



**CRIME IN THE PUBLIC MIND:
LETTERS TO THE EDITOR AS A MEASURE OF CRIME SALIENCE***

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ABSTRACT

Departing from the traditional reliance on survey data of crime fear to assess crime salience, this paper describes findings derived from measuring crime salience through content analysis of 1655 letters to the editor, published by five newspapers in four New England communities. The study examined crime and justice concerns expressed in newspaper letters. Findings suggest that crime and justice concerns, deemed significant in survey methodologies using global questions, are not given the same priority in letters to the editor, and that other concerns are more immediate for people on the individual level.

INTRODUCTION

Despite two decades of decreasing crime trends, crime salience remains a feature of American society. We are reminded of crime's prominence in the public psyche from surveys by Gallup, showing crime and violence ranked as the most important problem facing the country ([Newport, 1998](#)), and Harvard University's School of Public Health, pointing out that drugs/drug abuse and crime are ranked as the first and second most serious problems facing American children ([Maguire and Pastore, 1998:101](#)).

While public concern about crime is apparent, the magnitude and focus of the concern may be another matter. Researchers, it is argued, have approached measuring the public's concern about crime with a conceptual bias, equating concern about crime with fear of criminal victimization. The historical roots for this bias can be traced back to the late 1960s. Concerned with an increase in urban violence, the federal government promoted a more intensive effort to understand and control crime. Fueled by a combination of academic interest, the need for data, and an abundance of funding, a proliferation of studies measuring various levels of crime fear and its social correlates

followed. [Ferraro and LaGrange \(1987\)](#) list 46 of the better known empirical studies completed between 1971 and 1985 that measure crime fear. Public awareness about crime was explained by pointing out the large percentage of adults who expressed fear to be out at night ([Lewis and Salem, 1986](#)). This level of crime fear, we have been reminded, has remained relatively constant over the past two decades ([Warr, 1995](#)).

Even as a measure of public salience, the crime fear concept was deficient. Conceptual cloudiness and inappropriate operationalization distorted the meaning and utility of crime fear, with early studies measuring risk assessment instead ([Ferraro and LaGrange, 1987](#)). Recent studies appear to be more sensitive to the complexities of measuring fear of crime. Crime fear and risk perception are beginning to be treated as conceptually distinct constructs, and crime fear is being placed in the context of other life concerns such as safety and quality of life ([Gibbs and Hanrahan, 1993](#); [Rountree and Land, 1996](#)).

Traditionally, measures of crime salience include fear of crime and crime risk. Furthermore, [Sacco \(1982:490\)](#) contends that public perceptions of crime are diffuse phenomena that reflect generalized anxiety about the social and political environment, complicating the meaning of crime-related perceptual measures. Likewise, as [Lewis and Salem \(1986:460\)](#) point out:

Crime rates and victimization surveys tell us about the prevalence of crime in an area, but do not indicate its salience to the inhabitants. Measures of awareness and concern, on the other hand, tell us little about the realities on which these attitudes are based.

As a central theme on how citizens construct crime concerns, [Sasson \(1995:161\)](#) reports substantial support among participants agreeing with "media discourse blames crime on individual moral failure and a poorly functioning criminal justice system." Crime concerns then include family character, community controls, schools, social class issues, and the ability of the **[End page 1]** criminal justice system to effectively regulate the behavior of citizens. A case can be made that a more valid measure of crime salience can be obtained by broadening its conceptual definition.

A broader interpretation of crime salience might contribute to a better understanding about fear of crime. [Gibbs and Hanrahan \(1993:370\)](#) define a concern as:

a central or important feature in an individual's life in a specific environment such as an organization, institution, or community. It is a theme, issue, or matter that engages the individual's attention, shapes his or her life, or affects the sense of well-being in a particular environment or setting.

To better represent the breadth of a concern as defined by Gibbs and Hanrahan, crime salience, in this article, represents a much broader concept than the traditional reliance on victimization. It includes fear of crime and perceived risks, attitudes toward crime and criminals, and attitudes toward police, courts, and corrections.

Studies of crime salience need also to be challenged for their heavy reliance on survey designs

as the primary method for data collection. Preference for survey designs, no doubt, comes from ease of administration, the public's greater acceptance of "scientific" findings, and funding sources' preference for proposals that reflect "rigid," "scientific" procedures. [Sacco \(1982:490\)](#) cautions that a survey respondent's perceptual reaction to crime may not signify a narrow subjective reaction to the objective facts of crime. Pollsters' recordings of crime-related anxieties may be expressions of generalized negative feelings about other social concerns. Survey research, like all research designs, is subject to a variety of shortcomings. The need of "between-method triangulation" as a way to increase understanding of societal crime concern, therefore, becomes apparent ([Denzin, 1989:146-153, 244](#)).

As an alternative method of assessing the level of crime salience among the general public, the authors undertook a content analysis of letters to the editor published in five New England newspapers. This approach departed from earlier research endeavors in two ways. First, crime salience was conceptually defined as a broad concept to reflect fear of crime, victimization, risk assessment, attitudes toward police, the courts, and the criminal justice system in general. Secondly, instead of using data derived from survey research, data were obtained from content analysis of letters to the editor.

Two research questions guided the present study: 1) *To what extent were crime and justice concerns the focus of published letters to the editors?* 2) *When published letters to the editor focused on crime and justice concerns, what specific topics were addressed?*

The first research question was directed at assessing the general level of crime salience in published letters. Research question two was directed at determining the specific concerns addressed by the authors of crime and justice letters. **[End page 2]**

REVIEW OF THE LITERATURE

Americans' sensitivity to crime and justice did not develop in a vacuum. Perceptions and attitudes about crime and justice have been shaped largely by exposure to the popular press rather than by direct experience ([Bortner, 1984](#); [Chibnall, 1975](#); [Garofalo, 1981](#)). For most people, the media are often relied upon as a major force for socialization, and the case may be made that the saliency of crime among citizens has been media influenced. [Graber \(1980: 50-51\)](#) notes that 95% of the participants in her study responded that media sources were their primary source of information about crime and justice. [Einsiedel, Salomone, and Schneider \(1984\)](#) found that crime news was a better predictor of crime salience than even personal experience with crime.

Information about crime and justice is provided to the public by many media outlets: television news, television reality programming, media covered trials, radio, online news services, periodicals, cable television, and film. As [Surette \(1998\)](#) notes, citizens' interest in crime news results in criminal justice topics being one of the leading types of news issues, representing upwards of one-quarter of the total news programming across mediums. Yet, in spite of the growth of news mediums, popular interest in criminal justice news, and its potential impact on knowledge and attitudes, Surette notes in an extensive review that the relationship between the three is far from settled.

Although findings have been mixed, research on the role played by newspapers in shaping public awareness of crime has a rich history. [Davis's \(1952\)](#) study of crime news in four Colorado newspapers in the late 1940s was one of the first. Although Davis found no consistent relationship between the amount of crime news in newspapers and the local crime rate, he found moderate support that public opinion reflects trends in the amount of crime news rather than in actual rates ([1952:329](#)). [Sheley and Ashkins \(1984\)](#) found public attitudes about crime were more similar to newspaper presentation than to television.

With few exceptions, most studies looking at newspapers' influence on public awareness of crime have relied on levels of crime fear as the unit of measurement. [Jaehnig, Weaver, and Fico \(1981\)](#) determined that the level of crime fear was associated more strongly with newspaper emphasis on violent crime than with the actual frequency of violent crime in a community. [Heath \(1984\)](#) concluded that not all newspaper crime reports were equally fear provoking. Story details of sensationalism, apparent randomness of the crime, and crime location made a difference in the effect of the article on the perception of crime. She found that readers of newspapers that printed high proportions of local crime news reported high levels of fear if crimes were predominately sensational or appeared random. Conversely, Heath found readers of newspapers that printed a low proportion of local crime news reported lower levels of fear if the crime were sensational or random. Heath concluded that the more a newspaper prints crime news about other places, people feel more secure in their own environment ([1984:271, 274-275](#)). [O'Keefe and Reid-Nash \(1987\)](#) discovered that newspapers increased concern about crime, but not necessarily fear about crime. Fear of crime, and perceptions of neighborhood crime rates, were not significantly associated with readership of newspaper crime news. On the contrary, perceived likelihood of being burglarized and self protection concern were positively related to **[End page 3]** newspaper crime news attention. Heavier consumers of crime news felt more concerned about the crime issue, but also felt they had the ability to take preventive measures ([O'Keefe and Reid-Nash, 1987:156](#)).

[Liska and Baccaglini \(1990\)](#) found newspaper homicide crime stories showed the strongest relationship to crime fear. Local homicide stories increased fear, and non-local homicide stories decreased fear. They found that fear is affected positively by only initial, local homicide stories in the first part of the newspaper, further supporting [Heath's \(1984\)](#) findings that newspaper coverage of crime in other cities makes people feel better ([Liska and Baccaglini, 1990:372](#)). A survey of 2,092 adults in Tallahassee, Florida by [Chiricos, Eschholz, and Gertz \(1997\)](#) revealed that the frequency of reading newspapers had no apparent relationship to respondents' fear of being a likely victim of selected crimes. In a recent article describing the effects of television, newspapers, and new technologies on the fear of crime, [Heath and Gilbert \(1996\)](#) point out that media effects are not simple main effects, but involve many moderators.

There were a number of advantages in utilizing letters to the editor as a data source. Over the past decade newspapers have experienced a significant increase in the number of letters they receive ([Editor and Publisher, 1995](#); [Hynds, 1994](#)), providing a good source of information about citizen concerns. Unlike most survey questionnaires, which provide data from specific responses via fixed-alternative or closed-ended items, content analysis of letters to the editor provide data from subjects who have utilized an open-ended format to volunteer their concerns. Letters to the editor can provide first hand insights into one's attitudes and perceptions regarding the saliency of crime as a central concern of their immediate environment. Since the task of writing a letter

involves an expenditure of time and effort, a letter to the editor should reflect a reader's strong concern about a particular matter. Most citizens have an opinion about crime and justice, and letters to the editor provide insights regarding the prioritizing of community issues, as well as the identification and articulation of specific crime concerns among letter writers.

The authors of the present study have not overlooked the concerns raised when letters to the editor have been used as data sources. Early studies focused on several areas of concern: the demographic representativeness of letter writers; the representativeness of letters as a barometer of public opinion; and the motivational components of letter writing. [Forsythe \(1950\)](#) found letter writers were overwhelmingly older, primarily male, above average in formal education, native white American, and white-collar. [Tarrant \(1957\)](#) and [Vacin \(1965\)](#) found similar results in their studies, adding that letter writers had more children, were more likely home owners, did not listen to television or radio, were well-read and more likely belonged to the Republican party.

As a barometer of public opinion, [Foster and Frederich \(1937\)](#) found letters to the editor were tied to propaganda effects, with newspaper stories, editorials, and other letters most frequently conveying the stimulus to write letters to the editor. [Grey and Brown \(1970\)](#) concluded that political attitudes and interests of published letters to the editor were more a reflection of editors' gatekeeping than sentiments found in the community, or with the majority of letters writers. A comparison study of published and unpublished letters by [Renfro \(1979\)](#) **[End page 4]** found certain topics were more likely to get published than others. She found that letters dealing with local, controversial issues had a better chance of being published.

The safety valve function has been cited as the primary motivation for writing letters to the editor. Most letters are negative, "agin" something or somebody ([Foster and Frederich 1937: 74](#)). "The letter column gives the irate, the antagonist, the displeased a chance to speak out and be heard" ([Davis and Rarick 1964: 109](#)). [Forsythe \(1950: 144\)](#) concluded that letters to the editor are of a contentious nature, which did not represent reasoned, logical approaches to problems.

An explanation for these concerns may lie with the narrowness of the studies, which focused on politically orientated letters. Moreover, assessments of information validity have been based upon the degree of writers' conformity to mainstream political ideologies.

Mindfulness of a self-selection process in writing letters to the editor and the demographic bias of letter writers has not discouraged use of letters as a data source. [Lambkin and Morneau \(1988\)](#) compared the image of police in editorials to the image of police in letters to the editor in three papers. They found editorials and letters in the *New York Times* split evenly on positive and negative images of police. The *Los Angeles Times*, although publishing more negative editorials, published more positive letters about police. The *Daily News* (circulated in the San Fernando Valley) was found to be highly positive in both editorials and letters. [Pritchard and Berkowitz \(1991\)](#) studied 10 newspapers covering 31 years. Their results suggested that letters to the editor were more important in understanding the content of front pages and of editorials than had been previously realized.

More recent studies have challenged earlier contentions that letter writers are emotionally and politically extreme, and that letters to the editor are an unreliable measure of public opinion. [Buell](#)

(1975) and [Volgy et al. \(1977\)](#) concluded that letter writers were not a politically distinct group compared to the larger population. [Hill \(1981\)](#) found letter opinion in major American dailies regarding the Equal Rights Amendment was very similar to that found in public opinion polls. In a study of letters to the editor in 15 Arizona newspapers regarding opinions on establishing a Martin Luther King Holiday, [Sigelman and Walkosz \(1992:945\)](#) concluded, like [Davis and Rarick \(1964\)](#), that letters to the editor were not just the province of crackpots, providing them with a safety valve for blowing off steam, but under certain conditions were also a vehicle that provided an accurate gauge of public thinking on controversial issues. They noted that much of the evidence critical of letters as a reliable and valid thermometer of public opinion was dated, and most of these studies focused on the characteristics of letter writers rather than on the content of the letters they write ([Sigelman and Walkosz, 1992:939](#)).

RESEARCH DESIGN

To ascertain community salience of crime and justice issues, a content analysis of letters to the editor was undertaken in five newspapers, representing four different news markets. The *Boston Globe* and *Boston Herald* represented a large news market. The *Manchester Union Leader* (NH) and *Lowell Sun* (MA) each represented a medium-sized news market, and the *North Adams Transcript* (MA) represented a small news market.¹ [End page 5]

The *Boston Globe* and *Boston Herald* provided an opportunity to assess the impact on crime salience in the same news market from newspapers with differences in reporting style and emphasis of presentation in news reporting. The *Boston Globe* was viewed as presenting news in a more conventional manner. The *Boston Herald*, on the other hand, was viewed as relying on a more sensational format in its news reporting. Selection of both the *Manchester Union Leader* and *Lowell Sun* provided an opportunity to study community crime salience in two news markets of similar size and with similar crime rates,² but with newspapers exhibiting different political perspectives. The *Lowell Sun's* image as a politically low-keyed community newspaper was in sharp contrast to the nationally known, outspoken, and very conservative *Union Leader*.

The study covered the time period April 1 to May 31, 1997. This time period was selected to avoid the conflicting factors of the lower crime rates typical in winter and the higher crime rates expected during the summer months. With the exception of the *Transcript*, without a Sunday edition, weekday and Sunday editions of the papers were examined during the period of 61 days.

Content analysis was conducted on letters to the editor using a coding scheme modified from subject categories developed by [Deutschmann \(1959\)](#) and [Graber \(1980\)](#). Graber's coding scheme was especially useful for it was based upon a broad definition of themes that addressed topics pertaining to both crime and justice. Crime and justice included individual crimes, criminals, statistics and trends, police activities (in letters devoted at least in part to the activities of police), courts, corrections, and law and criminal justice policy debate or announcement ([Graber, 1980:21-25, 164-183](#)).

The content analysis procedures progressed through several layers of coding. First, letters were coded as fitting one of four general categories. These categories included: 1) Politics/Government; 2) General Society/Other; 3) Crime and Justice; and 4) Ethical/Moral (See [Appendix A](#) for

descriptions of the coding categories and examples). Next, crime and justice letters were further categorized according to the primary focal point of their discussions: 1) Crime; 2) Police Activities; 3) Court Processes; 4) Corrections; 5) Policy/Law; and 6) Other (See [Appendix B](#) for examples). Letters concerning a criminal event, such as the occurrence of a murder, were coded as (1), whereas a letter concerning the police investigation of that murder would be coded as (2). Crime and Justice oriented letters to the editor were additionally divided according to the type of crime mentioned. Categories for crime types were: 1) Murder/ manslaughter; 2) Rape/sex-related; 3) Other crimes against the person; 4) Property crime; 5) Public order crime; and 6) Other/unspecified. To determine consistency of coding, the authors compared each other's coding from a sample of 100 letters selected from four of the five newspapers (the *Transcript* was omitted). A coefficient of reliability of .88 was obtained.

FINDINGS

A total of 1655 letters to the editor was coded from the five newspapers studied. The *Lowell Sun* accounted for the largest percentage of letters published among the newspapers. The [End page 6] *Boston Globe*, *Boston Herald*, and *Manchester Union Leader* were comparable in the number of published letters. The *North Adams Transcript* produced the fewest number of letters.

The *Sun's* large number of published letters was no doubt a result of the variety in the newspaper's submission formats. In addition to publishing postal mail, the *Sun* also encouraged e-mail and phone-mail submissions, an increasing trend among community newspapers ([Hunter, 1995](#); [Noack, 1994](#)). It published concerns and opinions of readers submitted by e-mail and voice mail in a regular column titled "BackTalk"; ninety-three percent of their mail was received via an electronic method. On the one hand, the expeditious nature of phone-mail no doubt encouraged a higher rate of reader input in the *Sun's* "BackTalk" column. Phone-mail communication was quick, direct, and required minimal grammatical and articulation skills. On the other hand, the immediacy with which "BackTalk" callers could express opinions on topics discouraged a "cooling down" period available when composing and then mailing a letter. Consequently, "BackTalk" calls frequently appeared more emotionally directed or inspired, possessing an "edge" not found in traditional letters to the editor (See [Appendix C](#) for examples). While the other papers allowed for electronic transmission of letters from readers, unlike the *Sun*, they did not distinguish electronic mail from other methods of submission, nor did they regularly devote columns to electronically received correspondence.

Research Question #1: To what extent were crime and justice concerns the focus of published letters to the editors?

As noted in [Table One](#), issues of crime and justice were not the focal point of most letters written to the five newspapers studied; only 6.4% of the 1655 letters addressed those topics. Except in the *Sun*, letters pertaining to crime and justice ranked last as a focal point for writers. Most writers focused on general society concerns, or politics and government.

Telephone interviews with editors responsible for letter selection in the five newspapers dispelled concerns that the low percentage of crime and justice letters was the product of purposive selection on their part. While all editors confirmed that letters may be edited for length, with

libelous and hate letters eliminated, none of the editors deliberately attempted to change a letter's intent. The *Union Leader* and *Transcript* published all letters received. The *Sun* published all letters (e-mail and postal mail) intended for its "Letters To The Editor" column. Phone-mail and e-mail directed to the *Sun*'s "BackTalk" column required more editorial vigilance, resulting in the publication of roughly two-thirds of "BackTalk" received communiqués. Typical of large newspapers, the *Boston Globe* and *Boston Herald* published 15 to 20 percent of letters received. However, editors of both papers offered assurances that every effort was made to publish letters reflecting the proportion of topics addressed from the total number of letters received. Consistent with our own findings, the *Boston Globe*'s letters editor volunteered that less than 5% of all letters received focused on crime and justice concerns.

– [INSERT TABLE ONE ABOUT HERE](#) –

Because there were relatively few crime and justice letters to the editor (n=106), comparisons across newspapers by category were difficult. Even with the greater number of **[End page 7]** letters received by the *Sun* due to the popularity of its "BackTalk" column, there was little variation among the five newspapers.

Research Question #2: When published letters to the editor focused on crime and justice concerns, what specific topics were addressed?

Attention was directed toward ascertaining the nature of concern among writers of crime and justice letters. Of the small number of letters concerning crime and justice, the majority (39.6%) was coded as crime concern, the category wherein the emphasis is on a specific criminal event mentioning a victim, an offender, and some type of harm or loss. The majority of letters received by the *Boston Globe* (7 of 9), *Boston Herald* (8 of 12), and *Transcript* (3 of 5) fell under the category of crime concern. On the other hand, only the *Sun* (25 of 63) and the *Union Leader* (2 of 17) received crime and justice letters focusing on police activities.

Of the 106 crime and justice letters only 84 letters referred to a specific type of crime. The majority of these letters concerned public order offenses, with the more serious crimes of murder and sex-related offenses less often mentioned. There was little evidence of concern for other personal crimes (i.e., robbery, assault) or property crimes (See [Table Two](#)).

- [INSERT TABLE TWO ABOUT HERE](#) -

Some of the letters, concerned with the more serious personal crimes, need qualification. For example, although seven of the nine crime relevant letters in the *Boston Globe* were coded as rape/sex-related, four of these seven letters were critical of Lt. Kelly Flynn's court-martial trial on adultery and disobeying orders. Three of the seven letters were in response to a *Boston Globe* story on date rape. Except for one letter criticizing the court's decision in convicting a Manchester attorney of sexual assault, *Union Leader* crime and justice letter writers paid little attention to those types of crimes ordinarily receiving more attention in the press. Both *North Adams Transcript* letters that discussed murder/manslaughter were reactions to a news story about a local native who was murdered in a Florida holdup. Two other letters dealt with problems resulting from drinking by students at a local college.

SUMMARY AND DISCUSSION

Departing from traditional reliance on survey data to measure crime salience, the present study used newspaper letters to the editor as the unit of analysis. Our findings show that crime salience among newspaper letter writers appears to be low, with only a small proportion of published letters to the editor addressing crime and justice topics. It appears that crime and justice concerns, deemed significant when survey methodologies utilize global questions, are not given the same priority in letters to the editor. Our findings suggest that, at least among letter writers, other concerns are more immediate for the individual. Letters that dealt with crime usually focused on the less sensational incidents reported in crime news stories, a characteristic consistent with findings in public opinion research. Americans' belief about crime on the national level is not the same as what they believe about crime in their neighborhoods ([Warr, 1995:302](#)). Differences exist between global versus specific attitudes. [Applegate \(1996\)](#), for **[End page 8]** example, found that support for a "three-strikes-and-you're-out" law was high when citizens were asked broad single-item questions, but diminished greatly when citizens were presented with specific situations under the law.

Cautions accompany any claims made that letters to the editor represent opinions held by the general population. In our case, the demographics of letter writers may be more representative of people who are better informed of the risks of crime, less affected by crime, or less affected by the media's portrayal of crime. Nonetheless, [Sigelman and Walkosz \(1992:944\)](#) report "a close match between explanations offered by survey respondents and those given by letter writers" in a study comparing citizen attitudes in letters to the editor and an independent poll on the passage of a Martin Luther King Holiday. The similarity of findings among the five newspapers from four different communities in the present study, moreover, provides reasonable support to suggest the relatively low measure of public concern about crime may be an opinion shared by the public at large, at least in four New England communities. As [Sotillo and Starace-Nastasi \(1999:251\)](#) point out, "Even though a certain degree of editorial pruning is done to ensure that published letters are not defamatory or grossly offensive, the LEs [letters to the editors] do provide an insight into the socio-cultural dimensions of a community as experienced by reader-writers."

On the basis of the research reported in this article, a case can be made for the importance of surveys measuring crime salience that identify more immediate crime and justice concerns among individuals in a geographically defined area. The use of surveys with extensive open-ended formats, which allow for better probing of respondents' attitudes, will provide a better sense of the public's concerns about crime in their community.

Letters to a newspaper are not intended to be representative measures of public opinion; rather, they are measures representing public opinion. Accordingly, more investigations of letters to the editor are encouraged. Increased utilization of new technology such as e-mail and voice-mail, which allows opinions to be more easily submitted to editors, broadens the popularity of citizen communication with their dailies. The traditional safety valve function of letters to the editor ([Buell, 1975](#); [Davis and Rarick, 1964](#)) should be revisited to determine if the role and function have changed over time. We found that the letters in four of the five newspapers appear to function as a safety valve, but the publication of these letters is not as immediate, nor are these letters as emotionally directed or inspired, as the phone-mail and electronic-mail utilized by the *Lowell Sun*. **[End page 9]**

ENDNOTES

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1. Circulation for the *Boston Globe* was 498,853 daily and 793,672 on Sunday, and for the *Boston Herald* it was 294,000 daily and 203,000 on Sunday. The *Manchester Union Leader* reported a daily circulation of 89,000, and a Sunday circulation of 102,000. Daily circulation for the *Lowell Sun* was 55,890, with a Sunday circulation reported at 58,360. The *North Adams Transcript*, with no Sunday edition, reported a daily circulation of 9,638 ([Burrelle=s Media Directory, 1997](#)).

2. The population of Manchester was 99,567, and the population of Lowell was 103,439. See [U.S. Bureau of the Census, 1990](#). *U S Census Data, Database 1990: C90STF1A* [On-line]; available from <http://www.venus.census.gov/cdrom/lookup>; accessed 6 March 1998. At 3407.7 per 100,000 (MSA) Manchester=s crime index was close to (MSA) Lowell=s crime index of 3975.5 per 100,000. See U.S. Department of Justice, *Crime in the United States 1995* ([Washington, D.C.: Federal Bureau of Investigation, 1996: 82, 92](#)). [End page 10]

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APPENDIX A

Coding Categories, Descriptions, and Examples

Categories	Category Descriptions
Politics/Government	Letters concerned with government activities (local to national, domestic and foreign), national defense, elections, elected and appointed officials, political figures, political issues
General Society/Other	Letters concerned with social issues, education, business and the economy, people, lifestyles, cultural activities, sports, entertainment, leisure, human interest
Crime/Justice	Letters concerned with general crime discussion, specific crimes, adult and juvenile crime, the criminal justice system, crime statistics, crime trends, laws, policies
Ethics/Morals	Letters concerned with public moral problems, social equality, sexual behavior, pornography, gambling, drug addiction, alcoholism, family values, public honesty and integrity, religion in society

Examples

1. *Politics/Government*

Clearing the Way. Why was Gov. Weld offered the position of an ambassador to Mexico by Bill Clinton? Could it be possible that our president is trying to make available the position of governor of Massachusetts to Joseph Kennedy? It looks like the president stepped in and eliminated the opposition.

Lowell Sun ("BackTalk") 4/29/97

2. General Society/Other

Ayer High Drama Production Soared as Community Effort. On Feb. 28 and March 1, the Ayer High School Drama Club presented its production of *Bye Bye Birdie*. As always, I must praise the students who participated on stage and behind the scenes, they put in a lot of work to guarantee that the community of Ayer would be exposed to a great production. **[End page 15]**

This, however, was only a microcosm of the involvement in this production. In fact, this production was a celebration of the community of Ayer High School.

Karen Bagshaw, the Consumer Science teacher, organized a dinner for senior citizens of the area. Students in her charge prepared and served a meal fit for royalty, and after the meal the senior citizens watched the dress rehearsal.

I have to cheer many faculty and staff members who performed or assisted the student cast and crew. Principal, Don Parker, and teachers, Bill Beaushene, Pat Beaushene, Jane Steinberg, Sally Paul, Randy Long, Karen Bagshaw, and Maggie Hartnett joined the production to perform as Shriners and to sing "Kids." In addition, Ted Januskiewicz helped with the building of the set and Walter Naparstek assisted with sound and videotaped the production.

We also had assistance from the Dram Backers led by Merry Balchunas, Anne Marie Jeannotte, and Vanessa Riffelmacher.

The production was a success because of the community input and support.

Lowell Sun 4/6/97

3. Crime/Justice

See [Appendix B](#).

4. Ethics/Morals

Slot Machine Gambling Too Easy. To the Editors: Reference "Your Turn New Hampshire" article concerning gambling by Rep. Katherine Rogers.

I believe she is right in what she wrote concerning our lottery system. The same can be said of the race tracks and beano, that have been so popular for such a long time. In fact, it is said that "life is a gamble," and I'm not being funny.

I play beano rarely and for fun. I play Megabucks almost constantly and itch for the scratch tickets. My expenditures are about \$4 a week, i.e. I win a dollar or two at scratch per week. I do look at the lottery as a "volunteer tax," with supposedly much of it going to our communities for schools. Certainly a good cause.

Here is where the other shoe drops. I feel that Rep. Rogers may have never spent much or any time in a real gambling casino, especially around the "low cost," easy to use slot machines that promise large payoffs. **[End page 16]**

Slot machine gambling is now so easy and so popular, all you have to do is stuff paper money into a slot, just like a change machine, and you get credits on the screen for the money you put in. For example, a \$100 bill will credit you with 40 quarters [sic].

And this is where we the people begin to go wild. And as soon as our discretionary fun money is spent, then comes the car payment, and then the rent, and then . . .

This, Rep. Rogers, is the vast difference I find in playing the lotteries and "working" the casinos. I have a chilling fear they will get to [sic] close to us. Yes indeed, to [sic] close to me . . . and many other people. And yes, I know it's a crazy statement in the '90s, but I do care about other people. Yes, that gives away my age.

Manchester Union Leader 4/1/97 [End page 17]

APPENDIX B

Examples of Crime and Justice Letters

1. Crime

What About Guys Falsely Accused of Date Rape? I'd like to thank

you for writing about college date rape on Page A1 last Sunday, and looking out for the *Globe's* younger readers ("Efforts by universities to curb date rape falling short").

I know it's a potentially life-ruining incident to be raped, especially by someone you knew (and trusted). You also have to take into consideration what happens to a guy or group that is falsely accused of date rape. There is so much anti-date rape propaganda (and rightfully so) on college campuses that a girl may go to a party, get drunk, have sex, and then regret it the next morning.

The next thing you know, she's accusing the guy of something that he, too, may have regretted but is too embarrassed to admit.

As a fraternity member at the University of Michigan, I saw this occur. A young woman got drunk at a fraternity house and had intercourse with a guy, and the next day accused him of rape.

The fraternity got tons of negative publicity in the school newspaper. She finally admitted it was her fault, and there was no mention of this in the paper. The media seem to be anti-male in date rape cases.

Sure, we supply alcohol for females at our fraternity parties, but we do not force it down their throats.

The next time a girl decides to get drunk and accomplish her goal of hooking up with a guy, she should make sure beforehand what she is willing to do.

Boston Globe 5/25/97

2. Police Activities

Special Thanks to Police. Regarding the way the media downplayed a recent drug bust in our community and the tireless efforts of the Boston Police Department, BPD Drug Unit and law enforcement officials who made it happen ("Southie drug sweep unites cops, residents," April 7).

Anyone with half a brain knows that the big dealers will not sell to 13-year-old kids. The 18 individuals who got busted were not only dealing, but many of them were **[End page 18]** users and they sell to everyone just to support their own habit. They don't care about anyone or anything.

Heroin is becoming rampant in virtually every neighborhood across

Boston. Its [sic] killing our kids.

Special appreciation and thanks to the entire Boston Police Department and to the excellent men of the BPD Drug Unit for a job well done. Please continue the fight against the war on drugs knowing that a good number of us truly appreciate your efforts.

Boston Herald 4/17/97

3. Court Processes

Fighting Crack Dealers. I applaud your editorial, "Crack cocaine debate" (May 5).

As a former narcotics prosecutor, I agree that some adjustment should be made from a fairness standpoint to correct sentencing inequities derived from the wide disparity between penalties imposed in cases involving the street-level sale of small quantities of cocaine hydrochloride (powder) and crack cocaine. However, it's essential that stricter sentences continue to be meted out in cocaine distribution cases involving volume sales of crack cocaine.

The finished "rock" product is purer, more lethal, more highly addictive and faster-acting. Any cocaine dealer should be treated harshly and penalties should be enhanced according to weight and criminal histories. It's therefore logical to deem a dealer who takes the extra step to "cook" his product so that it's even more dangerous than in its original form as having "aggravated" the crime enough that additional prison time is mandated and increased according to the amount involved.

Boston Herald 5/12/97

4. Corrections

Time for Judiciary to Side with Victims. Surviving victims of horrendous crimes and deceased victims' families are further punished by a weak, ineffective justice system which showers compassion on perpetrators rather than on their prey.

Allowing violent monsters to live out their lives in prison watching TV and visiting with family is an insult to their innocent victims.

Feeding, clothing, entertaining and "treating" killers is an affront to taxpayers and all good people. **[End page 19]**

Ignore the whining and pandering of politicians who sympathize with violent criminals because they had a tough life or were on drugs when they wreaked havoc and death upon innocent victims. Stop ridiculous years of death penalty appeals. We must insist on politicians and judges who will dispose of those who kill our friends, family and law enforcement officers dedicated to a safe and sane society.

Boston Herald 5/26/97

5. Policy/Law

Death Penalty Is Fair Punishment. To The Editors: In Pennsylvania, Gary Heidnik was sentenced to die for sexually assaulting and murdering two women and then feeding their body parts to two other women he was using as sex slaves. Should Heidnik be executed?

Some argue that capital punishment is barbaric, uncivilized and state-sanctioned murder; however, if the execution of a sadistic murderer like Heidnik is "state-sanctioned" murder, then state imprisonment of rapists, child molesters, drug dealers, burglars and murderers is "state-sanctioned kidnaping" [sic] and state taxation on consumer goods is "state-sanctioned theft."

Many religious opponents of the death penalty cite the commandment "Thou shalt not kill" to buttress their position; but the commandment is more accurately understood as "Thou shalt not murder;" indeed, a few passages after that commandment is given by God to man, there is a verse affirming that a murdered [sic] forfeits his own right to live.

Some killing is morally justified such as killing in self-defense or in a just war. If the state has the moral right to authorize its citizens to wage a just war against Adolf Hitler, then the state also has the moral right to authorize the execution of vicious murderers like Gary Heidnik.

In a conversation with this writer, the former Vatican scholar Father Malachi Martin, S.J. noted that "strict justice" demands the executions of murderers. For punishment to be just, said Father Martin, it must fit the crime, that is, be proportionate to the crime committed. For premeditated murder, the only fair and appropriate punishment is the death penalty.

Manchester Union Leader 5/30/97 [End page 20]

APPENDIX C

Examples from the *Sun's* "Backtalk" Column

DEADLINE UNFAIR. I couldn't believe Saturday's paper "Back to Treatment for Alleged Wife Slayer." He was not a slayer. I don't think you should have written that. This is an 80-year-old man that was with his wife for 50 years.

Lowell Sun ("BackTalk") 4/2/97

SET THEM FREE. The Amiraults should be vindicated of their charges, and Scott Harshbarger should get a life.

Lowell Sun ("BackTalk") 4/2/97

YOUR OPTIONS. To the Dracut resident who has no town water, sewage or gas, but a Lawrence phone exchange and a Methuen fire hydrant. You can: 1) take your own trash to the dump and make believe you live in New Hampshire; 2) sue who sold you the house; 3) support the power plant - it is the only way you are going to see improvement to your situation.

Lowell Sun ("BackTalk") 4/15/97

PLEASE PAVE. My car would like to know when North Road is going to be paved. She's getting very tired of this.

Lowell Sun ("BackTalk") 4/15/97

SLOBS BEWARE. To the losing slobs who throw their scratch tickets on the ground in the convenience store parking lots: As an abutter [sic], I will empty a trash barrel into your car if I see you.

Lowell Sun ("BackTalk") 4/18/97

OFF DUTY. To the caller who suggested retired police, firefighters and teachers should volunteer to patrol school hallways. The key word is "retired." We've done our time. Why don't parents assume the responsibility? Better yet, do a better job at home and we won't need to patrol schools.

Lowell Sun ("BackTalk") 4/22/97 [End page 21]

NEW HAMPSHIRE MYTH. I lived in New Hampshire for eight years. People say it is cheaper to live in New Hampshire. Well, that's

baloney. They have to drive farther and make less money. That's why they're so miserable.

Lowell Sun ("BackTalk") 5/28/97 [End page 22]

TABLE ONE

Topics Addressed in Letters to the Editor of Five New England Newspapers

Newspapers

Topics	<i>Boston</i>	<i>Boston</i>	<i>Sun</i>	<i>Union</i>	<i>Transcript</i>	All
	(%)	(%)	(%)	(%)	(%)	(%)
Politics/	15.9	9.6	14.3	31.3	43.8	18.4
General Society/	68.6	74.7	71.8	51.1	38.1	66.3
Crime/	3.5	4.6	8.3	6.3	4.8	6.4
Ethics/	12.0	11.1	5.6	11.2	13.3	8.9
N =	258	261	763	268	105	1655

[End page 23]

TABLE TWO

Focus of Discussion and Type of Crime Discussed in Crime and Justice Letters to the Editor in Five New England Newspapers

Crime	39.6	Murder/Manslaughter	19.0
Police Activities	25.5	Rape/Sex-Related	20.2
Court Processes	15.1	Other Crimes of Person	7.1
Corrections	5.7	Property Crimes	4.8
Policy/Law	8.5	Public Order Crimes	35.7
Other	5.7	Other/Unspecified	13.1
N =	106	N =	84

[End page 24]



**"STAR TREK" AND *STARE DECISIS*:
LEGAL REASONING AND INFORMATION TECHNOLOGY***

by

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ABSTRACT

What impact does the changing technology of information have in the process of legal reasoning? Using the 1967 episode of Star Trek entitled "Court Martial" as a launching pad to explore the issues of legal reasoning and information technology, this article explores where no one has gone before. First, how have previous changes in information technology influenced legal reasoning, such as the rise of the doctrine of stare decisis during the advent of the printing press? Second, what impact may computer information technology have in the processes of legal reasoning in contemporary society? Live long and prosper!

INTRODUCTION

We are not far from a legal information parallel universe that once only the likes of Asimov and Star Trek writers could envision.

[Donald Dunn \(1993: 60\)](#)

CALR [computer assisted legal research] can impede the understanding of the legal process, which is reinforced by printed sources. Printed sources are designed in such a systematic and interconnected way that by using them the legal researcher not only will arrive at an answer to the issue being researched, but in doing so will reinforce his or her understanding of the legal process. To the extent that CALR allows the researcher to deviate from the system imposed by printed sources, some knowledge of the legal process itself may be sacrificed.

[James Acker and Richard Irving \(1998: 5\)](#)

Criminal justice practitioners are increasingly bombarded with new information technologies.

From the Internet superhighway to computerized legal databases, information technologies grow and demand increasing time and money, not only of judges and lawyers in criminal courts, but also of police, corrections, and juvenile personnel in wide-ranging roles ([Acker & Irving, 1998: vii-viii](#)). Compounding information overload are the uncertainties and criticisms of legal method as well as interpretation and impartiality in the use of the legal method. Like my previous published work ([Chilton, 1991](#)), this manuscript focuses on the confluence of emerging problems in information technology and legal reasoning. It uses the 1967 episode of "Star Trek" entitled "Court Martial" as a launching pad to explore these issues as part of a growing literature on futuristics in criminal justice (see [Klofas & Stojkovic, 1995](#)) and on "Star Trek's" general legal values (see [Joseph & Carton, 1992](#); [Scharf & Roberts, 1994](#)) and social meaning (see [Greenwald, 1998](#)).¹ This short article overviews the development of professional legal literature and the influence of three factors in the rise of the doctrine of *stare decisis*: (1) The invention of the printing press; (2) The development of court hierarchy by the 19th century; and (3) The efforts of entrepreneurial printers and publishers. The manuscript concludes that the rise of *stare decisis* was not simply due to the legal factors of court structure and hierarchy, but also because of the extra-legal influence of the printing press and the efforts of individual printers and publishers. The implication of this synergism is applied to contemporary developments in computer assisted legal research for criminal justice practitioners.

"STAR TREK"

"Court Martial," *Stardate 2947.3*, episode 15 of the original 1967 "Star Trek" series, features the court-martial trial of Captain James Kirk of the starship *U.S.S. Enterprise* for negligent homicide. During an unscheduled layover at *Starbase 11* for repairs to the *U.S.S. Enterprise* from ion storm damage, Captain Kirk is accused of the negligent homicide of Ben Finney. Finney had been taking readings of the ion storm from a pod attached to the *U.S.S. Enterprise* [End page 25] when Captain Kirk ordered it jettisoned to escape the storm. The computer records of the *Enterprise* indicate that Kirk negligently failed to follow standard procedures and notify Finney before jettisoning the pod. Kirk, who becomes the first starship captain to stand trial for a criminal homicide in the line of duty, is totally exonerated of all charges when it is revealed that Finney had tampered with *Enterprise* computer records. In fact, Finney remained alive and was discovered aboard the *Enterprise* in a dramatic fight with Kirk where Finney confessed to altering the computer records. In their *Starfleet Academy* days, Finney was an instructor and befriended midshipman-student Kirk (about *Stardate 2086*) and became so close that Ben named his daughter, Jamie, after Kirk. But aboard the *U.S.S. Republic, NCC-1371* (also about *Stardate 2086*), Kirk reported an error by Finney, causing Ben to be passed over for promotion and leading him to insanely blame Kirk for never attaining command of a starship. The "Court Martial" story concludes with Jamie apologizing for her emotional outbursts against Kirk and helping her father off to his rehabilitation ([Paramount Home Video, \[1967\] 1985](#); see also [Okuda & Okuda, 1993](#)).

The "Star Trek" writers of "Court Martial" (Don M. Mankiewicz and Steven W. Carabatsos) also presented their vision of future legal information technology. Both Areel Shaw, the prosecutor, and Samuel T. Cogley, Kirk's defense lawyer, were placed in scenes demonstrating extraordinary legal databases and accessing a wide range of legal codes, cases, and materials from several galaxies and over three millennia. And beyond the obvious falsification of *Enterprise* computer records by Finney, these scenes dramatize uncertainty and criticisms of the legal method

and interpretation in the use of computer assisted legal research. Defense lawyer Cogley, for example, is portrayed as a charming eccentric who still insists on using antiquated books in his legal method. He insists that the internal, historical narrative of law is found only in books, even dull old law books, and is lost in the sterile world of the computer. The computer legal database has none of the dog-eared pages, hand-scribbled notes and bookmarks, and well-thumbed versus untouched pages to cue the reader. And so, he insists on stacks and stacks of books, even in the courtroom ([Paramount Home Video, \[1967\]\(1985\)](#)).

STARE DECISIS

Perhaps the most distinctive aspect of Anglo-American common law is the doctrine of *stare decisis*. According to the simple definition in *Black's Law Dictionary*, *stare decisis* is the:

doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same ([West Publishing, 1987: 1577](#)).

Of course, this definition presents too simplistic a conception of *stare decisis*, which is in reality a complex endeavor, not the simple application of principles. This essay seeks to develop this more complex understanding of *stare decisis* in the follow two sections.

For at least one hundred years, Anglo-American courts have spoken of *stare decisis*, either in the "strict" or "latitudinarian" form ([Wise, 1975](#)), and applied its precepts in the **[End page 26]** resolution of legal disputes. Various scholars of legal history allege the doctrine of *stare decisis* was brought into being by the influence of: (1) The invention of the printing press; (2) The development of court hierarchy by the 19th century; and (3) The efforts of entrepreneurial printers and publishers. Sir William Holdsworth, in his multi-volume treatise on the history of English law, claimed that the invention and application of the printing press influenced the rise of *stare decisis*, arguing "it could be attributed to the fact that reports of judicial opinions were by that time not only officially reported in writing, but printed and published" ([Holdsworth, 1937: 331](#)). Others have repeated the claim that the technology of the printing press may have influenced the rise of *stare decisis* ([Mellinkoff, 1963](#)). Traditional legal scholars have argued that the rise of *stare decisis* was due to the hierarchy of courts that emerged in the early 19th century ([Dawson, 1968](#); [Kempin, 1959](#); [Wise, 1975](#)). Still others attribute the rise of *stare decisis* to the efforts of individual entrepreneurs in the printing and publishing world who stood to make profits from the requirements of large book purchases by lawyers across the country ([Parrish, 1979](#); [Young, 1975](#)).

ENGLISH LEGAL LITERATURE, 1066-1800

The professional legal literature of English common law had its origins in the conquest of England in 1066 A.D. by William the Conqueror. After his victory at the Battle of Hastings and the death of King Harold, William attempted to take the "treasure" of his conquered domain. For the collection of taxes, he spent most of his remaining life in a survey of property ownership in England called the *Domesday Book*, assembled in 1086. As the first official record of England, William did not impose a new set of statutes or code on the conquered peoples, as did the Romans

and other European conquerors. Instead, laws were found in the common customs and traditions of the peoples in the small "shires" or villages of England ([Plucknett, 1956](#)). Hence, the name "common law."

In spite of this departure from Roman civil code traditions, the early English legal literature was modeled after the Roman civil code legal encyclopedias like *Justinian's Institutes*. The earliest of the English legal treatises focused on property law, such as *Laws of Edward the Confessor* (written anonymously in 1118), and *Glanvill* (written by Justiciar Ranulf de Glanvill in 1187). These early works simply compiled legal documents (deeds, etc.) with commentary in Latin. A much larger treatise was written in the 1220-30s, attributed to Henry de Bracton (d. 1268). Bracton attempted to meld the two legal traditions together in this work, organizing in Roman encyclopedic fashion the many individual case decisions on the common law. But he only once referred to a specific case. Bracton's work was widely distributed in the 13-14th centuries, but its influence did not last because it was written too early; the common law grew greatly in the centuries after ([Baker, 1979](#)).

The common law was always in some sense "case law." Thus, it is no surprise that some of the earliest legal literature to appear in England were manuscript records of cases. Until about 1300, only the formal Latin phrases that service as the title of an action of law were recorded in the "plea rolls," a sort of court record. However, lawyers and their apprentices soon began taking notes of interesting judicial arguments in cases. As early as the 1280s there appeared specifically **[End page 27]** dated reports of legal arguments attributed to named judges and lawyers in the English courts. By the 1300s, there was a regular chronological series of these summaries. As they were written anonymously, they were given the generic name "yearbooks," probably produced by apprentice-students who listened to the court proceedings and took notes ([Henderson, 1975](#)). These early yearbooks were produced by some sort of collective effort from 1300 to about 1550, informally and anonymously written in manuscripts, and often omitting details such as the names of the parties ([Henderson, 1975](#)).

With the advent of the printing press in England came the publication of the hand-written yearbooks found in London law libraries. The first printed law book, however, was a textbook entitled, *Littleton's Tenures*, printed in 1481 and popular until the 1800s. As one scholar has observed, "within ten years of the introduction of printing into England in the 1470s, the London printers had found a market in the legal profession" ([Baker, 1979: 154](#)). The last hand-written yearbook was dated in 1535 and called the *Michaelmas Term 27 Henry VIII*. By 1558, a complete set of yearbooks had been printed.

The rise of printed yearbooks correlated with the increased number of references to prior cases (or precedent) in judicial decision making. In summary of older legal historians, [Robert Ruppin \(1980\)](#) observed: "Jenks speaks of 'books of precedents which so rapidly appeared after the introduction of printing.' Published judicial decisions did undoubtedly influence the decisions of judges." This correlation causes some scholars to conclude that the advent of the printing press was the *first cause* of the doctrine of *stare decisis* in the use of precedent. However, other scholars point out that the printing press was also in use on the continent, but no doctrine of *stare decisis* or use of precedent was found in continental courts ([Dawson, 1968](#)). In fact, until the 20th century, the use of precedent in continental courts was considered prejudiced and unethical judicial conduct ([Wise, 1975](#)). It would be reckless generalization, therefore, to argue that the advent of the printing press

alone caused the rise of the doctrine of *stare decisis*. However, there is no doubt that it was an important cause among others.

The rise of printed law books brought an extensive new source of business to printers. Scholars note that as the sale of printed yearbooks climbed, the attendance of apprentice lawyers at required court hearings and "moots" (simulations) declined. In fact, by the mid-1700s, attendance by apprentices and their supervising trainers (attorneys) was nil. And in spite of significant fines for nonattendance! Scholars speculate that attendance waned as it became possible to cheaply acquire a printed book of the recorded proceedings rather than to laboriously write them all out manually ([Henderson, 1975](#)). Indeed, until the rise of university training in law in the 1700s, the apprenticeship lost its oral component and had become a matter of "reading the law," a phrase used to this day to describe legal education during this period. The effect of printed legal materials on legal education warrant even more commentary, but we must leave the history of legal research education for some other day and manuscript as we move on with the presentation at hand.

The demise of this oral transmission of information and the increased reliance on printed books appears to have synergized the development of a class of court reporters, printers, and **[End page 28]** booksellers to meet these needs. The modern case reporters that were published after the 16th century incorporate the efforts of this service industry. Court reporters were sent to important courts to take down, word-for-word, what judges said in decisions. Printers worked closely with booksellers who were sensitive to the needs of lawyers and the law book market. Summaries were inserted by publishers for each case to meet the demand for speedy searching. Publishers also developed separate books, the "abridged" or indexed versions, which made the cases and their summaries even faster to search. And they developed other treatises to assist the lawyer in learning or practicing the law.

AMERICAN LEGAL LITERATURE, 1750-PRESENT

[Erwin Surrency \(1981\)](#) recounted the rise of similar changes in law book publishing in America from colonial times through the 1970s. He noted the close cooperation and responsiveness of the law book publishing industry to the bar. For example, when lawyers complained that there were too many cases being published, the printer responded with the beginnings of "casenotes" or short outline summaries of the case (now standard). Eventually, law book publishers developed complex indexing systems for retrieval, such as the "keynumber" system of West Publishing Company. But Surrency neglects the obvious influence this change in information processing must have had on the bar. The staff at these publishing houses had taken on more and more of the tasks once reserved for the bar. And they had come to interpret, define, categorize, and index these cases. The bar had delegated these functions to the publishers to save money, but also placed in the hands of others control over the legal information process.

[Jenni Parrish \(1979\)](#) develops more fully a thesis on the influence of early American law book printers and publishers on the development of common law in the US. Early American lawyers had a surprisingly large number of law books. This great output of publishing was due to the prodigious efforts of individual printers and publishers who armed all of America with law books. Indeed, most early American lawyers learned their trade by "reading the law," from law books borrowed from a cooperative practicing lawyer. Most popular among lawyers and laymen alike were

Blackstone's Commentaries, first published in America by Robert Bell in 1771-72 (see also, [Billings, 1993](#)).

Contemporary printer/publishers that dominate today's market arose in the 1870s. West Publishing Company was founded in 1879 with the promise to systematize legal information retrieval. By 1890, West had an extensive series of case reporters covering all sections of America, with extensive indexes to locate each legal issue in each case by its "keynumber."² Other contemporary law book publishers include Commerce Clearing House (CCH), Bureau of National Affairs, and Lawyer's Co-operative. These publishers compete with one another, but essentially control all but a few official state and US Government printing of law books.

This perspective on the rise of *stare decisis* strongly implies that the market demands for profit among law book printers and publishers led to the development of the doctrine of *stare decisis* by the 19th century. As lawyers and judges were required to follow prior cases under *stare decisis*, no longer to merely take the precedent under advisement, the bookseller stood **[End page 29]** to sell a great many more books. While compelling in its argument, this perspective lacks the empirical evidence of actual bookmakers, printers, sellers, etc., stating this intention in so many words. If it was the intent of booksellers to drive the lawyers to *stare decisis* to sell more books, would not someone have said this at some time? A search of the literature reveals that no printer, publisher, bookseller, etc., is so quoted.

The traditional explanation given by lawyers to explain the rise of *stare decisis* in the 19th century (from its origins in use of precedent) is in court hierarchy. [Frederick G. Kempin, Jr. \(1959\)](#) argued that *stare decisis* was given birth in early 19th century America after the constitutionally dictated hierarchy of courts had settled in. According to this interpretation, *stare decisis* arose only after the U.S. Supreme Court had convinced lower federal and state courts that it was indeed the "Supreme Court of the land." After the Supreme Court had established its power and legitimacy in the early 19th century, other courts recognized this by strictly following the case decisions of the Supreme Court. This hierarchy of authority flowed downward in pyramid fashion to lower courts and maintained a classical bureaucratic information flow (in a Weberian sense). Thus, it is argued, the bureaucratization of courts into hierarchies of authority caused the development of the doctrine of *stare decisis* ([Kempin, 1959](#)).

Of course, the hierarchy of court structure in the 19th century made possible the enforcement of *stare decisis*. But so, too, did the advent of the printing press and the efforts of individual printers and publishers. While the hierarchy of courts may be said to be a most important factor in the development of *stare decisis*, it is not the only causal factor. Indeed, the bureaucratization of courts in a hierarchy of authority may be considered simply one link in a chain of events from the advent of the printing press and commercialization of law book publishing that synergistically led to the development of the doctrine of *stare decisis*.

THE IMPLICATIONS FOR COMPUTERS IN LAW

Computers came to the legal profession in the 1970s as devices for word processing and data storage. However, since 1975, on-line data services for the retrieval of entire legal documents, such as cases, have been available. On-line computer retrieval systems were developed in the 1960s

from experiments by the Ohio Bar Foundation to produce Ohio Bar Automated Retrieval (OBAR), later purchased by Mead Data Corporation. Mead developed and released Lexis in 1972, making it on-line in 1975. Westlaw followed with a 1973 release and was soon on-line, too. Westlaw and Lexis are now standard in most law firms and law libraries, although Westlaw has come to dominate through its market takeovers and introduction of "natural language" search engines in 1992 ([Allan, 1993](#); [Berring, 1995](#); [Harrington, 1985](#)).

The printing and computer "revolutions" in legal literature are similar in some respects. First, both involve the incremental adaptation of existing, yet unrelated, technologies by brilliant invention to solve problems with the transformation and retrieval of information. Just as Gutenberg used the metallurgist's punch in rows under a wine press with a screw to "press" paper on the inked rows of assembled works, so too was the computer born out of the inventive application of the binary code from biplanes' machine guns and the jacquard [End page 30] loom. Second, both were aesthetically imitative, designed to create products that emulated existing information technology packages (the hand-written manuscript, or today, the printed book). Third, both were invented for a technologically more efficient answer to the problems of information control. Finally, in their impact on society, both have decentralized the control of information transformation and retrieval ([Bolter, 1984](#); [Dahl, 1958](#)).

However, at a most basic level, the current approaches to computerized legal databases fail because of their high costs, ineffective "natural language systems" search engines, and poor ergonomics and psychological fit. This critique is not simply the expression of computer technophobia or a romantic fondness for the printed word; it is a critique disciplined by the observations of technological success in imitation and efficiency. Legal databases are enormously expensive for criminal justice practitioners, not just in initial and monthly fees, but also with each new generation of hardware and software necessary to keep current ([Landauer, 1995](#)). The much-touted "natural word systems," such as those announced in 1992 by Westlaw ([Katsh, 1993](#); [1994](#)), are dismal failures in tests of their search capabilities ([Landauer, 1995](#)). And no current legal databases work like the "Superbook" developed by Bellcore, incorporating extensive ergonomic and psychological testing of users to more successfully imitate the hand-held book, although Microsoft Corporation's new generation of "notebooks" comes closer ([Landauer, 1995: 247](#)). Thus, at this time, computer assisted legal research is severely limited by the inability of the technology to adequately imitate the ergonomics of the printed book.

At a social level, the current approaches to computerized legal databases fail because of problems of access, authority, and the superficial legal method that often results. The impact of the high cost of legal databases includes a host of access problems for underfunded legal services and criminal justice agencies, particularly those dealing with the poor ([Berring, 1997](#); [Stefancic & Delgado, 1991](#)). Further, as [James Acker and Richard Irving \(1998\)](#) suggested in the opening quote, legal authority and process is blurred by the lack of context and multiple sources of legal information (see also, [Berring, 1997](#)). And the sheer volume of law accessed by computer databases results in certain information overload and greater reliance on headnotes, summaries, and other superficial and low quality understanding of these codes, precedents and arguments ([Birkerts, 1994](#); [1996](#)). Thus, at this time, computer assisted legal research is severely limited by the inability of the technology to provide efficiency of access, authority, and information control when compared to the printed book.

At a phenomenological level, the current approaches to computerized legal databases fail for the reasons prophesied by Gene Roddenberry's eccentric "Star Trek" defense lawyer Samuel T. Cogley: the internal, historical narrative of law is found only in books, even dull old law books, and is lost in the sterile world of the computer that has no dog-eared pages, hand-scribbled notes and bookmarks, and well-thumbed versus untouched pages. The legal method is highly interpretive and extends beyond rule-based models of legal reasoning ([Carter, 1998](#); [Rubin, 1988](#)). Legal information is interpreted according to socioeconomic ([Mann, 1989](#)), gendered ([Bartlett, 1990](#); [Farmer, 1993](#); but see [Duggan & Isenberg, 1994](#)), and aesthetically determined ([Brenner, 1990](#); [Haigh, 1997](#)) phenomenological judgments. [End page 31]

Further, current legal information retrieval systems are syntactic, or based on the structure of key words (even "natural language systems"). But lawyers think of legal concepts semantically, focused on the meaning of synonymous words or phrases. Access to information in Westlaw and Lexis cannot be found by semantic searching for concepts; only the correct key word will locate the case in point. Further, the current computer retrieval technology will not allow the random access or systematic browsing traditionally employed by lawyers. Through systematic browsing, lawyers come up with analogies of law that can be used in cases with unrelated facts ([Slayton, 1973](#)). Finally, current legal information retrieval systems assume legal reasoning to be guided by rule-driven logic; that lawyers simply find the appropriate legal prescription and apply it to the case for the single correct answer. But lawyers since the time of Cicero have acknowledged that the same rule has different meanings, depending on one's concept of "Justice." And justice is not rule-driven, but appears to be a somewhat emotional state-of-mind as to what is appropriate or "fair" in a given case. Thus, at this time, computer assisted legal research is severely limited by the lack of decentralization of interpretation of information when compared to the printed book.

CONCLUSION

The information age has brought to criminal justice practitioners the problems of information overload, compounded with the uncertainties and criticisms of legal method in the use of new information technologies. The 1967 episode of "Star Trek" entitled "Court Martial" suggests through science fiction that this dilemma may continue into the far future with the shortcomings of computer information technology. Thus, this article discussed the implications of computer information technology for the legal method and the structure of a core doctrine of legal reasoning: *stare decisis*. First, based on an examination of the rise of the doctrine of *stare decisis* during the advent of the printing press, the paper concludes that the rise of *stare decisis* was not simply due to the legal factors of court structure and hierarchy, but also because of the extra-legal influence of the printing press and the efforts of individual printers and publishers. Second, the implication of this synergism leading to the rise of the doctrine of *stare decisis* can be applied to an analysis of the contemporary information technology of computer assisted legal research for criminal justice practitioners. While the printing and computer "revolutions" in legal research are similar in some respects, the currently available computer information technology fails at a basic/ergonomic/psychological level, at a social level, and at a phenomenological level. Perhaps, in the end, we are left with the argument of the eccentric "Star Trek" defense lawyer in "Court Martial," Samuel T. Cogley, who stood against computer assisted legal research and for books by saying:

Do you want to know the law - the ancient concepts in their own language? Learn the intent of the men who wrote them? From Moses to the Tribunal of Alpha Three? BOOKS!" **[End page 32]**

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ENDNOTES

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1. See also, <http://www.startrek.com/>, the official Internet web site of "Star Trek," "Trekkies," and other related information.
2. The keynumber system was the inspiration for numerous other indexing schemes that have appeared since for other professions and literatures. **[End page 36]**



ANOREXIA AND THE HOLINESS OF SAINT CATHERINE OF SIENA*

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INTRODUCTION

In skeletal fashion, anorexia nervosa may be identified according to the following basic factors:

1. Onset in adolescence;
2. Lack of appetite accompanied by loss of weight;
3. Disturbed and aversive behavior when challenged concerning food, eating, or weight;
4. The aversive behavior is not affected by hunger, reproach, encouragement, or threats. For example:
 - a. May refuse to acknowledge the illness or the need to eat;
 - b. May display clear satisfaction in loss of weight, and show pleasure in refusal of food;
 - c. Desire for an extremely slender body, with great satisfaction at reaching and maintaining this condition;
 - d. Anomalous manipulation and handling of food;
5. At least two of the following manifestations:

- a. Amenorrhea (abnormal absence or suppression of menses);
- b. Thin and lifeless hair;
- c. Bradycardia (abnormal or pathologically low heart rate);
- d. Periods of hyperactivity;
- e. Episodes of bulimia;
- f. Self-induced vomiting (see [Feighmner, 1972](#))

To this definitional framework, we may add as well difficulty in sensing external temperature (i.e., wearing heavy clothes in summer and light clothes in winter) and confusion concerning sexual conduct (i.e., alternating periods of total abstinence and periods of promiscuity).

The frequency of this pathology has consistently increased in recent years. However, to understand anorexia nervosa in full historical context, we must return to the medieval period where it is possible to identify an "epidemic" which may be defined as "holy anorexia" ([Bell, 1985](#)). We take as an excellent example of this historical period Saint Catherine of Siena, whose suffering bears a close similarity to the forms of anorexia nervosa described above.

THE BODY OF THE WOMAN IN THE MEDIEVAL PERIOD

In the medieval period, the control, renunciation, and torture of the body were understood not so much as a rejection of the physical, but as a way of achieving the divine ([Walker Binum, 1989](#)). [End page 37] Gradually, the manifestations of this renunciation of the body came to apply peculiarly to women, for whom this state may be defined as "holy anorexia," identified by the following features.

The Female Body as an Expression of Sexuality. The body of the woman was seen as an expression of sexuality, curvaceous with prominent breasts, and was thought to be the product of the woman herself, whereas the male body was formed by God. This supposition was confirmed by the extremely changeable nature of the female body, particularly in terms of control. Thus, the female easily slipped into a trance, into levitation, into catatonic states, leading rapidly to asceticism or anorexia. She displayed spontaneous lactation and bleeding, manifestations that sometimes were accompanied by stigmata. Indeed, at least fifteen medieval saints bled at the moment they received the Eucharist. In contrast, of saints in other periods of history, only Padre Pio and San Francesco displayed stigmata that were preserved on their bodies after death.

If we are to consider specifically anorexia as a characteristic of sanctity, we must examine the periods of 1200 and the end of 1500 when Theresa of Avila (a Spanish saint who joined with a mystic force and spirit to reform Catholicism, resulting in the reinvigoration of all religious orders) began frequently to use twigs of olives to induce vomiting and completely empty her stomach. In this way she was able to truly take into herself the Host, which became her unique source of sustenance. From an investigation of the conduct of 170 Italian medieval saints by [Rudolph Bell \(1985\)](#), fully one half of them exhibited symptoms of anorexia.

The Emotions of Women Also, the lifestyles and emotional expressions of women have been assessed. The emotions were considered by medieval saints as mystical experiences, deriving from a meeting with God. Margaret of Faenza, Angela of Foligno, and Margaret of Oingt were likened to a slender bush with five branches representing the five senses, which were able to bloom only in a brook (representing Christ), bringing to life their feelings of sensation, including the awakening of sexuality.

Bodily Manifestations as Affirmation of Mystico-Religious Rules. Anorexia and other manifestations of the body provided the medieval woman a unique opportunity to affirm the true power of mystico-religious rules. A woman was destined to get married with whomever was designated according to family origin; otherwise, she entered a convent closed to the outside. In the latter case, however, the medieval woman was not allowed to study or acquire clerical power nor to speak in public or to preach. However, the complete renunciation of the body made it possible for a woman to foster, express, and experience her sensations and desires as manifestations of faith and religious expression. "Holy anorexia" was a confirmation of the role of mystical power, providing the woman with a way to convincingly affirm her sanctity to her confessors in whom she placed her trust and gave her charge. In fact, she placed her trust in her confessors in the same way that trust was placed in the family, which guaranteed in return to nurture her. Anorexia, together with flagellation and other bodily suffering, became the way for a woman to achieve holiness. Her body became the symbol of lust, of weakness, and irrationality. **[End page 38]**

THE MYSTICAL EXPERIENCE

Of all transcendental experiences, the one associated with anorexia nervosa is probably one of the strongest and one that most directly involves the emotions. This is demonstrated by numerous descriptions of these experiences reported in literature of various kinds (see [James, 1958](#)). Notwithstanding that these experiences are often defined in idiosyncratic and vague ways, it is possible to demonstrate that the basic characteristics come together as a sensation of ecstasy and of contact with a universal cosmic essence ([Bharati, 1976](#)). The latter is often considered supernatural or paranormal, a conclusion understandable in light of the overwhelmingly similar experiences of a sensation of "going outside of the body," of visions, of motor and sensory automatism, of unusual perceptions and images, and other transcendental sensations.

We are not able in this paper to make a deeper analysis of the complex phenomenon of mystical experience, in particular those conditions and predispositions that facilitate and promote it. Nevertheless, in our discourse, we will try to briefly outline some of the general conditions that seem to facilitate or favor the onset of mystical experience:

1. The physical antecedents of many mystical experiences may include the consumption of certain substances, hypo or hyperventilation, fever, excitement, fatigue, or sensory deprivation;
2. The last aspect that precedes the mystical experience may be an altered state of consciousness. Ecstatic emotions and unconscious images may arise, changing the modality of ordinary consciousness by, for example, falling into a trance, into states of self-absorption, into daydreaming, into fantasies, and so on;
3. Other antecedents of many mystical experiences are situations of privation and

frustration. These are part of the great tradition of mysticism, often going to extremes in search of mystic illuminations. For example, in the Christian tradition, before he departed on his mission as teacher and pastor of souls, Jesus wandered for 40 days and 40 nights in the desert; alternatively, the Oriental tradition of Tantric Hinduism propounded sexual activity that omitted orgasm or postponed it indefinitely.

We now outline aspects of mystical experience that sometimes have effects such as the following:

1. The first effect we can indicate is the state of ecstasy which is described according to various sources (see [Laski, 1961](#)). Ecstatic sensations are intimately connected to feelings of satisfaction at solving daily problems of living and of a positive vision of life;
2. Another effect of mystical experience is a feeling of goodness and truth that results from what we call a "sense of communion with the cosmic universe." This corresponds with the desire of many persons to be "at one with the cosmic universe," which is often identified with God; **[End page 39]**
3. Another important effect of mystical experience is indicated by the distortions that occur in perception, emotions, and behavior. Often, mechanisms of inhibition or habituation of common sensory stimuli are implicated against the interior world, with a consequence of disinclination to respond to the outside world. In certain cases this "disconnect" or isolation from the external world can be reflected by an absolute insensibility to other stimuli that might reduce suffering.

Before proceeding any further, we wish to emphasize in this context the fact that such altered states of consciousness may, among other things, permit the emergence of thoughts not yet elaborated, especially of the emotive kind, relative to both the internal and the external world, reinforcing, finally, the perception of ecstatic sensation. This may in good part explain the special characteristics displayed by these mystics, as for example, the capacity to understand all creatures, the capacity to "cure" certain illnesses and disorders, or the capacity to "read" future events or reinterpret past events. Everything, therefore, is interpreted according to the supernatural, although, according to us, there is no need to refer to the divine in explaining these matters. In any case, we do not doubt that many mystics have developed the uncommon ability to bring together and elaborate on these matters both for themselves and for others, displacing and modulating sufficiently their perceptual processes, using a complex and constant practice of conscious meditation. To continue with our outline:

1. The mystical experiences are sometimes accompanied by out-of-body sensations or levitation, which are probably connected to the mechanisms of habituation, deprivation, and sensory inhibition caused by long periods of praying and meditation;
2. Another effect of mystical experience is found in modifications in typical physiology that may fluctuate according to the particular case ([Laski, 1961](#)). Among these changes are the following: slowing down of the heart rate,

changes in body temperature, changes in the brain wave rhythms, and so forth. Thus, we come to recognize that there is still much to study and comprehend concerning these phenomena. And reasoning from this, we can hypothesize that some physiological transformations that are verified during mystical experience should also facilitate the curing of some illnesses, particularly those considered to be psychosomatic and common hysteria by the alleviation of physiological stress ([James, 1958](#); [Underhill, 1972](#));

3. The last effect of mystical experience that particularly interests us is the existential-cognitive reconstruction that induces many mystics to discover new meanings of life, with the appropriate constellation of behavioral strategies that see everything as completely different (see, for example, in addition to the case of Saint Catherine of Siena, the cases of Saint Francis of Assisi and Saint Theresa of Avila).

Mystical experience may also be seen and described in different ways by men and women. Mystics such as Bernard of Clairvaux (author of "Sermon on the Body of Christ,") describe mystical experiences in personal and theoretical form using Latin, thus limiting access only to those who had studied ecclesiastics, who were invariably men. In contrast, saints such as Beatrice of Nazareth and Gertrude of Delft, who reported "My Mystical Experience" in her local **[End page 40]** dialect, provided rich self-criticism that was expressed in a language that revealed an experience of personal participation. Thus, bodily suffering assumed a different meaning according to the ways men or women were agitated. An excellent example is the famous miracle of Valburga in the 9th century, reported consistently in popular literature of the medieval period. A man and a woman suffering from an eating disturbance, including anorexia nervosa and vomiting, were brought before a holy relic; to the man appeared three sisters who cured him of his reluctance to eat by patiently offering him a goblet and tenderly getting him to take sustenance. Instead, for the woman the miracle consisted of dealing with the anorexia nervosa by ravenous and recurring bulimic crises, divinely resisting food, and maintaining abstinence for a good three years! And after she died she was taken up to Heaven.

SAINT CATHERINE OF SIENA

It is in the context of medieval life that we now consider the life history of Saint Catherine. We will trace quickly some of the significant phases of Saint Catherine's life, then present some considerations that are useful in better understanding the relationship between her problems and those of actual anorexia nervosa.

Saint Catherine was born in 1347 of a large family (her mother had 25 pregnancies one half of which were carried to term), the daughter of Jacopo Benincasa, a painter. Her mother, a strong woman of decisive and practical character as well as an atheist of considerable physical strength (she died at about 100 years old), always had a strongly competitive and intrusive relationship with Catherine. The intense relationship with Catherine must be considered according to the fact that she was the only daughter suckled by her mother, and that Catherine's twin died immediately upon birth. Challenged by her mother, Catherine chose to make everything in life a hardship, wishing to be acknowledged and to be confirmed by her mother in that choice: "I wanted to see you mother as a true mother not only of my body but also of my mind. I think that if you loved my mind more

than my body your exaggerated tenderness would die and you would not suffer so much to be deprived of my corporeal presence. In fact, it should be a consolation to you to think that I have a special relationship with God, so you should want to support my suffering."

At seven years, after a vision of Christ while returning home after a visit to her sister Bonaventure who was "happily married to a rich painter who was rough and brutal" ([Uboldi, 1995](#)), Catherine decided to "deprive herself of this flesh, of all flesh as far as possible." When her mother insisted that she eat, she secretly began to throw meat under the table. According to [Bell \(1987\)](#), this conflict with her mother was interpreted as a sign that "Catherine, still being a child, was beginning already to develop the capacity to draw on her true internal strength which she derived only from her personal relationship with God" ([p.44](#)). We are able to conclude that there was always present the expectation that her mother, Lapa, should demonstrate faith and understanding of Catherine's religious "choice" which Lapa, however, did not even minimally acknowledge. In fact, at 12 years old the intense animosity between Catherine and Lapa was confirmed when Catherine was preparing her first appearance in public as "signorina." With the help of her sister Bonaventura, to whom Catherine was deeply attached, she was able to present a clean countenance, and make up her face as well as color and curl her blond hair. Catherine was torn between being a good daughter/sister and being a rebel. She feigned acceptance, but **[End page 41]** beneath the surface secretly conserved internally her vows and project of virginity, which were to organize her adolescence.

At 15 years of age, we find a significant event. Her sister Bonaventura died in childbirth; Lapa, one always preoccupied with the well-being of the family, talked openly about the possibility that Catherine could marry the widower of her sister because this match to the rich painter would guarantee the economic well-being of all the Benincasa family. The conflict became very intense, aggravated also by Catherine's sense of guilt for the death of her sister Nanna, less than one year old, whom Catherine had come to think of as a "substitute" for Bonaventura. It is in this circumstance that it is possible to confirm the actual definition of "compensatory anorexia." "Reinforced by the personal pact with God, Catherine entered into battle with her family" ([Bell, 1985: 50](#)). She lost half of her proper weight and opposed the demands of Lapa by fasting, which confirmed her true dedication to God, and renouncing her "corporeality." Nevertheless, the intervention of Don Tommaso of Fonte, the local priest to whom her parents had sent her (note the analogy with sending to a psychiatrist in similar situations today), was able to get Catherine somewhat to desist. In response to injunctions from Don Tommaso in the name of God to take food at least once a day, Catherine began to vomit with every attempt: "God did not make me eat to correct the depravity of my throat. I pray in order to return to eat, but it is His wish for my expiation in this way."

Don Tommaso was uncertain whether to call her a saint or a madwoman. The possibility that Catherine was fed by demoniac possession derives from the fact that her wasting appearance corresponded with hyperactivity as well as great physical and mental strength, which made Catherine continue in her determination:

I have already given you sufficient testimony of the reason that guides me, in order that you may understand, but in respect to your confrontations I have still not spoken. However, today I have broken

my silence and intend to open up my heart to you and declare without fear of contradiction that I have made my decision. I have not given in since yesterday and I have maintained my decorum until now without yielding or regret . . . Today it should be easier to render a stone soft as wax than to tear me away from my determined heart. The time has passed for you to fight it. I advise you to give up every plan regarding my marriage on earth, because on this point you will receive no obedience from me, because it is to God that I owe obedience ahead of other men. If then you want my consent to continue to live in this house, make me your humble servant, I would be happy to lend myself at my best. If instead you send me away from you because of my vow, this will not change my intent. My Spouse is sufficiently rich and powerful that he will not deprive me of anything and will provide for my every personal need.

After two years of a tough stance by the family, the father Jacopo finally took a position (for the first time taking a position against his wife who was always dominant in the family). "Fulfill freely your vow, and do what the Holy Spirit helps you to . . . no one torments our daughter more than the man she truly loves. Go and serve your Spouse in peace." Catherine was enclosed in her small cell and began self-flagellation, and did not eat or sleep, in the face of the anger and desperation of her mother whose opposition confirmed her incomprehension. Also, friends of the **[End page 42]** family influenced Lapa, saying that Catherine was mad or bewitched, feeding upon the doubts of her identity.

Catherine continued her battle to be recognized within her family. She was able to enter a convent in the militant order of Mantellate in spite of her young age. However, rather than close herself off in a convent, she obtained her own role in the Order for helping the sick in the hospital of Santa Maria della Scala; then she returned to her family. There, she pursued a "strategy" of "virtual death" by making a promise that she would enter the Order of Dominican Priors on her deathbed. The day after, she was "cured" of guilt and returned to the hospital to help the needy.

At 21 years of age, Catherine lost her father Jacopo, who died with his daughter constantly by his side. Feelings of grief came down upon her as if by a sign from God: "Jacopo Benincasa represented the spirit of God. And at that moment, Catherine, exhausted from prayer, was struck by an intense pain in the side – the same place in which Christ was stabbed by the Roman centurion. In this way she was convinced that her father had been received into the glory of Heaven. Then, receiving guests at the funeral, Catherine was smiling in contrast to the cries and laments of the others" ([Uboldi,1995](#)).

After the death of Jacopo, the Benincasa family was broken up, and Catherine had to go temporarily away from Siena. She enlarged her field of battle and dedicated herself to the church: her objective was the return of Pope Gregory XI from Avignon to Rome. She continued then to state: "So great is the need for the salvation of men that she had not the time to think, let alone to touch earthly food."

All the days she took the Eucharist she continued to fast: "So as not to cause scandal, she

sometimes took a little salad, fresh vegetables and fruit, but would then turn around and spit them up. And if it was the case that she swallowed just a single morsel, the stomach did not let up until it could not regurgitate any more: the incessant vomiting gave her so much pain that her face was almost bursting. On occasion she would go away with one of her friends and prod her throat with a stick of finnochio or with a goose feather, until it was thrown open depending on how much she had swallowed. And this she called "doing justice." "We do justice for our miserable sins," she liked to say.

She defended the new Pope Urbano V against the Avignon schism of Clement VII always with energetic militancy and decisiveness against those who opposed her. More suffering and more fasting were her strength and her way to impose her will. However, resistance continued in acknowledging and sharing in her cause. The return and attitude of the Pope and of other ecclesiastics were for her a source alternating between hope and deep disillusionment. They added to her doubts and so caused her fasting to become more intense. She decided not to eat any more, imploring that they should concede that she "carried on her shoulders the errors and evils of the Church and of those who govern it" and at the same time she declared herself guilty for not always being able to understand how to respond to Christ's expectations.

That she thought she was deceived by others, or deceived about God, added to her conflict and accentuated her anorexia nervosa. For three months she was closed up in her cell, **[End page 43]** taking only a few drops of water, doubting that her life could shine forth from a series of errors. The doubt continued to her death (29 April, 1380 at 33 years!), accompanied by uncertainty and a sense of her own sacrifice. So great was the presence of her mother, Lapa, that she traveled from Siena to Rome to give Catherine recognition and to wish her well. Catherine turned to God and said, "You called me, Oh Father, that I should I come to you! And now I come. I do it not for my own good, but only to relieve you of your suffering."

CONCLUSION

"Holy anorexia" may be interpreted as a response to social structural factors and the patriarchalism of medieval Catholicism. It is significant that Saint Catherine made her choice in adolescence, a period well-known to be one of opposition to the family which seems to repeat almost exactly the stereotypical view of adolescent rebellion. Moreover, a strong and competitive maternal figure existed, who wanted to guide her daughter into a role of high social approval. Meanwhile, a father moved on the periphery and left direction to the mother; in this sense, he was a disappointment to his good daughter. "Holy anorexia" became a singular mechanism for autonomy and a way out of the destiny prescribed for her by her family and society. In order to follow this logic, we need to understand, therefore, all the relevant forces that operated upon her, and not to look to supernatural causes (unless they are actual forces perceived by her) during her entire life.

There remains nevertheless the need to understand this rebellion. So also for Saint Catherine: here and there she received confirmation and recognition, but never completely. She was always trying to understand her oscillation between illusion and delusion by putting herself constantly in doubt about her real strength and perseverance to continue her hyperactive religious mission. The possibility of disconfirmation came to her not from confrontations with others, but only with God. Only God did not deceive her and only with him could she consent to let go of her intense

emotions. From him she received after not a little "harvest of proof" the guarantee that she would never be deceived or abandoned. Included in this was the constant necessity of total control of her body. To yield to food was to yield to sin, to deceive God, to lose all the power that she had laboriously garnered, erasing the sense of identity gained from the victory over her opposition to family regulation. It is of little matter, then, if she did not feel understood by her opponents (in the medieval time compared to ours). Indeed, incomprehension provided the stimulus to go on. The challenge continued to provide a way for her to confirm her true sense of identity. In doing so she won more than mere Holiness, but as well became Doctor of the Church and Patron of Italy and Europe. The period of holy anorexia was, however, of short duration. Already in the 16th century the church was not tolerating asceticism, and anorexics were labeled as witches and consigned to the stake.

In 1695 [Richard Morton](#) described the first case of anorexia nervosa in "Phtisiologia: a Treatise on Consumption." The change of role and the search for a social identity brought on anorexic behaviors in women, especially those of the indentured social class. Baglivi, an expert in physical medicine who held the chair of Theoretical Medicine in the University of Rome at the beginning of 1700, spoke of the disaffection in the face of food which presented in young women uncomfortable in love and in conflict with their families. The cure proposed was to encourage the spontaneous healing of the patient with the help of "a doctor who is a nimble **[End page 44]** talker and a master in the art of persuasion ([Baglivi, 1699](#)), whereas today there is a trend to return to organic causes and to offer biochemical therapies. In 1874, [Gull](#) officially coined the term "Anorexia Nervosa."

Today anorexia nervosa presents at leading medical schools at approximately the rate of 1 in 200 individuals, and in schools of dance at a rate of 2 cases in every 10 individuals. There are also statistics in regard to prognosis. Within 10 years after onset, 7% of anorexics die, about 23% are cured, 70% become chronically ill with "fat-thin syndrome." Confessors of the mind no longer seem able to do anything more for these patients; psychiatric biochemists look in vain for pharmacological remedies for a problem that for them also seems very mysterious.

Stories such as that of Saint Catherine are also able to promote an understanding of others who are in search of authenticity and who avoid facing up to reality because of their fear of making a mistake. **[End page 45]**

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ENDNOTE

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A LAW CULTURE DIAGNOSTIC*

by

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Review of *When Law Goes Pop: The Vanishing Line between Law and Popular*

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A LAW CULTURE DIAGNOSTIC

It has become increasingly clear that law is no longer (if it was ever) an autonomous discipline. In the past 25 years, law has been theorized and re-positioned from disciplinary perspectives as divergent as economics and literary criticism, socio-biology and rhetoric, critical theory and religion. Richard Sherwin's *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* follows in this tradition, exploring law from a broad contextual/social/ political perspective. Sherwin's proclaimed interest is popular culture, but he writes as a cultural diagnostician exploring some difficult questions: What happens when the stiff formality of law and the social institutions that preserve law's stability and legitimacy are subjected to the powerful influences of today's new visual mass media and its focus on images, associative reasoning, spontaneity, and the shaping (and deforming) of our stock of cultural stories? More particularly, what happens as lawyers – Richard Sherwin in *When Law Goes Pop* refers to them throughout the book as "savvy lawyers" – use the power of media visual images and stories (the production of which is market driven) to shape the outcome of courtroom litigation to benefit their clients? Is law and our meaningful understanding of it, endangered or enlightened by the influence of popular culture? These are the questions Richard Sherwin, Professor of Law at New York Law School, addresses in a masterful, exhilarating, sometimes frustrating account of the influences of popular culture on law and courtroom litigation.

The reader should be forewarned – Sherwin doesn't present a systematic theory of how law undergoes cultural change, nor is he tempted by the academic's propensity to lay out definitions and then shoehorn observations to fit. For example, Sherwin simply ignores on-going efforts to distinguish (or erase) distinctions between "high culture" and "popular culture." Some academics and theorists will be disappointed in the way Sherwin ignores what they take to be preliminary and basic. Still other readers will object to the absence of empirical research findings; Sherwin doesn't

try to measure anything or report the efforts of those who have. He does, however, observe widely, interpret, and speculate wisely. His method is that of a cultural diagnostician. He doesn't say much about law – with a capital L – but focuses on the law practiced by lawyers who are now most attuned to popular culture. [End page 48]

When Law Goes Pop is one of the first engaging book-length accounts of lawyering to take into account the new narrative jurisprudence and scholarly interest in legal storytelling. Lawyers are storytellers, and always have been, as Sherwin observes, but the more significant point is that the legal profession (and legal educators) are becoming more conscious of the way lawyers tell stories and the effect of their storytelling (and their orientation toward it) on the fundamental virtues we associate with law. And what are these virtues? Law provides a regular means of resolving disputes by sorting through available facts (limiting the facts considered when the exclusion supports a more "rational" decision), reducing prejudice and bias, seeking so much of the truth (always elusive) so that legal decisions will be just.

The popular conception of lawyers today runs the gamut: lawyers are shysters and liars (brazenly empowered by their profession to lie) and they are the culture's orators and storytellers who help us understand and resolve the most troubling conflicts we have with each other and the world we inhabit. One of my law-teaching colleagues, [David Barnhizer \(2000\)](#), recently argued that in these diverse conceptions of lawyers we find lawyers are both "angels of light" and "princes of darkness." Sherwin follows Barnhizer in seeing that lawyers represent a part of our culture worth preserving (as "angels of light") but Sherwin warns that the virtue work of lawyers is in danger when they (and we) take up "media logic" and forego "law logic."

Sherwin's *When Law Goes Pop* is, as I have noted, a part of a larger intellectual movement to understand law from a cultural perspective, but oddly enough it is also part of still another tradition – a growing genre in which contemporary lawyering undergoes an ethical audit. Sherwin's assessment of lawyer ethics is refreshing in that he avoids the usual literature (for example, moral philosophy) and explores the ethics of lawyering from the standpoint of the critical polarities of post-modernism: reality/fiction; fact/fantasy; appearance/reality; truth/fiction (pp. x, 7, 146). Sherwin is concerned that popular culture influences on law will result in "image-based manipulation of irrational desire, prejudice, and popular passions" (p. 7), which will be destructive of the virtues we associate with law.

OBSTACLES TO CULTURAL DIAGNOSTICS

There are serious obstacles to doing the kind of cultural analysis and diagnostics that Sherwin undertakes in *When Law Goes Pop*. Law culture diagnostic work is made problematic by the fact that the world of law has not been turned upside down or revolutionized by the influence (infection/affliction) of popular culture. Courtroom trials have never been forums reserved for truth-telling; lawyers have always been rhetoricians (of the classic and not so classic sort); and jurors are not, today nor have they ever been, paragons of rationality and objectivity who can step out of their prejudices and reach beyond their culturally-shaped understandings of the world (which is of course exactly what we ask them to do). [The classic film portrayal of a jury working through its biases and prejudices is *12 Angry Men* (1957)]. But to say there has been no revolution does not mean that subtle and significant, and according to Sherwin, disturbing changes, are not taking

place. We might, with Sherwin, ask: What changes can we expect from jurors who have learned law from images/stories portrayed in mass media venues? (pp. 19-21, 107). Even experienced courtroom lawyers may not as yet have tried to articulate (or adjust the way they practice law) to the fact that jurors are now more likely to have learned about **[End page 49]** law and lawyers from popular culture media than any other source. Sherwin is working not with revolutionary upheaval so much as the kind of erratic (and subtle) change that hides its effects. Consequently, Sherwin's cautionary observations are in the nature of an early warning rather than an autopsy of a social institution on the rocks. But Sherwin's warning does, at times, take on an ominous tone, as for example, his argument that: "[S]keptical postmodernism leads to law's vanishing point." (p. 172). But for the most part, Sherwin is, in his words, simply trying to follow (and confront), "the alien story lines of our time, both familiar and newly emerging." (p. 12).

While some academic readers will lament the absence of empirical research or research findings, *When Law Goes Pop* isn't a social science treatise and doesn't purport to be. (I suspect there is at present insufficient social science research data, to do much more than provide a set of interesting footnotes to Sherwin's cultural diagnostics.) The usual alternative to social science research is theory and while Sherwin's book is theoretically sophisticated he has done an admirable job of keeping his theory off center stage. Sherwin doesn't eschew theory, or argue theory, so much as he simply puts theory to interpretive use, never letting theory get the upper hand. Theory is put to interpretive use in the form of a series of interesting case studies, focusing on what Sherwin calls "notorious trials," the courtroom tactics of "savvy lawyers," and an analysis of films (the documentary *The Thin Blue Line*, the two versions of *Cape Fear*, and Kieslowski's *Red*).

Every cultural observer is dogged by fundamental conflicts, in Sherwin's case it is the tension between postmodernism's demystification of law ("postmodern skepticism") and the old virtues associated with law, which results in "nostalgia." (pp. 8-9). We may now see through the fantasy of law's self-representation as an embodiment of objective truth and justice (p. 7), but we must still find a way, according to Sherwin, to believe in law, to re-mythologize what has been deconstructed by the relentless critical skepticism of postmodernism. (p. 172). [More on myth, pp. 201-202]. Sherwin sees enchantment and disbelief (pp. 11, 17), denial and nostalgia (p. 172) as the fundamental tension, and it results in a time of "both danger and opportunity." (p. 209).

THE DIAGNOSIS

Sherwin says he set out on this exploration of the influence of popular culture on law because "something is up," "a collective change of mind and culture" that has placed law under "great strain." The result is that the traditional (virtuous) meanings we associate with law are being "flattened" and have become "thin." (pp. x, 4, 22). Sherwin fears these "deleterious effects" (p. 7) will result in further loss of critical reflection (p. 22) and a "resurgence of the irrational" (p. 209), and ultimately, a collapse of meaning that will threaten law's stability and legitimacy.

Sherwin attributes these effects to the "synergist impact" of new communication technologies, market demands, and postmodern ideas (primarily constructivism). (pp. x, 4, 8, 22, 27). The new "media logic," if I understand Sherwin, operates something like a slow-acting virus; it ever so gradually infects a healthy organism (law) which has achieved a form of "law logic" on which the culture depends. **[End page 50]**

One result of the invasion of law by popular culture is that "law comes to inherit the baggage of postmodern anxiety. . . ." (p. 226). The anxiety manifests itself in both personal and cultural form. In law it has created what Sherwin calls (and describes at some length) as the "jurisprudence of appearances" (pp. 141-168). We are afflicted with this jurisprudence of appearance because everything the visual mass media touches "bears the mark of reality/fiction confusion." (p. 141). Sherwin explores "what happens to law when it comes to be dominated by image and perception," "when law enters the domain of the hyperreal, a realm in which appearances battle appearances for the sake of appearances – and where images risk spinning out of control." (p. 141). Law thoroughly invaded by popular culture will, according to Sherwin, present problems far beyond those we associate with lawyers who tell fanciful stories to benefit their clients. The "deleterious effects" that concern Sherwin are the erosion of basic beliefs by which we know what is true and meaningful, resulting in a world in which fewer and fewer of us know the difference between "truth and fiction, image and reality, fact and fantasy" (p. 146).

The response to a popular culture that overwhelm us (and law), according to Sherwin, is a stance of "detachment, irony, and cynicism" (p. 144), a stance that inoculates us against the worst effects of popular culture but comes with its own serious and debilitating side-effects. The cure for postmodern skepticism, re-enforced by visual mass media and constructivist theories of reality, may turn out to be as poisonous as the symptoms it addresses.

In psychological terms, we might reformulate Sherwin's diagnosis of law in something like the following way: Individuals have begun to experience anxiety about law, and even lawyers are increasingly anxious by the work they do, especially their efforts to persuade juries using (and manipulating) stories and story technology. (Or put differently, law itself can be diagnosed as suffering from anxiety.) Between serious attacks of anxiety induced by "notorious trials," we experience sustained periods of confusion in which we (patient/citizen/consumer/TV viewer/juror/lawyer) cannot distinguish between fact and fiction, between appearance and reality. Social institutions like law, which once helped us distinguish between fact and fiction, appearance and reality, are now so invaded by "visual mass media" (p. 21) and the "visual logic of film and TV images" (p. 4) that law loses its meaning and its stability and legitimacy are threatened. The symptoms of anxiety are expressed in, and most fully exposed in, our "notorious trials." These trials, rich with meaning and symbolic significance, reflect the serious and debilitating underlying fault-lines in our culture and our psyches. They are at once a kind of manic acting-out and a healthy airing of conflicts (and secret desires). But we do not, of course, heal ourselves by way of the occasional "notorious trial," but we can use them to better understand what ails us. The meaning we might derive from such trials and the work of our best lawyer storytellers is attenuated by the fact that we are so over-hyped by a manic culture whose spasms of belief and disbelief are manipulated by the visual images and cultural stories produced by the market demands of popular culture.

To diagnose the influence of popular culture on law as harmful, as Sherwin does (with caveats), requires him to view law in some healthy (prior) state subject to new afflictions brought on by popular culture. But Sherwin knows that law has its problems, and that most of these problems were not induced by popular culture, indeed, that the law/popular culture relationship is **[End page 51]** itself not a "new phenomenon." (p. 7). So Sherwin makes some rather adroit moves to address these concerns, but leaves the reader unclear about exactly where he stands on the status of law

(and lawyers) un-afflicted by today's heavy saturation of popular culture influences. If the stability and legitimacy of law are now threatened, as Sherwin fears, then he must envision an old (healthy) order of things – a time when legal meaning was, well, deeply meaningful. But Sherwin is not an apologist for the old legal order and warns against a nostalgic account of law's great virtues. [By the old virtues, Sherwin means that "time when universal truths, and rational norms reigned" (p. 17), when law was associated with objective truth and universal justice. (p. 7)]. "I maintain," says Sherwin, "that the advent of postmodernism is not without value with regard to law. Certain unrealistic aspirations and repressive tendencies in the immoderately rationalist culture of modernity are now undergoing an important and necessary corrective." (p. 7). In this admission, one sees an alternative interpretation to Sherwin's more cautious warning about law and popular culture. The "deleterious effects" of law influenced by popular culture may, contrary to Sherwin's argument, be offset by the vigorous (and healthy) demystification of law (which in turn makes possible a more rational mystification). In this interpretation, which shares Sherwin's understanding of the symbolic and mythic significance of law, law is seen as cultural institution which moves (ever so painfully) through a cycle of mystification and demystification, a cycle that renews foundational virtues by exposing "unrealistic aspirations and repressive tendencies." (p. 7). Sherwin's cautionary warnings about popular culture may, if one follows this interpretation, prompt an assessment of popular culture's affirmative contributions to a more broadly-based (popular) and distinctive place for law in American culture and the lawyers who serve as "angels of light" and "princes of darkness" (in Barnhizer's characterization).

AN UNFULFILLED PROMISE

Sherwin promises early in the book to offer an alternative to the dilemma posed by postmodernism (as reflected in constructivist theory and visual mass media) which results in skepticism and denial on the one hand or pure nostalgia and glorification of the old days (prior to the influence of popular culture) on the other. Sherwin calls his new, middle-way between skepticism and nostalgia, "affirmative postmodernism" and he devotes a concluding chapter to efforts he calls "Redrawing the Line between Belief and Suspicion." (pp. 235-264). "[I]s it possible reflectively to reframe the myth of modernity in a way that allows us to avoid the excesses of skeptical postmodern irrationalism and disenchantment on the one hand, and of modernist rationality and repression on the other?" (p. 233). This is the question Sherwin addresses in his fitful and frustrating conclusion to an otherwise stunning work of law culture analysis.

While Sherwin has skillfully and artfully practiced something that might be called "affirmative postmodernism" throughout *When Law Goes Pop*, his efforts falter when he tries to spell-out the theoretics of this new middle-way. Sherwin contends he has told the reader what "affirmative postmodernism" is (p. 229), but it seems more accurate to say he has told us what it is not (it's not the dichotomizing of Plato, or the super-rationality of the Enlightenment; and it is not the defensive, ironic, detached psychological response to skeptical postmodernism).

So what is affirmative post-modernism? It is an alternative to radical skepticism and **[End page 52]** conservation nostalgia and it is, according to Sherwin, bound up in "tragic wisdom." It will take "tragic wisdom" to get things right in a culture so awash in image and rhetoric, intensified contingency, and constant multiple claims to truth; a world in which postmodernism and popular culture have put fiction and reality into constant play. In his exploration of a foundation for

"affirmative postmodernism" Sherwin, oddly, turns to theorists like Habermas and Rawls but only to criticize their failure "to give due consideration to the particular linguistic, cultural, and cognitive competencies by which those who advocate the norms in question, and those whose actions are judged accordingly, construct their own disparate senses of self and social reality." (p. 236). Sherwin questions the way Habermas and Rawls posit "abstract notions" of right, justice, and truth delivered from the top (theory) down (to the world where we live in popular culture constructed worlds). (p. 236). But how are we to address such a failure? Wouldn't any theoretical conception of "tragic wisdom" suffer the same problems? And if "tragic wisdom" is not to be theoretically devised how is it to be formulated and known? Perhaps "tragic wisdom" can only be seen and experienced in the form of individual lives, particular communities, and given its most intentional and artfully crafted form in the work of novelists/poets/dramatists who present tragic wisdom in fiction (hand-crafted, created reality). I suspect Sherwin is trying to say something of this sort about "affirmative postmodernism"/"tragic wisdom" but he turns to theory at just the juncture when it can serve him least. It results, in my view, in what I would characterize as a rather thin conclusion to a robust cultural analysis and diagnosis: "Tragic wisdom expressly takes into account the contingencies, uncertainties, and limitations of human understanding and the imbalances that exist in particular linguistic interactions. In this way it invites us to take cognizance of the competing claims or warrants for belief that arise within a given conflict situation . . ." (p. 237). Sherwin has the right impulses, and wants to help us navigate an obstacle-strewn path, but provides little helpful guidance. Indeed, when he outlines the "skills and techniques" that will permit us to evaluate the "discrete claims to truth and justice" (p. 237) which confront us, he lays out a line of questions and there's not a skill or technique in sight. In my view, an affirmative postmodernism grounded in tragic wisdom is best seen and understood in the case studies Sherwin undertakes, that is, in his interpretive and diagnostic work, in contrast to his theoretical efforts.

Sherwin offers a host of suggestions which he identifies with "affirmative postmodernism," but I find them disconcertingly flat in comparison to the rich, theoretically informed, and sophisticated close readings of the various cultural texts which inform *When Law Goes Pop*. Sherwin's suggestions include: cultivation of "a more sophisticated appreciation of the extent to which the 'antinomies' of modernity may be viewed as a complex mosaic of interpenetrating forces and constructs" (p. 246); more interdisciplinary studies (p. 246) (in legal education, Sherwin calls for "a new interdisciplinary domain of law, media and cultural studies") (p. 252); "restore the discrete virtues of disparate modes of legal discourse and reasoning and redress imbalances in the way power is allocated among them" (p. 246) (as best I can interpret it, this means we need jurors who can exercise common sense and judges who can do best what good judges do and legislators who act like real/ideal legislators); we must pay more attention to the cost of externalizing the means of repression ("excessive police power") (p. 247); we need more "media literacy skills" and "[t]he public needs to be trained to decode the skewed meanings and distorted effects of mediatized legal representations" (p. 252); we need to further develop our critical thinking skills (p. 252); we need more "deliberate strategies" to encourage "cultural affirmation" (p. 253); **[End page 53]** "cultivate heightened critical appreciation" of the work of "cultural critic(s)" (ibid.); work more with "notorious cases" (ibid.) (trying to view them "as a rich source of knowledge and insight rather than as simply a bizarre media spectacle.") (p. 253); and develop more participation, choice, and responsibility "regarding the creation of self and social reality" (pp. 253-54).

PRAISE FOR SHERWIN'S DIAGNOSTIC WORK

In summary fashion, let me outline the substantial accomplishments of Sherwin's *When Law Goes Pop*:

(1) Far too much cultural diagnostic work is burdened by the reiteration of theory, and overly confined by existing academic conceptions of intellectual work. To read academic writing today one needs a glossary of terms and a handbook on contemporary theory. Sherwin has done an excellent job (with the exception of his efforts to describe "affirmative postmodernism") to use theory without dragging the reader into a theory thicket. It is, I think, a compliment to Sherwin to say, he is a theory man who strives not to let his theory get the best of him. The focus in *When Law Goes Pop* is on ideas, analysis, and interpretations, not theory mongering. Sherwin is a thinking man who takes popular culture and visual media seriously. By seriously, I mean that Sherwin's knowledge of (and background use of) psychoanalysis, narratology, rhetoric, constructivism, film and communication studies provide a rich context for his law culture analysis.

(2) Sherwin is at his best in the close reading of trials and trial lawyers as cultural texts. The most intriguing and pedagogically useful sections of *When Law Goes Pop* consist of Sherwin's nuanced readings of an eclectic set of texts/trials/legal cases: Gerry Spence's closing argument in the Randy Weaver case (pp. 52-66); the history of Randall Dale Adams and the making of *The Thin Blue Line* (pp. 107-126); an insightful, detailed, psychoanalytic reading of the film, *Cape Fear* (1962) and its remake in 1991 by Martin Scorsese (pp. 171-185); two Supreme Court cases, *Estes v. Texas* (1965) and *Chandler v. Florida* (1981), decided 16 years apart which prohibited the televising of criminal trials and then permitted it (pp. 152-168); some fine pages on David Lynch's *Twin Peaks* (1990) and his film *Lost Highway* (1996) (pp. 187-194); commentary on a Philip Haas film adaptation of Paul Auster's novel, *The Music of Chance* (pp. 195-200); and some interesting observations on the Krzysztof Kieslowski film, *Red* (pp. 254-260).

(3) Sherwin presents a unique perspective on the new "narrative jurisprudence" and the growing fascination with stories and storytelling by legal academics (as they join academics in virtually every discipline).

(4) *When Law Goes Pop* is an important first look at the new "savvy lawyer" (Sherwin's term) who knows (and puts to use) visual mass media, popular culture, rhetoric, story basics, and myth.

(5) Sherwin doesn't hold himself out as an ethicist but *When Law Goes Pop* is [End page 54] surprisingly good on the problem of lawyers and truth. Sherwin presents a simple, elegant, and workably productive, instructive scheme on the kinds of truth we find (and try to discover) in the courtroom – distinguishing between factual truth, legal truth, and symbolic truth (pp. 49-50). He explores and helps the reader understand how representations of law in popular culture both clarify and confuse these various forms of truth.

In Sherwin's view truth is complex, bound up as it is in the way lawyers tell stories, the purposes (and means) by which these stories are told, our postmodern and constructivist understandings of reality, the market driven nature of mass media images, and the manipulation of cultural stories within the world of popular culture. We might say, of this aspect of Sherwin's

study, that it's a round-a-bout exploration of quite old themes – truth, justice, and order – and how they are represented within a culture saturated, mediated, and manipulated by mass media visual images and stories.

(6) There are any number of books, which focus on particular (and selected) notorious trials, but little in the way of cultural analysis of the meaning of these trials. Sherwin argues that the most celebrated trials presented to us today are "cultural riddles" (p. 75).

(7) Sherwin's work far exceeds in reach and sophistication much of what now passes for popular culture studies. *When Law Goes Pop* is a sophisticated (if speculative) exploration of what happens to law "when skeptical postmodern theory, communications technology, and the demands of the marketplace converge, as they are now doing" (p. 227).

(8) Sherwin's *When Law Goes Pop* will be of special interest to colleagues in the criminal justice field as much of the book focuses on criminal trials, trials made increasingly visible and compelling by *CNN* and *Court TV* coverage, informed by a steady offering of TV drama programs (*The Practice*, *Law and Order*, *Alley McBeal*, and new offerings every fall).

(9) Finally, Sherwin has presented a sophisticated account of the subtle changes in our legal culture induced by the growing reaches of popular culture. He provides a way of "reading" these changes (something like taking sonar readings to see what lies in the depths beyond what we most readily see and hear) and an interpretation of their practical effects. Sherwin suggests that to understand law and lawyers and the "trials" in which law exposes itself most fully, requires a new understanding of lawyers as storytellers, working with different kinds of truth, and the effect of media images and stories on both the work of lawyers and jurors.

The forces of modern culture – theory, technology, and commerce – are bearing down on us. As these forces invade a social institution like law they are going to change, erode, and threaten the virtues we associate with law – stability, meaning-making, rationality, truth, justice. The changes must be observed, and the threat studied, and this is what Sherwin has done so well. **[End page 55]**

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**Review of *Cop Knowledge: Police Power and Cultural Narrative
in Twentieth Century America****

by

Peter K. Manning
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Book: *Cop Knowledge: Police Power and Cultural Narrative in Twentieth Century America*.
Author: Christopher P. Wilson
Publisher: University of Chicago Press
Year: 1999

As is befitting a cultural studies scholar, Wilson wants to link various kinds of "cop knowledge" to social structure. Unfortunately, he does not distinguish between three kinds of knowledge: knowledge held by police, or "police knowledge," and knowledge others have of the police, or "knowledge about the police," and analytic frameworks used to organize police knowledge, "knowledge about police knowledge's." These are three distinctive kinds of knowledge, collapsed by his punning title which further confuses because it uses a slang term, "cop." His primary concern, so far as I can discern it, is the second type, knowledge others have of the police. But even here, he confuses the knowledge an audience might have after reading or seeing some presentation of knowledge about police, and theorized knowledge of an observer who sees, reads, or hears about policing. This confusion, between hypothetical content-based meaning and that which a reader takes from the text (as an analogue) constantly vexes cultural studies because the field has no method to discern these two kinds of meaning.

It is perhaps useful to see his analysis in semiotic terms, although he does not use this language. Here, I mean seeking the referents of the term, "Cop knowledge" (cpk) and the context that links expression (what points) and content (what is pointed to) to produce a full representation or sign. Absent a content linked in context with an expression, a sign has no meaning. If "cpk" is an expression, it has various denotations. I use numbers to indicate denotations. Wilson uses as evidence of cop knowledge: cpka1 (films, books, TV, essays); cpka2 (a pastiche of references to sociology, media studies, criminal justice and history) and cpka3 (his meta-analysis or argument about how cpka1 is linked to or associated with cpka2). These three, cpka1-3, function as a metonymic list that is ordered by an implicit value hierarchy that valorizes cpka3. These denotations of cpk are loosely related, but not tied to, what I see as three additional denotations of cpk, which might be called cpkb1-3. Cpka and cpkb are linked metaphorically. They are alike in some fashion, not merely by proximity or as a series. Knowledge with the "b" notation is cop knowledge also. Cpkb1 is knowledge that police have "in their heads" or display in their practices;

cpkb2 is knowledge that academics and others have of cpkb1; and cpkb3 is the valuation of or the sanctioned "proper knowledge" that arises from ethics, politics, and economics. Another set of implicit and un-explicated denotations of cop knowledge are cpkc1, "knowledge [useful] on the beat and on the streets"; cpkc2, a slang reference to all the knowledge police possess; and cpkc3 is an analytic gloss on the first two. These three sets of denotations, linked by the metaphor "knowledge," are quite distinct. **[End page 58]** Unfortunately, Wilson does little to clarify the links, using the terms expeditiously to advance his argument. By that I mean, by punning in the title, he confuses the reader- is he interested in what police know about policing? What filmmakers, television writers and authors know about policing? What the reader or viewer knows? What theory orders these observations about meaning?

Perhaps clarity could have been produced by presenting a method, or technique, or even a rule of thumb that designates what counts as evidence and why. Absent one of these, serious and careful studies (e.g. the work of Reiss, although he sees through the vapid claims of the "Broken Windows" authors) are dismissed, off-handed observations on the meaning of films are taken as strong evidence, and no criteria are advanced by which any claim could be dismissed as either flawed or irrelevant.

The argument is, in brief, that cpk1, seen through the perspective of cpk2, shows that "policing" (undefined) is a socially, politically and culturally shaped phenomena which has been (is) seen via various perspectives that reveal the value contexts of various (chronologically defined) periods. Wilson locates a progressive view of the police focused on corruption and veniality (based on the writings of Stephen Crane and Lincoln Steffens); a reform period focusing on procedure (using Vollmer et.al.); a 1960's conflict view (based on Wambaugh's novels); a 1980's realism based on street journalism (David Simon and others) and a final period in the 'nineties based on an analysis of the Boston Globe's coverage of a murder of a teen-ager. The content of these periods is treated to an apparently detailed analysis, judging by the number of footnotes in the 217 pages of text (517 or 2.4 a page). It is not clear, however, how the periods were defined, what themes are central to them, how the representative works were chosen from among the possible texts, nor how the content was analyzed.

Wilson contends that knowledge of policing (perhaps this should be called cpk4, or knowledge of all sorts of police knowledge's), is increasingly mediated, or presented via some communicational means other than face to face experience. It is furthermore always shaped by class, race and politics, contains differential, detailed knowledge of policing (as cpkc1) and contains a current reading of social distance between various reading and viewing publics and the police. Ironically, the view of the police as distant and unassimilated returns to view in the 'nineties in the form of CP rhetoric'. Rhetoric, being what officers actually say, has no place here. The book is a representation of representations.

Of course, the implication of "knowledge," that which is true, cannot be disentangled from the ways in which the media display and manipulate it. All media, however, as Wilson suggests, play on repeatedly the paradox of control. While a decentralized form of local control is emphasized, neighborhood safety is seen as a consensual matter, and the idealized home, family, and neighborhood as custodians of each others' fate is dramatized, the media "elevate homicide" as the ultimate tragedy. It is described, a-contextually, as preventable, local, and devastating because

given the first premise, homicide is an unthinkable act. This juxtaposition, the media's primary and repeated weapon – their "spin" or "take" – destroys by trivializing values and dramatizes both their apparent relevance and their *de facto* shabbiness, tattered and dubious tenacity. The fact that cops consider this "paradox" the bottom line of their work, this [End page 59] book says very little about that kind of knowledge. It seems to me that ethnographic work that identifies and elaborates knowledge police have about policing is a stronger evidentiary base than what Hollywood, television producers and journalists think the police think, or what these cultural icons think they know about what police think.

ENDNOTE

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**Review of *Psycho Paths: Tracking the Serial Killer through
Contemporary American Film and Fiction****

by

Karen Beckman
Princeton University

Book: *Psycho Paths: Tracking the Serial Killer through Contemporary American Film
and Fiction*

Author: Philip L. Simpson

Publisher: Southern Illinois University Press

Year: 2000

What makes an American psycho? Or rather, Philip L. Simpson's *Psycho Paths* makes us wonder, what makes a "psycho" specifically American? Why has American culture been preoccupied with the figure of the serial killer for the last three decades, and what does this preoccupation reveal about the society that produces this figure in the first place? To what extent is the serial killer nothing but a natural extension of the idea of American individualism? Do serial killer narratives generally represent radical critiques of American society, or are they inherently conservative? These, and other important questions, constitute the springboard for Simpson's thorough investigation of the genre of the serial killer narrative in contemporary American culture, which will be of interest not only to those working within the fields of film and literature specifically addressed in the book, but also to anyone who cares about the disturbing relationship between fictional "horror" and the horrors of "reality." In the course of Simpson's study, the line between fiction and reality becomes thoroughly confused: the media frames "real" criminals as horror-movie nightmares, police profiling resembles nothing so much as fiction writing. Real policemen take their investigative clues from detective fiction, just as serial killer novelists take their cues from FBI files.

Of course, as Simpson makes abundantly clear in his careful and thoughtful analysis of the gothic heritage of the serial killer genre, this kind of confusion of boundaries is absolutely symptomatic of the social problems the killer himself embodies. In his introduction, Simpson describes the serial killer's violence as a type of "affirmative postmodernism" (p. 17), claiming that "post-modernity as a cultural force evokes a crisis-as-spectacle atmosphere . . . in which literal violence as well as increasingly sensational narrative representations of it can easily flourish, simply because the postmodern transgression of all boundary is inherently a 'violent' act of cognition." Undoubtedly, as Mark Selzer's (1998) *Serial Killers: Death and Life in America's Wound Culture* demonstrates, the problem of the serial killer cannot be addressed without

simultaneously thinking about the question of postmodernism. Given this, though, it might be important to distinguish a little more carefully between acts of cognition and acts of murder. The serial killer may indeed be a product of postmodern culture, yet the two cannot be conflated as easily as Simpson at times suggests. [End page 61]

The first and strongest chapter focuses on the question of genre, tracing the serial killer narrative back to its gothic roots through detailed comparative readings of Gary Fleder's 1997 film, *Kiss the Girls*, and Paul West's 1991 novel, *The Women of Whitechapel and Jack the Ripper*. Both of these texts illustrate Simpson's claim that the doppelgänger plays a key role in the serial killer genre. In Fleder's film, the killer turns out to be two killers, Casanova and The Gentleman Caller, and in West's novel, the idea of the Ripper splits into "infinite replications" of himself. No single killer exists, only a series of related men who commit murders attributed to one non-existent figure, a fact which again raises the question of postmodernism's concern with the original and the copy in interesting ways.

For Simpson, Jack the Ripper constitutes the first serial killer, "simply because the Ripper's advent on the stage of media happened to coincide with the serial format as popularized in the Victorian press" (p. 36). This statement sets up the very idea of seriality as a media phenomenon. Simpson quotes Richard Dyer to support his claim that the media itself is founded upon seriality: "it is only under capitalism that seriality became a reigning principle of cultural production, starting with the serialization of novels and cartoons, then spreading to news and movie programming. Its value as a selling device for papers and broadcasts is obvious" (p. 22). By relating the serial killer's murders to the pleasures of seriality and repetition, Simpson begins to break into the difficult question, posed in his introductory chapter, of how American society produces such murders in the first place, and makes such crimes possible. Having raised the question, however, Simpson does not pursue it thoroughly. The reader is left with many unanswered questions not only about the responsibility of the media industry, the financial success of which relies so heavily upon the appeal of seriality, but also about other issues related to the question of repetition. What, we wonder, is the relationship between (male) serial killing and (female) serial sex, as practiced by the prostitute who is so often the victim of the killer's brutal torture? How are we as viewers implicated in the horror of serial killing through our desire to watch, or read about not one murder, but many? And how is the critic, forced to cite or describe the most gruesome representations of murder again, implicated in the violence of the murders themselves?

These questions raise complicated issues about the relationship between violence and representation, a question that Simpson might well have spent more time on in the course of his inquiry. We need to know whether seriality is itself the problem. Is seriality always related to violence in some way? And if so, why? Simpson opens up one possible line of inquiry on this subject when he notes that many of the killers are previous victims of someone else's violence or sexual abuse, usually in childhood. Although some of the killers, like Early Grayce in *Kalifornia*, are keen to stress that they are not simply acting out earlier childhood traumas, one cannot help but think that recent discussions of repetition and representation in the field of trauma theory would provide a useful paradigm for analyzing this bequeathal of violence from one generation to the next more closely.

Chapters two and three develop the emergence of the doppelgänger in serial killer fiction

through readings of *Thomas Harris's Manhunter* and *The Silence of the Lambs* (chapter two) [End page 62] and *From Potter's Field*, *Citizen X*, and *The Alienist* (chapter 3). In both of these chapters, Simpson argues convincingly that the psycho-profiler (chapter two) and the detective (chapter three) emerge as uncanny doubles of the killer himself. In order to catch the serial killer, Simpson rightly notes, the detective has to be able to think like him, and this ethical paradox lies at the heart of the genre. In these carefully researched chapters, Simpson not only expands his theories about violence and representation through an analysis of detection as an act of reading, making the murdered body a "text" to be read, but also addresses important ideological issues. He notes that the serial killer/detective drama is analogous to an earlier American genre of Indian and Indian fighters, with the detective upholding the "American" values of the lone individual in a bleak landscape, charged with the protection of the traditional family unit. *Citizen X*, a cable-television movie set in the 1980s Soviet Union province Rostov, stands up less well to close analysis than many of the more substantial texts Simpson selects, but does give him the opportunity to explore how the serial killer narratives of the 1980s and early 1990s need to be read in the context of the cold war.

The question of the death penalty arises on a couple of occasions in suggestive ways. In Patricia Cornwell's novel, *From Potter's Field* (1995), the New York City police department wants the serial killer Temple Gault to be tried in Virginia, Simpson informs us, where he can be executed. Actor Scott Glen, who portrays Thomas Harris's chief FBI profiler, Crawford, a character based on Jack Douglas, real FBI profiler and co-author of two books on "mindhunting," claims that he was "traumatized into renouncing his long-held opposition to the death penalty after hearing Douglas play confiscated tape recordings of two serial killers torturing teenaged girls" (p. 71). And finally, one reviewer of *Kalifornia* claims that the "gruesome cross-country ride argues for capital punishment" (p. 185). Aside from the question of why an FBI agent should be re-staging the spectacle of real torture for a Hollywood actor, these references to the death penalty, not developed by Simpson, do raise the issue of how state-imposed death fits into a study of serial killing as a particularly American trait? In many ways, Simpson's description of serial killing fits nothing so well as the state's own imposition of death. As the idea of "death row" implies, the victims are multiple, reduced to a serial line up. Those executed by the state, and by the serial killer, are most frequently the members of society who are least valued by, least visible to, the white majority. And, as with the serial killer, the state's method of killing is precise, a meticulous repetition of the preceding execution, a grim prefiguration of the next. The parallels are too striking to ignore in this type of study.

Simpson argues convincingly that the serial killer constitutes a mythical, almost supernatural, embodiment of American society's deepest darkest fears. We are compelled by the representation of this figure because he allows us to project our fears onto a clearly delineated villain. "The marauding serial killers of the late 1970s, 1980s, and 1990s encode, deliberately or otherwise, many of our cultural phobias in their polysemous narrative representation in fiction and film" (p. 2), writes Simpson. On numerous occasions, the killer is either marked as homosexual or androgynous, and this is clearly one of the "cultural phobias" to which Simpson refers, yet he pays this issue remarkably little attention, a fact that is reflected in the bibliographic omission of [End page 63] [Diana Fuss's \(1993\)](#) important essay on serial killers and homophobia, "Monsters of Perversion: Jeffrey Dahmer and *The Silence of the Lambs*." Several references to the killer as a "virus" point to the troubling relationship between the rise of the serial killer narrative and the

AIDS crisis of the 1980s and 1990s, but this connection is not developed by Simpson. When AIDS is mentioned explicitly in a quotation from Joyce Carol Oates's *Zombie* (p. 168), Simpson does not comment on its presence or relevance.

Similarly, given the book's ostensible commitment to pursuing the cultural anxieties reflected in these narratives, I felt that the author's treatment of race was problematically marginalized. Simpson notes that the American Gothic transforms the Gothic image of the haunted castle into "plausibly American settings such as abandoned farm houses, dark cellars, antebellum plantations . . .," and stresses the frequent recurrence of the American South in serial killer narratives, but he does not connect these sites of racial conflict to the issue of race in the narratives themselves. Why, we wonder, does Ruskin, one of two serial killers in *Kiss the Girls*, build his dungeon for imprisoning female victims in the tunnels beneath an old slave plantation? What role does slavery play here, and how is it connected to the murder of women? Similarly, in his analysis of Joyce Carol Oates's *Zombie* in chapter four, Simpson notes that the killer, Quentin, preys on "those who will not be missed by mainstream America, such as black and Asian homosexuals." He fails, however, to extrapolate from this local observation any more developed theories about how the serial killer narrative as a genre deals with the problem of race in America.

Simpson is better when dealing with the treatment of women in this genre, and some of his most interesting discussions focus on what happens when a female writer enters the serial killer genre. In particular, his readings of Joyce Carol Oates' *Zombie* and Patricia Cornwell's *From Potter's Field* address the difficult and complex problem of "how to elevate the female voice to a position of power within the male dominated text" (p. 114). Cornwell's female forensic pathologist, Dr. Kay Scarpetta, not only offers us a strong female character in a genre where such women are hard to come by, but also allows the reader, through Scarpetta, the opportunity to identify with the victims, rather than the killer. Is this a good thing? Simpson is ambivalent, but then ambivalence is what this genre is all about. Perhaps Simpson might have addressed the misogyny seemingly inherent to this genre more fully by paying closer attention to issues of spectatorship throughout the book. Why does our society long to look at the bodies of dead women? How are we, as viewers and readers, implicated when we watch or read repeated scenes of female torture? Why do serial killer movies generally not show the murder of women, focusing instead on the dead bodies left at crime scenes? These questions seem crucial to any analysis of the genre in a socio-political context.

Psycho Paths is an ambitious work, not only in the amount of material it addresses, but also in the nature of that material. Without doubt, serial killing is at least as hard to write about as it is to read about, and Simpson's work provides a thoughtful and provocative response to very difficult material. Though Simpson raises more questions than he can answer in the scope of the book, the questions he asks are important ones, and are worth pursuing further. **[End page 64]**

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ENDNOTE

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