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Law's Screen Life: Criminal Predators and What to do About Them : Popular Imperatives From Screen-Based Reality

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Imagining Legality

Where Law Meets Popular Culture

Edited by
Austin Sarat

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Law's Screen Life

Criminal Predators and What to Do about Them: Popular Imperatives from Screen-Based Reality

Richard K. Sherwin

Law today lives in images the way images live on the screen. In this chapter, I will describe three discrete but interrelated forms of law's screen life and show how they play out both in actual cases and in mainstream visual culture. The three forms I have in mind reflect (1) law's assimilation from the visual mass media of familiar cognitive and cultural templates, including character types and story forms that tell viewers how the world works and the way people may be expected to behave in a given set of circumstances; (2) law's exploitation of the viewer's sense of visual delight on the basis of which vivid images and dynamic image flow draw and hold attention, stick in memory, and authorize belief; and (3) law's emulation of the visual mass media's logic of desire, which simultaneously stokes forbidden fantasies while providing moral cover in the form of a predatory Other onto whom the viewer may displace (and thus disown) guilty pleasures.

Law today enlists the expressive forms and authority of the visual mass media in the search for truth and justice in particular cases. With increasing frequency video displays and digital images accompany lawyers' opening statements and closing arguments at trial. They are introduced as evidence in the form of animations, digital reenactments, and video documentaries showing tort victims living damaged lives in the wake of accidents or botched surgeries or exposure to defective products or chemical pollutants. Prosecutors display images from police surveillance as well as private security cameras that have visually captured drug deals, robberies, and all manner of wrongdoing. Criminal defense lawyers use amateur videos, perhaps fortuitously shot from a handy cell phone, to show police misconduct or to contradict a written police report. And increasingly, on appeal, judges review the visual record of the trial to assess allegations of

error. Did jurors, or perhaps a lower appellate judge, unreasonably construe visual evidence that jurors saw at trial? Did the trial judge properly deem a witness hostile, thus permitting the prosecutor to ask leading questions? The visual record captures descriptive details, such as demeanor, facial expression, and tone of voice, which the proverbial "cold" record on appeal leaves silent or unseen, hidden beneath or between the lines of the court reporter's text.

At the same time, however, new forms of visual communication and advocacy operate not only in the search for truth and justice before the bar. The visual mass media may also enlist law's expressive forms and authority in the service of the media's own interests. In what follows, I shall tell a cautionary tale that flags this danger. It describes one of the directions that law may take along the two-way street on which both law and visual mass media travel.¹ This is an example of what can happen when law adopts (and enforces) the logic of the visual mass media as its own.

Everyone bears the imprint of the culture into which he or she is born and raised. Each of us inherits and constantly renews an archive of cultural knowledge and a repertoire of communicative practices. We can only tell (and respond to) the stories we know,² or know how to decode. Each medium generates its own set of meaning-making practices and meaning-construing norms. There are scripts for negotiating certain kinds of social interactions, there are character types for helping us to recognize the kind of person we might be dealing with, and there are story forms at hand that help us to make sense of the situations we confront either in person or vicariously through various audio and visual media (such as radio, film, television, video games, and the Internet).³ Once we assimilate the communication tools of everyday life they become second nature to us, which is to say, we are no longer conscious of their presence. The work they perform becomes invisible. These unconscious habits of meaning making make up what we call ordinary common sense.⁴ Whether accurate or not, common sense depends upon the familiar images that we carry around in our heads.⁵ This includes images of lawyers, criminals, and the legal system that we acquire from popular culture. For good or for ill, these are the materials with which trial lawyers have to work (or work around).

In contemporary legal practice, displaying evidence and even argument by way of visual images on the screen is increasingly a matter of ordinary expectations.⁶ It should not prove surprising, therefore, to find trial lawyers importing popular film stories and character types as well as familiar cinematic styles into their courtroom practices.⁷ Lawyers cannot function

effectively without an adequate understanding of the dominant sources of cultural meaning together with the dominant styles and modalities of communication in the communities in which they practice.⁸ Put simply, they must know not only how meanings are made, but also, and arguably even more important, how meanings are received.⁹ And when it comes to law on the screen, it is not simply a matter of what you show, it is a matter of what people see (or think they see), as well as what they feel, associate to, or identify with, or discount in the process of looking. These intuitive (mostly unconscious) cognitive operations help to constitute decision making in a particular case. In short, the stories we hear and see are not simply a matter of content or genre¹⁰; the medium in which they are conveyed matters.¹¹ As the great American poet Wallace Stevens put it, "things as they are, are changed upon the blue guitar."¹²

New visual technologies allow lawyers today to picture evidence and argument with unprecedented persuasive power. We can see inside defective machines or constricted arteries; we can reconstruct accidents and crimes; and we can assess complex patent claims by comparing relatively simple visual displays of complicated technologies or processes that show whether an impermissible imitation exists. This capability ensures great strides in the search for truth and justice at trial. At the same time, however, pictures (in some cases, by virtue of their simplicity) may also complicate the law's aspiration to attain fact-based justice. This risk arises, for example, when visual evidence and visual arguments import strong affective and associative content that would be impermissible if it had been expressed explicitly instead of remaining hidden on an implicit (which is to say, unconscious) level of meaning making.¹³ Law's adversarial method must adapt to these new cultural, cognitive, and technological conditions. Legal pedagogy and jurisprudence must catch up to the realities (including the digitally simulated realities) that are being projected onto electronic screens in courtrooms across the nation. We need a new visual jurisprudence and new levels of visual literacy for lawyers, judges, and laypeople.¹⁴

Adapting Robert Cover's famous formulation to contemporary cultural conditions, we may now say that for every constitution there is not only a textual epic but also a cinematic and perhaps even a multiplayer interactive one.¹⁵ Once viewed in the context of the narratives, films, and digital (algorithmically generated) representations that give it meaning, law becomes "not merely a system of rules to be observed," and not simply "a world in which we live,"¹⁶ but many different worlds, each reflecting deep

structures within the operating system or organizational logic of the communicative medium in which law's meanings unfold.

It is important to realize that the way we respond to visual images is different, as a perceptual and cognitive matter, from the way we respond to words alone.¹⁷ For example, law on the screen privileges meaning making through associational logic that operates, in large part, subconsciously, through its emotional appeal. A viewer might be aware that an image is strongly linked to a particular emotional response without knowing or understanding just what the connection is. In this respect, then, visual images tend to capitalize on the power of people's intuitive, *gestalt* emotional responses to shape their judgments. These effects operate beneath the radar of awareness and are thus less amenable to critical scrutiny and counterargument.¹⁸ It is also notable that visual images tend to have more impact than nonvisual expressions of the same information. This is because they tend to be more vivid and more lifelike. Studies show that people respond to photorealistic pictures as they would to the real thing.¹⁹ For instance, viewers of an IMAX movie of a roller coaster ride or of an unstable, camcorder-based film like *The Blair Witch Project* (1999) or *Cloverfield* (2008) may experience a sense of dizziness or physical excitement that words alone could never induce.

In sum, when law lives as an image on the screen the *aesthetic forms*, *interpretive methods*, and *narrative content* of popular visual entertainment inevitably find their way into the courtroom. Given the stakes, studying the practical and theoretical dimensions of visual rhetoric should be part and parcel of contemporary legal education. This is particularly the case given that popular legal images (in court as well as in popular culture) often are not what they seem.

What does it mean for law to operate as an image on the screen? That is the question before us.

The gist of my response is this: *Law today lives in images the way images live on the screen.* Law's screen life is a double life. What we see on the screen is always more than what is shown. The key is to try to increase our awareness of that cultural, cognitive, and perhaps even ontological excess. This is particularly important in light of the fact that our visual common sense tells us we need no such encouragement.

We all tend to be naïve realists when we watch the screen. We look through it as if it were a window onto reality rather than the construction that it is. We tend to accept as true what we know or believe.²⁰ And that goes for what we directly perceive with our senses in everyday life as well

as what we perceive on the screen. It seems natural to take visual images on their own terms, as if what we see were the thing itself, what the image represents. But the image is a construction. It is bounded on all sides by conventions; conventions imposed by the medium in which it appears; conventions imposed by cultural patterns of meaning making that we have unconsciously assimilated; and psychological conventions that incline us to make certain kinds of emotional associations when faced with certain kinds of images.

The image is shot through with extrinsic properties that have to do with visual meaning making, properties that are eclipsed by the sense of self-evidence, of immediate, intuitive recognition that accompanies the act of seeing. There are many dimensions to explore when it comes to the constructed nature of visibility.²¹ We could talk about the physiology of perception, the social and cultural construction of visual meaning, the cognitive function of emotion, the operation of implicit associations in response to the image, and so on. I want to limit my focus here to visual aesthetics and psychodynamic meaning making in the context of the criminal predator. When I use the word psychodynamic, I have in mind the traditional Freudian sense of depth psychology, the operation of unconscious fantasies, wishes, and desires.

Inside the courtroom, all of these aspects of meaning making are more or less active, though veiled. We see as through a glass darkly—which is to say, vision is always subject to a complex range of internal and external influences and frames of reference. We tend to become what we see, and we see because of who we are. But we do not see how this comes about.

Jerome Bruner has taught us that our minds are culturally distributed through the shared materials, the stories and storytelling methods that we carry around with us, and that are “ready at hand” to help us make sense of things.²² For example, during a recent oral argument in *Scott v. Harris*,²³ referring to the plaintiff, who ended up a quadriplegic when the police used lethal force to terminate the chase on which the plaintiff led them, Justice Scalia said: “He created the scariest chase scene I’ve ever seen since *The French Connection*.” Justice Scalia’s reference to the famous car chase sequence from *The French Connection* (1971) as a basis for comparing the crucial police video of the real car chase in the *Scott* case may have been amusing, but it was no idle joke.

Justice Scalia may not have realized the extent to which he was transferring, by visual association, a highly significant emotion from a feature film onto the police video in question. Or perhaps he meant his association

to *The French Connection* to identify for others precisely the kind of affect that they should be expected to invest in the real chase video. Either way, the fact remains that familiar images inside the courtroom are being saturated with extralegal meanings that operate for the most part outside our conscious reckoning. The image is always more than it shows. Its meaning depends to a great extent on what we bring to it and what we allow it to bring to us. What it doesn't show is how this meaning-making process comes about.

Turning to that process, I will begin with aesthetics. Then I'll address the natural human craving for certainty—particularly in the face of irrational disorder and doubt.

Aesthetic gratification amplifies certainty by gratifying our sense that we get it. For its part, science in contemporary popular entertainment has been invested with an almost mystical power of certainty. Its images look beautiful on the screen and the language that scientists use to describe those images sounds authoritative (especially when we have no idea of what the scientists are talking about—like the alluring mystery of hearing the Catholic mass in Latin).

There is a corollary to the quest for certainty. The more certain we wish to be, the less tolerance we have for disruptions that tell us the world is not certain at all. Unconscious eruptions—in the form of illicit fantasies, wishes, and desires—are frightening and need to be controlled. Images arouse and gratify licit as well as illicit desires; and gratification, in its mute clarity, simulates the certainty we crave. Gratification thus often carries a price. The more illicit its source, the more potent the prohibition required to condemn it. I want to suggest that there is a hidden alliance in the visual mass media between the quest for certainty and the logic of desire on which the visual mass media thrive.²⁴ Law holds the key to this secret coupling.

Why is law so much a part of our visual entertainments? One reason is that the plot device of the mystery genre, the whodunit, gratifies our sense of closure and certainty.²⁵ In the end we know “whodunit,” the mystery is solved. Melodrama is also a common staple of television and film. It, too, gratifies our craving for certainty—the certainty that shapes and informs our shared moral order. Melodrama is all about good and evil. People like melodrama because it clarifies what good and evil are, and affirms *that* they are. It is also gratifying to identify with the good guys and to see the bad guys get their proper come-uppance.²⁶

Law figures centrally in both mystery and melodrama. Crime stories in

particular serve as a recurring template. The aesthetic clarity of good guys and bad guys in a moral universe where the truth will out in the end, and justice prevails, plays into our craving for certainty. Villainous criminals along with those heroes who find and punish them populate our melodramatic moral imagination.

Law is manifestly the domain of prohibition and moral clarity. However, popular entertainment uses law on the screen for its own purposes, just as savvy lawyers use popular entertainment for their own purposes inside the courtroom. Law on television and in film not only provides the templates for order and clarification of conflict, but also the authority for prohibition. Prohibition is important to the media because illicit fantasies, wishes, and desires fuel a good deal of what appears on the screen. Powerful psychic forces make us attend. TV sponsors and film producers like good attendance. That's what they are paying for. But you can't simply unleash unconscious forces. You have to restore moral and psychological order. Narrative coherence requires no less.

Popular entertainment uses law not just for its storytelling templates, but also for law's authority to prohibit.²⁷ Law provides moral cover for the viewer's guilty pleasures. The psychic gratification that illicit fantasies provide is morally covered by the viewer's condemnation of their source. Responsibility for the illicit belongs to the bad guy, whom the viewer is all too willing to condemn in the end. That condemnation purges the psyche of guilt. Viewers thus get what they want: jolts of stimulation that are morally covered by the authority of law. And the producers of visual mass media get what they want: viewers.

And the law? As it turns out, the law gets more than it bargained for. For there is reason to believe that the cycle of illicit fantasy and legal prohibition is not simply a matter of popular entertainment. The media's logic sometimes leaks into the legal culture itself.

When law migrates to the screen it brings the media's logic of desire with it. That is what we see, for example, in the national obsession with the figure of the sexual predator. Our fantasies have taken on a life of their own. Law lives off of them in the same way as the mass media. In this sense, jurists today are legislating from the unconscious. That, in a nutshell, is my contention. In what follows, I will present evidence in support of my claim.

We start with the matter of visual aesthetics as a basis for scientific certainty and truth. Consider the magical realism of pop science. Studies have shown that the mere presence of a photograph at trial (even a neutral one)

significantly increases the conviction rate compared to when no photos are shown (up to 38 percent from only 8.8 percent).²⁸ And the mere mention of “neuroscience” has been shown to enhance the credibility of claims made in its name.²⁹

Between 2003 and 2008, on average, a thousand peer-reviewed scholarly articles on neuroscience were being published every month.³⁰ The claims being made were wide ranging and sometimes elaborate. As early as 1994, for example, Francis Crick had written: “your joys and your sorrows, your memories and your ambitions, your sense of personal identity and free will, are in fact no more than the behavior of a vast assembly of nerve cells and their associated molecules.”³¹ The neuroscience refrain resounded: mind is matter. On this view, free will dissolves in a bath of biochemical processes. No wonder Michael Gazzaniga asserted in 2005 that advances in neuroscience would someday “dominate the entire legal system.”³² How could it not if the hard determinist claims being made in its name turned out to be correct?

And, indeed, the popular and professional enthusiasm toward fMRIs (functional magnetic resonance images) in particular, which purport to show the human organism at work from the inside, has not been lost on trial lawyers. With increasing frequency fMRIs have been showing up in court in personal injury cases (to make brain injuries visible to jurors), in criminal cases (to establish incompetence or insanity), and in the penalty stage of most death penalty cases (to show mitigation, which is to say, to support the defense claim that execution is inappropriate when brain abnormalities diminish the defendant’s culpability).³³ At the same time, crime scene investigators are increasingly submitting every shred of forensic proof for lab testing—leading to ever-growing backlogs. As Antony Zuiker, the creator of the popular television series *CSI: Crime Scene Investigation*, put it, “blood, hair, saliva, skin et cetera are forensically designed to tell an investigator what has happened without having any witness to a crime.”³⁴

The message is clear: while witnesses may lie or make mistakes, science does not. In this way, the new forensic technologies signal a return to the early days of evidence, when the credibility of physical evidence was thought to far outweigh eyewitness testimony.³⁵ If there is one thing upon which commentators seem to agree it is this: CSI technology is not just science, it is super-science.³⁶ And to be sure, the visual aesthetics of CSI technology is beautiful to behold. I believe that what we are witnessing here is the magical realism of pop science.

Our aesthetic delight in the image, in combination with our assimilation from popular entertainment of the authority of science, helps to authorize this kind of visual scientific evidence. This is certainly the case when it comes to the advanced scientific technologies that are being used in court, such as brain scans or fMRIs. To the untrained eye, which is to say, to ordinary common sense, the brain scan looks a lot like a picture of the brain. But it is hardly that. The brain does not really “light up” when active. The fMRIs are really statistical maps, visualizations of data sets, indicating variations in the magnetic resonance of water molecules within localized blood flow to the brain. But this highly complex information has been digitally programmed to look like a brain that is lighting up in some parts, but not in others. The resulting image seems to give us direct access to the truth claim a particular advocate is seeking to prove.

As Neal Feigenson has pointed out, it is not only nonspecialists who are tempted to think this way. For example, an experimental psychologist observed that “[t]here is a real danger that pictures of blobs on brains seduce one into thinking that we can now directly observe psychological constructs.”³⁷ The natural inclination to view fMRIs as if they were photographs thus poses a serious risk of increasing conviction rates in cases involving fMRIs. Nor does this even begin to take into account the possible influence of forensic pop science on television shows like *CSI: Crime Scene Investigation*. People these days are apparently fascinated with cognitive neuroscience and the wide-ranging evidentiary claims of digital forensic technology. Consider what we see on television. From 2000, the year it debuted, to 2006, *CSI: Crime Scene Investigation* grew into a franchise, with two spinoffs: *CSI: Miami* and *CSI: New York*. In 2004, each enjoyed over fourteen million weekly viewers, while the original series had over twenty-five million. Comparable shows, featuring crime-stopping, cutting-edge technologies, have ensued, including *Without a Trace*, *Numb3rs*, *Criminal Minds*, and *Navy NCIS: Naval Criminal Investigative Service*—on one network alone. Other networks have sought to ride the wave with similar shows of their own, including *The Closer*, *Crossing Jordan*, and *Bones*.³⁸

This collective visual feast seeks to assure us that science brings certainty. Forensic investigators probe crime scenes, seeking physical clues that lead to likely suspects. Perhaps they will retrace the trajectory of a gunshot back to its source, as in one episode of *NCIS*.³⁹ That glare in the car window, it's the flash of a gun, caught fortuitously in the frame of an ATM camera, and now, by simply shifting the view on the screen to an overhead police surveillance camera we readily see the image of a driver in

a van. His face is quickly scanned and just as quickly dumped into a data base that immediately produces the identity investigators were seeking. Wondrous. Like that episode on *CSI* when traces of an attacker's skin were caught under the fingernails of a child, the result of a struggle.⁴⁰ After being placed in a machine the size of a toaster, the skin cells glow green, like numinous crystals of kryptonite, beautiful to behold. It's a quick trip to a skin cell data base, and presto! The criminal target's face instantly looms large on an adjoining screen. Like magic, except that we are meant to conclude that what seems like magic is really the stuff of science, the product of the most sophisticated forensic technologies. Even the *CSI* labs seem magical, suffused as they are in a mystical violet light that adds to the uncanny beauty of scientific truth. But is it truth, or sheer visual delight parading as truth? If the latter, then the same possibility apparently haunts the computer screens of professional scientists and trial lawyers alike.

The sheer visual delight of digital forensic technologies enchants the eye. As one researcher concluded, "exposure to brain images in the popular press, which provides a physical explanation for cognitive phenomena, likely influences the allure of cognitive neuroscience data."⁴¹ In short, our aesthetic delight in the image, perhaps in combination with our unwitting assimilation of pop science from mainstream culture, authorizes the ersatz aura, what I have referred to as the "popular magical realism" of the image. Needless to say, the incentive to heighten that aesthetic effect—what some neuroscience researchers call the "Christmas tree effect"⁴²—in order to enhance the credibility of the image raises serious ethical concerns.

Our aesthetic delight in the image, in combination with our assimilation from popular entertainment of the authority of science, helps to authorize this kind of visual scientific evidence. There are risks, however, when the instant gratification of popular entertainment displaces more deliberate forms of judgment. There are also risks when fantasies stirred by the visual mass media take on a life of their own.

Consider, in this regard, the figure of the sexual predator. In recent years, popular entertainment seems to be obsessed with this figure. This is no idle fixation. There is an interesting dynamic at work here, mostly on an unconscious level. Images cause viewers to react to what they show as if it were the real thing. We emote in sympathy or antipathy with what we see on the screen; and what we see triggers the full gamut of sexual fantasies and wishes. Sexual responses are particularly potent. Hence, their popularity in the visual mass media, along with violence—and judging by popularity, preferably the two combined.

Law dramas on the screen may enact a dance of legal forms on the surface, but underneath powerful unconscious forces are at work fueling the narrative. Film and television are desire machines regulated by familiar symbols of authority. As Freud understood, the release of powerful unconscious forces requires equally powerful prohibitions to restore psychic equilibrium. The greater the jolt of illicit titillation, the more sinister is the agent who must bear the full force of law's prohibition. Perverse sexual fantasies demand an evil sexual predator. If he did not exist we would have to invent him. Like the proverbial scapegoat, he pays the price for the community's sins.

When the mass media's logic of desire migrates to legislative chambers and courtrooms, life imitates art. The evil predator then becomes a creature of law. Today, law is at risk of being fueled by the same illicit fantasies and symbolic prohibitions as our popular entertainments. We become what we watch. And that is what we are seeing in the domain of law pertaining to sexual predators and child pornography.

The sexual abuse of children has been described as "the master narrative of our culture."⁴³ It is a crime that has been described as "worse than murder."⁴⁴ As Amy Adler notes, no other crime so preoccupies our "tabloid culture."⁴⁵ These popular narratives have given rise to a variety of distortions. For example, mass-media depictions of child abductions and sexually motivated murders promote the belief that children are at great risk from predators lurking in schoolyards and playgrounds. Studies have shown, however, that the vast majority (93 percent) of child sexual abusers are well known to their victims.⁴⁶ According to one study, approximately 34 percent are family members and 59 percent are acquaintances.⁴⁷

The similarly pervasive fear of recidivism among sexual offenders has led to the proliferation of laws calling for indefinite civil commitment once criminal sentences have expired.⁴⁸ However, the empirical data do not support this popular belief. In fact, there is reason to believe that the law's response to the public's obsession with the figure of the sexual predator reflects a vicious cycle that ends up feeding, rather than allaying, the public's anxiety.

Titillating screen images of the predator arouse illicit desires that draw (and hold) viewers' attention. The problem is that these popular images have a way of migrating to law's field of prohibitory action. Fantasies help to constitute what we fear, and may be useful to those whose objective is to stage the efficacy of the state's power to manage fear. Terror management studies, for example, have shown that terror prompts a heightened ten-

dency to blame and punish.⁴⁹ Punishment reestablishes social stability by restoring confidence in a preexisting “steady state” of conventional values and beliefs that undergird and authorize the punitive impulse.

At the same time, punitive measures also restore confidence in the community’s ability to police and effectively prohibit dangerous contaminants. The disproportionate attention paid to violent and especially sexually violent child predators in the face of statistics that belie such wildly exaggerated claims alerts us to the supernumerary presence of an overdetermined psychic significance. In a word, some strange fantasies are afoot.

Consider, for example, the bizarre accounts of sexual and often satanic ritual abuses in day-care centers in the 1980s.⁵⁰ This prompted a slew of criminal prosecutions. Perhaps most notorious was the McMartin Preschool Trial in Los Angeles, which ran for two years, making it the longest criminal trial in American history. No convictions resulted.⁵¹

Many of these day-care cases claimed that the alleged sexual abuses were undertaken in order to produce child pornography. None was ever found. Throughout this period of “crisis” and “moral panic,” the empirical data seemed to contradict the need for such exceptional concern and such extraordinary legal remedies. Yet, the public’s obsession continues.⁵²

So who is the predatory other? To judge from the mass media he assumes a variety of guises, but the classic image from film and television is that of a violent, often brutal stalker of innocent children. In the horror film *The Hills Have Eyes* (2006), for example, a teenage girl is raped in front of her family by a grotesque monster with the physical characteristics of an older man who has been deformed by exposure to radiation. In the 1999 film *8mm*, an investigator is hired to learn more about a snuff film involving the rape and murder of an underage girl. Her tormentor is an S&M star named Machine, a man of giant proportions who wears a black leather mask to conceal his identity when he rapes and murders his young victim. The explicit depiction of his abuses is meant to convey the demonic and sadistic nature of his actions, but their graphic nature is also a titillating source of forbidden fantasy and illicit arousal.

Alternatively, the sexual predator also may be depicted as seemingly ordinary and nondescript. This characterization is a staple of the decade-long television series *Law and Order: SVU*, which focuses its weekly plots on “sexually based offenses that are considered especially heinous.”⁵³ The series covers a range of sex crimes, especially those against children and teens. For example, in an episode titled “Demons” a young girl who sur-

vives a brutal rape describes in gruesome detail the full extent of her ordeal.⁵⁴ Her abuser is a serial rapist who is portrayed as a middle-aged man with gray hair dressed in flannel suits. The episode "Fault" features the classic predator, a violent stranger who tortures and rapes his vulnerable child victim.⁵⁵ In the first few minutes of the show viewers witness the murder of a family, including the rape and murder of a young girl. Two other children are kidnapped and tortured. The abuses they suffer include cigarette burns and sodomy. In the episode "Uncivilized" an eight-year-old boy is beaten, raped, murdered, and left to die in a shallow grave by a middle-aged man with a history of sex crimes against children, but whose ordinary appearance gives no outward clue of his vicious past.⁵⁶

In recent years, graphic images of the sexual predator have migrated from the visual mass media to various public fora involving law enforcement and legislation. Consider, for example, this public notice from a local law enforcement Web site:

The predator can be anyone from any social standing in life. From the doctor, who we admired for his manner, to the race car driver, whose public persona was filled with the embraces of a multitude of female fans, it become apparent that there is no "typical" profession with which to associate him to. He (or she) no longer hides on the boundaries of our school playgrounds but now exists within the confines of the Internet as well. Where he was once a transient he is now the vice president of a corporation. Where he was limited in choice as to where he "operated" he now resides in anonymity within a largely unregulated medium.⁵⁷

This kind of official notice has helped to fan public fears, which in turn have motivated expansive prosecutions, more stringent laws, and even vigilantism. For an example of the latter, consider citizen groups, such as "Perverted Justice," which have begun their own efforts to hunt down sex offenders.⁵⁸ Volunteers for "Perverted Justice" troll the Internet pretending to be underage boys and girls in an effort to catch prospective sex offenders. Their efforts have been aided by partnering with the hit reality television show called *To Catch a Predator*. The concept for the show debuted in 2004, on the television news-magazine *Dateline NBC*, which featured a series of hidden camera investigations aimed at identifying and detaining alleged pedophiles who sought out minors on the Internet for sex. The

predators were then lured by sexually explicit communications supplied by the show's staff writers to meet with a decoy in a staged (televised) undercover sting operation.⁵⁹

Society's sense of moral panic has in recent years gravitated to the Internet. This kind of panic reflects profound disturbances within the community.⁶⁰ The source of moral infection must be identified and symbolically banished. (It is this drama of hysteria and ensuing sacrifice that the documentary filmmaker Andrew Jarecki presents in his riveting documentary, *Capturing the Friedmans*.⁶¹) Viewed in this light, it may not be surprising that in recent years the focus of child pornography law has shifted. Initially, the law sought to prohibit the marketing of child pornography in order to prevent actual harms caused to minors used in its production.⁶² The new approach, by contrast, targets the illicit fantasies on which child pornography feeds and in turn fuels in the minds of its viewers—which might cause children harm in the future.⁶³

In other words, the social evil has migrated from actual harm to prospective harm—in the event that a pedophile might use child pornography to seduce future victims. By taking aim at the forbidden gaze the law seeks to avoid the “perception of children as sexual objects.”⁶⁴ The paradoxical outcome, however, is that it achieves precisely the reverse of what it sets out to do. The evil of pornographic images (which express or inflame impermissible desires) now consists in the forbidden gaze itself. Without that gaze, according to this juridical logic, the sexual purity of children can remain intact.⁶⁵

The problem, of course, is that (aside from its puritanical and clinically disputed denial of children's sexuality) the law cannot effectively target impermissible desire by prohibiting pornographic images, for the same reason that it cannot determine the existence of such images based on the forbidden gaze itself. The desire the law seeks to proscribe may or may not have been present at the time the targeted image was created. Indeed, forbidden desires may readily be brought to an entirely innocuous image. In fact, experts have observed that it is precisely the sexual innocence of the child in view that prompts the pedophile's sexual arousal.

Paradoxically, it is only by emulating the pedophile's forbidden gaze that the law against child pornography (so defined) may be implemented. Viewers who perform the prohibited gaze are essential to the success of this legal strategy. The more judges entertain prohibited fantasies while they look the more prohibited pornography they will find. In short, if pornography lies in the eye of the beholder, the beholder must assume

the persona of the predator she condemns in order to authorize the law's prohibition. Without the illicit fantasy there is nothing to prohibit. Law's prohibition thus remains parasitic upon the desire it condemns.⁶⁶

Law as the great educator in this instance teaches jurists to become what the law condemns so that they may see what the law prohibits. If the visual mass media help to construct how and what we see in the world around us, in the current child pornography context, by emulating the mass media's own perverse gaze, the law, as Amy Adler has written, "transforms the world into a pornographic place."⁶⁷ This paradoxical state of affairs, in which law constitutes the very evil it seeks to avert, brings to mind Freud's crucial insight into the way the human unconscious operates: "Whatever is expressly forbidden must be an object of desire."⁶⁸ In other words, the very act of prohibition tempts transgression.

Thus, the cycle commences: prohibition escalates desire which in turn calls for greater prohibition, which in turn escalates desire even further. The forbidden desire that stares back from the prohibited image is the one the viewer projects onto it. This is what happens when the media's logic migrates to the legal system itself. When lawmakers need ever-more threatening predators to appease the community's growing anxiety about the secret source of its guilty pleasures, we may say that we are legislating from the unconscious.

Overbelief in the reliability of evidence is one way in which decision makers act out their rage against uncertainty. Even weak evidence may provide a plausible basis for acting on a desire to convict. Neuroscience and the vivid digital images used in support of its claims may be used to give legitimacy to that desire. The paucity of facts as a basis for guilt has to be made up for in the intensity of feeling.

Of course, the essence of our constitutional regime is to protect against distortions in the quest for fact-based justice. When law takes on the life of images on the screen, however, those protections meet new challenges. These are challenges that visual literacy can help us to understand and work through.

In sum, we need a new tool kit and a new jurisprudence—a visual jurisprudence—that can help us adapt to law's life on the screen. Legal meanings backed by the police power of the state resolve concrete conflicts in society; meanings circulating in the collective consciousness (and cultural unconscious) adapt legal forms of prohibition and punishment to resolve urgent (though often hidden or disguised) social and shared intra-psychic conflicts. In both fields of action, actual and symbolic, conflict is the en-

gine of normative clarification. The study of law's screen life brings into view how law adapts to the cognitive, aesthetic, and libidinal demands of visual mass media, and how popular culture in turn transforms law's rituals of conflict resolution into highly charged, symbolic forms expressing shared fears, beliefs, fantasies, and values.

Conclusion

Law performs its meanings in a shared, public world that is constituted (and re-constituted) through an overlapping network of discrete cultural and cognitive practices, social institutions, and inherited textual and audiovisual sources.⁶⁹ For us to understand the internal logics of law's order we must become mindful of the various media in which that order is enacted. Each medium enjoys strengths and weaknesses that others do not. For example, words may assert logical propositions and deploy them in a more rigorous argumentative form than visual images, while visual images may more effectively produce verisimilitude and thereby evoke more compelling perceptual, cognitive, and emotional responses than words alone.

The stories we tell and the way that we tell them differ from one medium to another. Thus, to the extent that law performs its meanings through narrative and image,⁷⁰ its fate remains closely tied to the way in which a given medium codes the meaning-making process. For example, if the grammar of film has taught us to instantly recognize the visual code of close-ups, cross-cutting, and montage (through which new meanings emerge from the juxtaposition of discrete images), the digital grammar of computer-generated imaging has taught us to similarly internalize the interactive code of the interface along with the command and control conventions of rip, burn, interact, re-synch, upload, and resend.⁷¹

Law's entanglement in the changing patterns of our "second nature" means that law cannot escape the dominant epistemological anxieties that may afflict a given medium. Thus we are led to ask, what becomes of law when, following the path of contemporary politics and marketing, it too flattens out on the electronic screen? What is the life of law like when it is lived cinematically?

Lack of empirical support for the child pornography epidemic that has gripped the public and its representatives in Congress, taken together with a significant number of acquittals in criminal cases brought on inadequate evidence, point to a reality gap. There is a word for this. When mind outstrips reality we say it is engaged in fantasy. In the domain of child pornography we seem to be dealing with a collective fantasy. The question is,

why? Why is law caught up in the collective moral panic that surrounds the all-too-frightening figure of the sexual predator? A Freudian interpretation suggests that we unconsciously desire what we prohibit, and the price we pay for escalating forbidden pleasures is more formidable prohibitions. This cycle plays out in popular culture when forbidden desire becomes the fuel that drives commercial mass media. But when the visual mass media's logic of desire migrates to the legal system itself, things begin to go badly wrong. Then lawmakers need ever-more threatening predators to appease the community's growing anxiety about the secret source of its guilty pleasures. When that occurs we may say that lawmakers are legislating from the unconscious. This is the domain of baroque law, or more accurately perhaps, it is the domain of the digital baroque.⁷² We see this manifest in the ersatz or pseudo aura of pop science—the magical-realist images that I have been discussing in this chapter.

Fact-based justice and symbolic justice describe two poles along a spectrum of psychological certainty. This is not a strictly linear continuum; one pole may fold into (in the guise of) the other. For example, the psychological need to convict increases in proportion to the rage a particular criminal act evokes. In cases of symbolic justice, as all show trials amply demonstrate, the result is known at the outset. The objective of such a legal ritual is not to prove that a past event occurred, but rather to conduct a purification ceremony in the present. In the face of serious social disruption, either in the form of civil wrongdoing or criminality, there is a deep psychological need for reassurance. The rift in the social fabric must be repaired; certainty and normality must be restored, so that the original steady state of ordinary life may be resumed.⁷³ When this cannot be achieved through a fact-based, adversarial search for truth, a symbolic drama may have to do.

A conviction is an exquisite source of certainty, but since there can be no evidentiary proof for phantom crimes (either in the form of suspected, but uncharged crimes from the past or crimes supposed to take place in a possible future), proof will have to give way to a drama of outrage and condemnation. The paucity of facts as a basis for guilt will have to be made up for in the intensity of feeling associated with the psychological reality of reaching a conviction. In short, trials dominated by symbolic justice are likely to be fueled by fantasy and supported by ersatz auratic forms of expression (rooted, for example, in the culture of celebrity, "telegenic" reality effects, or archetypal images of the predatory Other) rather than factual evidence. This is to be expected, since the reality being tried doesn't

really exist. It is a collective fantasy, a specter that haunts the community and that calls for a symbolic agent (or scapegoat) for it to be purged. Who that agent is does not really matter, but it helps if his characteristics correlate with the sort of person who fits the fantasy of the Other among us, the predator we fear most.

Shared fantasies in the popular imagination, like the fantasy of the predatory criminal, align the state's apparatus of power with the dissimulating forces of symbolic justice. The titillating reality effect of the sexual predator thus joins the cult of celebrity and the visual delights of pop science as yet another expression of ersatz aura in law's contemporary screen life. Critical assessment of this development requires the cultivation of new competencies. In short, we need an enhanced level of visual literacy. The adversarial testing of truth in the evolving Anglo-American common law tradition may yet preserve its efficacy as an engine for attaining fact-based justice. But it will take new skills to run that engine aright in the digital visual age that is upon us. Training in visual rhetoric and visual jurisprudence is a prerequisite to effectively managing the challenges presented by law's life on the screen.

Notes

1. For more on this subject, see Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago: University of Chicago Press, 2000).

2. See Robert A. Ferguson, "Story and Transcription in the Trial of John Brown," *Yale Journal of Law & the Humanities* 6 (1994): 37. See also Anthony Amsterdam and Jerome Bruner, *Minding the Law* (Cambridge, MA: Harvard University Press, 2000); Jessica Gurley and David K. Marcus, "The Effects of Neuroimaging and Brain Injury on Insanity Defenses," *Behavioral Sciences and the Law* 26 (2008): 85, 95 ("Jurors may base their verdicts, at least partially, on their prototypical notions of what they believe a criminal to be rather than focusing solely on the evidence presented to them during the trial.").

3. See, for example, Jerome Bruner, *Beyond the Information Given: Studies in the Psychology of Knowing* (New York: W. W. Norton & Co., 1973); Jerome Bruner, *Acts of Meaning* (Cambridge, MA: Harvard University Press, 1990); Roger Schank and Robert Abelson, *Scripts, Plans, Goals, and Understanding: An Inquiry into Human Knowledge Structures* (Hillsdale, NJ: Lawrence Erlbaum, 1977); Gerd Gigerenzer, Peter M. Todd, and the ABC Research Group, *Simple Heuristics That Make Us Smart* (Oxford: Oxford University Press, 2000); Richard Nisbett and Lee Ross, *Human Inference: Strategies and Shortcomings of Social Judgment* (New York: Prentice-Hall, 1985).

4. See Richard K. Sherwin, "Dialects and Dominance: A Study of Rhetorical Fields in the Law of Confessions," *University of Pennsylvania Law Review* 136 (1988): 729.

5. See Vicki Smith, "Prototypes in the Courtroom: Lay Representations of Legal Concepts," *Journal of Personality and Social Psychology* 61 (1991): 857; Al Ries and Jack Trout, *Positioning: The Battle for Your Mind* (New York: McGraw-Hill, 1986).

6. Richard K. Sherwin, Neal Feigenson, and Christina Spiesel, "Law in the Digital Age: How Visual Communication Technologies Are Transforming the Practice, Theory, and Teaching of Law," *Boston University Journal of Science & Technology Law* 12 (2006): 227-70.

7. Whether it is courtroom references to Oliver Stone's *Natural Born Killers* (see, e.g., *Beasley v. State*, 269 Georgia 620, 627 [1998]) or to Francis Ford Coppola's malevolent organized crime characters from *The Godfather* (see, e.g., *Commonwealth v. Graziano*, 331 N.E. 808 [Mass. 1975]; Jeremiah Donovan, "Some Off-the-Cuff Remarks about Lawyers as Storytellers," *Vermont Law Review* 18 [1994]: 751, 753 [referring to prosecution's invocation of images from the *Godfather* in *United States v. Bianco*, No. H-90-18 [AHN] Connecticut, July 16, 1991]), the fact remains that in adversarial legal systems law is performed as a theater of battle.

8. See, for example, Anthony G. Amsterdam and Randy Hertz, "An Analysis of Closing Arguments to a Jury," *New York Law School Law Review* 37 (1992): 55. See also Desmond Manderson, "Trust Us Justice: 24, Popular Culture, and the Law," in this volume (noting that popular culture "is a source of law, a record and memory of subterranean practices which have not lost their power to constitute legal actions and ideas.").

9. See, for example, Frank Luntz, *Words That Work: It's Not What You Say, It's What People Hear* (New York: Hyperion, 2006).

10. Notably, literacy in this sense entails an understanding of what we think about as well as the kinds of tools we use (within a given medium) to think with. As Stachenfeld and Nicholson put it, "the best courtroom stories, and therefore performances, are almost mythic in structure: good vs. evil, man vs. nature, big vs. small, innocence vs. deceit, etc." Avi J. Stachenfeld and Christopher M. Nicholson, "Blurred Boundaries: An Analysis of the Close Relationship Between Popular Culture and the Practice of Law," *University of San Francisco Law Review* 30 (1996): 903, 904; see also "Symposium, Lawyers as Storytellers & Storytellers as Lawyers," *Vermont Law Review* 18 (1994): 567.

11. Stachenfeld and Nicholson, "Blurred Boundaries," 904 ("Every culture has certain boundaries or parameters that define the acceptable style or language of presentation within that group.").

12. Wallace Stevens, "The Man with the Blue Guitar," in *The Collected Poetry of Wallace Stevens* (New York: Vintage, 1990).

13. See Neal Feigenson and Richard K. Sherwin, "Thinking beyond the Shown: Implicit Inferences in Evidence and Argument," *Law, Probability, and Risk* 6 (Oxford: Oxford University Press, 2007), 295–310.

14. This is the subject of a larger work from which this chapter is adapted, namely: Richard K. Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (London: Routledge, 2011).

15. Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983): 4.

16. *Ibid.*

17. See Sherwin et al., "Law in the Digital Age."

Renowned Swedish film director Ingmar Bergman once wrote that in film he found "a language that literally is spoken from soul to soul in expressions that, almost sensuously, escape the restrictive control of the intellect." From Ingmar Bergman, "The Snakeskin," *Sight and Sound* (August 1, 1965), online at: http://www.bergmanorama.com/bergman_snakeskin.htm (last accessed on December 11, 2009).

18. At the same time, it may be the case that a sudden insight, or *gestalt*, might also occur as an act of *recognition* of that which is already known on a profound level by the viewer. As Jennifer Deger observes: "The power of recognition—the moment of insight when one sees beyond what is already known—arises from the way it allows us to *glimpse something more, something new, yet nonetheless somehow known or true*. As a technology of showing, the camera thus brings an ontological charge of truth far exceeding the verisimilitude of the 'realistic' likeness." Jennifer Deger, *Shimmering Screens: Making Media in an Aboriginal Community* (Minneapolis: University of Minnesota Press, 2006), 19. The filmic function of "presencing" might operate on a representational or a symbolic level. For an example of the latter, consider Renaissance symbolic painting, such as Botticelli's *Primavera*. As Charles Dempsey observes regarding the Greek rhetorical term *ekphrasis*: "It is a rhetorical means of persuasion, and indeed a means of setting before the eyes and making present the reality that lies behind the actual experience of the thing described." Charles Dempsey, *The Portrayal of Love: Botticelli's Primavera and Humanist Culture at the Time of Lorenzo the Magnificent* (Princeton, NJ: Princeton University Press, 1992). See also Richard K. Sherwin, "Law, Metaphysics, and the New Iconoclasm," *Law Text Culture* 11 (2007): 70–105.

19. Tom Gunning (in "An Aesthetic of Astonishment: Early Film and the (In)Credulous Spectator," in *Viewing Positions: Ways of Seeing Film*, ed. Linda Williams, 114 [New Brunswick, NJ: Rutgers University Press, 1995]) ex-

plains how audiences viewing for the first time Lumiere's *Arrival of a Train at the Station* were simultaneously terrified by the impression that the train was headed straight for them and pleased by their appreciation of film's *trompe l'oeil* capabilities. For research indicating that photographs can provoke emotional responses similar to those aroused by the real thing that in turn affect legal judgments, see Kevin S. Douglas, David R. Lyon, and James R. P. Ogloff, "The Impact of Graphic Photographic Evidence on Mock Jurors' Decisions in a Murder Trial: Probative or Prejudicial?" *Law & Human Behavior* 21 (1997): 485.

20. See Daniel T. Gilbert, "How Mental Systems Believe," *American Psychologist* 46 (1991): 107, 108.

21. See, for example, Martin Jay, *Downcast Eyes* (Berkeley and Los Angeles: University of California Press, 1993); William J. Mitchell, *What Do Pictures Want? The Lives and Loves of Images* (Chicago: University of Chicago Press, 2005); Stuart Clark, *Vanities of the Eye* (Oxford: Oxford University Press, 2007).

22. Jerome Bruner, *Actual Minds, Possible Worlds* (Cambridge, MA: Harvard University Press, 1987).

23. *Scott v. Harris*, 550 U.S. 372 (2007).

24. For a fuller discussion of this phenomenon, see Sherwin, *When Law Goes Pop*.

25. Compare Carol Clover, "Law and the Order of Popular Culture" in *Law in the Domains of Culture*, ed. Austin Sarat and T. R. Kearns (Ann Arbor: University of Michigan Press, 1998), 99–100 ("Trials are already movie-like to begin with and movies are already trial-like to begin with . . . [T]he plot structures and narrative procedures (even certain visual procedures, in film and television) of a broad stripe of American popular culture are derived from the structure and procedure of the Anglo-American trial . . . [T]his structure and these procedures are so deeply embedded in our narrative tradition that they shape even plots that never step into a courtroom, and [. . .] such trial-derived forms constitute the most distinctive share of Anglo-American entertainment.")

26. See generally, Neal Feigenson, "Accidents as Melodrama," *New York Law School Law Review* 43 (1999–2000): 741–810.

27. And as Laurie Ouellette, in her contribution to this volume, points out, law enforcement also uses popular legal entertainment for *its* own purposes: namely, to help regulate civic life and even to outsource the state's policing function. See Laurie Ouellette, "Real Justice: Law and Order on Reality Television."

28. See D. A. Bright and J. Goodman-Delahunty, "Gruesome Evidence and Emotion: Anger, Blame, and Jury Decision-making," *Law and Human Behavior* 30 (2006): 183–202.

29. See Skolnick et al., "The Seductive Allure of Neuroscience Explanations," *Journal of Cognitive Neuroscience* 20 (2008): 470–77; J. D. Trout, "Seduction without Cause: Uncovering Explanatory Neurophilia," *Trends in Cognitive Sciences* 12 (2008): 281.

30. O. Carter Snead, "Neuroimaging and the 'Complexity' of Capital Punishment," *New York University Law Review* 82 (2007): 1265.

31. Audry Lee, "The CSI Effect: TV's Impact on the Future of Forensic Science," *The Triple Helix* (2007): 22.

32. *Ibid.*

33. See, for example, Alexis Madrigal, "Courtroom First: Brain Scan Used in Murder Sentencing," *Wired Science* (November 23, 2009) (brain scan evidence that the defense claimed showed the defendant's brain was psychopathic was *allowed into the sentencing portion of a murder trial* in Chicago), go to: <http://www.wired.com/wiredscience/2009/11/brain-scan-murder-sentencing/#Replay> (last accessed on December 11, 2009). See generally Neal Feigenson, "Brain Imaging and Courtroom Evidence: On the Admissibility and Persuasiveness of fMRI," *International Journal of Law in Context* 2 (2006): 233, and Michael Perlin, "His Brain Has Been Mismanaged with Great Skill: How Will Jurors Respond to Neuroimaging Testimony in Insanity Defense Cases?" *Akron Law Review* 44 (2009): 885.

34. Kimberlianne Podlas, "The CSI Effect: Exposing the Media Myth," *Fordham Intellectual Property Media & Entertainment Law Journal* 429 (Winter 2006); law.fordham.edu/publications/index.ihtml?pubid=200 (last accessed on December 11, 2009). See also Audry Lee, "The CSI Effect" (describing a prospective boon, perhaps, to those flocking to forensics courses at university).

35. See Alexander Welsh, *Strong Representations* (Baltimore: Johns Hopkins University Press, 1995).

36. See N. J. Schweitzer and Michael J. Saks, "The CSI Effect: Popular Fiction about Forensic Science Affects Public Expectations about Real Forensic Science," *Jurimetrics* 47 (Spring 2007): 357, 358.

37. Feigenson, "Brain Imaging and Courtroom Evidence."

38. See Simon A. Cole and Rachel Dioso-Villa, "Investigating the 'CSI Effect' Effect: Media and Litigation Crisis in Criminal Law," *Stanford Law Review* 61 (2009): 1335; Simon A. Cole and Rachel Dioso-Villa, "CSI and Its Effects: Media, Juries, and the Burden of Proof," *New England Law Review* 41.3 (2007): 435.

39. *Navy NCIS: Naval Criminal Investigative Service*, NCIS, season 6, episode 22, "Legend" Part 1, NBC (air date: April 28, 2009).

40. *CSI* ("Crime Scene Investigation"): "Say Uncle," season 9, episode 6, CBS (air date: November 13, 2008).

41. David P. McCabe and Alan D. Castel, "Seeing Is Believing: The Effect of Brain Images on Judgments of Scientific Reasoning," *Cognition* 107 (April 2008): 343–52.

42. Dean Mobbs, H. W. Longhead, W. B. Bilker, K. Ruparel, A. R. Childress, S. I. Busch, and R. C. Gur, "Law, responsibility, and the brain," *PLoS*, 5(4) 2007: 103.

43. Amy Adler, "The Perverse Law of Child Pornography," *Columbia Law Review* (2001): 209, 227. See also Nancy Scheper-Hughes and Frank Stein, "Child Abuse and the Unconscious in American Popular Culture," in *The Children's Culture Reader 178–79* (Henry Jenkins, ed., 1998) (describing "child sexual abuse" as "the master narrative of our culture").

I am indebted to Professor Adler for her superb description and psychoanalytically acute analysis of the pornographic gaze that recent anti-child pornography legislation and relevant case law unconsciously adopts. More recently, Ummni Khan has written a compelling and substantially similar interpretation using the "Disney World Girl" child pornography media spectacle that took place in 2005, in Toronto. See Ummni Khan, "Having Your Porn and Condemning It Too: A Case Study of a 'Kiddie Porn,'" *Expose, Law, Culture and the Humanities* 5 (2009): 391, 394 (arguing that media texts are "sites where direct gratification is absent and yet displaced satisfaction and desire are engaged").

44. Adler, "The Perverse Law of Child Pornography," 227 n. 100 (citing James R. Kincaid, *Erotic Innocence: The Culture of Child Molesting* [Durham, NC: Duke University Press, 1998], 16, and noting that some legislative schemes reflect the view that child pornography is worse than murder). Compare, for example, Ariz. Rev. Stat. 13–604.01(B), (D) (Supp. 1993) with *ibid.* 13–701(A) (Supp. 1993) (imposing mandatory minimum penalty of seventeen years in prison for violation of child pornography law but only mandatory minimum of ten years for second-degree murder), cited in *Arizona v. Gates*, 897 P.2d 1345, 1349 (1994).

45. See Sara Scott, *The Politics and Experience of Ritual Abuse: Beyond Disbelief* (Berkshire, UK: Open University Press, 2001), 103.

46. Stacey Katz-Schiavone, "Myths and Facts about Sexual Violence: Public Perceptions and Implications for Prevention," *Journal of Criminal Justice and Popular Culture* 15 (2008): 291.

47. U.S. Department of Justice, Bureau of Justice Statistics, "Summary

Findings: Violent Crime," 2000. Online at: http://www.ojp.gov/bjs/cvict_c.htm (last accessed on December 11, 2009).

48. For example, Kansas's "Sexually Violent Predator Act," upheld by the Supreme Court in 1997, provides for the indefinite civil commitment of certain sex offenders. The defendant in the Kansas case was convicted of repeated child molestation. See *Kansas v. Hendricks*, 521 U.S. 346, 352-53 (1997). See also Adam J. Falk, "Sex Offenders, Mental Illness and Criminal Responsibility: The Constitutional Boundaries of Civil Commitment after *Kansas v. Hendricks*," *American Journal of Law and Medicine* 25 (1999): 117, 118 (noting that civil commitment of sex offenders "occurs for an indefinite time period").

49. See Neil Vidmar, "When All of Us Are Victims: Juror Prejudice and 'Terrorist' Trials," *Chicago-Kent Law Review* 78 (2003): 1143; Greenberg et al., "Terror Management Theory of Self-Esteem and Cultural Worldviews: Empirical Assessments and Conceptual Refinements," in Mark Zanna, ed., *Advances in Experimental Social Psychology* 29 (1997): 61; Greenberg et al., "Evidence for Terror Management Theory II: The Effects of Mortality Salience on Reactions to Those Who Threaten or Bolster the Cultural World View," *Journal of Personality and Social Psychology* 58 (1990): 308. See also Neal Feigensohn, "Sympathy and Legal Judgment: A Psychological Analysis," *Tennessee Law Review* 65 (1997): 1.

50. See Adler, "The Perverse Law of Child Pornography," 223-25.

51. *Ibid.* See also David Shaw, "Reporter's Early Exclusives Triggered a Media Frenzy," *Los Angeles Times*, January 20, 1990, at A1: "The prosecution charged in March, 1984, that the McMartin Pre-School was, in effect, a front for a massive child pornography ring. . . . The district attorney, the FBI, the U.S. Customs Service and various local law enforcement agencies and task forces . . . did not find a single one of the 'millions' of photographs and films that [the deputy district attorney] had said were taken."

52. Adler, "The Perverse Law of Child Pornography," 226-27. As Adler notes: "Anxiety over children's exposure to pedophiles was a major justification in Congress' rush to pass the 1996 Communications Decency Act (CDA) a measure that quickly succumbed to a First Amendment challenge. New anti-stalking measures have arisen, targeting pedophiles who prey on children on the Internet. The Protection of Children from Sexual Predators Act of 1998 criminalizes the use of interstate facilities to transmit information about a minor for criminal sexual purposes. The Child Online Protection Act (COPA) prohibits knowingly distributing to minors 'material that is harmful to minors.'" *Ibid.*, 228-29.

53. "Law and Order: SVU," go to http://www.nbc.com/Law_and_Order_

Special_Victims_Unit/episodes/index.shtml (last accessed on December 11, 2009).

54. *Law & Order: Special Victims Unit "Demons"* (2005). Go to <http://www.imdb.com/title/tt0629641/> (last accessed December 3, 2010). For an excerpt on YouTube, go to <http://www.youtube.com/watch?v=Ef546FB-iqc> (last accessed December 3, 2010).

55. *Law & Order: Special Victims Unit "Fault"* (2006). Go to <http://www.imdb.com/title/tt0771259/> (last accessed December 3, 2010).

56. *Law & Order: Special Victims Unit "Uncivilized"* (1999). Go to <http://www.youtube.com/watch?v=Ef546FB-iqc> (last accessed December 3, 2010).

57. Law Enforcement Division, Child Abuse Unit, Long Island, New York: online at http://childabuseunit.com/p_information.cfm (last accessed December 3, 2010).

58. Visit online at <http://www.perverted-justice.com/?con=full> (last accessed December 3, 2010).

59. During the 2006–7 television season, the eleven episodes of “Predator” attracted an average of seven million viewers who witnessed the graphic enticements and consequent humiliation and public shaming that the sting operation produced. The show has continued in syndication on MSNBC following its cancellation in 2008.

60. See, for example, Stuart Hall, Charles Critcher, Tony Jefferson, John Clarke, and Brian Robert, *Policing the Crisis: Mugging, the State and Law and Order* (London: Palgrave Macmillan, 1978).

61. Go to <http://www.capturingthefriedmans.com/main.html> (last accessed December 3, 2010).

62. See *New York v. Ferber*, 458 U.S. 747 (1982).

63. See, for example, *Osborne v. Ohio*, 495 U.S. 103, 111 (1990).

64. See Title 18, Part I, Chapter 110, § 2251. Go to http://www4.law.cornell.edu/uscode/html/uscode18/use_sec_18_00002251---000-notes.html (last accessed December 3, 2010).

65. Adler, “The Perverse Law of Child Pornography,” 209.

66. *Ibid.*

67. *Ibid.*, 303.

68. Sigmund Freud, *Totem and Taboo* (Digireads.com, 2008), 46.

69. These are what the anthropologist Don Handelman refers to as the discrete logics of organizational design. See Don Handelman, *Models and Mirrors: Towards an Anthropology of Public Events* (New York: Berghahn Books, 1998), xi–xii. See also Colleen McDannell, *Material Christianity* (New Haven, CT: Yale University Press, 1995).

70. See, for example, Richard K. Sherwin, "The Narrative Construction of Legal Reality," *Vermont Law Review* 18 (1994): 681; Peter Brooks and Paul Gewirtz, *Law's Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1998).

71. On the emerging digital culture of command and control, see D. W. Rodowick, *The Virtual Life of Film* (Cambridge, MA: Harvard University Press, 2007), 174 (noting that, before the digital screen, "[we] express a will to control information and to shape ourselves and the world through the medium of information."). There, is, however, a price to be paid for this new sense of empowerment. Immersion in virtual worlds generates a form of monadism in which "there is no present other than mine, the one I occupy now" and "no presence other than myself." *Ibid.*, 172. In short, other minds and worlds "have become 'information.'" *Ibid.*, 175. See also Alexander Galloway, *Gaming: Essays on Algorithmic Culture* (Minneapolis: University of Minnesota Press, 2006), 87 ("While the disciplinary societies of high modernity were characterized by more physical semiotic constructs such as the signature and the document, today's societies of control are characterized by immaterial ones such as the password and the computer."). As Deleuze notes, what we are witnessing here is a shift in the meaning of control from "discipline" (in Foucault's sense) to information freeways constituted by computer networks: "In making freeways, for example, you don't enclose people but instead multiply the means of control . . . people can drive infinitely and 'freely' without being at all confined yet while still being perfectly controlled. This is our future." Galloway, *Gaming*, 87–88 (quoting Deleuze).

72. See Richard K. Sherwin, "Sublime Jurisprudence: On the Ethical Education of the Legal Imagination in Our Time," *Chicago-Kent Law Review* 83 (2008): 1157; Sherwin, *Visualizing Law in the Age of the Digital Baroque*.

73. Tom R. Tyler, "Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction," *Yale Law Journal* 115 (2006): 1050, 1065 ("By seeing the wrongdoer identified and punished, the community is reassured that those who commit wrongs and are deserving of punishment get their just deserts.").