulck (2004) found a similar relationship between fear of crime and television fiction. Explanations for these relationships vary; discursive elements of news broadcasts may contribute to the impression that crime rates are increasing when the actual statistics suggest otherwise (Hogg & Brown, 1998), while even fictional movies and TV shows can encourage a heightened public awareness of the most frightening types of crimes (Lee, 2007; Madriz, 1997). The moral panic framework connects this fear-inducing tendency of the media to a more complicated set of processes involving various claims makers, moral guardians, and law enforcement authorities.

In the last decade and a half, however, a new discourse concerning similar issues has raised questions about the utility of the moral panic framework. Beck’s (1992) view of a “risk society”—in which the hazardous chemical, nuclear, and environmental byproducts of modernity have become a primary focus of social and political concern—suggests that new sites of social anxiety have emerged which vary from the folk devil/moral panic framework. “Claims making on risk society issues is, in comparison with conventional moral panic issues, hedged in by more apparent and sticky trajectories, by a more equal balance of power on the part of rival claim makers, and by a comparative absence of distinguishable types of folk devils that evoke deep-seated hostility and fear” (Ungar, 2001, p. 287). For instance, trying to determine the appropriate level of concern over global warming seems like the wrong approach to a problem with consequences so geographically and temporally diverse. Although particular social agents may come under fire in the risk society framework, polluting companies or irresponsible scientists are not likely to become recognizable,

stigmatized social types. Some have also argued that with the increasing ubiquity of mass media in social life and the increasing number and influence of advocacy groups, top-down panics that yield new measures of social control are less common. Instead, they see the mass media today as operating in a constant panic mode over even trivial news stories, while maligned groups now have new avenues in which to publicly defend and represent themselves (McRobbie & Thornton, 1995).

In an essay written shortly after September 11th, Beck (2002) claimed that terrorism was an example of the new reflexive risks of modernization, part of a “world risk society” in which “fanatical anti-modernism, anti-globalism and modern global thinking and acting are interrelated” (p. 7). This widely espoused view of terrorists as anti-modern fanatics turning modernity’s weapons in on themselves is somewhat exculpatory of the Western democracies that are now the targets of terrorism; in this view, terrorism is more about knee-jerk reactions to modernity’s global encroachment than any particular political grievances. In any case, in the post-9/11 geopolitical landscape, the scientific assessment of potential terrorist tactics and targets has become a central focus of Western states, a fact which aligns well with the risk society thesis.

However, terrorism also fits the moral panic framework in many ways, most notably in the daunting figure of “the terrorist” who serves as a menacing folk devil justifying an unprecedented number of new efforts at social control. This paper examines terrorism at the intersections between the moral panic and risk society frameworks, and adds a third factor that accounts for discrepancies between the two, specifically on the issue of disproportionality. That third factor is the ascendance of consumerism as the fundamental trope for understanding any large scale political movements, social stigmatization, or hazardous risks in contemporary society. Terrorism today is consumed like a brand, with a host of spin-off products, and terrorists are recognized as a distinct and dangerous social type through advertisements, rumors, and staged public relations pseudo-events.

In the aftermath of the September 11th attacks, the stereotypical figure of the terrorist served as the folk devil at the center of an intense American moral panic. Terrorism has allowed the federal government and various military and business elites to set out a certain broad definition of who terrorists are and a set of solutions for how to prevent them from harming us. These solutions have included the military engagements in Afghanistan and Iraq, increased surveillance powers both domestically and internationally, and a set of radical neo-liberal economic policies (Klein, 2007). While the fear of terrorism fits Cohen’s (1980) somewhat time-honored model of a moral panic, the idea of “the terrorist” as a folk devil also requires an account of larger changes in consumer culture today, and must be reconciled with the concept of a “risk society.” If we take as a starting point the notion that the mass media not only provides us with information but is also ineluctably bound up with consumer culture—providing “packaged” stories to consume, broadcasting various advertisements for other goods and services, offering models of behavior and potential identities to adopt—then we may examine the contemporary folk devil as a consumer product itself, and as part of a universe of consumer goods, services, and experiences that sensitize us to certain threats and risks. As such, knowledge of contemporary trends in consumption can add to our understanding of the power behind terrorism as a moral panic and a looming risk.

The terrorist is an especially interesting case of a folk devil since there are so few examples of terrorists in the United States; after the devastation of September 11th there have been very few instances of political terrorism on which to base a continued scare. Few people have been successfully and publicly prosecuted for terror-related plots, and yet the threat of terrorism still looms large as a justification for a whole host of government policies. Rather than a tangible threat, it makes sense to think of the

terrorist as a commodity with a sizable advertising campaign and a host of spin-off products behind it.

This conceptual approach to terrorism also helps resolve tensions between the risk society and moral panic frameworks on this issue. Hier (2003) has noted that, rather than eliminating folk devils, the risk society frequently utilizes enemy stereotypes to signify dangerous risk factors. But a recent shift in the meaning and evaluation of risk has opened up more space for this kind of stereotyping. Furedi (2008) has identified a movement away from calculated, probabilistic assessment of risks to more speculative, *possibilistic* assessments. These *possibilistic* threats refer not to what is likely to happen, but to what could possibly go wrong, although in practice the two are often conflated. This kind of thinking, utilized by everyone from environmentalists to counter-terrorism experts today (Furedi, 2008), privileges intuition and imagination over statistics, thereby creating an atmosphere in which consumer culture is an appropriate resource and inspiration for risk-related discourse, and in which folk devils are appropriate subjects for consumption, as this paper will demonstrate.

Terrorism and Consumerism

The war on terror has always been couched in consumerist rhetoric, and designed from the start to ask for as little sacrifice as possible on the part of American consumers. In the days and weeks immediately following September 11th, we were asked only to continue to buy things. As Vice President Cheney put it, Americans should “stick their thumb in the eye of the terrorists and...not let what happened here in any way throw off their normal level of economic activity” (Reich, 2001, p.B1). This stands, of course, in stark contrast to the extensive rationing and saving encouraged of American consumers during World War II (Reich, 2001; see also Cohen, 2003). At the start of the Iraq War, *Newsweek* urged Americans who still had “a secure job and a decent financial cushion” that the conflict’s economic repercussions meant it was “a great time to buy a car, book a vacation, or furnish your home” (Stern, 2003, para.1). Today, domestic support for the war on terror comes not from national appeals to sacrifice and self-control but through patriotically themed mass consumption. Despite the reverence with which September 11th is generally handled in the press, many of its associated products are full of overblown emotion, kitschy playfulness, or crass sloganeering. World Trade Center snow globes, 9/11 casino chips, and FDNY lighter and pocket knife sets certainly speak to the banality of much consumption surrounding the attacks of September 11th (Sturken, 2007; Broderick & Gibson, 2005). In one sense, posters with crying eagles overlooking the burning twin towers, bumper stickers masquerading as terrorist hunting permits, and t-shirts emblazoned with confederate flags and slogans like “Fighting terrorism since 1861” do suggest that terrorism is being taken less-than-seriously, or at least, treated as a fad rather than a serious threat.

If, however, consumers have any more specific duty in the war on terror than simply continuing to shop, it has something to do with “preparedness” or “readiness.” With terrorism portrayed as an ever-present and unpredictable threat, citizen-consumers have had to become an interactive part of the defense against terrorist attacks. To that end, the United States government has launched programs like TIPS, in which citizens can call in and report suspicious activities that they have witnessed, and ready.gov, a website with instructions for parents and children on how to be prepared for a terrorist attack (Andrejevic, 2006). Concern for the safety of one’s family members tends to make up a larger component of fear of crime than regard for one’s own safety (Warr & Ellison, 2000), and the family home is the site where such concern can be allayed through consumption of everything from home security systems to bigger, supposedly safer cars like the Hummer, which saw its sales peak in the period between 2001 and 2004 (Sturken, 2007). This new “consumerism of

security” around the family home parallels the creation of government agencies like the Department of Homeland Security. “The militarization of the home is thus not only a means through which public fear of terrorism is mediated but is also a process through which the domestic household is articulated into the policies of the United States government” (Sturken, 2007, p. 41). These kinds of appeals to the readiness of individual consumers and family units in the protection of the home and homeland have appeared in the form of banal requests to stock up on duct tape, advice guides touting the purchase of firearms (Lockard, 2005), and outlandish products like executive parachutes for those who work at the top levels of skyscrapers (Andrejevic, 2006).

Multinational companies and new entrepreneurs alike have attempted to capitalize on fears about terrorism or, at least, the patriotic emotions that terrorism also generates. General Motors, for instance, made reference to the words of an airline passenger who fought back on one of the hijacked flights with its post-September 11th ad campaign, “Keep America Rolling.” At the same time, private security firms and consultants have offered scores of new products to protect panicked families. Self-help guidebooks with titles like *The Complete Terrorism Survival Guide: How to Travel, Work, and Live in Safety or Preparedness Now! An Emergency Survival Guide for Civilians and Their Families* offer advice to individuals and families in ways that parallel 1970s self-care manuals such as *Our Bodies, Our Selves* or *The Whole Earth Catalogue* (Lockard, 2005; Andrejevic, 2006). Yet instead of the “loosening of the self” that the lifestyle manuals of the seventies encouraged (Binkley, 2007), these new survival guides suggest a tightening of the relationship between the self and the outside world—a new self volunteering his or her eyes and ears to national security while withdrawing to the safety of the home and family unit.

Of course, volunteering oneself for this kind of do-it-yourself surveillance and engaging in this kind of “preventative consumption” (Lockard, 2005, p. 223) are not the only ways in which one’s consumption choices serve the war on terror. In addition to that kind of interactive participation lies an even more widespread “interpassive one, in which data about every transaction, every purchase, and every movement is aggregated within the government equivalent of the total demographic database” (Andrejevic, 2006, p. 447). The National Security Agency’s warrantless spying on American citizens, and the administration’s earlier attempts to create an Orwellian program called “Total Information Awareness,” which was eventually disbanded amid public criticism but whose programs have simply been moved to other agencies, show that consumer behavior is also a central means of identifying problematic social types. Most of these surveillance technologies attempt to piggyback off of existing demographic research accumulated by the private sector through commercial monitoring (Andrejevic, 2006). In the same way that Bertillon collected anthropometric data in order to identify criminals in the 19th century (Ewen & Ewen, 2005), the United States surveillance apparatus today collects market demographics. Buying the wrong kinds of books or airline tickets, living in the wrong kind of housing, and attending the wrong kind of events in the wrong combination is liable to mark one as potentially dangerous. These new surveillance programs translate stereotypes into algorithms that can calculate the sum total of one’s market behavior and determine the appropriate degree of suspicion.

From Folk Devil to Celebrity

It is worth reiterating that the motivation behind the country’s collective participation in, acquiescence to, or willful ignorance of these dramatic shifts is in large part the fear of the terrorist folk devil. But these terrorists, as discussed before, are not a daily or even potential physical presence in the lives of most Americans. Instead they are known only through mass-mediated images, much like celebrities. In

one sense, terrorists such as Osama Bin Laden, Abu Musawi Al-Zarqawi—and other notorious figures dubiously linked to terrorism like Saddam Hussein—have served as terror-celebrities. When one considers the spurious link between Hussein and September 11th that nevertheless convinced many Americans to support the Iraq War, or the murky whereabouts of Bin Laden and the sparse details released to the public about his actual role in planning the September 11th attacks, or the string of supposed Al Qaeda leaders like Zarqawi who are trumpeted by the American press as very important figures until their capture or assassination proves to have little effect on that organization, Boorstin's (1987) description of celebrities as people who are "known for their well-knownness" comes to mind. Indeed, the misinformation, rumor, and folklore surrounding the few iconic terrorist folk devils suggests that they are known less for their actions or biographies than for the publicity that surrounds them. Bin Laden's position in the pop culture landscape is, in a way, little different from other controversial, reclusive celebrities like Michael Jackson who maintain a devoted public following, and many angry critics (despite fairly limited recent output; in Bin Laden's case a handful of audio and video tapes).

The loss of community which accompanies modern life is often said to leave us with an affective deficit; we are thought to have weaker emotional ties as the family and local community become less important to our daily lives. This deficit is increasingly made up for by the growing number and intensity of our emotional attachments to celebrities (Turner, 2004). These para-social relationships are normally thought to congeal around emotions like love, envy, or, when misfortune befalls the celebrity, sadness. But terror-celebrities may fulfill a deficit of anger in modern life. As the slowly increasing acceptance of ethnic diversity in America makes hatred of a variety of more immediate others less viable, para-social hatred of terror-celebrities like Bin Laden provides a more acceptable outlet for expressing aggression.

In any case, terrorists and terrorism are consumed today as much as Coca-Cola, McDonalds, and MTV. As evidenced by the dramatic reenactments of movies like *World Trade Center* (2006) and *United 93* (2006), and Marvel's 9/11-themed comic book series *Heroes*, the terrorist is a central figure in much of popular culture. But that presence in popular culture is not ancillary to processes of risk assessment or the generation of folk devils: it is central to them. Take, for instance, the character of Jack Bauer on Fox's popular television program *24*. Bauer's frequent use of torture has been cited by numerous government officials as an inspiration for, or in defense of, the harsh interrogation tactics at Guantanamo. As Lithwick (2008) points out:

John Yoo, the former Justice Department lawyer who produced the so-called torture memos...cites Bauer in his book "War by Other Means." "What if, as the Fox television program '24' recently portrayed, a high-level terrorist leader is caught who knows the location of a nuclear weapon?" Even Supreme Court Justice Antonin Scalia, speaking in Canada last summer, shows a gift for this casual toggling between television and the Constitution. "Jack Bauer saved Los Angeles...He saved hundreds of thousands of lives," Scalia said. "Are you going to convict Jack Bauer?" (para. 4).

This kind of "what if" thinking opens up the possibility of even the most outlandish threats and scenarios. "From this catastrophic perspective there is no time to wait for evidence. The unknown quality of the threat itself is proof of the danger ahead" (Furedi, 2007, p. 70). Thus, terror-celebrities, from Osama bin Laden to Jack Bauer, simultaneously signify real risks and invite the imagination of worst case scenarios generated from Hollywood fictions. Such an odd juxtaposition suggests that the growing intersection of mass-mediated panic and official risk assessment has been thoroughly permeated by popular culture.

Implications of Terrorists as Mass Commodities

Thinking of the moral panic about terrorism as a fundamental part of consumer society allows for corrections to the problem of disproportionality described earlier. This paper has already suggested that determining proportional responses to the kinds of threats described by the risk society thesis is difficult or impossible today. But this is not a problem when those risks are placed in the context of consumer culture. In the world of mass marketing and advertising, proportionality is not much of an issue; the increasingly spectacular landscape of mass consumption requires ever-growing levels of publicity, hype, and buzz. So, too, do contemporary moral panics. Without a steady diet of spectacular news headlines, panics over things like road rage, tainted Halloween candy, or gangster rap music tend to fade into obscurity (Glassner, 1999).

Campbell (1987) has emphasized the importance of imagination in the birth of modern consumerism. While Protestantism supplied the modern West with an ethos of negative emotional control, it also served to definitively locate emotions not in the world, but in individuals, and to paradoxically encourage individuals to seek pleasure via emotional and not merely sensory stimulation (Campbell, 1987). This mental orientation towards "autonomous self-illusory hedonism," the ability to control one's imagination in order to achieve a desired emotional state, was a foundation for the rising levels of consumer desire that accompanied industrialization and the growth of modern mass production. The result of self-illusory hedonism, according to Campbell (1987), is a ceaseless quest for novelties that we hope will fulfill our fantasies.

New terror-related products and policies continue to inspire both our fears of terrorism and our fantasies of safety and security. The self-illusory quality of modern consumption helps explain why a particular folk devil need not pose an actual threat, and may not even have to exist, to continue to occupy American popular culture; all that is required is a marketing campaign to keep one's imagination occupied. The terrorist folk devil is in fact a creation of intense marketing efforts; thanks to television shows, advertisements, comic books, news reports, and public relations campaigns, the terror threat appears novel in its strength, its scope, and its continued ability to inspire renewed fears as well as entrepreneurial responses to those fears. Even the White House admitted to thinking of the war on terror in marketing terms, for example, by waiting until the first anniversary of September 11th to introduce the idea of an Iraq War because "you don't introduce new products in August" (Card, quoted in Heller, 2005, p. 1).

The notion of novelty has always been an important part of the moral panic literature. As Cohen (2003) put it, "A new type of deviance is usually seen as more threatening than something which has been coped with in the past" (p. 68). The conventions of news reporting favor the coverage of newer panics as well: "A 'new' social problem will be seized upon, covered until its full news potential has been exploited, then dropped as the next new problem, with its fresh news angles, is discovered" (Critchler, 2003, p. 139). The attacks of September 11th were not the first terrorist acts on United States soil, and also not the first terrorist acts committed by Muslims here. But September 11th has had a long-standing cultural impact in ways that the Oklahoma City bombing of 1995 or the World Trade Center bombing in 1993 may not have. Certainly the loss of life and general scale of September 11th is a factor, but its unprecedented scope was, in a sense, transformed into a type of novelty. This novelty was key to its prolonged and intense consumption by mass American audiences, just as novelty is key to many products' success with consumers. As the panic over terrorism continued, it had to be subtly shifted and updated. From suicide hijackers to shoe-bombers to anthrax senders to dirty bombers to dictators with weapons of mass destruction (WMDs) at the ready, the image of the

terrorist has been subject to seasonal changes. Modern marketing has been based on just this kind of small play of differences and constant updating of styles, especially characteristic of the fashion industry, since the mid-19th century (Lipovetsky, 1994).

The preponderance of spectacle in modern consumer society increases the potency of certain kinds of moral panics. As rationalization has proceeded across innumerable retail sites, retailers have sought to combat the disenchantment associated with the efficient, predictable delivery of goods by focusing on services, experiences, and themes. (Ritzer, 1999). Advertising gurus today advise companies on ways to turn their stores into exciting, unique experiences that will capture the attention of jaded customers (Pine & Gilmore, 1999). The spectacular destruction of September 11th, experienced in real time by millions of viewers, set it apart from other terrorist attacks, and marked it as a particularly powerful generator of new ideas about the hidden, sinister “others” who could have masterminded such catastrophe. Of course, spectacle has always been a powerful tool for manipulating popular opinion. As the influential, albeit anti-democratic, turn-of-the-century intellectual Gustave Le Bon noted in an eerily prescient passage from his 1895 treatise *The Crowd*:

A hundred petty crimes or petty accidents will not strike the imagination of crowds in the least, whereas a single great crime or single great accident will profoundly impress them...An accident which should have caused the death of only 500 instead of 5,000 persons, but on the same day and in public, as the outcome of an accident appealing strongly to the eye, by the fall, for instance, of the Eiffel Tower, would have produced, on the contrary, an immense impression on the imagination of the crowd (p. 70).

In a culture filled with elaborately-themed Las Vegas casinos, giant mega-malls, and televised extravaganzas like *American Idol*, moral panics like that over terrorism require heightened levels of spectacle in order to capture and maintain the public's attention.

The political implications of this spectacular, commodified version of terrorism are troubling in many respects. One effect of the September 11th attacks has been to call forth a reimagining of America's enemies across political and popular culture. The new definition of “terrorist” that has emerged expands the boundaries of America's national interest in other countries by affixing certain racial and ethnic characteristics to conventional wisdom about who the terrorists are, and then justifying imperial conflicts as a way of “fighting them over there.” But these racial generalizations have consequences at home as well. In the week following September 11th, there were 645 incidents of backlash against Americans of South Asian or Middle East descent reported in United States media outlets, including three deaths (South Asian American Leaders of Tomorrow, 2001). The image of the terrorist in popular culture no longer looks like Timothy McVeigh, despite his role in the Oklahoma City bombing, nor does it look like “American Taliban” John Walker Lindh, who is now a largely forgotten figure despite the fact that he fought against United States troops in Afghanistan. This suggests that racial stereotyping, quite separate from the actual actions taken by various enemies of America, is at work in our definitions of terrorist and terrorism. These labels simply no longer apply to whites, a fact that aids the indiscriminate killing of ethnic others “over there,” and one that suggests that the terms themselves are biased towards the continued promotion of perpetual war.

The Authenticity of Moral Panics

The shared national experience of September 11th was not just a spectacle, but a more authentic sort than is normally offered by consumer culture. Americans watched the towers fall live on air. They heard the frightened, awe-struck, unscripted

pronouncements of shaken news anchors. They saw the footage of giant dust clouds sweeping down city streets taken by fleeing cameramen. More than just a collection of arresting images, this footage offered visual clues to the authentic, unscripted nature of the crisis: “The main features of the Manhattan visuals are random shots, erratic camera movements, imperfect focus and framing, and camera lenses covered in white dust. This is clearly a projection of unstaged reality” (Chouliaraki, 2004, p. 191). In this immediate, authentic context, it is no surprise that television coverage of September 11th was consistently more emotional than print coverage, and that viewers of TV news reports about the terrorist attacks had stronger emotional responses than those who were primarily informed through print media (Cho, et al., 2003). Although political and media elites certainly stretched that sense of reality or honesty over time, as 9/11 became the buzz word or trademark attached to many increasingly unrelated policy decisions or political campaigns, its initial authenticity helps explain why so many geographically dispersed Americans felt themselves to have been victimized by the attacks.

The concept of authenticity, and its relationship to mass consumption, has received increasing scholarly attention in recent years. Although the idea that one could come to truly know one’s inner self has been central to notions of authenticity since at least the Romantic era, such authenticity has been increasingly viewed as elusive or problematic. Trilling (1972) has argued that before the ascendance of Freudian psychiatry, not authenticity but sincerity—simply being true to one’s word—was still the main criteria for judging an individual. But the Freudian-inspired self-help movement of the 1960s and 1970s served to further “belabor” the self, paradoxically setting up personal authenticity as the goal at the end of a long process of self improvement and re-creation (McGee, 2005). This vision of authenticity appeared in consumer culture in the 1970s, when marketers first co-opted public skepticism about the conformity of mass consumption by focusing on niche markets, appeals to youth and rebellion, and a renewed appreciation for nature and the body (Frank, 1998; Binkley, 2007). Today, in an era in which so much of our identity is constructed from a pastiche of media and cultural influences, and constantly reconfigured for various audiences, authenticity has become an increasingly rare and increasingly sought-after commodity that individuals often seek in the products they consume. Advertisers and marketers have translated this explicitly into a desire to present “authentic market offerings” to a public they often find deeply suspicious of, or at least savvy about, their appeals (Gilmore & Pine, 2007).

Of course, the notion of authentic consumer culture is somewhat of an anachronism, since the concept of authenticity seems an anathema to marketing decisions and advertising manipulations. Nevertheless, the market has adapted new styles of “ethical consumption” that hint at a more authentic relationship to the goods one consumes (Holloway, 2002). Also, and perhaps more obviously, the media has incorporated various degrees of “reality” into television programs since the early 1990s in an effort to appear authentic through a natural, unscripted tone. Frequent viewers of reality television recognize the paradox inherent in these notions of authenticity, but revel in the tension between the realistic and the fantastic aspects of these programs (Rose & Wood, 2006). Tourism often plays off of similar tensions, and tourists are liable to even find authentic those items or places that have no direct connection to a time period or event, but simply *appear* as if they do (Grayson & Martinec, 2004). As we increasingly construct our personal biographies through mass media and consumer culture (Gergen, 1991), the consumption of authentic experiences comes at a premium, despite the contradictions inherent in the entire concept of authenticity.

Authenticity is often connected to fear as well. The so-called ethical consumption movements that focus on cruelty-free, organically-grown foods are often motivated by fears about contamination or genetic modification. And as consumers increasingly

construct their own biographies with an eye toward their marketability to prospective employers and prospective love interests alike, they face the terror of their own inadequacy. As Bauman (2007) puts it, they are “simultaneously, promoters of commodities and the commodities they promote. They are, at the same time, the merchandise and their marketing agents, the goods and their traveling salespeople” (p. 6). Thus, the stakes of any kind of consumption choices are high, as an inauthentic presentation of self is likely to have increasingly high costs in both professional and private life. This may be a hidden incentive, within our increasingly fragmented, niche-marketed consumer society, towards conformity in the rare instances, such as September 11th, where a widely shared experience is attached to a very narrow range of acceptable or authentic emotional responses.

At this point, it makes sense to return to the question of why certain moral panics resonate and why others do not, or at least, do not resonate for as long or as powerfully as others. Scholars of moral panics point out that panics tend to serve the interests of certain government and media elites. But public opinion is more complicated than simply a top-down imposition of ideas, and if every potential panic serves certain elite interests, then this still does not explain why some resonate and some do not. Glassner (1999) speculates that unacknowledged guilt over structural conditions like poverty or unemployment fuels many mass-mediated moral panics. But this is also a highly subjective and individual criterion: the familiar post 9-11 refrain of “why do they hate us?” (Zakaria, 2001) suggests a sincere lack of understanding about global perceptions of the United States, not guilt over perceived American imperialism.

As with other products and services on the market today, the success of a given moral panic is tied to its perceived authenticity. Just like reality TV viewers, we negotiate the real and scripted or manufactured aspects of disastrous or catastrophic events, and use those negotiations to evaluate the authenticity of proposed folk devils. The experience of September 11th, in which so many Americans watched the towers collapse in real time alongside stunned news anchors, was authentic enough to provide a powerful and long-lasting motive behind the creation and persecution of a category of folk devil that had scarcely existed in the public consciousness before then, and which failed to actually materialize afterwards despite constant warnings about lurking terror threats.

Moral panics may also fail to take root due to a lack of authenticity. Americans experienced television coverage of the April 16, 2007, Virginia Tech shootings in similarly immediate and emotional ways when compared to September 11th, and in place of FDNY and NYPD hats and t-shirts they purchased millions of dollars worth of Virginia Tech athletic apparel in the aftermath of the tragedy (Bowman, 2007). But the media coverage was quickly perceived to be unnatural or excessive; 50% of respondents in one survey believed there was too much coverage of the story (Pew Research Center for the People and the Press, 2007). Media critics soon attacked the news media’s pushy interviews with traumatized students, its flashy graphics and theme music, and NBC’s decision to air footage from killer Cho Seung-Hui’s homemade multi-media press release (Dumenco, 2007; Fox, 2008). Three days after the massacre, signs reading “Media Stay Away” were fastened to the walls of several Virginia Tech campus buildings (Gravois & Hoover, 2007). Thus, despite widely watched news coverage and the attempts of various interested stakeholders, the Virginia Tech shooting failed to inspire a moral panic about school shooters, violent movies or video games, mental illness, or the easy availability of guns. This was not, it would seem, due to a sober public consideration of the actual threat posed by these events, but was due, instead, to the perceived lack of authenticity with which these events were handled in the media.

Conclusion

Goode and Ben-Yehuda (1994) claim that “panics are not like fads, trivial in nature and inconsequential in their impact; they do not come and go, vanishing, as it were, without a trace” (p. 229). But it is difficult to even describe fads this way today, given the intensity with which contemporary consumer culture devotes itself to nostalgic recycling of styles and trends from previous decades. Treating consumer culture as frivolous and arguing that its shifts and movements are inconsequential overlooks the innumerable ways in which that culture has provided the foundation for the current moral panic over terrorism. By making the case for the terror threat in the free market, the neo-liberal architects of the war on terror were exhibiting their fundamental preference for market-based solutions: the same preference that has resulted in some of the war on terror’s most audacious innovations and its most disastrous failures.

This paper has suggested that folk devils must be evaluated based on their perceived authenticity, or lack thereof, not based on whether the panic they create is proportional to the actual threat they pose. Although both terms are somewhat imprecise, using inauthenticity rather than disproportionality as a means of critically evaluating moral panics matches the consumerist framework in which such panics now occur. It also allows for a better understanding of why particular panics succeed in capturing, or fail to capture, the public’s attention. Today, official risk appraisals and mass-mediated moral panics are both subject to, and coercive of, the public imagination. Thus, it is not enough to imagine terrorism as the domain of either rational, scientific risk evaluations or law-enforcement-led moral panics. Instead, these approaches to terrorism intertwine within a popular culture fascinated by phenomena that are perceived as in some way authentic, and that authenticity provides the resources for the continued calculation of risks and creation of folk devils.

Today the power of the terrorist threat in the United States is directly related to the ubiquity of consumer culture and the authenticity of a national trauma shared throughout that culture. Ours is not yet an era in which the kinds of bureaucratic fixes and scientific or technocratic debates envisioned by the theory of the risk society exist outside the influence of a panic-inducing mass media. Management of risks before they happen seems no more important in contemporary American culture than the mass consumption of the catastrophes that result. The millions of viewers glued to television sets during September 11th, Hurricane Katrina, and the Virginia Tech shootings suggest no less. But these voyeuristic tendencies would be less worrisome were they not so easily connected to the kinds of mass panic and stigmatization inherent in the notion of the terrorist folk devil.

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TWO FACES OF CRIMINAL PROSECUTION:
HARVEY DENT, MIKE NIFONG, CRAIG WATKINS

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Abstract

In the film The Dark Knight, the character of Harvey Dent is an existential archetype of the American criminal prosecutor. Rather than his characterization in the Batman canon as Two-Face, a minor, but typical, comic villain, Harvey Dent's two faces are the extremes that the American public sees in prosecutors nationwide—sometimes venality and abuse; sometimes propriety and conscientiousness. In this popular culture manifestation, art reflects life reflects art. Here, the two extreme examples are Durham, North Carolina District Attorney Mike Nifong and Dallas, Texas District Attorney Craig Watkins. The former wrongly prosecuted the members of the Duke University Lacrosse Team; the latter established a special unit in the district attorney's office to review prior convictions for exonerations. Like Batman and Commissioner Gordon, the only face the American public wants to see is the good face of Harvey Dent, heroic prosecutor, not the rare skull underneath of prosecutorial misconduct.

"The duty of a public prosecutor or other government lawyer is to seek justice, not merely to convict."²

"Better that ten guilty persons escape than that one innocent suffer."³

"It takes a good lawyer to convict a guilty man. It takes a really good lawyer to convict an innocent man."⁴

"I believe in Harvey Dent."⁵

These quotes of fact, fiction, and aspiration reflect what Professor Richard K. Sherwin has said happens, "when law goes pop."⁶ Rather than Lady Justice with blindfold, sword and balance scales standing independent and apart from society, Sherwin concludes that beyond an "ordinary intermingling of law and popular culture" we are seeing "a more generalized erosion of law's legitimacy."⁷

From Sherwin's perspective, we are confronted with a Hobson's choice between two extreme cultural reactions to this erosion of legal legitimacy. Society fluctuates from "radical disenchantment (or skeptical postmodernism)," wherein we sink into a passive state of ironic detachment and go with the flow of events, on the one hand, or

¹ The author would like to thank Ryan Reese and Natalia Vera for their assistance with the manuscript.

² Illinois Rules of Professional Conduct, Rule 3.8(a). The American Bar Association Model Rules of Professional Conduct, a version of which is pending before the Illinois Supreme Court, has eliminated this statement.

³ Blackstone's Formulation, a/k/a Blackstone Ratio or Blackstone's Ration, http://www.newworldencyclopedia.org/entry/William_Blackstone. (last visited Oct. 2, 2008).

⁴ *The Thin Blue Line* [(American Playhouse, 1988).

⁵ *The Dark Knight* [(Warner Bros. Pictures, 2008).

⁶ RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* (The University of Chicago Press 2000).

⁷ *Id.* at 5.

seek a “reactionary nostalgia for Enlightenment rationality and control” akin to the call for “law and order” on the other.⁸

Sherwin cites as a prime example the philosophical differences about law expressed in the two different film adaptations of the John D. MacDonald novel *The Executioners*—J. Lee Thompson’s 1962 *Cape Fear* and Martin Scorsese’s 1991 remake. Both reflect an extreme perspective of law and society in and of their times and, for our purposes, are reflections of Sherwin’s two philosophical poles. In 1962, the lawyer and his family are romantically nostalgic, even for that time, morally upstanding and, though willing to push the envelope of the law, still rely on the legal system to protect them. But, in 1991, both the family and the legal system are dysfunctional. What was a *film noir* in 1962 is a Hitchcockian puzzle in 1991. While Thompson’s film showed that there are some flaws in law, character, and community, Scorsese presents a world “so dark as to be bereft of the possibility of redemption” except perhaps by the intervention of fate or magic.⁹

The two films are dramatic, artistic liberties that fit Sherwin’s perspective. But how universal is Sherwin’s construct? Critiquing Sherwin, Jessica M. Silbey challenges his “inattentiveness to methods of interpretive technique.”¹⁰ She argues that he fails in his stated goal that “law cannot be adequately understood without a careful examination of specific linguistic, cognitive, and cultural practices.” To the contrary, however, this article takes the perspective that Sherwin is grasping toward his goal through a newer framework—“postmodern theory, of the affirmative kind.”¹¹

While Sherwin’s primary focus is, at its root, more narrowly on the popular culture impact within the jury pool and the courtroom, this article looks more broadly at a subjective suggestion of how these fictional and factual characters might be viewed by the electorate—those in the popular culture who select the prosecutor who, in turn, serves as a symbol of the state and the integrity of the criminal justice system. This article follows in Sherwin’s wake grasping toward the nexus of law and popular culture, each reflecting the other. From the perspective of a lawyer who views law-related popular culture by looking to facts and images that have legal impressions or significance, analysis of Sherwin’s “affirmative postmodernism” is apropos.

In this article, we see the two faces of American criminal prosecution symbolically distilled from *The Dark Knight* re-characterization of Harvey Dent. He is elected District Attorney to bring law and order to Gotham City, but is corrupted by Joker into a detached, unprofessional victim pursuing personal goals. But then, in death, Harvey Dent’s image is restored by Batman and Commissioner Gordon acting in both cynical disregard of fact and for the public’s ability to accept truth, into a nostalgic but false heroic figure. Art reflects life reflects art in the case studies of Craig Watkins, Mike Nifong and Harvey Dent. Watkins is factually acting as Harvey Dent sought to act. Nifong allowed personal interest to subvert his professional responsibility and publicly went beyond Harvey Dent’s private failure to cause public questioning of law’s legitimacy.

Batman

Batman is one of the pantheon of American superheroes such as Superman, Spiderman, Wonder Woman, and perhaps others, depending upon who joins the debate and what beverages are served. But in all such friendly debates, the participants must recognize that Batman is the only character who is not blessed with

⁸ *Id.* at 8-9.

⁹ *Id.* at 182-183.

¹⁰ Jessica M. Silbey, *What We Do When We Do Law and Popular Culture*, 27 *LAW & SOC. INQUIRY* 139, 163 (2002).

¹¹ SHERWIN, *supra* note 5, at 235.

non-human powers. Instead, Batman relies upon only his human characteristics and the ingenuity necessary to develop and manufacture his tools and weapons. His only superpower, so to speak, is his super wealth. According to *Forbes*, the annual cost of being Batman in *Batman Begins* is \$3,365,449.¹²

The focus of our discussion is Harvey Dent. But before we focus, an overview of the world of Batman is apt. However, such a task is somewhat like trying to construct the genealogy of the Greek and Roman Gods—like myths and folk tales, they evolve according to who is telling the story and who is listening.¹³

First, there was the comic book. In 1938 artist Bob Kane and writer Bill Finger collaborated on a new character for Detective Comics.¹⁴ According to Kane, the character was inspired by Superman, a drawing by Leonardo da Vinci for a bat-wing glider, and two films—*The Mark of Zorro* and *The Bat Whispers*.¹⁵

The Joker first appeared in 1940 in the *Batman* comic book, while Harvey Kent (subsequently re-named Harvey Dent to avoid confusion with Superman Clark Kent) first appeared in August 1942.¹⁶

The general story line for Harvey is one where half of his face is disfigured by acid. At various junctures, the disfigurement is the result of mob boss Salvatore Maroni throwing acid on Dent's face, scarring one side of it. Dent's mind snapped and he became a criminal calling himself "Two Face."¹⁷ Another version has Batman deflecting the hand throwing the acid thus leaving half of Dent's face uninjured. Harvey became obsessed with the digit 2 and duality—often making decisions based on the flip of a two-headed coin—normal on one side, scarred on the other.

Over the seventy years since the creation of Batman, his evolution in multi-media has paralleled aspects of American society. In many manifestations, Batman and his band of criminal adversaries have been of their times, though not necessarily commenting about the times.

Prosecutors

Whether they are called District Attorneys (DAs) or State's Attorneys (the Illinois designation),¹⁸ or United States Attorney, they all possess the power of the government to prosecute an individual for the alleged commission of a crime. As former U.S. Attorney for New Mexico, David Iglesias¹⁹ wrote:

¹² Bruce Wayne's fortune has been estimated at \$6.3 billion. David M. Ewalt, *Being Batman*, http://www.forbes.com/technology/2005/06/20/batman-movies-superheroes-cx_de_0620batman.html (last visited Oct. 8, 2008).

¹³ See, DON LOCICERO, *SUPERHEROES AND GODS: A COMPARATIVE STUDY FROM BABYLONIA TO BATMAN* (McFarland 2007).

¹⁴ Batman Timeline, <http://thebatman.bravepages.com/comics/timeline.htm> (last visited Oct. 5, 2008).

¹⁵ THE MARK OF ZORRO is the 1920 silent classic, the first of the many Zorro movies. It stars Douglas Fairbanks, Sr., <http://www.archive.org/movies/thumbnails.php?identifier=markofzorro-1920> (last visited Oct. 5, 2008). THE BAT WHISPERS is much more obscure. It is a 1930 release based upon a 1920s play that was part of a Broadway fad for haunted house stories, <http://www.imagesjournal.com/issue09/reviews/batwhispers/text.htm> (last visited Oct. 5, 2008).

¹⁶ LOCICERO, *supra* note 13.

¹⁷ *Id.*

¹⁸ Ill. Const., art. 6, § 19 (1970).

¹⁹ Mr. Iglesias is one of the U.S. Attorneys improperly fired by the Bush Administration in 2006 for political reasons. Those firings are now the subject of criminal investigation by the Department of Justice following the recommendation of the DOJ inspector general and office of professional responsibility report that specifically highlighted Mr. Iglesias' firing. See The Huffington Post, *Prosecutor Named in DOJ-US Attorney Investigation*, http://www.huffingtonpost.com/2008/09/29/prosecutor-named-in-doj-u_n_130275.html (last visited Oct. 6, 2008). See also U.S. Department of Justice, *An Investigation Into the Removal of Nine U.S. Attorneys in 2006*, <http://www.usdoj.gov/oig/special/s0809a/final.pdf> (last visited Oct. 6, 2008).

U.S. Attorneys are, in other words, fully invested in their turf and are given the complete confidence and authority of the U.S. government, with all the gravitas that conveys....I took my job as a U.S. Attorney very seriously, and there wasn't a day that passed when I didn't feel the weight of the responsibilities with which I had been entrusted. That entailed the assumption that I would, under all circumstances, maintain rigorous impartiality. It came with the job and went without saying.²⁰

This is a manifestation of Illinois Rules of Professional Conduct, Rule 3.8(a), quoted at the beginning. This also corresponds with the professional standards established by the American Bar Association in the seminal *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* (1993). These standards go beyond a reactionary nostalgia, but represent the legal standard against which a prosecutor's conduct is to be judged both in court and in the attorney disciplinary system.

Craig Watkins

But a new day has dawned in Dallas County, Texas. On January 1, 2007, Craig Watkins was sworn in as the first African-American District Attorney in the county's history.²² From the time of Dallas' legendary District Attorney Henry Wade (DA from 1951-1987), the county has had a record for "conviction at any cost."²³ Indeed, the U.S. Supreme Court opinion in *Miller-El v. Dretke*²⁴ held the District Attorney had a pattern and practice of excluding minorities from juries. The *Dallas Morning News* cited documents within the prosecutor's manual circulated within the District Attorney's Office specifically stating, "Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or how well educated."²⁵

In what may be considered cosmic justice, the laboratory used by Dallas County preserves its samples for twenty-five years—much longer than standard. This has been largely responsible for the twelve exonerations prior to Watkins taking office according to the Innocence Project of Texas.²⁶ Bringing the work of the Innocence Project in house, Watkins said:

The first thing we did was set up this "Conviction Integrity Unit" in the District Attorney's office. We immediately staffed it with two attorneys and two investigators, and told them to look at 400-some-odd cases for which there was DNA available to test. So their responsibility right now is to look through those 400 cases to see if there's reason to suspect a wrongful conviction. If they find cases, we'll then collect the DNA and test it. If it shows the person in prison is innocent, we'll start proceedings for an exoneration...In addition to that, the unit has the responsibility of training the younger lawyers here in the office on the ethical side of a prosecutor's job—things like the importance of properly dealing with exculpatory evidence. And we intend to have this section here in this office forever. This is not a pilot program. It's something I'd like to see

²⁰ DAVID IGLESIAS WITH DAVIN SEAY, *IN JUSTICE*, 47 (John Wiley & Sons, Inc. 2008).

²² Gromer Jeffers, Jr., *Watkins Driven to be DA*, THE DALLAS MORNING NEWS, <http://www.dallasnews.com/sharedcontent/dws/news/politics/local/stories/123106dnmetwatkins.3382814.html> (last visited Oct. 19, 2008).

²³ Linda Greenhouse, *Court Revisits Question of Jury Selection Bias*, N.Y. TIMES, Oct. 17, 2002, at A25.

²⁴ *Miller-El v. Dretke*, 545 U.S. 231 (2005).

²⁵ Sara Rimer, *In Dallas, Dismissal of Black Jurors Leads to Appeal by Death Row Inmate*, N.Y. TIMES, Feb. 13, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9D01E0DF163FF930A25751C0A9649C8B63&sec=&spn=&pagewanted=all> (last visited July 14, 2009).

²⁶ Walker Blog, *Craig Watkins Turns Prosecution on its Head*, <http://walkerw.blogspot.com/2007/02/craig-watkins-turns-prosecution-on-its.html> (last visited Oct. 19, 2008).

spread across the country—where DAs will actively seek out convictions that were obtained unfairly.²⁷

Watkins went on to note another serious flaw in modern criminal prosecution—eyewitness testimony:

It's been proven time and time again in studies that eyewitness identification is extremely unreliable. Yet police, prosecutors, and juries still tend to put a lot of faith in them. And these same studies show there are some basic steps you can take to make eyewitness identifications more reliable, but that also would result in fewer identifications, and fewer prosecutions. But if there are procedures available to increase the validity of a form of evidence, and police and prosecutors aren't using it, then they're deliberately increasing the chances of a wrongful conviction in order to get more convictions.²⁸

In May 2008, Watkins said he was considering whether to launch a campaign to mandate disbarment for any prosecutor who intentionally withheld evidence from the defense. Michelle Moore, a public defender and member of the board of the Innocence Project of Texas, supports criminalizing violations of *Brady v. Maryland*,²⁹ which requires prosecutors to provide evidence material to guilt or punishment. Speaking on the exoneration of one defendant after twenty seven years, Attorney Moore said, "If he can do twenty seven years behind bars, the prosecuting attorney can face time for hiding evidence."³⁰

The most radical aspect of these positions is their rationality. Again, quoting Watkins:

Well we've obviously had this political mantra over the last thirty years about "getting tough on crime." And I think too often, buried in that mantra is the implication that there's no room for fair justice. We've stripped away protections for the accused. And as a result, I think many prosecutors went into a case with blinders on—like everyone was guilty. The more convictions you won, the better your chances to get re-elected or to move on to higher office. We're now seeing the fallout from that mentality.³¹

This prosecutorial mentality has been summarized in a report by The Center for Public Integrity in thirteen lessons that lead to wrongful conviction:

1. Premature conclusions can ensnare the innocent.
2. Lack of solid evidence does not prevent charges from being filed.
3. Prosecutors can tilt the system of checks and balances.
4. Prosecutors should cautiously evaluate testimony and confessions.
5. Prosecutors should not rely uncritically on their scientific and forensic experts.
6. Some prosecutors still withhold evidence.
7. A pattern of excluding potential jurors by race or gender should raise a warning.
8. Juries empowered to impose the death penalty might be more likely to convict.

²⁷ Radley Balko, *Is this America's Best Prosecutor?*, REASON ONLINE, <http://reason.com/news/show/125596.html> (last visited Oct. 19, 2008).

²⁸ *Id.*

²⁹ *Brady v. Maryland*, 373 U.S. 83 (1963).

³⁰ Jennifer Emily & Steve McGonigle, *Dallas County district attorney wants unethical prosecutors punished*, THE DALLAS MORNING NEWS, <http://truthinjustice.org/dallasda.htm> (last visited May 4, 2008).

³¹ *Walker Blog*, *supra* note 26.

9. Improper opening statements and closing arguments and direct and cross-examinations can infect the fairness of a trial.
10. Prosecutors should not interfere with defense access to prosecution witnesses or tamper with witnesses for either side.
11. Appellate courts sometimes ignore exculpatory evidence withheld due to misconduct.
12. Individuals from outside the criminal justice system are often the only post-conviction hope of those denied a fair trial.
13. Police and prosecutors sometimes do little to search for the actual perpetrators of a crime after learning the original suspect is innocent.³²

All of these factors and practices contribute to the diminution of legitimacy of the law in the eyes of the public.

Mike Nifong

One can see several of these lessons present in the case of the Duke Lacrosse players. There is an inversely weird American mythic quality to the story of Mike Nifong and the Duke Lacrosse team. In some ways, it seems to be a parallel universe—a *Planet of the Apes* moment—when compared to a case like *Powell v. Alabama*.³³ In *Powell*, popularly known as “the Scottsboro boys case,” the indigent, uneducated nine Black youths were accused of raping two White girls and railroaded to trial and conviction. Here we have the very affluent White members of the exclusive Duke University Lacrosse team accused of raping a Black “exotic dancer.” And while the Scottsboro case was reversed because of the failure of fundamental due process, including fair trial and assistance of counsel, the three Lacrosse players who were ultimately charged were fully “lawyered” with supportive families and friends. In other words, the Lacrosse defendants were unlike the vast majority of defendants in the criminal justice system.

A brief summary of the case is that on the night of March 13, 2006 an African-American female exotic dancer, escort, and sometime student at the predominantly Black North Carolina Central University was hired to perform at an off-campus house rented by the captains of the Duke University all-but-one White Lacrosse team. She and another dancer arrived; she was under the influence of alcohol and other substances. The women danced and sexual comments were exchanged. The dancing stopped and the women retired to the bathroom. Further verbal sparring occurred when the women exited the bathroom, with the putative victim being disoriented and partially undressed. The women drove away. Subsequently, the second woman, who did not know the putative victim, tried to get her to leave her car as the putative victim was intoxicated. Ultimately, the putative victim was involuntarily committed to a local mental health and substance abuse center in Durham. It was there that she first stated that she had been raped.³⁴

From this point, it becomes a story of race, politics, and prosecutorial misconduct inextricably entwined and demonstrating many of the lessons from the Center for Public Integrity. While Nifong had worked as a career prosecutor for twenty nine years, he had been appointed District Attorney less than a year and was running in his first election for the job. At the time of his first briefing about the incident, Nifong was

³² Center for Public Integrity, *Harmful Error: Investigating America's Local Prosecutors* 14-33 (2003).

³³ *Powell v. Alabama*, 287 U.S. 45 (1932).

³⁴ Tiffany Webber & Jared Mueller, *Timeline of March 13-April 20, 2006: Duke Lacrosse Sexual Assault Case*, N.Y. TIMES http://topics.nytimes.com/top/reference/timestopics/organizations/d/duke_university/duke_lacrosse_sexual_assault_case/index.html?scp=2&sq=duke%20lacrosse%20charges&st=cse (last visited Oct. 24, 2008).

polling behind his opponent. Subsequent to the publicity about the case, he won the election.³⁵

The findings of the North Carolina State Bar Association disciplinary process which resulted in Nifong's disbarment, identified violation of ten provisions of the North Carolina Revised Rules of Professional Conduct.³⁶ Generally, Nifong's public statements to the media violated rules prohibiting statements that have "substantial likelihood of materially prejudicing the adjudicative" process. For example, Nifong called the Lacrosse team "a bunch of hooligans" stating "I'm not going to let Durham's view in the minds of the world to be a bunch of lacrosse players from Duke raping a Black girl in Durham."³⁷

Second, Nifong failed to disclose exculpatory evidence and then hid it in a "document dump" of over 1,800 pages of material. This violated disciplinary rules and constitutional requirements under *Brady*. Third, he failed to disclose conversations with the director of the DNA lab and directions he gave to the director to prepare a report with only positive matches. Fourth, Nifong made false statements of material fact to the courts, opposing counsel, and third persons.³⁸

The chair of the Disciplinary Hearing Committee stated that the panel concluded that Nifong's misconduct was initially motivated to further his political ambition and grew out of "self-deception arising out of self-interest."³⁹ Further, Nifong was sentenced to spend a day in jail for contempt of court for willfully making false statements to the court.⁴⁰

These actions fit squarely within both poles of Sherwin's Hobson's choice (as incongruous as that sounds). It satisfies those who seek nostalgia for rationality and control giving the impression that Nifong was one bad apple who the system successfully caught and punished. At the same time it also satisfies those who possess a passive ironic detachment saying, "This is just another example of the corruption of the system; now let's move on." Both are, in fact correct, entwined parts of the story, for indeed, there is much more prosecutorial misconduct un-punished and, at least in this case, it was addressed by the system. Professor Bennett Gershman, Pace University School of Law, a former New York prosecutor,⁴¹ sums it up when he says, "I couldn't give you five cases in the last 40 years of criminal charges against prosecutors."

Returning to my original inversely weird American mythic quality of this story, why did District Attorney Mike Nifong—who did not send anyone to death row nor have a history of running a racist office—suffer this extremely severe unusual disposition? According to Stephen M. Gillers, a law professor at New York University:

The very same facts that made this case attractive to a prosecutor up for election and a huge publicity magnet—race, sex, class, lacrosse stars, a prominent university—also led to his undoing when the case collapsed and his conduct was scrutinized in and beyond North Carolina...If the same case had involved three poor men, instead of defendants with private counsel and families that supported them financially and publicly,

³⁵ Duff Wilson, *Facing Sanction, Duke Prosecutor Says He'll Resign*, N.Y. TIMES. June 16, 2007, at A1.

³⁶ Each state and federal court has separate procedures for the admission of attorneys to practice law in that court and to discipline that attorney for violation of that court's rules of conduct. Each court's rules are different, but are generally based upon the ABA Model Rules of Professional Conduct. Disciplinary action is generally limited to the ability of the attorney to practice law within that jurisdiction.

³⁷ Joan C. Rogers, *Prosecutor in Duke Lacrosse Case is Disbarred for Intentional Misconduct*, 23 LAW. MAN. PROF. CONDUCT 330 (June 27, 2007).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ A.P., *Day in Jail for Ex-Duke Prosecutor*, N.Y. TIMES, <http://www.nytimes.com/2007/09/01/us/01nifong.html?scp=8&sq=nifong&st=cse> (last visited Oct 23, 2008).

⁴¹ *Center for Public Integrity*, *supra* note 32.

we would not likely see a disbarment, in North Carolina or anywhere. I'd be surprised if there were even serious discipline.⁴²

Harvey Dent

Over the life of the *Batman* saga, there have been many variations of the Harvey Dent/Two Face character. The general commonality between all incarnations is the notion of duality—the fact that Harvey Dent is grievously injured on one side of his face, that he is “mentally troubled,” that he engages in criminal conduct and that he possesses a coin that he uses as a tool in his conduct.

The Harvey Dent manifest in the film *The Dark Knight* presents an existential character unlike the earlier versions. In both *Batman Begins* and *The Dark Knight*, Christian Bale and Jonathan Nolan, screenwriters and, in the case of the former, director, the story has evolved.⁴³

Limiting the discussion to live-action,⁴⁴ one could analogize the three different video/film presentations as being like a cartoon, a comic book and a graphic novel: 1) the television program (1966-68) was campy and closest to the comic book origins in plot, but more cartoon in execution. Indeed, *Batman* creator Bob Kane credits the TV show with saving the comic from cancellation;⁴⁵ 2) the first big budget films, the Tim Burton directed and designed 1989 *Batman* and one of its sequels, the Joel Schumacher directed 1995 *Batman Forever*, in which Harvey Dent appears, take a more serious and traditional comic book approach; 3) the 21st Century films are closer to a graphic novel, combining high quality graphics with high quality writing and more substantial social comment.

While Harvey/Two-Face never appeared among the “POW” “WHAM” “HOLY COIN-FLIP” escapades on television, his two appearances in the last century were of a pair. In *Batman*, Billy Dee Williams’ Harvey Dent was the District Attorney and was never Two-Face.⁴⁶ In the third film of the 1980s-90s, *Batman Forever*, Tommy Lee Jones was Two-Face, but, for all practical purposes, was never Harvey Dent, District Attorney.

We get the Harvey Two-Face back story in less than a minute on a television news report as part of a story about Two-Face’s latest crime: Harvey Dent was District Attorney attacked with acid by a mobster in a courtroom and protected, in part, by Batman; the attack affected his brain and caused him to turn to crime and obsess with killing Batman. We are briefly told about his obsession with the number two and his coin, but it is never fully explained. Ultimately, Harvey Two-Face becomes more the villain for Robin after he kills Dick Grayson’s family of acrobats. Generally, Tommy Lee Jones’ Harvey Two-Face is cartoonish and over-the-top with his maniacal laughter and characterization; his multiple personality has no more intellectual or social significance or depth than any other traditional *Batman* villain.⁴⁷

⁴² Adam Liptak, *Prosecutor Becomes Prosecuted*, N.Y. TIMES, June 24, 2007, at § wk, p. 4.

⁴³ See The Internet Movie Database, <http://www.imdb.com/title/tt0468569/> (last visited Oct. 22, 2008).

⁴⁴ And omitting the 1943 serial THE BATMAN and the 1949 serial BATMAN AND ROBIN, both from Columbia. <http://www.allmovie.com/cg/avg.dll?p=avg&sql=1:142778> I was unaware of either until researching this paper and have seen neither.

⁴⁵ TV.Com, *Batman (1966)*, <http://www.tv.com/batman-1966/show/713/summary.html> (last visited Oct. 22, 2008).

⁴⁶ In an interview in promotional material, Mr. Williams comments that he took the part in the first film with the expectation that he would be morphing into Two-Face in a sequel and looked forward to the theatrical challenge. He stated his inspiration was Adam Clayton Powell as a flamboyant character with a mixed moral history—being a preacher, a congressman, and a playboy. YouTube, <http://uk.youtube.com/watch?v=2InLzsZ-0h8> (last visited Oct. 22, 2008).

⁴⁷ Kurt Williams, P.P. (Producer), & Joel Schumacher, D.D.(Director). (1995). BATMAN FOREVER [Motion picture]. USA: Warner Bros. Pictures

With *The Dark Knight*, Harvey Dent assumes a greater significance and a heightened role in the canon. Several commentators have noted that Harvey Dent is the “centerpiece” of the film. “Harvey Dent is the man Bruce Wayne tries to be as Batman—he’s heroic, honorable, intelligent, inspirational, and able to tackle crime effectively—all without wearing a mask.”⁴⁸

This fits the more intense and 21st century sensibility of the new films. Tim Burton created his own 1980s-90s gothic/comic book look and gave them a maturity beyond the television program. The additional complexity demonstrated by Bruce Wayne/Batman was not present in the various villains—for our purposes, particularly The Joker and Two-Face. Rather, these bad guys are just bad guys out to steal money or kill Batman or similarly act on selfish pedestrian ambitions.

In *Batman Begins* and *The Dark Knight*, the Nolan Brothers create even more back story to Bruce Wayne and his development to Batman. As Roger Ebert says of the first film, it “penetrates to the dark and troubled depths of the Batman legend.”⁴⁹ Of the latter film, he says, “It is customary in a comic book movie to maintain a certain knowing distance from the action, to view everything through a sophisticated screen. *The Dark Knight* slips around those defenses and engages us.”⁵⁰

This is the quality that makes the Harvey Dent of *The Dark Knight* a symbol of American criminal prosecutors. As Ebert describes, it is the Joker that moves the action: “[H]e devises ingenious situations that force Batman (Christian Bale), Commissioner Gordon (Gary Oldman) and District Attorney Harvey Dent (Aaron Eckhart) to make impossible ethical decisions. By the end, the whole moral foundation of the Batman legend is threatened.”⁵¹

For Harvey Dent, that clear demarcation is not the cartoonish criminality of *Batman Forever*, but a very real concept of strength of character and integrity that lead to his election as the reform-minded District Attorney confronted by the Joker’s anarchy. Indeed it is Joker in the hospital with Harvey who pushes him over the edge all the while disclaiming any responsibility for “scheming.” “I just did what I do best; I took your little plan and turned it on itself.” The Joker taunts Harvey giving him a gun and urging him to kill: “Introduce a little anarchy. Upset the established order and everything becomes chaos. I’m an agent of chaos. And you know the thing about chaos, it’s fear.” That is what pushes Harvey over the mental edge and the first time Harvey uses what had heretofore been merely his lucky coin as a tool for who lives or who dies.⁵² As such, Joker manipulates Harvey Dent from an honest positive character to a hidden corrupted negative character; from altruism to selfishness; from enlightenment to disenchantment.

Two Faces of American Criminal Prosecutors

In the scene of *The Dark Knight* where the movie audience sees the lifeless body of Harvey Dent after he has followed his psychotic revenge and kidnapped Commissioner Gordon and threatened to kill Gordon’s son, Batman turns Dent’s head so that no one can observe the scarred skull side of his face and only sees the

⁴⁸ Steven Cookson, *The Importance of Harvey Dent in The Dark Knight*, http://actionfilmscomedies.suite101.com/article.cfm/the_importance_of_harvey_dent_in_the_dark_knight (last visited Sept. 20, 2008).

⁴⁹ Roger Ebert, *Batman Begins. At last: Batman’s real story*, June 13, 2005, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20050613/REVIEWS/50525003/1023> (last visited July 30, 2008).

⁵⁰ Roger Ebert, *The Dark Knight. No Joke, Batman*, July 16, 2008, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20080716/reviews/55996637> (last visited July 30, 2008).

⁵¹ *Id.*

⁵² *The Dark Knight*, *supra* note 5.

handsome face of Harvey Dent that everyone believed in. Batman tells Commissioner Gordon: “They (the citizens of Gotham) won’t (know what Joker did to Harvey). They must never know what he did....the Joker cannot win. Gotham needs its true hero.”⁵³ Thus, a typical political cover-up occurred—not an uncommon event in the politics of an elected prosecutor such as Mike Nifong.

Batman practices the skeptical postmodern analysis of Gotham City’s populace believing them only capable of accepting the nostalgic myth of what Harvey Dent had been. Batman does not know the strength of character demonstrated by Gotham’s people when Joker attempted to manipulate two ferry boats—one with random citizens and one with prisoners—to trigger explosions on one to save the other. Rather than sacrificing the other ferry to save themselves, neither group of people initiated the destruction of the other ferry. This contradicts Joker’s expectation and undercuts Batman’s paternalistic view of Gotham City’s citizens.

So when Commissioner Gordon eulogized Dent at a public event, he calls Dent “A hero. Not the hero we deserved, but the hero we needed—nothing less than the Knight shining.”⁵⁴ But was this ambiguity, this shading of the truth about Harvey Dent necessary?

Conclusion

So how does Harvey “Two-Face” Dent symbolize our American criminal prosecutors? In an existential way, as the number of exonerations continue to climb, we see the acid-injured side—the continued reliance on unreliable eye-witness testimony and suggestive line-ups, jail-house informants, junk science, and actual illegality such as *Batson* and *Brady* violations. But equally threatening is the psychological mindset. “The vast majority of criminal defendants are guilty and, thank God they are because we wouldn’t want to live in a country where the majority of criminal defendants were innocent.”⁵⁵

Because the vast majority are guilty, it makes it much more difficult for anyone, especially prosecutors, to identify those who are actually innocent. The constitutional presumption may be one of innocence, but the operating default is one of guilt.

In this manner, the exigencies of the system do institutionally to the prosecutor what the Joker did to Harvey Dent—like Craig Watkins in Dallas County, Dent started the film as Gotham City’s savior. The Joker destroys Dent by attacking his personal life, despoiling his face and breaching his soul. We must presume Mike Nifong spent his years as an assistant prosecutor more professionally; when he was running for the office, it was personal and political ambition that destroyed Nifong and made him a symbol for prosecutorial misconduct. Both contribute to a perception of law’s illegitimacy.

We know that Batman spoke the truth to Harvey when he said that the Joker chose Harvey to destroy “[b]ecause you were the best of us. He wanted to prove that some one as good as you could fall...and he was right.” The citizens of Gotham City don’t know the truth of Harvey Dent because, in the end, Batman and Commissioner Gordon agreed to propagate the myth of Harvey Dent—the same myth that would have been propagated by Mike Nifong had, as Professor Gillers said, the defendants been three poor men without families able to give them financial and emotional support. We would likely never hear of them or the case and Nifong likely never would have been disciplined, let alone disbarred.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ I have sought for years to find the source of the quote. But while my memory of the statement is vivid, my search for a source has been in vain. However, see David R. Ginsburg, *The Defenders: TV Lawyers and Controversy in the New Frontier* in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 73 (Michael Asimow, ed., 2009).

In this sense then, what *The Times of India* said about *The Dark Knight* as a film is equally appropriate to the conundrum of exonerations and revelations of misconduct by American criminal prosecutors: "Its superficially good-versus-evil set-up is slowly revealed to be a complex examination of fundamental human flaws."⁵⁶

But despite evidence to the contrary that the public can and does function best when given full information and rational deliberation, the conclusions of Batman, Commissioner Gordon, and the attitude of most prosecutors is summarized by Batman, displaying a fundamental post-modern human flaw of misunderstanding the public: "Sometimes truth isn't good enough. Sometimes people deserve to have their faith rewarded."⁵⁷

About the Author

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⁵⁶ Yamini Lohia, *Dealing with Good and Bad*, *The Times of India*, Aug. 1, 2008, <http://timesofindia.indiatimes.com/articleshow/msid-3311111,prtpage-1.cms> (last visited July 14, 2009).

⁵⁷ *The Dark Knight*, *supra* note 5.

POWER WIRE: UNDERSTANDING THE DEPICTION OF
POWER IN TV DRAMA

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Abstract

*This content analysis of the first season of HBO's *The Wire* is designed to compare the use of power strategies between the officials and the street gang that are the central characters of the crime drama. We examine how each group uses the powers of rank, law, access, force, loyalty, and reputation to achieve their respective goals within the context of the fictional world created by executive producer David Simon and his staff of writers. While Simon's show attempted to cast a different and more accurate light on the flow of power in a modern American city, our study found that *The Wire* was not entirely successful at avoiding the clichés and stereotypes that are entrenched in most procedural crime dramas.*

Every human relationship and every human interaction is affected in some way by the exertion of power. The Merriam-Webster Dictionary defines power in a number of ways: The ability to act or produce an effect; legal or official authority, capacity or right; possession of control, authority or influence over others; a controlling group; a large number or quantity; a physical might; a force of armed men; mental or moral efficacy and; political control or influence. The dictionary also provides some synonyms for power: authority, jurisdiction, control, command, sway, dominion, force, and might (Merriam-Webster, 2008).

In the context of this study, which is about the depiction of power in the fictional TV drama *The Wire*, one of the most useful (and less literal) explanations of power comes from the French philosopher and sociologist Michel Foucault. Toward the end of his illustrious career, he worked on a concept called "governmentality," which he succinctly defined as "the art of government" (Foucault, Burchell, Gordon, & Miller, 1991). Foucault's idea is a bit more complex—essentially, he contends that Western liberal democracies have systematically found ways to assert control over virtually every aspect of life. This order extends from our traditional notion of government as an elected body to the implements of government like schools, hospitals, and other public institutions and, if successful, to all parts of society. The goal is to provide order, which if successful, maintains the status quo (in many respects, Foucault's governmentality is a more thorough and complex version of his famous interpretation of Bentham's panopticon and its relationship to power and control). Governmentality applies directly to *The Wire*. The drama provides a fictional view of how various official levers of control—police, judges, and politicians—exert power over the area that they are positioned to govern. One of the things that makes *The Wire* unique among TV crime dramas is that it gives equal attention to the people who live on the edges of this system, in this case poor inner-city residents. This group has little or no access to the established levers of power (or money) and they respond by creating their own system of governance that earns them both power and money and creates its own system of control. This kind of response is common in many American cities, and indeed, cities around the world, especially in impoverished urban neighborhoods (Brugmann, 2009).

The ways in which power is exerted—subtly and explicitly, aggressively and passively—are manifold. Aside from our interactions with others, our interpretations of

how power shapes the world and affects our lives and the world around us can be, like so much else, influenced by the way it is depicted in the media. News coverage is one obvious source for depictions of power in the media. Most typical news stories (certainly anything to do with politics, economics, business, or crime, to name a few) are all about power. In most instances, they are about the outcome of power. For example, much of the coverage of the 2008 presidential campaign focused on who raised the most money (financial power), who has the best campaign team (persuasive power), and who was getting the most important endorsements (institutional power). In all of these cases, the reader finds out about the result of these power plays, which are then analyzed in the context of the final power struggle—the race to win the nomination.

For the most part, however, news coverage can only tell us about the outcomes. It takes another, more popular genre to take audiences inside these power struggles. Virtually every fictional narrative, whether on television or film, in books or any other medium, is about power. Fiction's advantage over news is that it permits us to see how the outcomes are achieved and how different characters use the power available to them in an attempt to reach their goals. The disadvantage, however, is that the scenarios are the creations of the men and women who write the narratives. In fact, as long as the narratives adhere to an internal logic (the characters act in a fashion that is consistent with their past behavior and with their surroundings) then it does not matter if the narrative is as gritty and realistic as HBO's *The Wire* or a Raymond Carver short story or as fantastic as an episode of *Star Trek* or a Gabriel Garcia Marquez novel.

This study looks at each of the primary characters in the first season of *The Wire* and how they interact with others while navigating the complex power relationships in the program. We look at how the characters use the power they each possess, within episodes and over the course of the season. We also analyze the interactions among characters. The significance of the study lies, to a great extent, in the cultural significance of *The Wire*. While it never earned large viewing audiences or even Emmy Awards, *The Wire* is often cited as not just an important piece of television, but perhaps the most important piece of fiction produced in the last decade (Neyfakh, 2009). Before the end of the last season of *The Wire*, a graduate-level course about the series was already being taught by at least one prominent American communications scholar. Given the show's critical acclaim and place in the cultural landscape, it is likely that *The Wire* will continue to be the subject of much scholarly inquiry.

The Wire is a story of two worlds that exist simultaneously on the streets of Baltimore, Maryland, in the present time. The first world can be called *official*—made up primarily of people in the justice system, essentially the police department and the mayor's office. The second is populated by those who live outside the law, which we call the *street* world for the purposes of this study. Characters in the official world balance maintenance of law and order with protection of the political, economic, and legal system that they serve. As anyone who has ever worked in a bureaucracy knows, this is easier said than done. These characters react to pressures from within their system as well as opponents from the other world. The opponents are drug dealers, who also have their own balancing act—to maintain or wrest control from enemies within, while also fending off those in law enforcement. Their goal (to maintain and grow their drug operation) is impeded by law enforcement and the fact that they are required to operate outside the boundaries (or at the very best on the margins) of the legal system.

The first season of *The Wire* follows members of a gang of drug dealers as well as individuals of the police unit trying to capture them. The name of the program centers on the police effort to obtain and maintain a wire-tap surveillance system that will incriminate the drug dealers. This dramatic device allows the producers and writers to

explore power relationships among the characters. The police constantly interact with each other, officials in the justice system and the mayor's office, as well as with informants and occasionally members of the gang. Gang members interact with each other, police, other gangs, and customers, as well as with citizens not directly involved in the drug operation.

Theory

Fictional narratives demonstrate how power works in worlds that, in some way, replicate ours and by extension, comment on how power operates in the real world. As a result, studying these narratives helps us understand the role of power in human interactions. For example, we can examine what audiences may learn about power as a result of reading a novel, watching a film, or seeing a television drama—who has power and who doesn't? How is power consolidated or squandered? To what end is power used? Are there some people or groups (for reasons that may be beyond their control, such as gender (Cowan, Drinkard, & MacGavin, 1984), race and/or socioeconomic status) that have more or less power than others? And perhaps most importantly, how should power be employed?

The manifestation of power

There are many types of power in *The Wire*—physical violence, manipulation, money, status, verbal command, and intelligence, just to name a few. We also look at the outcomes of using power for the characters—were they able to achieve their goals and what was the result? There are also cues—race, gender and socioeconomic status—that can indicate the amount of power characters have and how they can use it.

The show is about the ability of individuals with power or money to use those tools to win or secure positive outcomes for themselves, most often they are seeking more power or more money or both. However, in *The Wire*, not having money or actual power does not stop characters from exerting their own wills. Any powerful hierarchy is certain to elicit a movement that is working to resist their control. In other words, those in power expect that there will be a certain measure of resistance to any hierarchy (Contu, 2008). Some characters use methods of resistance that range from clandestine conversations with people above their immediate supervisors to outright defiance.

Power in fiction

Much of the power exerted in *The Wire* is in the form of dialogue among the characters. The conflicts in this crime drama often hinge on arguments made by characters on both sides of the law. Conflict-language strategies range from the simple “power of the last word” to the complex “confessional voice” (Lorenzo-Dus, 2008). Using conflict-language literature as a framework, we can both examine the power of language and plot the results of successful use of conflict-language strategies.

Like most other shows, and indeed many news programs, *The Wire* uses a number of strategies to increase audience involvement. The most compelling of these is “non-closure.” This is achieved by attending to three goals: maintaining suspense, plot intricacy, and the survival of the protagonist. Such elements are critical to the involvement of the audience (Wittebols, 2004; Weinblatt, 2008). Power structures in *The Wire* may be examined in the context of these narrative strategies. This is why power outcomes in *The Wire* are often ambiguous. In order to maintain suspense, the outcome of a power play is sometimes left to be resolved in a later episode—or even

a later season. In the interest of prolonging the drama, the protagonist must live to exert power another day. Both of these tactics add to the intricacy of the plot.

The cultural significance of The Wire

By the end of its run on HBO in 2008, *The Wire* had achieved a rare combination of critical success and cult status while not drawing particularly large audiences. In the months since the show has concluded, the acclaim has continued to roll in and the show's cultural significance appears to be growing. In the spring of 2009, the English professor and critic Walter Benn Michaels described the show in an article in *Bookforum* as "like a reinvention of Zola or Dreiser for a world in which the deification of the market is going out rather than coming in" (Michaels, 2009). Michaels also argued in the same article that unlike its more popular HBO counterpart, *The Sopranos*, *The Wire* is about institutions and "the world that neoliberalism has actually produced."

This is not a case of critics and academics reading more into the show than the author intended. In a series of magazine articles and interviews over the last few years, *Wire* creator David Simon boldly asserted that his show, while featuring cops and robbers, was intended to be about far more than good guys and bad guys. In a 2007 interview with the author Nick Hornby in *The Believer*, Simon says he pitched the show to HBO as "the anti-cop show, a rebellion of sorts against all the horseshit police procedurals afflicting American television." Later in the interview, he added: "The show would instead be about un-tethered capitalism run amok, about how power and money actually route themselves in a postmodern American city" (Hornby, 2007, p.72). Simon also asserted this vision for the show in the introduction to a book about the series written by one of the show's writers. "*The Wire* is not about Jimmy McNulty. Or Avon Barksdale. Or crime. Or punishment. Or drugs. Or violence. Or even race. It is about The City. It is about how we live as Americans at the millennium" (Simon, 2004, p.4).

The combination of the show's critical significance and the stated goal of its creator enhance its place in the culture and make it more worthy of study than some other TV crime dramas.

Hypotheses

Broadly speaking, there are two distinct groups in *The Wire*—street characters, who are involved in or connected to the drug trade, and officials, who are either involved in crime prevention or city politics. Even though these groups are distinct (one seeks to break the law and the other to uphold it) the members of both groups have power at their disposal. Members of each group use particular power techniques to interact not only within their own group, but also with others outside their group..

The official group, by virtue of its placement in society, is more formally structured than the criminal group. The police are required to adhere to a number of specific rules and regulations (and laws) in their efforts to curtail the activities of the drug gang. This structure undoubtedly is limiting in some regards but also affords the official group some advantages. For example, as agents of the state, the police have inherent powers of jurisdiction and access. They have the added experience of having operated within the system over time and have thus built relationships with other officials. Furthermore, officials can manipulate the power that they already possess to gain more power.

Our goal is to understand how the official and criminal groups use power strategies.

H1: There is a relationship between a character's group association (official or street) and that character's use of power strategies.

A character's *group association*—official or criminal—provides information about the character's placement in society. For example, officials have access to resources that are not available to members of the street characters, such as public housing files. Other factors, such as race and income, relate to the characters' place in society and affect the use of power strategies.

We define *total amount of power* as the number of specific power strategies employed by each character. Criminals and officials use many strategies to exert power over others. For example, the rank a character holds within an organization can control the activities of other members. Another display of power is using violence to further the character's agenda. We propose that the use of power strategies form a matrix of power identifiable in and unique to the organizations of both officials and criminals. By examining instances in which power strategies are used, we can tally the use of power ploys within each group as well as between the groups. In this fashion, a picture of each group's power structures will emerge.

H2: Officials are more likely than the street characters to use the power strategy of *rank*.

H3: Officials are more likely than the street characters to use the power strategy of *law*.

H4: Officials are more likely than the street characters to use the power strategy of *access*.

We define *rank* as the use of one's place within an organization to exercise influence over others, whereas the power strategy *law* addresses police power and jurisdiction, legal statutes, court orders and punishment, and the law itself (while H4 may seem to some extent tautological, some of the street characters have access to lawyers and used the law to avoid punishment or to benefit their operations). *Access* is the power of having something or knowing someone that others do not. While this is not solely the purview of the officials, some aspects of access are specifically under the rubric of law enforcement and the courts, while others are manufactured as products of *law* power strategies.

Although the street characters often don't have these advantages, they do have their own ways of using power strategies. For example, drug dealers are not bound by social norms against breaking laws, making the use of violence a more viable option for them than the police. Similarly, although the criminal's organization is in some ways less formally structured, its unique cohesion supports certain power strategies. Some less tangible power commodities become more valuable in the vacuum of the streets. Criminals who rank low in their organizations are motivated more by loyalty to those above them and by a desire to develop their reputations within their reference groups than by a desire for wealth. There is an implicit understanding that wealth will follow after these goals are met and the criminal gains a position of higher power within the organization.

H5: Street characters are more likely than officials to use the power strategy of *force*.

H6: Street characters are more likely than officials to use the power strategy of *loyalty*.

H7: Street characters are more likely than officials to use the power strategy of *reputation*.

By *force*, we mean the use of physical violence and threats of violence to others. *Loyalty* is as the desire to comply with someone out a sense of duty to that person. *Reputation* addresses the image that others have of the character, the image that he or she has built over time. This power strategy involves banking on one's previous successes as a means of influence.

Method

We analyzed the first season of the HBO network series *The Wire*, which first aired in 2002. The fifth and final season of *The Wire* was broadcast on HBO in the spring of 2008. We chose the first season of the show for its availability on DVD and because it seemed like a logical starting point for this sort of research about *The Wire*. Comparisons of the first season to later seasons may prove useful to future scholars. Because we look at power relationships among characters, character is our unit of analysis. Our sample is composed of all of the characters from the entire first season of *The Wire*, a total of 13 episodes. The recording unit is the scene, within the context of each episode. The scene is confined to an exchange between characters and ends when a new set of characters appears on the screen.

The characters are coded as being *associated* with either the official or street groups. In addition, we coded their *race* (white or black), gender and *income* (low, medium, or high). Obviously, we did not have access to the fictional pay stubs of all of these characters, but because so many of the characters in the official group held public positions that are common in all communities, we have a good sense of the income of the Baltimore police officers, assistant district attorneys, criminal defense lawyers, judges, and other public officials. Less specific cues had to be employed to determine the income level of the characters in the street group. There was a very strictly defined hierarchy among the people who worked for the drug dealers and it is reasonable to assume that there is a correlation between their level of responsibility and their remuneration.

Within each scene, all characters' interactions with others were coded as to whether one or more power strategies were used and also the amount of each type of power. *Power* is coded as one of these types: rank, law, access, force, loyalty or reputation. Then the number of various power strategies will be examined to identify patterns in power strategies for each group. The coding was done by two coders who worked closely together to ensure the reliability of their coding, selecting one episode as the starting point to work from. Initially, they found more than six types of power, but were able to group the different representations of power under one of the six types of power that were ultimately settled on for this study. The coders kept a paper tally of each episode and all of the scenes and the characters in each of those scenes.

For each scene, the characters' interactions with other individuals were observed to determine if an exertion of power existed. In other words, was one character attempting, by some means of power ploy, to gain an advantage over another character or group of characters. For each employment of a power strategy, a categorical "power code" was noted. Power codes included, but were limited to, rank, access, force, loyalty, and debt. Then the number of various power ploys was examined to identify patterns in power strategies for each group. These power matrices were compared.

Results

As Cowan and colleagues (1984) have noted, some groups of people are either vested with power or denied it by virtue of their race and/or socioeconomic status. Therefore characters were coded according to whether the characters were depicted as officials or part of a street gang, along with their gender, race, and income (see Table 1).

Table 1. Descriptive Statistics Regarding Character Variables and Types of Power

| Variables | | Percentages (%) |
|---|---------------------------------|-----------------|
| Character's role in the show | N = 37 | |
| | Street | 43.2 |
| | Official | 56.8 |
| Character's gender | N = 37 | |
| | Male | 81.1 |
| | Female | 19.9 |
| Character's race | N = 37 | |
| | Black | 59.5 |
| | White | 40.5 |
| Character's income | N = 37 | |
| | Low | 29.7 |
| | Middle | 51.4 |
| | High | 18.9 |
| Types of power that characters use to achieve power | N = 330 | |
| | Rank in organization | 22.4 |
| | Reputation | 14.8 |
| | Loyalty to individual/group | 19.4 |
| | Force or threat of force | 9.4 |
| | Access to information/resources | 20.6 |
| | Law | 13.0 |

Slightly more than 40% of characters were part of the street group, including members of the drug gangs, drug customers, police informants (who were included as part of the street group because they lived on the street and interacted most frequently with the other people in the street group; we refer, of course, to the beloved Bubbles) and people who live in the drug gang's territory but are not involved in the drug trade. The rest were officials, including police officers, detectives, law enforcement supervisors, judges, attorneys, and politicians. The vast majority (80%) of characters were male, and 60% were Black. About a third of the characters were coded as having low incomes, with slightly more than half as middle income and about one in five as high income.

Table 1 also shows the percentages for the types of power strategies used to analyze the characters. Among the power strategies listed in Table 1, force was the most common power strategy used by characters in *The Wire*, with the legal procedures being second. A character's rank, whether in the police department or a criminal enterprise, and a character's personal reputation among their colleagues were used with equal frequency as a power strategy. Although as we see later in this section, rank and reputation were used differently by officials and street characters. The power strategies of access and loyalty were least often used.

The categorization of characters by gender, group, and race shows some not unexpected results. Table 2 shows the distribution of characters by gender and role. There were only seven female characters in *The Wire*, with two belonging to the street group and five belonging to the official group.

Table 2. Cross-tabulation of Character's Role by Gender

| Character's role | Character's gender | |
|------------------|--------------------|--------|
| | Male | Female |
| Street | 14 | 2 |
| Official | 16 | 5 |
| | 100.0% | 100.0% |
| | N = 30 | N = 7 |

Male characters were split more evenly between officials and street groups (N = 16 and 14, respectively), but there was no statistically significant relationship between characters' role as officials or criminals and their gender, possibly because of the small number of females.

Tables 3 and 4 show the distribution of characters by race, gender, and role. The female characters were distributed across race in a fairly equal fashion; four of the female characters were White and three were Black. Numerically, males were fairly equal in terms of race (N = 11 White and N = 19 Black; see Table 3).

Table 3. Cross-tabulation of Character's Race by Gender

| Character's race | Character's gender | |
|------------------|--------------------|--------|
| | Male | Female |
| White | 11 | 4 |
| Black | 19 | 3 |
| | 100.0% | 100.0% |
| | N = 30 | N = 7 |

However, less equality exists in the representation of race between the roles (see Table 4).

Table 4. Cross-tabulation of Character's Role by Race

| Character's role | Character's race | |
|------------------|------------------|--------|
| | White | Black |
| Street | 2 | 14 |
| Official | 13 | 58 |
| | 100.0% | 100.0% |
| | N = 15 | N = 22 |

Only 2 of the street characters were White, out of 16. The official group fared better in this regard, with 38% of its characters listed as Black (N = 8).

Table 5 shows the correlations between all characters' use of the five power strategies.

Table 5. Zero-order Correlations Among Types of Power

| Variables | Rank | Reputation | Loyalty | Force | Access | Law |
|------------|------|------------|---------|-------|--------|-----|
| Rank | | .62 | .22 | .95 | .18 | .05 |
| Reputation | | | .02 | .00 | .51 | .60 |
| Loyalty | | | | .00 | .04 | .98 |
| Force | | | | | .36 | .33 |
| Access | | | | | | .00 |
| Law | | | | | | |

Most striking are the relationships with coefficients that exceed .90: the use of force with a character's rank in his or her organization, and a character's use of legal power with his or her ability to command the loyalty of others. Characters' access to those above them correlates strongly with their reputation and with their use of legal strategies, which is consistent with previous findings that power can be the result of a person's place in society (Cowan et al., 1984). In addition, characters' reputation correlates strongly with their rank in organization hierarchies, their ability to access people above them, and with their power to use legal powers.

In Table 6 independent t-tests assess differences between official and street characters' use of the power strategies. The results show that street characters are more likely to use reputation and force to achieve their goals, whereas officials rely mainly on the legal system.

Table 6. Independent t-tests for Types of Power by Role¹

| Types of power | Role | | t value |
|----------------|----------------------|------------------------|---------|
| | Street Mean (&SD) | Official Mean (&SD) | |
| | N = 16 | N = 21 | |
| Rank | 1.06 (1.98) | 2.71 (3.76) | 1.59 |
| Law* | .50 (1.51) | 1.67 (1.88) | 2.03 |
| Access | 1.06 (1.57) | 2.43 (3.04) | 1.63 |
| Force** | 1.69 (2.06) | .24 (.70) | -3.02 |
| Loyalty | 2.12 (2.31) | 1.43 (2.11) | -.955 |
| Reputation* | 2.19 (3.25) | .67 (1.11) | -2.00 |
| Total | 8.62 (7.54) | 9.14 (8.87) | .19 |

Table 5 shows support for hypotheses H3, H5, and H7, but fails to support hypotheses H2, H4, and H6.

¹ All variables have *df* (degrees of freedom) = 35; SD = standard deviation; * $p < .05$; ** $p < .01$

Discussion

In summary, the obvious uses of power strategies inherent to the respective groups—law that accompanies the badge, force that plagues the drug trade—were reflected in *The Wire*. However, some power was not bound by these group distinctions. Access, expected to mainly be the purview of the official group, was often used by the street group. Loyalty, though not required by the official group, proved to be an important strategy to those characters nonetheless. In this study, it was in the unsupported hypotheses that the true insights were to be found.

Even though the creator of *The Wire* intended for the show to offer a different perspective from other shows in this genre, our study suggests that *The Wire* is not entirely successful in escaping some of the themes and depictions that are entrenched in these shows. Sheer force (or the threat thereof) is still largely a tactic of drug gangs and others on the street. Meanwhile, the police and other officers of the court are far more likely to be seen using the law to their advantage. This is not particularly surprising, but when we look at those hypotheses that were not supported, we find a greater sense of the unique world that the show's creator was aiming for. Our findings suggest that loyalty, access, and rank are widely used as a strategy by both the characters that work as officials and those who live and work on the street. These particular power strategies are, upon further review, more universal in nature and their use by both groups shows some similarities between the officials in *The Wire* and the characters defined as living and working on the street.

This study should serve as a template for more research into the depiction of power in TV drama. Police procedurals remain a very popular genre that can help to influence public perceptions of the legal system and criminals. Further research in this vein would give us a clearer sense of the messages that these shows are imparting about how power works in the legal system. *The Wire* itself is also ripe for more research. This particular study could be replicated on subsequent seasons, some of which shifted focus from the drug gangs to other aspects of life in a modern American city, like politics, labor unions, education, and the media. More studies of *The Wire* would also allow us to evaluate the success or failure of these power strategies.

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See page 97 for information on Marti Cecilia Collins.

PORTRAYAL OF CRIME IN TELEVISED NEWS IN CANADA: DISTORTION AND PRIVILEGES

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Abstract

Crime news has always been a critical component of televised news in Canada. Not only is crime considered newsworthy and presented to viewers as informative, but televised crime news also plays an increasingly important role in contemporary popular culture. This paper explores the roles that local televised crime news plays in shaping Canadian viewers' perceptions of crime and argues that the tendency to privilege certain characteristics of the crime effectively shapes the culture of fear and public perceptions about crime in Canada. Issues of gender, race, and ethnicity are central to the analysis of the portrayal of crime in Canadian local televised news. The use of multidisciplinary approaches in the analysis of crime and popular cultural formats, such as televised news, is beneficial for understanding the complexities and tensions involved in the production, distribution, and interpretation of crime news within the context of contemporary Canadian local news broadcasts.

Crime continues to play a prominent role in the Canadian news industry. Televised crime reporting has been criticized by researchers and observers for failing to situate crime stories within the broader context of socioeconomic and political inequalities between individuals and groups. Television news media frequently make the link between crimes and individual characteristics. In so doing, they ignore historical, social, and economic explanations for the crimes.

In recent decades, issues concerning the representations of crime in news media and the effects they have on the public's views of crime and the criminal justice system have become important areas of research for scholars and researchers across disciplines. Anthropology is now using multidisciplinary approaches to understand and analyze the complex relationships between crime, news media, and popular culture. This approach provides new challenges and possibilities for anthropologists.

By accessing these media outlets, Canadian viewers are exposed to various representations of crime, and in the process they shape their ideas and opinions about crime and the country's criminal justice system. This paper examines the roles that Canada's local television news media play in shaping public ideas of crime and the criminal justice system. The paper will demonstrate the politics involved in the production, distribution, and consumption of images of crime. In addition, this paper will argue that the tendency of televised news to emphasize certain characteristics of the crimes contributes to the culture of fear in Canada.

Crime and the Televised News Media

Television has transformed the production and circulation of crime news. Prior to television, many people around the world relied mostly on newspapers for news (Taras, 1990). They also acquired knowledge about crime through individual experiences and accounts of their friends or family members (Altheide & Michalowski, 1999). The advent of television obscured for viewers the element of being there or experiencing the situation for themselves. Over time, individuals came to rely on television news to construct their own knowledge about crime (McCormick, 1995;

Taras, 1990). The rise of television news media has hastened the process of communicating events to mass audiences, even as the events themselves are unfolding (e.g., police chases). In this way, television news media have transformed how we acquire knowledge about the world we live in.

Television allows for the possibility of transmitting news more quickly and presenting it in a more entertaining fashion (Doyle, 2006). Television was first introduced in Canada in 1952 (Taras, 1990). During the 1950s, the Canadian news network CBC had to compete with a small number of American news networks. The proliferation of new channels, in conjunction with increased access to satellite television, has led to the fragmentation of audiences, as well as fierce competition among news networks to secure audiences and advertisers (Taras, 1990). Advances in technology and the proliferation of channels now give viewers the opportunity to access various media networks and to bypass advertisements. These developments challenge TV networks to be more competitive in the way they package and present the news to meet diverse needs.

Increasingly, local news programs in Canada are broadcasting national and international news that was previously reserved for national news networks. This change has aided in attracting new viewers to local programs as well as retaining existing viewers (Taras, 1990). The incorporation of national and international news by local news programs poses further threats to Canada's larger news networks.

The selection, organization, and production of television crime news stories are often "recontextualized" events (Taras, 1990). Television news journalists often approach their stories with pre-existing requirements (Doyle, 2006). That is, news stories will be cast according to the reporter's image of what is necessary. Camera angles and locations, the types of questions asked, and the people chosen to be interviewed are the context imposed on the event by the reporter and his or her editors and producers. Journalists rarely "go bowling for news," looking for news without having predetermined the context. (Taras, 1990). Consequently, some people featured in the news stories feel that they have been misrepresented and that what they said was taken out of context (Roberts, 2007). Complex explanations offered by those appearing on the news stories are often simplified by reporters (Taras, 1990). The distorted images of crime are often presented to television news viewers as "facts" or "reality," and news stories of crime are often linked with fear (Haggerty, 2001).

Similar to crime, fear is socially constructed, and the meanings of fear are varied across cultures. Fear operates within systems of communication and interaction between individuals and groups (Altheide & Michalowski, 1999). Research on media representation of violent crimes suggests that the violent content featured in violent crime news stories has the potential to lead viewers to perceive the community that they live in as frightening (Altheide & Michalowski, 1999; Dowler, 2004; Doyle, 2006; Roberts, 2007; Sharpe, 2000). After all, "fear is not a thing but a characteristic attributed by someone (i.e. journalist)" (Altheide & Michalowski, 1999, p.480). By over-representing violent crimes, the media frequently distorts crime, and as a result "the public overestimates its frequency and misperceives reality" (Altheide & Michalowski, 1999, p.479).

In order to understand the influences that the news media have on the values and perspectives of Canadian audiences, it is necessary to examine the issue of media effects. There has been an increase in research in various social science disciplines on how the news media have shaped public attitudes and perceptions about crime and fear (Altheide & Michalowski, 1999; Dowler, Fleming, & Muzzati, 2006; Taras, 1990). Social science researchers first carried out research into media effects on public attitudes and behavior in North America during the 1920s and 1930s. Many of these early studies tended to view the news media as a powerful and persuasive institution that "could dramatically alter the perceptions and beliefs of entire

populations" (Taras, 1990, p.26). Since the 1970s, researchers have moved away from viewing the audience as a homogenous group. Now they are exploring differences among the audience and how these differences shape social relations between individuals in their daily lives (Doyle, 2006; Taras, 1990). This approach poses important challenges to the idea that audiences are made up of passive individuals who are willing to accept news stories as reality.

Propaganda theory has also proven useful for analyzing the production of crime news stories in Canada and elsewhere in North America. According to propaganda theory, all news stories contain five main elements that interact with and influence each other:

concentration of ownership/profit motive; advertising as primary income source; reliance on "official" sources; "flak" or negative criticism as a way of controlling the media; and anti-communism, which also acts as a structural control mechanism (Dowler, 2004, p.576).

In this regard, the practice of news making is similar to the construction of propaganda campaigns. By using the police or politicians as official sources for crime stories (Beland, 2007; Dowler et al., 2006; Taras, 1990), the news media support institutional power and authority (Beland, 2007). Local news programs in Canada regularly feature police and politicians; the presence of these individuals in crime stories not only serves to legitimize the media reports, it can also add to public support for increases in police resources and tougher laws. By privileging the opinions expressed by police or politicians regarding particular crime stories, the news media effectively deny the roles, experiences, and viewpoints of ordinary people who are participants in the stories (Doyle, 2006).

Although researchers often disagree about the relationship between news media and crime, there is a general agreement that the news media play important roles in shaping individuals' knowledge and attitudes about crime (Altheide & Michalowski, 1999; Haggerty, 2001; Sharpe, 2000). This is particularly apparent when fear is linked with other popular topics like violence (Sharpe, 2000). For example, audience perception of a crime wave is largely influenced by popular culture. However, audiences should not be viewed as passive individuals who accept the portrayal of crime produced by the news media. Studies on the effects of news media on people's knowledge suggest that people often privilege their own personal experience and the opinions of friends or relatives over the expert sources featured in the media (Altheide & Michalowski, 1999; Roberts, 2007). Any analysis concerning the effects of the news media on the audience must therefore include a discussion of the roles that crime stories play within the individuals' lives.

Attempts to understand the meanings of crime must examine the interactions between news media images of crime and local cultural meanings. In addition, cultural meanings of crime are constructed within systems of interaction between various representations of crimes (Doyle, 2006; Haggerty, 2001). These meanings are interpreted by diverse audiences who draw on their experiences and social relationships with others in understanding crime.

Crime News and the Culture of Fear

Crime has become a staple in Canadian news media and popular culture. Public fascination with the criminal cultures of society is reflected in an increase in the number of television crime news stories and crime shows. Recognizing this tendency, television news media have made changes in the selection and production of crime stories to meet public demands (Dowler et al., 2006). Crime stories are often selected to be leading stories in televised news broadcasts (Taras, 1990). Because many people view the world through watching television, television news is often considered

to have the power to shape public opinion. During the late 1980s, Canada's two popular network news programs, CBC's *The National* and the *CTV National News*, which aired from 10 to 11 p.m. Pacific Time, together averaged more than one million viewers (Taras, 1990).

Although the crime rate in Canada has been declining since the 1980s, research shows that public fear of crime remains relatively constant (Roberts, 2007; Weinwrath, Clarke, & Forde, 2007). Through analyzing public opinion polls from the 1980s to the early 2000s, Weinrath et al. (2007) found a lack of correlation between fear of crime and official crime rates. Their research has raised important questions about how differences in class, education, ethnicity, race, and gender shape individuals' perceptions and knowledge about crime and fear.

Racial stereotypes are often used by television news media in portraying minority offenders. For example, although the issue of domestic violence affects the majority of people in Canada, English-language television news media frequently portray it as a problem that occurs in non-White communities, and the racial or ethnic status of the victim and perpetrators are central elements of crime stories (Dowler et al., 2006). Weinrath et al. (2007) suggested that the increase of the non-White population in Canada might contribute to the constant level of fear. Furthermore, in the context of Canadian news media and the continuous racialization of immigrants, there is a distinct pattern of underrepresentation and misrepresentation of minorities in the Canadian English-language news media. Racial minorities and new immigrants to Canada from minority racialized groups in particular, are often presented as threats to the nation-state, and non-White groups are portrayed consistently as mysterious or inscrutable, or linked invariably to crime and deviant patterns of behaviour. These findings have implications for understanding how immigrants experience exclusion and face challenges when attempting to create spaces for inclusive citizenship and belonging in Canada (Mahtani, 2008).

Stereotyping based on social factors is entrenched in Canada's Anti-Terrorism Act. According to Carli (2008),

The media's portrayal of youth as rising criminals is in fact false media coverage [and] has resulted in unnecessary tougher criminal policies on youth crime with increasing numbers of incarcerated youth. Other targeted groups are ethnic and cultural minorities, as well as foreigners, immigrants and refugees. . . In the United States and Canada, increasing attention to terrorism has led to stereotyping of Muslims and Arabs as criminals. The result has been the adoption [in Canada] of the Anti-Terrorist Act (securities certificate), which permits the government to detain and possibly deport any individual suspected of a terrorist act or an affiliation with a terrorist group, without the need to present confirmed evidence ("Examen parlementaire de la Loi antiterroriste"). These laws, in fact, violate basic universal human rights and unfairly stigmatize certain groups. (p.4)

Research shows that local news media play important roles in constructing so-called "crime waves" and promoting public fear (Weinwrath et al., 2007). Over the years, the news media have adopted the problem framework for constructing crime stories. According to Altheide and Michalowski (1999), "the 'problem frame' is an important innovation that satisfies the entertainment dimension of news" (p.476). The *problem frame* integrates "the universal and non-situational logic and moral meanings of a morality play with the temporal and spatial parameters of a news report—something happened involving an actual person in an actual location, (e.g., street address)" (Altheide & Michalowski, 1999, p.479). By focusing on real events and people, television news media succeed in representing crime stories as facts. The closer the audience is to the crime, the more likely it is to be affected by the news

report (Roberts, 2007). Research demonstrates that local television crime reports use the problem frame more often than national or network news in constructing crime stories (Altheide & Michalowski, 1999).

Crime News and Stereotypes

In recent years, American television crime shows such as *Law & Order*, *CSI New York*, and *Cold Case* have become an important source of entertainment for many Canadian viewers. Reality crime shows such as *COPS* also contribute to the stereotypes and images of crime. Increased access to these shows through satellite television has influenced the way people in Canada and elsewhere in North America view social problems like crime. The mass appeal of these shows is reflected in the popularity of not only the current episodes but also reruns of the series. The content or storylines in these shows often follow those of the crime stories produced by television news, thus blurring the boundary between news and entertainment (Dowler et al., 2006). Acquiring knowledge about crime through watching these programs has transformed the ways in which people view television news; instead of being seen as a source of knowledge, news has become a form of entertainment (Dowler et al., 2006; Stabile & Rentschler, 2005).

Because the news media have control over the types of crime covered and whose views should be included and excluded, they play significant roles in constructing and perpetuating stereotypes concerning crime and people who participate in criminal activities (Altheide & Michalowski, 1999; Dowler, 2004; Haggerty, 2001; McCormick, 1995). In Canada and elsewhere in North America, the portrayal of criminal violence by the news media is frequently associated with maleness. In this model of violence, women often take on victim status (Comack & Brickey, 2007; Roy, 2005). The *victim* label denies women's agency in negotiating their status in violent situations and ignores the issue of women's use of violence. This issue has posed challenges for feminists who research violence against women. Some feminists propose that women's use of violence is but one consequence of what women experience under patriarchy (Comack & Brickey, 2007). This explanation fails to hold the individual woman accountable for her actions. In the television news media, women who participate in violent crime are frequently portrayed as "mad, wicked, manipulative, and deceitful monster(s)" (Comack & Brickey, 2007, p.2).

One famous example was the famous trial of Karla Homolka, who was charged with and found guilty of helping her partner, Paul Bernardo, in the rape and murder of three young women in the province of Ontario during the 1990s. The trial received significant media coverage throughout Canada and elsewhere in the world. In explaining her actions, the news media portrayed Homolka as "bad" and "mad" (Comack & Brickey, 2007). The recent release of Homolka from a federal prison has renewed public interest and debates about women's involvement in violent crime. The image of the criminal woman and her bad behavior stands in stark contrast to the constructed image of "good women" who are portrayed as "gentle, chaste, and caring wives and mothers" (Comack & Brickey, 2007, p.2). The dual images of good and bad women further reinforce gender stereotypes and expectations in Canada.

The portrayal of criminal women as mad is historical and has been a prominent feature in European and North American societies (Roy, 2005). The issue of women's use of violence is also historical and varies across cultures (Comack & Brickey, 2007). In most European and North American societies, the link between violence and individual pathology is historical and gendered. Similar to men's use of violence, women's use of violence is often considered to be a result of individual pathology. When comparing male and female populations in Canadian prisons, researchers found that women are more often diagnosed with mental disorders, including "schizophrenia, major depression, substance use disorders, psychosexual

dysfunction, and antisocial personality disorder” (Comack & Brickey, 2007, p.14). Research suggests that these labels often have negative consequences for incarcerated women, as “their pathological minds are named as the cause of their troubles” (Comack & Brickey, 2007, p.14). Although violence is often attributed to individual pathology, the news media label women as mad more often than they do men. The association between violence and individual pathology ultimately excludes other social causes or alternative explanations. Consequently, social factors such as gender, race, ethnicity, and class inequalities are often ignored or deemed not to be factors in violent crimes.

Violent crimes such as murder are overrepresented in the Canadian news media. As such, the more violent the crime, the greater the chance it will appear as a leading story in news programs (Dowler, 2004). Whereas violent crimes such as gang violence and homicide are a main focus of the news media, nonviolent crimes such as fraud and theft are underrepresented (Dowler et al., 2006). In cities with high crime rates, such as Vancouver, violent crimes are regularly featured on local and provincial news. In particular, murder stories involving more than one victim are deemed newsworthy and therefore more likely to be reported. For example, the recent trial of Robert William Pickton, a resident of the city of Port Coquitlam, British Columbia, received tremendous local, provincial, national, and international television news media coverage (Fleming, 2007). Pickton was found guilty in 2007 of murdering a number of women. Through watching the trial on television news, viewers in British Columbia and elsewhere learned that the majority of the women murdered by Pickton were aboriginal women and that most worked in the sex industry. In their descriptions of many of these women’s backgrounds, various news reporters regularly made the connection between prostitution and drug addiction; these representations further reinforced the victim status of these women.

Conclusion

Many television viewers in Canada are exposed not only to daily reports of crime news but also to entertainment crime shows from the United States. Together, these media sources shape individuals’ views of crime and fear. Henry and Tator argued that in Canada, there remains a persistent denial of systemic racism, which is “deeply manifest in the fabric of Canadian culture and is a part of all social, economic and political systems” (cited in Solutions Research Group, 2003, p.10). Denial of racism among all opinion makers is, they claim, “so habitual that making the allegation of racism and raising the possibility of its influence on social outcomes becomes a serious social infraction” (Solutions Research Group, 2003, p. 10)

Crime and fear are socially constructed, and the news media have become an inextricable part of this construction. The sensationalistic tendency of television news networks to focus on rare and violent crimes such as murder contributes significantly to the public’s fear and perpetuates criminal stereotypes. By privileging these violent crimes, television news media effectively exaggerate the crime level and ignore other equally serious crimes such as domestic violence and child abuse.

Because news reporters tend to privilege official sources such as the local police over alternative voices such as those involved in the crime, television viewers are presented with selected and edited versions of crime. News stories about crime are selected, organized, and produced in such a way that certain viewpoints or the stories of those involved in the crime may remain invisible to viewers.

The tendency of television news media to portray crime as a result of individual pathology effectively removes the element of individual accountability and excludes cultural, economic, and other alternative explanations for the individual behaviour. The shift from the portrayal of women as victims to perpetrators of crimes by television news has played a part in the transformation of women’s social status in recent years.

Issues concerning women's use of violence increasingly challenge the representation of violence against women in television news and other news media outlets.

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ERRATA

Please take note of the following changes to Volume 8:

In the article entitled *Resist or Comply: An Examination of Student Attitudes on Surveillance and Government Access of Personal Records* by Richard Tanksley and Jack E. Vincent, the reference on page 298 to the quote by Ronald Reagan should be dated to 1983; further, the following references should be included on page 308:

- Cohrs, J.C., Kielmann, S., Maes, J., & Moschner, B. (2005). Effects of right-wing authoritarianism and threat from terrorism on restriction of civil liberties. *Analyses of Social Issues and Public Policy*, 5, 263-276.
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