

# THE Critical Criminologist

Winter, 1998

Volume 8 #2 Newsletter of ASC's Division on Critical Criminology



## The Color of Crime\*

Katheryn K. Russell

University of Maryland, College Park

Over the past several years, I have wrestled with the question of why the color of crime is so often portrayed in Blackface. From an empirical perspective, most of the research which purports to be about "race and crime" is actually about Blacks and crime. In some instances, it is about minorities and crime. Like, race, the mainstream offers a single definition of crime. Crime is short-hand for "street crime." To understand how all of this has come to pass, I focus on the intersection between the criminal justice system, the media, the criminal law, and the discipline of criminology. All told, I wrote *The Color of Crime* (1998) because there were questions I needed to answer. Hopefully, the book will answer questions that others are also interested in.

At core, *The Color of Crime* seeks to accomplish three things. First, to critique racial labels--whether used by the police, criminologists or journalists--and their fall out. Second, to attempt to explain the Black community's overwhelming support of "colorless" O.J. Simpson. "Black protectionism" is not new and is deeply rooted in the ethos of the Black community. Third, the book stands as a fundamental challenge to the conventional wisdom that the criminal justice system is working just fine, thank you.

The book, divided into eight chapters, begins with a look at media images and popular perceptions of Blacks. The discussion includes a look at images from popular culture, news and journalism. Most notably the chapter includes focus group discussions with young Black men. Oddly, very little of the public discussion about young Black men in the criminal justice system includes the words, thoughts, and perspectives of those at the center of the discussion--young Black men. The men share their experiences, perceptions of themselves, the criminal justice system, and other young Black men. The chapter concludes with an interview of Joshua Solomon, a young White college student who decided to "become" Black. He intended to prove to his Black friends that they were overly sensitive about racism. After taking a skin-darkening drug, Solomon, a Maryland native, visited Georgia. Within days, he was ready to abandon his experiment.

The second chapter traces this country's history of racial apartheid against Blacks. The goal of the chapter is to provide a clear nexus between the past and present system of American

justice. The legal evolution from the slave codes to the Black codes to Jim Crow legislation, establish a clear link to the operation of today's criminal justice system. This chapter concludes with a list of six principles that are minimally required for a racially-fair criminal justice system. Perhaps most problematic in the current system, is the question of whether there are adequate checks and balances that mitigate against racial bias in the legal system.

"Racial Discrimination or Disproportionate Offending?" (Chapter 3) offers a detailed critique of how mainstream criminologists measure discrimination. The problems of beginning a discrimination analysis with the formal stages of the justice system (e.g., arrest), as well as the problems of generalizing from single and multi-stage discrimination studies are discussed. Racial discrimination is not limited to the formal stages. The phenomenon of "DWB" (Driving While Black) is perhaps the best counterpoint to mainstream analysis. Police stops which do not result in arrest do not trigger the formal stage, therefore, fall outside typical measures of racial discrimination. The perception that many Blacks have, particularly Black men, that they are targeted by the police is not a lightweight matter. The perception and reality of disproportionate minority targeting has everything to do with how minorities view the justice system and its legitimacy.

For good or ill, a book which purports to be about race and crime would not be complete without some discussion of the O.J. Simpson criminal trial. In Chapter 4, "Are we *Still* Talking About O.J.?", the focus is upon the criminal trial as a Rorschach test rather than an isolated, rare event. Although we were bombarded, *ad nauseam*, with the criminal trial, very little of the data and analysis were new. Much of media discussion was an outgrowth of the early polls, which showed that there was a deep Black/White racial divide in the case.

This chapter is a critique of both the media presentations of all-things O.J., and what the media failed to present about the case. The common portrayal was that Blacks were on one side of the fence, shouting down an equal number of Whites on the other side. Very little of the media images showed that there were more Whites --in actual numbers--who believed in Simpson's innocence, than there were Blacks. There were so many unanswered questions, including, were perceptions about Simpson's guilt partly attributable to one's class status? Too few polls reported data on the intersection of class and race.

Further, why were so many Blacks so quick to jump to O.J. Simpson's defense? This chapter attempts to reconcile how Simpson, viewed by himself and others as "colorless," became a symbol of racism in the criminal justice system. How did this

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## From the Editors...

The birth of critical criminology is some 30 years old this year and the critical division of the ASC is 10 years old. If nothing else, critical criminology has proved that it was not an intellectual fad, but a vibrant and creative force in the quest for criminological knowledge. The same may not, however, necessarily apply to the critical division. We hope readers will take time to read Stuart Henry's article on the state of the division, which describes briefly some of the issues facing the division and offers several constructive avenues for further pursuit. *The Critical Criminologist* welcomes letters and other helpful commentary on this topic. But the newsletter and e-mail have their limits for exchanges about this matter, so we endorse Stuart's idea of non-agenda meeting separate from the business meeting.

We believe that this issue of the newsletter helps reflect the interesting opportunities for and intellectual trends in critical criminology. Please take a minute to read through the requests for papers for division publications ('Division News') and the variety of outlets available for critical thought ('Calls for Papers...'). Also, the substantive essays illustrate the richness of critical criminology. As the "editor-in-chief" for this issue, Gregg specifically sought out themes from authors who had recently published books of critical value on crime and crime control. These included Mark Hamm's *Apocalypse in Oklahoma: Waco and Ruby Ridge Revenged*, Esther Madriz's *Nothing Bad Happens to Good Girls: Fear of Crime in Women's Lives*, George Pavlich's *Justice Fragmented: Mediating Community Disputes Under Postmodern Conditions*, and Katheryn Russell's *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harrassment, and other Macroaggressions*.

Accordingly, each of these authors were invited to write overviews and/or original essays related to these books. We hope that you find these essays as interesting as we have. We will soon start soliciting articles for the next issue, but we also

welcome uncoerced articles, poetry and letters. Please send a hard copy and diskette version, no longer than 2,500 words (to offer room for many voices) and specify the software/word processing software being used. We ask that references be in the (Author Date: Page) format with minimal use of endnotes. Conversations or less formal non-referenced articles are also acceptable, but we expect that they will still represent polished final manuscripts that have been subjected to spell check and proofreading. Contact:

Gregg Barak, Stuart Henry  
and Paul Leighton all at:  
Department of Sociology,  
Anthropology and Criminology  
Eastern Michigan University  
Ypsilanti, MI 48197

TEL (313) 487 0012 FAX (313) 487 7010

Short announcements can be sent by e-mail to  
<SOC\_Leighton@online.emich.edu>

The Critical Criminology Homepage is maintained by Jim Thomas. It contains more information about the division along with links to a wide variety of data, current statistics, legal resources, political writings, teaching and mentoring information, and the Division's parent organization — The American Society of Criminology.

<http://sun.soci.niu.edu/~critcrim/>

\*The editorial collective would like to thank Jennifer Hatten for her work in putting this issue together

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## Contents

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# Division News

## Call for Standing Committee Members, '98-99

Persons interested in serving on or as chairs for the three standing committees: Elections, Awards, and Program Committees--please contact Gregg Barak, Division Chair at Soc\_barak@online.emich.edu or call (313) 971-2671 or (313) 487-3184 or fax (313) 487-7010. Persons presently serving, if desired, will also be considered for further service. Appointments and reappointments will be made before the Nov ASC meetings in D.C.

## Award Nominations

The ASC Critical Criminology Division invites nominations for its Major Achievement Award, the Critical Criminologist of the Year Award, and its Student Paper Awards.

*Major Achievement Award:* Signifying singular contributions to the development of critical criminology scholarship or pedagogy over time; or, contributions of an exceptional recent accomplishment (major scholarship or something exceptionally innovative).

*Critical Criminologist of the Year Award:* Recognizing a scholar who has symbolized the spirit of the Division in some combination of scholarship, teaching, and/or service within the past year.

*Student Paper Recognition:* The Awards Committee invites submissions of graduate and undergraduate student papers which exemplify the spirit of critical criminology.

Send nominations and supporting materials, as well as student papers, by June 1, 1998 to the Awards Committee Chair: Dr. David Kauzlarich, Department of Sociology, Box 1455, Southern Illinois University at Edwardsville, Edwardsville, Illinois 62026. Phone: 618 692-5894. Email: dkauzla@siue.edu.

## 1998 ASC CALL FOR PAPERS

I would like to invite members of the Division on Critical Criminology and other members of the American Society of Criminology to submit papers or panels to the Critical Division of the 1998 ASC Program Committee. The critical inquiry section of the 1998 ASC Program Committee welcomes papers from the full range of intellectual traditions that constitute contemporary critical thought in criminology including, Marxist, feminist, post-modernist, identity, race, culture, constitutive, and queer theory.

Because the 1998 ASC meetings will be the 50th meeting of the American Society of Criminology, this might be a particularly good time for panels and papers that assess the historical development of critical thought in criminology. I would also like to invite papers that explore how contemporary transformations in the academy have impacted teaching criminology and doing criminological research (e.g. distance education, post-tenure review; decline of full-time and expansion of part time academic employment; changes in the publishing world; aggressive intellectual property laws etc.).

1998 is not only the 50th meeting of the ASC, it also is the

50th anniversary of the Universal Declaration of Human Rights. I would like to organize one or more sessions on Human Rights in honor of the Declarations 50th anniversary.

If you would like to propose a paper or a panel, send the title and abstract, your name, affiliation, snail-mail and e-mail addresses, and phone numbers to:

Raymond Michalowski  
Department of Criminal Justice  
Northern Arizona University  
Box 15005  
Flagstaff, AZ 86011  
e-mail raymond.michalowski@nau.edu

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happen? "Black Protectionism" is discussed as a plausible explanation for the groundswell of support Simpson received from the Black community. Other fallen leaders, who have crossed the color line, such as Clarence Thomas, received similar "welcome back" passes into the Black community (Thomas's pass has apparently been revoked). The roots and extent of Black protectionism are further explored--including a consideration of whether it is available to Black women.

In many ways, the Simpson case was a missed opportunity. The "trial of the century" involved a Black man accused of murdering two White people. He was tried before a Japanese American judge, in a city with the largest Latino population outside of Latin America. Yet, the focus remained on Blacks and Whites. What did Latinos think about the case? Asians? Native Americans?

Though vastly different from the Simpson case, and arousing a different type of legal response, the Susan Smith case was also a watershed event. The 1994 murder hoax is the most recent example of racial scapegoating. The Smith case was the impetus for the fifth chapter, "The Racial Hoax as Crime." This chapter looks at the history of racial fingerpointing--particularly White women who falsely accuse Black men of rape. The Scottsboro Boys case and the Rosewood massacre are among the most notorious examples of White-on-Black hoaxes. This chapter analyzes the *more than sixty-five* reported racial hoaxes between, 1987-1996. The actual number of racial hoaxes is unknown, since police do not keep count.

Though the majority of the reported cases involve Whites who scapegoat Blacks, a sizeable number of cases involve Blacks who scapegoat Whites. The Tawana Brawley case, again in the news, is one example. An interesting pattern emerges in the Black-on-White hoax cases. Almost all of them were framed as hate crimes. The majority of Black hoax perpetrators created a scenario in which they were victimized *because* they were Black. This contrasts sharply with the pattern of White-on-Black hoaxes. These typically allege random acts of violence by Blacks (e.g., Susan Smith's carjacking scenario). The final section of the chapter makes the case for adopting laws which punish racial hoaxes. They harm all of us, particularly the community unfairly targeted. They create greater interracial tensions and distrust, and they are not adequately sanctioned under existing laws. An appendix summarizes the sixty-seven racial hoax cases.

What responsibility *should* social scientists have to respond when science fiction is masqueraded as scientific fact? "Science, Scientific Racism and the Ethical Imperative," (Chapter 6) considers this question. After reviewing several examples of misstatements about research on race and crime--including *The Bell Curve*--it is concluded that those who study race and crime should have an ethical duty to rebut. The rebuttal should be a public response by an official, recognized branch of the research community.

If we regularly use terms such as "Black-on-Black" crime and "Black crime" are we then compelled to use terms such as "White-on-White" crime and "White crime"? The ghettoization of racial labeling in criminology is the subject of "In Search of White Crime" (chapter 7). This chapter considers which offenses might fall under a "White" crime rubric and why adopting labels

for all racial groups may be necessary to overcome the image that crime is "a Black thing." The chapter concludes with a critique of James Q. Wilson's "Black crime causes White racism" thesis. The flaws in Wilson's ahistorical thesis are detailed.

The final chapter, "Affirmative Race Law" extends and rounds out the discussion of how new laws might be used to provide adequate checks and balances against racial discrimination. Racial discrimination reflects the wider problem of race and racism in larger society. As a consequence, addressing those larger racial harms must be done in conjunction with those targeted at the criminal justice system.

These larger racial harms include some "invisible" harms, such as microaggressions and macroaggressions. The term "microaggressions" is used to describe the non-verbal, subtle, oft-times automatic put downs of Blacks by Whites. Examples include a White person who refuses to hold an elevator for a Black person, a White person who refuses to make eye contact with a Black person while speaking to him, or a White person who enters an office building and assumes that the Black person she sees is a secretary or janitor. Macroaggressions are simply microaggressions *writ large*--that is public slights. A recent well-known example are the racially-charged comments made by Rutgers University president Francis Lawrence. His remarks indicated a belief that Blacks are genetically inferior to Whites. This chapter considers the harms caused by the *failure* of the law to address racial harms such as micro and macroaggressions.

While the law cannot rectify all racial harms, more can be done. There are numerous examples of how the law could be used to address racial injury. Racial hoax laws and Black reparations are two examples. A failure to do more to promote racial redress has serious sociological consequences, especially for minority communities. These include the increased probability of anti-social responses (including criminal offending), alienation, health risks, and "conspiricizing."

In the spirit of helping to create a cross-racial, cross-class dialogue about race in the country, most recently boosted by President Clinton's race initiative, I offer *The Color of Crime*.

*\*The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment and Other Macroaggressions* (New York: New York University Press, 1997).

The author can be contacted at: [krussel2@bss2.umd.edu](mailto:krussel2@bss2.umd.edu).

# The State of the

Stuart Henry

Eastern Michigan University

Since publication of the last issue of *The Critical Criminologist* we have had the ASC annual meeting and a series of e-mail exchanges, each having to do with members' reflections on where we've been and where we're going. At times this exchange was heated, at other times it was more constructive. Here I shall attempt to summarize the substance of the differing opinions, suggestions and ideas of the main contributors to this debate without attributing who said what, other than that contributions came variously from Brian MacLean, Marty Schwartz, Walter DeKeseredy, Ray Michalowski, Gregg Barak, and Steve Russell. This commentary is intended to be both suggestive as well as provocatively encouraging to silent voices.

## *Political Action/Activism*

There is a feeling among some members that the original activist component of the Division has been replaced by a concern for honors, awards, positions and titles. These directions need not be mutually exclusive, though excessive attention to the latter may undermine the former by sapping energy from political action and by reproducing organizational hierarchical forms. Reflexivity in the honors and awards game may provide some insulation. However, engaging in political action requires some agenda and some structure, including a focus on issues to be raised, policies to be responded to, and initiatives and alternatives to be created.

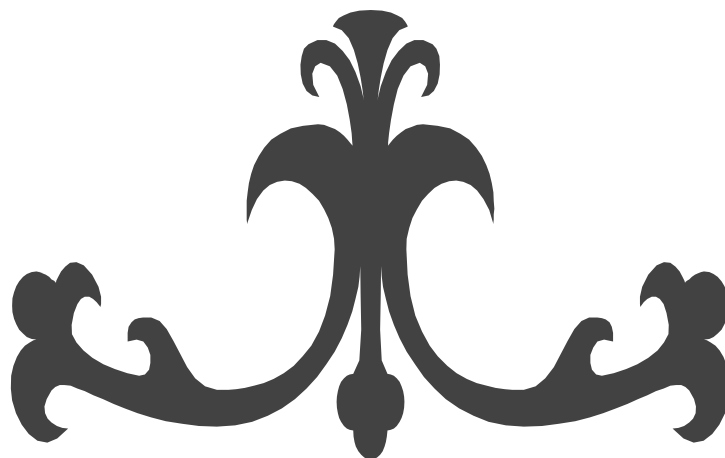
Others suggest that the division may not be the best place to ground political action, arguing that engaging in local community action can contribute to and bring about more effective change. Not least of the reasons for this is the view that, as a relatively privileged class, academics (critical or otherwise) are not going to change much simply by talking about issues. Yet, both global and local actions are important. The Division could certainly put more energy into its commentary on the national debate if, as realists so often point out, for no other reason than because the conservative and reactionary right (conspiracy aside) have "think" tanks aggressively concocting ideological discourse which will claim to be truth if it is not challenged. Part of the reason for our patchy policy commentary has to do with the division's organization.

## *Division Organizational Issues: Should we establish a Critical Policy Unit?*

Some members are concerned with the past operation of the division having to do with such issues as regularity of the newsletter, efficiency in reporting on the budget, poor organization of events, weak attendance at business meetings, lack of an advanced agenda at meetings, ineffective election process, unnecessary personal attacks on fellow division members, and insufficient embodied, face-to-face communication between members. I believe these things are being more effectively dealt with now and when the new division chair takes over, hopefully further strides can be taken in this regard. One

suggestion was that members need to keep up communication with each other in relation to the needs of the division's journal, individual research projects, etc., and that this needs accurate addresses. The need is not simply for a listing but to breakdown the isolation of those working on local efforts and to actively encourage member-to-member communication. A possible way forward from the less-than-accurate pas lists is for us to produce a division directory and put this on the division Website. We have the capability based on the subscription to the division and mailing addresses for the newsletter. With this in place, it might be useful to establish a Critical Policy Unit of the division which directly engages public policy on crime and justice issues through news releases, media representation etc. This could operate at global, national, regional and local levels, and could draw on members' expertise to help draft initiatives and responses. In this way the energy going into self-flagellation could be redirected toward addressing present policy and practice that contributes to our sorry state of social justice.

Other activities suggested that constructively deal with the division's organizational problems are: (1) strengthen links between the division and the Division on Women and Crime, and the division on People of Color and Crime (perhaps we could get their mailing lists also); (2) recruit new member's particularly students; and (3) endeavor to make more international



connections. To facilitate these it has been suggested that the division have two meetings next year: (4) a non-agenda meeting to discuss the broader issues and to establish a clearly defined direction for the division, and (5) an advance agenda for a separate business meeting. It might be useful also to organize these back-to-back in the same room.

Finally, some urgent action is needed on the division's journal *Critical Criminology*. This needs immediate attention on account of its present lack of institutional support. It might be worth reiterating the intentions when the journal began. According to one of the current editors, "this was to provide a non-capitalist venue for critical scholarly work so that: 1) crits

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would get their work out more quickly and without paradigm hostility hampering their publication records, 2) help to

## Calls for Papers & Participation ...

### Peace Review

SUMMER 1998: Anniversaries in US Imperialism, 1848 - 1898 – 1998 (deadline: 28 May 1998). Nineteen hundred and ninety-eight marks the 150th Anniversary of the Treaty of Guadalupe-Hidalgo, the 100th anniversaries of the Spanish-American War, Hawaii's annexation & the repression of the Ghost Dances. At the end of the last century US expansion originated relationships within and among peoples of Asia, the Pacific and the Western Hemisphere that influence the world's history now as throughout the 20th century.

WINTER 1998: Overcoming Linguistic Violence (deadline: 20 July 1998). From the war on drugs to aggressive cancer treatment, violent metaphors infuse the consciousness of our culture. "War" could be said to be one of its generic metaphors, a metaphor which shapes our ways of being in the world and with others. Language is inextricably implicated in all forms of human life and relationships, where it is a vehicle of power and discrimination as well as of intimate relation. For this issue we welcome explorations of the various ways in which violence is perpetrated in and through the use of language, explorations undertaken with a view to finding ways to overcome such violence.

SPRING 1999: Media and Democratic Action (deadline: 16 January 1999). Is it possible to seize a democratic public sphere from the jaws of transnational media conglomerates? PR calls for critical academics, media activists, practitioners and producers to address issues such as: the notion of "public interest," the role of public media systems in the creation of a democratic public sphere, the role of media policy in helping or hindering democracy, the dissemination of radical claims through alternative, community and mainstream media, the education of media workers re: democracy, and the utilization of information technologies for and against democracy.

ONGOING: Off-Theme Essays. Relevant topics include war, violence, human rights, political economy, development, culture and consciousness, the environment, and related issues. (Same deadlines as above.)

WRITER'S GUIDELINES: Peace Review publishes Essays, not Articles. They are intended for a wide readership both inside and outside of academia and the peace movement. We are looking for both research and perspectives on the cultural and political issues surrounding the conflicts occurring between nations and peoples. WE are a transnational journal (distributing to more than 40 nations), and thus want to avoid speaking in the voice of any particular national culture or politics. We seek short (maximum 3500 words), readable, jargon-free essays. Include a 1-2 sentence professional biography of yourself, and your email address, if available. Manuscripts and disks cannot be returned.

Manuscripts (2 copies, double-spaced) MUST be sent BOTH on paper and on computer disk (preferably IBM but MAC or ASCII text okay) to: Robert Elias, Peace Review, Peace & Justice Studies, University of San Francisco, 2130 Fulton Street, San Francisco, CA 94117. Fax: 415-388-2631/422-2772 Ph:

415-422-6349. Email: eliasr@usfca.edu

When writing your Essays, please observe the following: (1) We need a short title--we do NOT run titles divided by a colon (2) We do not run figures or tables but can run drawings or photos (3) We do not run subheadings but we do make periodic breaks in the text using drop-caps (in the style of literary journals). To indicate where you would like breaks, skip an extra line in the text (4) We do not run footnotes or endnotes but we do print a short list of "Recommended Readings" at the end of each essay, if the author so desires.

We welcome correspondence, and will publish short letters. We also want to recommend good new books, and distributors of good, progressive videos, and will publish favorable short reviews--not more than 800 words each. We also publish "Peace Profiles" comprised of short biographies of distinguished peace activists, broadly defined, from around the world.

### Injustice Studies

INJUSTICE STUDIES is a refereed

international electronic journal that helps focus academic attention on the study of injustices around the world. The editors welcome essays devoted to understanding the nature of injustice, types of injustice, and the history, politics, and moral psychology of particular injustices, ranging from global to local events. Disagreements over which injustices warrant attention also are part of the problematique of IS. Since IS has an interdisciplinary orientation, its articles should aim to be accessible to the general reader. Please send abstracts of articles for future issues to: <twsimon@rs6000.cmp.ilstu.edu> or Thomas W. Simon, 4540 Philosophy, Illinois State University, Normal, Illinois 61790-4540.

The first issue is located at: <http://wolf.ist.ilstu.edu/injustice/>

Contents Include: A Matter Of Extreme Cruelty: Bride Burning And Dowry Deaths In India. Partha Banerjee

Underestimating the Magnitude of International Crime: Implications of Genocidal Behavior for the Discipline of Criminology. George S. Yacoubian, Jr.

International Use of Force to Suppress Genocide. Kenneth J. Campbell

Turmoil Among Nations. Fred W. Riggs

Sex, Race, and Granite: One More Lesson From the Vietnam War. Tom Digby

Francisco's New Shoes. W. E. Gutman

Juvenile Justice in Honduras: Chaos, Corruption, and Impunity. W. E. Gutman

Contact: Thomas W. Simon, 4540 Philosophy, Illinois State University, Normal, Illinois 61790-4540. (309) 438-286. (309)

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438-8028 (Fax).

## Contemporary Justice Review

CONTEMPORARY JUSTICE REVIEW, a new journal focusing on social justice issues, invites submissions for a special issue on "Coalition Building/Radical Alliances." We seek papers that explore ways in which otherwise disparate people and groups are brought together to forge new connections and partnerships that challenge existing inequalities and injustices. These may include alliances across the barriers of one or more of the following: gender, race/ethnicity, class, sexual orientation, culture, nationality, religion, age, and ability. Possible topics could include practical and theoretical aspects of coalition building, the significance of coalitions for accomplishing social change, and how identity politics and difference can impede and/or make possible the creation of new alliances. We are interested especially in personal accounts wherein authors examine the processes of coalition formation on both the interpersonal and group/structural levels. Cross-cultural, international, interdisciplinary, and academic/ non-academic papers are welcome.

DEADLINE for submissions of one-page abstracts is April 30, 1998. Notification of selected abstracts will be made by May 30, 1998. Completed papers will be due by September 30, 1998.

For further information please contact either of the guest editors: Jill M. Bystydzienski, Department of Sociology, Franklin College, Franklin, IN 45131, Phone: 317-738-8270, E-mail: BYSTYDJ@Franklincoll.edu. OR Steven P. Schacht, Department of Sociology, Montana State University, Bozeman, MT 59715. Phone: 406-522-7466. E-mail: SPSCHACHT@aol.com

## University of South Florida

The Department of Criminology at the University of South Florida is pleased to announce that it is accepting applications for admission to its new doctoral program. Consistent with USF's mission to provide a superior graduate educational experience, and in order to enhance the doctoral experience for graduate students, the Criminology Department will operate a limited enrollment program with 4 to 6 openings per year. USF is among the 12 largest Universities in the U.S. in terms of enrollment, and is located 20 minutes from downtown Tampa and 40 minutes from St. Petersburg. For further information concerning this program, contact: Michael J. Lynch, Doctoral Program Director, Soc-107, Department of Criminology, University of South Florida, Tampa, Florida, 33620-8100. 813-974-8148. mlynch@luna.cas.usf.edu.

## Call For Participation

WESTERN  
ASSOCIATION OF SOCIOLOGY AND  
ANTHROPOLOGY MEETINGS  
MAY 15 AND 16, 1998  
VANCOUVER, B.C.

Plan to participate in the meetings of the Western Association of Sociology and Anthropology this Spring. Organized around the theme "The Challenges of Community", sessions will feature researchers and activists discussing a wide variety of issues surrounding contemporary communities including:

- \* The concepts of "community" and "citizenship."
- \* Community and populist politics.
- \* Community, Development, and Environment.
- \* Education and Community.
- \* Restraint, Volunteerism and Community in the Provision of Services.
- \* Crime and Community.
- \* Communities and Diversity

We welcome proposals for individual papers and panels dealing with these, or with any related topics. We are also particularly interested in other forms of participation, including workshops, discussion groups, displays, focus groups, and roundtables. Over three decades, W.A.S.A. has established a tradition of supporting progressive scholarship. Along with our keynote speaker, Sunera Thobani, we extend a special welcome to new members and to community groups interested in contributing to our forum. Proposals and requests for information can be directed by e-mail, fax, or post to:

Western Association of Sociology and Anthropology,  
c/o Kwantlen University College  
12666-72nd Ave.  
Surrey, B.C. Canada V3W 2M8  
FAX: (604) 599-2279  
email: wasa@kwantlen.bc.ca

MODERN CRIMINAL INVESTIGATION,  
ORGANIZED CRIME & HUMAN RIGHTS  
21-25 SEPTEMBER 1998  
SUN CITY, SOUTH AFRICA

WHO SHOULD ATTEND: International and local Police Management; Crime Investigators; Criminal Justice Departments; Customs and Excise; Academics; Policing Agencies; Institutes; Security; Corporations; NGOs; CBOs; Interpol; Forensic Experts  
CALL FOR PAPERS: Oral papers are limited to a summary of a 20 minute paper. Posters papers for presentation in a poster session, should consist of a description of the theme. Prospective authors for oral and poster papers should complete and return the reply form TOGETHER WITH A 300 - WORD ABSTRACT (PLEASE SEE THE WEBSITE FOR INSTRUCTIONS) not later than 29 May 1998. Authors will be informed of the acceptance of their papers by 15 June 1998. Papers will only be accepted on the

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understanding that the main author or a co-author will personally present the paper.

**TOPICS FOR DISCUSSION:** Modern Criminal Investigation: New trends in investigation techniques and tactics; Scientific and forensic investigation and evidence; Physical evidence; Investigation of violent and serial crimes; Computer-related crimes/Admissibility of computer generated evidence; Crime investigation management; Intelligence & Convert actions; Tracing techniques; Organized Crime; Computers in committing and combating offenses; The proceeds of crime; Human Rights; Detainees; Criminal Process; Victim's rights; Cultural diversity.

These topics should be viewed against a policing background in order to obtain practical solutions, procedures and co-ordination that are in line with international human rights, for the criminal justice system. The conference will include plenary, poster, workshop and parallel sessions. The official language of the conference will be English. Reservations can only be made through the Conference Organizers on the official registration form.

**FOR MORE INFORMATION AND ONLINE REGISTRATION PLEASE VISIT THE CONFERENCE WEBSITE AT:**

<http://www.trsa.ac.za/wccrime.htm>

Contact: Franci-Mari Botha OR Mignon Potgieter at tel + 27 11 442-6111 or fax + 27 11 442-5927

(E-mail [cpjhb@jhb.lia.net](mailto:cpjhb@jhb.lia.net)) for more information.

**DEADLINE DATES** Submission of abstracts: 29 May 1998.  
Notice of Acceptance: 15 June 1998.

## AMERICAN SOCIETY OF CRIMINOLOGY

11-14 NOVEMBER 1998

WASHINGTON, D.C.

I would like to invite members of the Division on Critical Criminology to submit paper proposals/abstracts to the Political Economy Division of the 1998 ASC Program. I am hoping to receive papers that examine social justice, crime, and punishment issues from a political economy perspective using a variety of methodological techniques. Also, if you have graduate students who are doing work in this area, please encourage them to make submissions. Please make all submissions directly to me (snail mail, e-mail, fax, and phone numbers listed below). The deadline is MARCH 31, 1998.

Dr. Susan M. Carlson, Department of Sociology, Western Michigan University, 1201 Oliver Street, Kalamazoo, MI 49008.  
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institutionalize critical scholarship in a way that could not be easily refuted by right-wing colleagues and would serve to move our peers through the ranks more quickly and to a point where they could be role models for junior crits and be overall more politically effective in their praxis, and 3) take the publishers on politically by removing profit from the equation. In this way, academics would not be ripped off for their hard work, and students would not be ripped off at the other end when buying books/journals." So, the journal needs each member of the division to urge their library to take out a subscription. The details are in this issue of the newsletter.

### *Policy and Direction: Issues for 1998*

The redirection and self-reflection of the past months will hopefully spur us all to new heights. Beyond the organizational questions what are the key substantive issues for critical criminology in 1998? A few concerns are: the expansion of the invasion of privacy from satellites for an \$11 subscription; the expansion of the prison building program (in Michigan Engler wants to build five more prisons) at a time of falling crime rates; the false celebration of community policing as the solution to the crime problem which may be more a reflection of the absorption

of street crime into the privacy of publicity-shy corporations and the growth of the unpoliced hidden economy; the failure of traditional radical feminism to accommodate to the new 90s feminist resistance to alienation, and the new feminists' valuable investment in developing their own empowering agendas that don't validate those of males; the expansion of information freedom through the web while technology increasingly disempowers the already powerless; the McDonaldization of journalism in the form of universal tabloid presentations of crime; the replacement of social science, especially sociology of crime and deviance from mainstream U.S. bookstores with sections on "true crime." Any more food for critical thought? Let us know your thoughts on the key issues for 1998 and we'll selectively publish these in the next issue (Spring/Summer, 1998).

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# Tragic Irony: State Malfeasance and the Oklahoma City Bombing Conspiracy

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malfeasance *n. Law.* Misconduct or wrongdoing; especially, wrongdoing that is contrary to official obligations.

Today there is a growing tendency among criminologists, and members of the general public alike, to believe that criminal trials are accurate prisms through which to view history. They are not. No other case in recent memory demonstrates this better than the *United States of America v. Timothy James McVeigh*.

The McVeigh trial lasted nearly three months and produced some 5,000 pages of transcripts based on the testimony of 162 witnesses. Add to this the fact that the FBI conducted more than 21,000 interviews for McVeigh's grand jury hearing, introduced into evidence more than 5,000 photographs and a 293-page inventory of telephone calls made by McVeigh and his coconspirators, and you have a bounty of qualitative data larger than any criminologist can work through in a lifetime.

There was a twofold purpose for this mountain of information. The first was to fairly try and convict McVeigh on eleven murder and conspiracy counts related to the Oklahoma City bombing, and sentence him to death for them. That the trial did, in spades. The second purpose was to answer a profoundly important question for the people of Oklahoma City--thousands of people whose lives have been irreparably damaged by the bombing: Why? Why did the bombing occur? That the trial failed to do, also in spades.

It is a tragic irony this. For within that mountain of data on the bombing lies not one but several related explanations for Timothy McVeigh's criminality, the conspiracy he forged, and the unutterable suffering that it caused. The purpose of this essay is to move beyond the most commonly-known explanation: That McVeigh detonated his truck bomb in front of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, to revenge the government's actions against the Branch Davidians at Waco, Texas, on April 19, 1993. In other words, had the FBI *not* been complicitous in the deaths of some 80 innocents at Waco, then McVeigh would *not* have taken his revenge in Oklahoma City--killing 168 defenseless people, including 19 babies. This gives rise to a question that is best left to the philosophers: Was Oklahoma City the moral equivalent of Waco?

But for those of us who struggle with more practical matters, there is a second and equally compelling question: Could the Oklahoma City bombing have been prevented? Below are eight reasons to believe so. Each section is derived from the *U.S. v. McVeigh*; they are supplemented with information leaked to the press during the grand jury investigation, media accounts and biographies of the conspiracy, and my own ethnographic study of McVeigh's travels in the Mojave Desert in the weeks prior to the

blast. Unless otherwise noted, the sources used in the essay are documented in my book, *Apocalypse in Oklahoma* (Hamm, 1997). There, but highlighted here, I tell the story of government bureaucrats--military recruiters and commanders, county sheriffs and state and federal law enforcement agents--who are distinguished only by their extraordinary malfeasance of duty.

## I. The Army Recruiters

On the same day--May 24, 1988--three men from markedly different backgrounds--Tim McVeigh, Terry Nichols, and Michael Fortier--enlisted in the U.S. Army, each for a three-year hitch. McVeigh joined at the recruiting office in Buffalo, New York; Nichols at the office in Flint, Michigan; and Fortier in Phoenix. Yet had the army conducted some simple background

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checks--as simple as the employment checks imposed on anyone who applies for a job at your local county jail--it would have rejected both McVeigh and Nichols straightaway. Then there would have been no conspiracy, and today Oklahoma City would not be a monument to human suffering.

Some thirty days before he enlisted (in April, 1988), twenty-year-old Timothy McVeigh was cited by New York state troopers for creating a public disturbance in rural Cattaraugus County. According to the complaint, McVeigh and a friend were using a remote section of land as an unauthorized firing range. "It sounded like a war out there," recalled the complainant. In their official report, the troopers were also quick to point out the intensity of McVeigh's firing, noting: "It sounded like bombs were being set off on the property."

At the time, McVeigh was employed as a security guard working out of a bleak cement depot in Cheektowaga, near Buffalo. He delivered bags of money to and from local banks and businesses. This allowed young McVeigh to acquire a permit to carry a concealed weapon, something he took full advantage of. According to his co-worker on the armored truck deliveries, Jeff Camp, McVeigh started bringing his own high-powered guns to work. This unrestrained use of lethal weaponry manifested itself in various displays of emotional instability on McVeigh's part (including hyperactivity, talking to himself, and loud

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shrieking for no apparent reason), culminating in an incident which clearly indicated that McVeigh had crossed a dangerous psychological line. One day, in what McVeigh would call a "joke," he showed up at the depot with a rifle in one hand, a sawed-off shotgun in the other, and bandoliers filled with shotgun shells slung in an "X" over his chest. "He came to work looking like Rambo," Camp recalled. "It looked like World War III."

The trial brought to light another development. McVeigh came from Pendelton, New York, a small town on the banks of the Erie Canal. During his formative years, in all likelihood McVeigh never met an African American. Yet the armored-truck deliveries demanded that he and Camp make regular trips into inner city Buffalo, where McVeigh was introduced to the dangers of ghetto life. In response, McVeigh is believed to have become a card-carrying member of a southern faction of the Ku Klux Klan.

In the words of his ex-wife, Lana Padilla, Terry Nichols was "a basket case." Nichols's biography reveals a litany of personal and occupational failures. Between his high school graduation in 1973 and his enlistment in the army at the unusual age of 33, Nichols held dozens of jobs--from farm hand and real estate agent to a farm elevator clerk. At each of these, Nichols proved to be a loser; and by 1987, he had become a severely depressed shut-in. According to Lana, Terry was spending his days "staring into space, staring at nothing for hours on end....I even feared he might commit suicide."

Beyond that, both Terry and his brother James were known to hold viciously antigovernment views. A short conversation with most any patron of the Decker Bar or the Poverty Nook Cafe (in Decker, Michigan) would have shown that the Nichols brothers were trouble. "There isn't a neighbor around," one resident said, "who didn't say they [the Nichols brothers] were nuts and off the wall."

In fact, it was here in Decker that the seeds of the conspiracy were planted. On April 1, 1988 (on Terry Nichols's 33rd birthday), the Associated Press broke a story about the sedition trial of former members of a neo-Nazi terrorist group from the Ozark Mountains of Arkansas, known as the Covenant, the Sword, and the Arm of the Lord (CSA). This newspaper article--a copy of which was passed to James Nichols by one of his antigovernment friends--told the story of CSA member Richard Snell's 1983 plan to bomb the Murrah Federal Building in Oklahoma City, a plot that had been inspired by a science fiction novel entitled, *The Turner Diaries*.

So, these facts alone--McVeigh's citation for excessive target practice, his well-known fetish with weaponry, and his suspected affiliation with the Klan, along with Nichols's poor employment record, his severe psychological depression, and his well-known involvement in antigovernment circles--should have caused the army recruiters to reject McVeigh and Nichols in a New York minute. Instead, the army brought these two extremely disturbed men together for thirteen weeks of military training at Fort Benning, Georgia. The United States Army, then, more than any other individual or group, provided the most important source of indirect support for the terrorism that would later occur in Oklahoma. This is so because the army provided the mechanism by which the conspirators were brought together in the first place.

## II. The Pre-War Commanders

U.S. Defense Department policy on political extremism is unambiguous. It states that "Military personnel must not participate in organizations that espouse supremacist causes...or advocate the use of force or violence." If soldiers violate this regulation, then "Commanders are empowered to deal with violators [using steps ranging from] court martial to discharge." Not only could this policy have been used to reject the enlistments of McVeigh and Nichols, its implementation could have averted the conspiracy before it took root.

By 1990--with the Persian Gulf War looming on the horizon--McVeigh, Nichols, and Fortier had been transferred to Fort Riley, Kansas, where they joined the army's First Infantry Division, long known as the Big Red One. Because of his stellar performance as a soldier, McVeigh had achieved the status of a "water walker"--one who advances in rank well before others of the same military cohort. As a result, Sergeant McVeigh now supervised 35 soldiers of the Big Red One. And he used the authority of that office to advance an extremist cause.

A year earlier, McVeigh had purchased a copy of *The Turner Diaries* through a survivalist magazine; it was mailed directly to him at Fort Riley. With this, McVeigh discovered a political obsession to match his fetish for weaponry. "He took the book to the field and read it for three weeks," testified infantryman William Dilly, McVeigh's roommate at the time. "He said it was really wild and tried to get me to read it." McVeigh then pressed the *Diaries* onto at least a dozen other soldiers; including the receptive Michael Fortier, marking an important stage in his political transformation.

Others under his command have testified that McVeigh was a hardcore racist, who often assigned latrine duty and other



undesirable tasks to black soldiers. This, along with his proselytizing of *The Turner Diaries*--a well-known terrorism manual--was a blatant violation of army regulations prohibiting troops from participating in extremist activity. Sergeant McVeigh had done precisely that; and there is no indication that his commanding officers ever did a thing to stop it. Rather than bureaucratic malfeasance, then, this activity more closely resembles what Barak (1991) has termed a crime of omission--a crime that ultimately provided another crucial source of indirect support for the terrorism that would later occur in Oklahoma.

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### III. The Post-War Commanders

The Big Red One arrived in Al Khobar, Saudi Arabia, in January 1991. Killing was everywhere. As allied bombers pounded Iraqi defenses in Baghdad, commanders were laying plans for a land war. By all accounts, Sergeant McVeigh spent his first days in the Gulf aboard a Bradley fighting vehicle, cleaning his 25 millimeter cannon and preparing himself for the killing. His chance came with George Bush's ground invasion of Kuwait on February 24.

McVeigh's Alpha Company was among the lead units crossing into southern Iraq. Soldiers aboard McVeigh's Bradley have testified that, first, the gunnery sergeant forced the surrender of dozens of stunned Iraqis by laying down a vicious hail of fire above their trench line. Then he was assigned to take out an enemy vehicle; that is when McVeigh killed his first human being. Then he killed another. Spotting an Iraqi walking out of a bunker fifty yards away, McVeigh blew the Iraqi's head off with one shot. Then came McVeigh's greatest kill, one that would earn him the award for Meritorious Achievement With Valor, one of five awards bestowed upon McVeigh for his performance in Operation Desert Storm. Spotting a fortified Iraqi gun nest about ten football fields away, McVeigh took aim with his missile firing system and annihilated it, killing at least two more Iraqis. After that, McVeigh witnessed one of the greatest massacres of modern warfare: the slaughter of thousands of retreating Iraqi soldiers on the Basr road. "Everybody who saw that terrible event was deeply affected by it," said McVeigh's commanding officer, Captain Terry Guild. "[W]e wandered for miles through hundreds of blackened bodies....McVeigh, like the rest of us, was pretty sickened."

Yet neither Guild or any other commanding officer took steps available to them through the Department of Veterans Affairs to have McVeigh diagnosed and treated for the post-traumatic stress disorder that he clearly experienced on his return to the States from Desert Storm. There is also the possibility--suggested by other Alpha Company soldiers--that McVeigh was exposed to mustard gas during the invasion, and may have suffered from Gulf War Syndrome (Franklin, 1997). Hungover from the high noon excitement of the killing fields, separated from his battle buddies, and abandoned by a military which--by policy--has a moral obligation to decompress all of its men and women when they come home from war, McVeigh was left alone to his own highly unstable devices. He began a slow deterioration.

### IV. The Phoenix Police

On or about September 9, 1993, two undercover officers from the Phoenix Police Department, working a gun show at Memorial Stadium, came upon a table displaying a flare gun, advertisements for a rocket launcher being sold by one Tim Tuttle, numerous copies of *The Turner Diaries*, and photocopies of the name and private address of Lon Horiuchi, the FBI sniper who killed Vicki Weaver during the standoff at Ruby Ridge, Idaho, in 1992. The thin young man behind the table was wearing a baseball cap bearing the letters ATF surrounded by black dots simulating bullet holes.

An officer asked him about the purpose of the flare gun. "He took a shell apart," said a report from the Phoenix PD, "and showed that the interior could be removed and another package put in that could shoot down an ATF helicopter." This man was Tim McVeigh. "Tim Tuttle" was his alias.

Since resigning from the army on the last day of 1991, McVeigh had spent much of the past two years wandering the gun-show circuit, peddling weapons and absorbing the end time thinking of the nascent American militia movement. Along the way, he experienced a personal reckoning.

Shortly after the Bureau of Alcohol, Tobacco and Firearms (ATF) raided the Branch Davidians on February 28, 1993, McVeigh traveled to Waco, where he joined a militia-organized protest against the government. He returned to the Nichols farm in Decker several days later, carrying a ton of hate. On April 19, in front of a television set alongside Terry and James Nichols, McVeigh watched in horror as David Koresh and his followers perished in a blaze of chemical flames. He immediately returned to Waco. For the second time in four years, McVeigh walked through the charred remains of a military apocalypse. That might have been the end of it had he not then joined Mike Fortier in Kingman, Arizona; where McVeigh became a regular user of crystal methamphetamine.

It is well-known that crystal meth is a central nervous system stimulant that causes extreme euphoria and paranoia. It can also lead to "precipitous and unarrested assaultive behavior," according to a prominent Harvard study. It is also well-known that some of the most powerful crystal meth in the world is produced in the clandestine labs of the Mojave Desert. Such a powerful drug is, of course, the last thing a lonely, post traumatic stress-disordered combat vet should get involved with; especially one who has immersed himself in the conspiracy theories of the *Diaries*, in the vitriol of militia rhetoric, and who has made two pilgrimages to Waco.

However, the Phoenix Police Department would turn a blind eye to McVeigh's festering criminality. Despite his bold threat to "shoot down an ATF helicopter," the Phoenix PD failed to pass McVeigh's name (or his alias) along to either the ATF or the FBI, in order to create a security file on him. This failure to communicate across organizational jurisdictions was only the beginning of a pattern of law enforcement malfeasance in the McVeigh case.

### V. The Arkansas State Police

The conspiracy bloomed upon McVeigh's return to Decker in early October, 1993; where along with the Nichols brothers, he began setting off pipe bombs in preparation for a larger mission. Such was the nucleus of the conspiracy, and McVeigh would soon make numerous attempts at recruiting others into its innercircle.

The first indication of this occurred on October 12, 1993. On a rural highway north of Fort Smith, Arkansas, a state trooper stopped McVeigh for speeding. The route on which McVeigh was stopped was not part of a main thoroughfare, and was one of two roads leading to the remote, self-contained community of Elohim City--a community of neo-Nazis, Klansmen, and other antigovernment activists. Richard Snell--the originator of the plan to bomb the Murrah Federal Building--was Elohim City's cause

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célèbre; at the time, Snell was awaiting execution in the Arkansas state prison for murder. (He would, in fact, be lethally injected on April 19, 1995--the same day that McVeigh bombed the Murrah Building.) Snell's execution warrant had been signed back in 1985 by Arkansas governor Bill Clinton--the same public official, of course, who had approved the final solution to Waco.

Had the Arkansas state trooper been sensitive to the violent elements at Elohim City (they had been well-documented in the Arkansas press), the officer would have entered McVeigh's name into the national crime information network. Few people go to Elohim City and it is likely that even fewer drive there like a

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maniac. Such an offense would have been duly noted by the police had it occurred, for example, on the road to the Aryan Nations compound near Couer d'Alene, Idaho. Such reporting could have been the beginning of a security alert on McVeigh, making up for the slipshod police work in Phoenix. But, again, that did not happen.

#### VI. *The Sanilac County Sheriff*

The best information on the conspiracy comes from Michael Fortier's trial testimony. With respect to McVeigh's leadership strategy, that testimony reveals a chilling story. It is clear that McVeigh repeatedly tried to come between Fortier and his family, attempting to separate Fortier from his wife and children so that Fortier could fully participate in the bombing plot.

The record shows that McVeigh "couldn't handle" being around Fortier's two babies, and that McVeigh accused Fortier of being domesticated. "He said it like a curse word, as if that was something bad," Fortier recalled. "He [McVeigh] was urging me to leave my wife and travel with him on the road...like desperados." Fortier became so fearful of McVeigh that he began packing a gun when in his presence, saying that McVeigh "was

giving me these negative vibes." He used the same tactic on Terry Nichols; only to greater avail.

On the morning of November 22, 1993, Terry was standing outside the farmhouse, waiting on a truck to pick up some of his corn crop. Suddenly, his wife--a Phillipino mail-order bride named Marife--bolted out of the house crying and screaming. Terry ran back inside and found her two-year-old child from another liaison (a Phillipino liaison) lying behind his bedroom door with a plastic bag covering his head and shoulders. Terry tried in vain to revive the boy, but it was no use. A report filed by the Sanilac County Sheriff's Department indicated that young Jason Nichols died by accidental suffocation. Yet the report also said that Marife was adamant that "this could not have happened by accident, that someone had to have intentionally done this to her baby."

The report indicates that Mr. and Mrs. Nichols were in the company of a houseguest, incorrectly identified as "Jim Tuttle." Terry's ex-wife, Lana, also recalled an occasion when McVeigh (Tim Tuttle) said that he "didn't like kids." But there was something much darker going on here: McVeigh had a delusional fascination, aggravated by the crystal meth, for *The Turner Diaries* which despised what it called the "Oriental approach to life." All of this--including the possibility that Jason's death was a hate crime perpetrated by McVeigh--went uninvestigated by the Sanilac County Sheriff.

Marife soon left Terry Nichols and returned to the Phillipines. Depressed, bitter, and grieving, over the next several months Terry deepened his resolve to participate in the conspiracy to bomb the Oklahoma City Federal Building. And that would require money.

#### VII. *The Garland County Sheriff*

On the morning of November 5, 1994, a gun dealer named Roger Moore stepped out the back door of his rural Arkansas home to feed the ducks. He was suddenly confronted by a man wearing camouflage, a black ski mask, and gloves. In the intruder's hands were a pistol-grip shotgun and a garrote wire. After bounding and blindfolding Moore with duct tape, the man entered Moore's house and robbed him of sixty-six firearms, \$8,700 in cash, and other valuables worth some \$50,000.

After working himself loose, Moore found his telephone wires cut and went to a neighbor's house to call the Garland County Sheriff's Department. Moore later told the Sheriff, in no uncertain terms, that he knew a young army vet from the gun shows who might have been involved. His name was Tim McVeigh. Remarkably, however, the Sheriff failed to report this crime to federal authorities. In fact, according to Moore (and confirmed by my own research on the crime), the Sheriff failed to pursue the lead on McVeigh altogether.

Two days later (on November 7, 1994) Terry Nichols rented a storage unit in Council Grove, Kansas, under the name "Ted Parker." Into that locker he moved the hardware from the Moore robbery. On December 17, McVeigh and Fortier arrived at the Council Grove locker where they split possession of twenty-five of the stolen guns. McVeigh then left for Michigan driving a gray Spectrum; Fortier headed back to Arizona in a rented Ford Crown Victoria. At the moment that they independently crossed the Kansas border, both McVeigh and Fortier became guilty of conspiring to transport stolen firearms across state lines, a federal

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offense.

#### VIII. The Arizona Highway Patrol

With proceeds from the Moore robbery, McVeigh brought the conspiracy to full bloom. By March 1995, he and Terry Nichols had gathered most of the composite materials for the bomb, and had stored them in rental lockers in rural Kansas. McVeigh's Spectrum was totaled in a rear-end collision in Sanilac County (there is no police record of the accident), so he bought a 1983 Pontiac Sunbird from James Nichols, and retreated to Kingman where he stayed in a series of seedy motels along Route 66. By this point, the severe problems associated with McVeigh's post traumatic stress disorder, his physical and psychological deterioration, and his meth-induced paranoia, had also reached full bloom. "[I]n only a short 1-2 years," McVeigh wrote in a letter to a Michigan friend in late February,

*my body will slowly start giving away....Might as well do some good while I can be 100% effective!...[M]y whole mind set has shifted, from intellectual to animal. Rip the bastards heads off and shit down their necks!, and I'll show you how.*

Indeed he would. On April 19, the second anniversary of Waco, McVeigh would unleash upon the world's consciousness a spectacular blue centerlight of evil. Yet the horror in Oklahoma City could have been prevented--not might have been prevented, but *could* have been prevented--if only law enforcement agencies had fulfilled their official obligations to communicate with one another, and to pursue known criminals. Here is the upshot of their errors:

Had the Garland County Sheriff's Department passed on McVeigh's name to the ATF following his involvement in the armed robbery of Roger Moore (a standard operating police procedure when such a large cache of firearms are stolen from a private residence), the ATF could have run a background check on McVeigh. Had the Phoenix Police Department, the Arkansas State Police, and the Sanilac County Sheriff done *their* jobs, the ATF would have discovered McVeigh's almighty threat against the agency at the Phoenix gun show; McVeigh's connections to the neo-Nazis at Elohim City; and his possible involvement in the homicide of Jason Nichols. That would have been more than enough to attract the attention of experts at the FBI's counterterrorism unit, giving them probable cause to issue an arrest warrant for McVeigh and his Pontiac Sunbird.

All of this fell into place for me one morning over coffee at the Town Restaurant in Kingman, a year after the bombing. I was staying next door in Room 212 of the Imperial Hotel, conducting a virtual ethnography of McVeigh's experiences in Arizona--something that I would not wish on my own worst enemy (Hamm, 1998). Room 212 is important because that is where McVeigh made his last stand; he checked in on March 31, 1995, and departed on April 12 for Kansas, where he constructed the bomb. During those thirteen days, by all accounts (including Fortier's), McVeigh did not leave the room.

My rented Ford Mustang sits in the parking space designated for Room 212--the same space where McVeigh would have parked his Sunbird. Suddenly, into the restaurant walks two Arizona Highway Patrolmen from the State Police Post, a mere

one mile down the road. They take a seat next to me at the counter, order coffee, and start talking with the waitress. Then it dawns on me: If they turn their heads slightly to the left and look out the side window, they can see my Mustang in the hotel parking lot.

I'm back at the restaurant the next morning, at the same time.

Again, the patrolmen arrive. After making small talk about the chicken fried steak and the trout fishing down on the Colorado River, I ask how often they come to the restaurant. "Oh, most days, I suppose," replies one of the officers. This is part of their routine. I assume it was part of their routine between March 31 and April 12, 1995. Had there been an all-points bulletin on McVeigh's Sunbird, then the troopers would have been in a position to see it everyday for nearly two weeks. All that they would have had to do, then, was walk next door and take McVeigh into custody. That simple, unremarkable act would have broken the back of the conspiracy by interrupting McVeigh's all-important timetable for the bombing.

#### Afterword

An overlooked fact of the Oklahoma City bombing is that McVeigh killed a total of 87 women, leaving behind scores of

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**Y**et the horror in Oklahoma City could have been prevented — not might have been prevented, but *could* have been prevented — if only law enforcement agencies had

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of motherless children. Castine Deveroux, a 40-year-old single mother who was crushed to death beneath a huge concrete girder on the fourth floor of the building, herself left behind five anguished children. The old spiritual teaches that "Motherless children have such a very hard time." Someday those children will have to identify the source of their hard time. That source, make no mistake about it, was Timothy McVeigh. McVeigh did it, not some shadowy element known as the "militia." But to fully understand their loss, these children must realize that this story could have gone down in history as a tragedy narrowly averted, rather than the unspeakable catastrophe that it was. And in that respect, the children must also realize that they have been wronged by some very irresponsible persons working in the military and in law enforcement. This complete and naked understanding of the bombing is profoundly important. For it is the first step on the long road to recovery and, ultimately, to forgiveness.

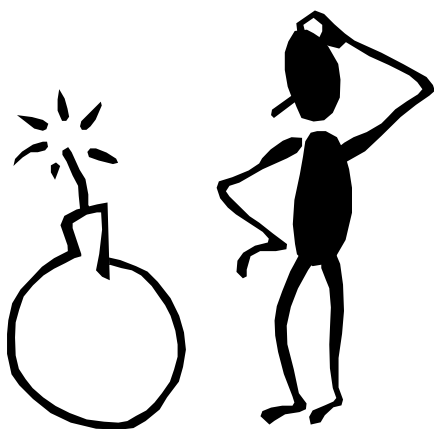
My thanks to Gregg Barak for the invitation to write this essay. I owe an especial thanks to Bill Chambliss, Richard Quinney, Martha Huggins, and Hal Pepinsky for their valuable comments on an earlier draft at a session sponsored by the Division on Peace and War at the 1997 American Sociological

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Association meetings in Toronto. Peace to all.

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## Anti-Crime Policy

WASHINGTON, DC - In a bold move designed to halt the spread of violent crime in America, President Clinton unveiled his new "Get Tough On Crime" sticker campaign Monday.

"We must send a strong message to the nation's criminals," said Clinton, displaying one of the new 3x6-inch stickers before an assemblage of reporters and law-enforcement officials. "These stickers, emblazoned with the phrase 'Get Tough On Crime!' will send a loud-and-clear message to all potential lawbreakers that crime will not be tolerated."

According to Clinton, the stickers, which feature a special "E-Z Peel" tab on the back to increase ease of peeling, should reduce crime by up to 75 percent when prominently displayed at eye level in high-crime areas.

"To those who would ignore the stickers, be warned," said Clinton, speaking directly into the television camera. "This sticker is extremely adhesive. And its message is printed in bold, upper-case, two-color type. This is not a mere show of concern. It is a serious deterrent to criminals everywhere."

A tougher version of the sticker is currently being developed for use in particularly dangerous areas. The stickers will be one square inch larger than the current ones, and will feature glitter over the words "Tough" and "Crime."

All residents of high-risk areas will also be issued a "Personal Defense Kit," which includes a set of 10 emergency-only stickers that they may apply to a nearby wall or lamp post if violently attacked.

Clinton is so confident the program will work, he says he will cut police-department budgets across the nation by 70 percent. "By the end of the year," Clinton said, "more than 100,000 police officers will be off the streets."

Despite the president's enthusiasm, many criminologists feel the program is flawed. "These stickers, while effective during the daytime, are simply not visible at night, when most crime occurs," said Georgetown University professor of criminology Anderson H. Balcomb.

In response to Balcomb, Clinton said he has already approved legislation allocating \$200 million for "the development of a special 'glow-in-the-dark' sticker that will be clearly visible in dangerous, poorly lit areas after being held up to a bright light for three minutes."

To enforce the sticker program, a U.S. Sticker Czar position has been created. "The Sticker Czar will run my new crime-fighting program," Clinton said. "And he will maintain an open-door policy through which all Americans may help themselves to the stickers free of charge by entering his office and taking one from the pile on his desk."

Law enforcement officials praised the new strategy. "Stickers have always been a powerful weapon in the hands of the police," Baltimore chief of police Roy Quinlan said. "When we applied stickers saying, 'Help Keep A Kid Off Drugs' to our patrol cars, drug use by young people immediately ceased."

# *Nothing Bad Happens to Good Girls: Fear of Crime in Women's Lives*

Esther Madriz

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In recent years, my life has been filled with stories, narratives and conversations about the significance of the fear of crime on women's lives. These stories are usually prefaced by questions such as: "I heard that you just published a book. What is it about?" My response usually goes something like this. "My book is on the impact of fear of crime on women's lives, and about how women alter their behavior to deal with this fear." Regardless of the age, race and socioeconomic class of the questioner, a cascade of anecdotes often follow my answer. Most of these stories reflect the frustration, anger, powerlessness and vulnerability that women express for "having to live my life like this," as Maria, a 22 year old Latina women who lives in Brooklyn, New York, reported, with fury and exasperation reflected in her voice:

Yes, I get very tired. Men don't have the same problem. Of course, men can be victims too. But, the sad reality is that we women have it worse. I have to think about the possibilities of crime all the time: when I get dress, when I go to some places, when I meet people, when I am looking for a job, when I go out and I have to worry about the time so I don't come home too late. All the time. It is too much. And, if you don't worry and take care of yourself, then people will say, 'See?' she asked for it.'

The major argument of my book *Nothing Bad Happens to Good Girls: Fear of Crime in Women's Lives* (Berkeley: University of California Press, 1997) validates Maria's expression: fear of crime is not "one more annoying problem" that women have to deal with throughout their lives. It is rather a significant element in the social control of women because it contributes to the perpetuation of gender inequalities that maintain patriarchal relations. Fear of crime actually infringes upon women's rights to the use of public space, to hold jobs for which they are qualified but that may be considered "inappropriate" or "dangerous" for women, to have equal access to education (many women are afraid to take evening classes or to attend schools that are located in "bad neighborhoods"), and the use of public transportation due to their fear of being chased, touched or insulted by a man wanting to have "fun."

Women are constantly reminded about the codes of behavior that they need to adhere to if they want to be safe --"sit like a lady," "don't go to certain places," "don't hang out with the wrong people," or "don't dress provocatively." These are only a few of the admonitions that girls and women have heard throughout their lives. In addition, women are told that if you want to be safe in the streets, you had better be accompanied by a man. Even at home, women are "better off" if they live with a man who can "protect" them.

An acquaintance of mine, who lives alone and in fear because she has been harassed by a man calling her over the telephone, felt that she had to change the message in her answering machine. Her present message says:

Hi, I am sorry, neither Robert nor I can come to the telephone right now. So, please leave us a message at the sound of the tone.

The reality is that Robert exists only in the answering machine to guard her against possible harassment. Thus not only "real" but also "imaginary" male friends are there to "protect" women against other men's advances, perpetuating the dichotomy of women/vulnerable/in need of protection, as opposed to men/strong/protector.

One of the participants in my research, Natasha, a twenty-two-year-old white female told me that one of her friends, who commutes more than one hour several times a week between her home in the suburbs of Westchester county and school in New York City, bought an inflatable latex man that sits besides her in the car. "People believe that she is with a man and they leave her alone," she concluded, laughing.

These two examples indicate that when women do not have bodyguards available to them, some concoct one. In a post modern world of images and symbols, even "fictitious male figures" serve as protectors, making women feel safer and

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**F**ear of crime is not "one more annoying problem" that women have to deal with throughout their lives

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protected against other men!

Even people who undoubtedly believe that women and men have the same rights will respond to women's victimization by using stereotypical notions of what is "appropriate" or "inappropriate" behavior for a woman. During a discussion in one of my criminology classes, a large number of the students responded to the crime committed against the woman banker who was raped while jogging at Central Park in New York City several years ago with questions similar to the following: "Doesn't she know better?" "What was she doing at Central Park alone?" "She was really looking for it." Very few people responded to this situation by demanding, for example, that the city must offer safer places where women can jog without having to worry about their safety.

Today, fear of crime has become a major social problem in

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the United States. Even though statistics show that crime is decreasing, several surveys indicate that fear of crime has actually increased. For example, the National Law Journal's

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second poll of public attitudes toward crime indicated that between 1989 and 1994 the number of persons reporting that they are "truly desperate about crime," almost doubled (Sherman 1995/96).

Fear of crime is exacerbated by the mass media, which constantly fills our "pre-sleep" moments with the most infamous crimes of the day. This is especially true of the nightly news and news magazine programs. Although criminologists know that most violent crimes are committed by people who know their victim, media coverage continues to focus on rape and murder and on the figure of the "sexual predator" or the stranger lurking in the dark, waiting for his victim. Intimate crimes are news only if they are committed by a super star such as OJ Simpson, an African American man, against a white woman, Nicole Simpson.

In California, San Franciscans and other Bay Areas, recently had their dose of media terror, represented in the image of a sexual predator who was recently captured and accused of a series of rapes. For several weeks, local television and the newspapers were filled with accounts of this event, in spite of the fact that we know that crimes such as the ones committed by the "Bay Area rapist" are a rarity. The sketch of the alleged rapist presented in newspapers and TV news, a Black man in his early 20s, raised alarm in the African American community and among other groups concerned with the stereotypical depiction of criminals. They claimed that the profile was somehow "generic"

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## **m**edia coverage continues to focus on rape and murder and on the figure of the "sexual predator" or the stranger lurking in the dark, waiting for his victim

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and that it elevated fears of all young Black men living in the Bay Area (Lee and Fagan 1997, A-1, A-13). The attacks, predominantly against female college students, prompt many women to enroll in self defense classes. Retailers also reported a sharp increase in the sales of pepper spray. One store sold so many canisters of peppe spray that the store run out of them. The store manager reported that "99% of the women buying them are doing so because of the attacks" (Lee and Fagan 1997, A13). This example vividly illustrates the strong association between the media reporting of an incident, the fear it provokes among women, and the activation of mechanisms women use to protect themselves against possible incidents of victimization.

However, the media is not solely responsible for reproducing these racist, classist and gendered images of criminals. From early childhood, women are taught to be afraid of strangers lurking in the dark. The story of *Little Red Riding Hood*, which was read to many of us, usually by our mothers in the safety of our bedrooms, is a good representation of the image of a "good girl" attacked by a dark, scary figure lurking in the dark. The virtuous girl is sent into the woods to fulfill a typical

female nurturing activity --to bring food to her sick grandmother. After prowling in the shadows, waiting for her pray, the mischievous wolf attacks the two women, who are swallowed by the beast without any resistance on their part. Another male figure, now white and fatherly, opens the stomach of the beast and rescues the two petrified women.

Stuart Hall and his colleagues, in their famous book *Policing the Crisis*, explain how the discourse surrounding crime serves as an ideological conductor deflecting criticism from the state agencies that have failed to deal with pressing social issues such as poverty, unemployment and inequalities of race, class and gender. Instead, they blame those who seem "threatening" for the failure of the state to solve these problems. It also justifies repressive policies against those considered "dangerous," defining them as outlaws. These policies and the conservative ideology surrounding them are expressed in recent backlash against people of color, immigrants and women. A few examples of these backlash are the passing of proposition 209 in California, the new anti-immigrant laws, and the current attacks on feminism by the media and by conservative ideologists (Faludi 1991).

Many studies on fear of crime report "paradoxical" that women are more afraid of crime than men. They attribute women's elevated levels of fear of crime to multiple reasons, ranging from women's "irrationality" to the higher vulnerability of women. One of the major contentions of my book is that fear of crime is higher among women because it is a very important element in the ideological repertoire of a society strongly divided along race, class and gender lines. In fact, I argue that fear of crime is one of the most important elements in the perpetuation of social inequalities especially gender inequalities.

In the conservatism that permeates contemporary social and political life in the US, the discourse on crime and especially the fear that it produces, play into the conservative agenda --people should be afraid of poor men of color and women are the "innocent victims" of strange predators. Contrary to what crime statistics show, when asked "Who is more likely to be the victim of crime?" a majority of the one hundred and forty women interviewed in my study echoed the response of Nancy, a 19 year old white woman --"women, of course." In addition, most women's narratives discussing their fears placed strangers at the center of such fears, despite the reality that most violent crimes committed against women are committed by someone they know (Stanko 1993).

Interestingly, although women of color are more likely to be victims of crime than anglo women, a large number of participants expressed their belief that white women had higher levels of victimization. During a focus group of Latina teenagers which took place in Brooklyn, New York, the participants vividly shared their ideas:

White women are more victims because they do not know how to fight.

We do; we know how to take care of ourselves.

This why they do not mess with us.

But white girls are afraid of everybody, of Latinos, of Blacks. This is why they are more victims. They have it worse.

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Since I was a little girl, I have had to look after myself. So, I know how to do it. White girls have always somebody looking after them; this is why they do not learn how to protect themselves.

According to Nils Christie, "ideal victims," are "a person or category of individuals who --when hit by crime-- most readily are given the complete and legitimate status of being a victim" (1986, 18-30). The typical image of the ideal victim is the innocent person who is robbed, assaulted, mugged, or killed, but who cannot be blamed for his or her own victimization. On the contrary, "culpable" victims are those who, when victimized, are considered "blameworthy" because they should not have been in

the place where the victimization occurred, or they were in the wrong company, or they should not have dressed in a certain "provocative" outfit, or they should not have been drinking.

Not surprisingly, the ideal or good victim shares many of the qualities that the conservative ideology attributes to a traditional, family-oriented, white middle-class woman. These are women who dress properly, who do not go the wrong places, who don't drink or do drugs, who are always in "good company." As Pilar, a white, middle-class woman who participated in my study said:

You just have to prevent something from happening. I know that I am extremely careful. I don't dress provocative, I don't go out at night by myself, I don't go to dangerous places, I don't wear jewelry. If I go out I don't drink. What for? Better safe than sorry. If something happens it's just bad luck, but I don't take any chances.

Images of women of color as seductresses, "inviting trouble" were also expressed by some participants in the study. A group of white middle-class women vividly recounted during a focus group:

This may be old-fashioned thinking too... what I have heard through the years...You take the young girls today...I think...oh! They are inviting trouble...Look how some of them act when they are out on the streets...how they dress, leaving nothing to the imagination, and I only think what my mama used to say...you know? They are looking for trouble. A decent girl should not dress like that.

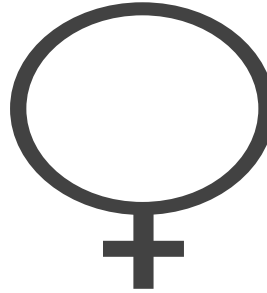
Another of the member of the group was surprisingly explicit about her association of these images with African American and Latina teenagers:

Especially some of the young... well, Black and Hispanic girls. They like to wear those tight pants... or too-short miniskirts.

Clearly, the ideology surrounding crime and the fear of crime depicted in the images of criminals and victims, have helped to foster a conservative moral agenda in which women are told to protect themselves and to be safe by adhering to specific

standards of behavior that are deemed appropriate for women.

Women who do not adhere to the strict codes of behavior set for them are considered "bad girls" and are, therefore, responsible for their own victimization. A few women, however, refuse to give up activities that are important to them or to change their lives because of their fear of crime. For example, author Andrea Todd (1994,30), who runs every night in Riverside Park, New York City writes:



My friends look in blank-faced dismay as I lace my running shoes; they plead with me not to go. When I reach for my Walkman, it's the last straw; they tell my dryly that I might as well take along some ID too... Everyone says that I am asking for it. However, to start living like a victim to avoid becoming one is not the solution.

However, comments like this were not very common among the participants in my study. Young African American and Latina teenagers were more likely to report that they have the right to act or dress the way they want. During a discussion with a group of Latina teenagers, Marietta talked about the way they think a woman should dress:

We should be able to dress the way we want... That's nobody's business... If they think that we look too sexy that is their fucking problem, not mine.

Similarly, Joyce, an African American teenager expressed their view that no matter what they wear or do they are going to be blamed for their own victimization:

What I am saying is no matter what I do, they'll say, "Oh, look what happen to her, because her skirt was too short, that is why that girl was raped." We are not harming nobody, you know... If I dress the way I want or go out at four o'clock, do that means that I am a hooker? Maybe I am coming from my girlfriend's party or something... You know what I am saying?

The attitudes of these working class Black and Latina teenagers reflect their belief that no matter how they behave or how they dress, they will be blamed for their own victimization -- so, "Why bother?" Their triple layer of oppression -- being women, Black or Latinas and poor, make them *per se* blameworthy victims. In other words, Black and Latina teenager who are raped, assaulted or mugged are frequently seen as "questionable victims" because they might have contributed to their own victimization.

Images of women of color, and particularly of African American women, have been "the focus of well-elaborated, strongly held, highly contested ideologies, concerning race, class and gender" (Mullings 1994). A strong component of this ideology is an oversexualized and hormone-driven image of Black --and more recently Latina-- women that has served to condone rape against women of color since slavery. Even today, the rape of a woman of color, if ever reported by the media, is always considered "questionable." These discriminatory images play into and encourage conservative policies and campaigns,

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such as the ones aimed at forcing teenage mothers to live at home or risk being cut off from welfare, ignoring the fact that many teenage mothers come from violent family backgrounds (Males 1994).

The possibility of violence and the fear it produces are not only an important element in the social control of women in general. They also create profound divisions between "good women" or upper and middle-class white women and "bad women," or Black and Latina women, who are often presented as sexualized and libidinous beings, in need of white patriarchal control. These images have been historically used to justify violent actions and social policies directed toward women of color, from rape to the enormous increase in imprisonment rates for Black and Latinas during the 1990s (Richey Mann 1995).

I am frequently asked, "What can be done?" The complexity of the problem notwithstanding, I do believe that there are ways to effect individual changes and eventually gradual transformations in the larger society. First, examining the everyday rituals of protection and uncovering the way in which they perpetuate gender, as well as class and race hierarchies, is a good beginning. A slogan printed in a t-shirt illustrates in a humorous way the manner in which behavioral expectations contribute to divide women into "good" and "bad." It reads, "*Las ninas buenas van al cielo, las demas vamos a todas partes.*" [Good girls go to heaven. The rest of us go everywhere.]

The vocabulary of crime and fear of crime needs to be deconstructed and scrutinized. It is profoundly offensive to many groups, containing open derogatory terms, as well as code words that continue to reproduce social hierarchies. Moreover, highly publicized crimes, which are often the less frequent to occur, are used by politicians to legislate, manipulating people's fears for electoral purposes. Critical criminologists and victimologists should access the media with the purpose of informing the public about the complexities and various dimensions of crime: street, domestic as well as corporate crime.

I believe that the discourse on crime has been monopolized by right-wing politicians and criminologists. The exploitation of people's fears has played a strong role in the promotion of extremely traditional views about crime. Therefore, it is the responsibility of critical criminologists to enter the public forum to present their points of view and to expose those who use people's concerns for crime to advance their deeply conservative agendas.

Note: \* Excerpts from this article were taken from my book *Nothing Bad Happens to Good Girls: Fear of crime in Women's Lives* (University of California Press, 1997).

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# Justice in Fragments: The Political Logic of Mediation in 'New Times'

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During my doctoral studies, I observed a moving drama from the gallery of a Canadian courtroom, described to me by one prosecutor as a "zoo." Particularly striking was the speed of summary decisions, and the abrupt way in which some people's lives were radically changed by the judge's silencing gavel. I was witnessing a bureaucracy grinding away in the name of justice, proclaiming the mantle of fairness, accessibility and equity. Lofty claims indeed, but the eyes of most participants – the charged, lawyers, spectators, administrators, judges – betrayed somewhat more remote experiences of the situation: fear (palpable to even the dullest olfactory sensor), confusion, tension, anger, unease, sociality, boredom, an attention to rules, the pressure to get through a pile of cases, etc.. My own responses were complex, but suffice to say that justice was not a description that came readily to mind. Walking away from one of these visits, which were prompted by a search for traces of justice within the court system, I felt disillusioned because this project was not to be.

In retrospect my judgment was probably flawed by clinging to an insufficiently theorized vision of 'justice.' Nevertheless, not wishing to let disillusion give way to apathy, I turned to the possibility of 'justice without law' (Auerbach, 1983). This altered focus led me to a movement which, by the end of the 1980s, had taken root in the U.S. and Canada: community mediation. Here, the seeds were sown for my book, *Justice Fragmented: Mediating Community Disputes Under Postmodern Conditions*, which focused on a growing community mediation movement in the Vancouver (British Columbia) area. Given my initial interests, I was particularly attracted to the discourse of protagonists which claimed mediation as a community-based 'alternative' to courtroom justice.

## *What is Community Mediation?*

Soon after approaching the topic I realized that,

... the mutating identity of 'community mediation' is best unravelled as a series of shifting patterns, a changing movement...Far from having a fixed, rigid or absolute being, the community mediation movement materialised as a contingent 'event' with shadowy outlines, fashioned by relentless antagonisms and struggles. (1996a: 8-9)

Even so, community mediation in Vancouver took form as an "alternative dispute resolution" forum to 'complement' – rather than replace – the courtroom. Advocates argued that mediation could better cope with 'community' conflict than the courtroom's adversarial procedures. Although not clearly defined, this 'community' conflict includes disputes between neighbors (e.g. conflict over pets, noise, etc.), landlords and tenants, partners in relationship breakdowns, parents and teenagers, school children, purchasers and sellers (small claims), and so on. No advocates

that I interviewed thought mediation was an appropriate way of dealing with more serious criminal cases.

Within these general guides, the actual process of mediation assumes various guises. In most cases, it begins with one disputant contacting a community mediation program administrator who invites disputing parties and mediator(s) to meet at an appointed place.<sup>1</sup> The mediators try to 'break the ice' and start sessions by soliciting disputants' agreement (usually signed) to abide by rules of mediation. Next, in seeking to 'generate an agenda', mediators ask one of the disputants (A) to relay his/her account of the dispute. The listening party (B) is asked to repeat A's account, and A is asked to correct misunderstandings. Then B's account is solicited and the process reversed. In the next phase, mediator(s) use various techniques (rephrasing, reframing, rewarding) to find the 'common ground' that is assumed to exist between disputants. If parties agree on the core issues at hand, then the mediators 'brainstorm' potential resolutions that are acceptable to both. A successful mediation yields a signed agreement between A and B, the absence of which usually terminates the session.

Now, what are we to make of this initiative? A heated debate on this issue offers contrasting positions on community mediation's potential and effects. Although in sympathy with many concerns raised by this debate, *Justice Fragmented* challenges its very precepts. Let us turn briefly to this issue.

## *Advocates Versus Critics: Too Narrow a Debate?*

The debate is on the one hand characterized by advocates who emphasize community mediation's strengths, and on the other by critics who view it as a deeply problematic development.<sup>2</sup> At the risk of caricaturing the arguments, I shall briefly touch on a few key points. To begin with, many defenders claim that community mediation empowers individuals to become active participants in settling their disputes. The process, so the narrative goes, encourages healthy ways to resolve conflict. In the more overtly communitarian strands of the advocates' discourse, this active participation is deemed crucial to reviving local democracies.<sup>3</sup> It is said to nurture an involved citizenry required for strong communities, and builds a spontaneous domain (civil society, the "people") from which democratic states derive their mandate. Conversely, by 'empowering' individuals and communities, mediation is presented as one of the ways by which people can reclaim power surrendered to the all too omniscient welfare state. This latter claim is strenuously challenged by critics who – despite their diverse theoretical inclinations<sup>4</sup> – argue that community mediation does not reduce state control or empower individuals. On the contrary, for them, it has the opposite effect of expanding and intensifying state control over more areas of social life. Such increased control is deemed necessary at this juncture of capitalist development because global, monopoly capital demands flexible (rather than universal) responses to conflicts generated by massive cross-national economic crises. The unwieldy welfare state is ill equipped to face such upheaval, and is plagued by its

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own fiscal, legitimacy, bureaucratic, and hegemony crises. With this in mind, critics argue, there is an insidious edge to the advocates' claims because "informal" state control is being expanded and legitimated through a dubious rhetoric of state reduction, individual freedom and community empowerment.

Reflecting on the foundations of this debate (admittedly abbreviated here), one is inclined to agree with Abel that the key issue is whether or not community mediation reduces or expands/intensifies state control (1982a: 6). In responding to this issue, advocates appear naïvely optimistic about mediation's ability to empower people and erode formal legal powers (see Matthews, 1988: 17). By contrast, critics seem overly pessimistic about its popular justice potential, and their clear denunciations could rule out of court analyses of its potential. More than this, however, I am perplexed by the hypostatization involved in the debate's use of terms like 'state.' Is it really possible to speak of the 'state' precisely enough to allow relative claims about its supposed reduction or expansion over time? Is the 'state' a sufficiently stable entity to permit comparisons of size and density? If not, as it seems to me, then why has critical analysis focused so much attention on the issue of state expansion? At stake here is no mere esoteric quibble: by focusing on community mediation in this way, many critics have narrowed their focus to a point where they cannot consider community mediation as anything other than a vehicle of state control. They have, that is, foreclosed on the possibility of considering the movement's own logic apart from its links with state agencies (see Pavlich, 1996b: 710-715).

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**I** have attempted to understand community mediation as deploying a rationale of control (a political logic) that is constitutively related to – but not reducible to – state-legal

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Following the lead of such authors as Cain (1988), Fitzpatrick (1988), and Matthews (1988), I have thus attempted to understand community mediation differently; namely, as deploying a rationale of control (a political logic) that is constitutively related to – but not reducible to – state-legal relations. This vantage permits one to focus on the political logic of community mediation relations as such, without assuming these to be either wholly independent of, or dependent upon, state formations. In turn, as Fitzpatrick (1988) indicates, this approach requires us to explore techniques of power that are specific to mediation practices in given contexts. It also allows a more rigorously detailed diagnosis of how mediation's 'power' could be engaged by efforts to envision an alternative politics of dispute resolution, beyond the 'professional' and 'technical' limitations of courtroom 'justice.'

#### *The Pastoral Political Logic of Community Mediation*

Whilst trying to critically analyze community mediation in these terms, I happened upon Foucault's work on discipline and 'governmentality' (1977, 1979, 1980, 1981a,b,c). Although not always consistent, his work offers a valuable framework for theorizing power beyond the state's ambit of control (see Pavlich,

1996a: chapter 5). In particular, it allows one to explore community mediation, not as an addendum to the state's *law and sovereign* model of power, but as a refashioned governmental form that embraces a *pastoral* model of power (Foucault, 1979, 1981a). The latter model is traceable to ancient Hebraic society, but has been developed in diverse historical contexts, including Sixteenth Century European discourses on 'police science', and the 'art of government'. (Gordon, 1991) Despite its diversity, pastoral power revolves around a core image of the shepherd leading a flock (Foucault, 1981a). Here, effective political control involves a form of ablative leadership which views the well-being of a collective whole in terms of the well-being of each individual member of the totality. Unlike the law and sovereign model, pastoral power neither emphasizes the strength of the sovereign (state), nor is it directed as juridically (state?) defined subjects (persons, or citizenry). Instead, it targets live, disciplined, individual selves who are deemed to comprise a given collectivity (e.g. population, society, community).

In specifically liberal societies, the pastoral model of governance was initially deployed to strengthen the medieval state. The resulting collusion between the law-sovereign and pastoral power arrangements eventually yielded the social welfare states that have dominated much of the present Century (Donzelot, 1991). Pastoral governance in such liberal democratic settings requires its targeted subjects to be located in 'domains of freedom' (eg., community), that lie beyond – but help to reinforce – state relations. Drawing on this background, community mediation can be read as embracing a political logic in a realm of freedom outside the courthouse which seeks to reconcile its singular regulatory objects (individual selves) with a wider

totality (community). Whilst its goal to remove conflict from communities may align with state-legal aims, it does so on the basis of an idiomatic political logic.

More specifically, community mediation deploys its own fields of control that require subjects to present themselves before mediators as *individuals* involved in a dispute. That is, disputes are treated as existing between *individuals*, regardless of whether there are more general, structural, dimensions to singular cases (e.g., sexual harassment cases, racial slurs, etc.). In as much as disputants accept the rules of mediation as a condition of their participation, they subject themselves to disciplinary techniques that: place them in hierarchically observable settings; license the 'normative gaze' of mediators; and, require 'examinations' of their actions regarding a dispute (c.f. Foucault, 1977). In this way, community mediation relies extensively on discipline to fashion individual behavior to settle conflict. In addition to regulating the actions of individuals through discipline, mediation is also involved with reshaping disputants' very self-identities. That is, community mediation enlists several techniques of self formation in its attempts to alter subjective identities so that participants can co-exist as non-disputing, harmonious

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community members (see Pavlich, 1996b). As such, mediation – intimating its pastoral logic – may be likened to a modern version of the confessional in that disputants are entreated to confess a truth about themselves regarding a given dispute. These ‘truths’ are worked on by the listening mediator, who tries to reconstruct salient aspects of the participants’ self-identities to increase the likelihood of a settlement.

If the pastoral logic of community mediation deploys techniques that target singular objects of regulation, the movement is also implicated in purveying, and drawing upon, a collective structure: the community (see Pavlich, 1996a: 113-116). This ‘community’ is constituted as an amorphous collectivity which is tapped for various, and often contradictory, political purposes. In most cases, though, it is etched in the advocates’ discourse as a conflict-free, spontaneous and informal zone of freedom that contrasts with the alienation of state institutions. Much could be said about such a dubious formulation of community<sup>5</sup>, but the point is that this comprises a totalizing aspect of a pastoral political logic in which (singular) individual selves are ‘granted’ the ‘freedom’ to ‘settle’ their own disputes. In reconciling its singular and collective dimensions, the political logic of community mediation regards an absence of conflict as its ideal: the peaceful community is predicated upon individuals actively seeking to settle, and effectively resolving, their disputes.

Here one sees how the advocates’ narrow visions of ‘freedom’ and ‘empowerment’ are enlisted as pastoral techniques in the service of securing order in a liberal democracy (Rose 1992, 1990). Furthermore, to the extent that community mediation is enlisted to ‘complement’ legal calculations of justice, it seems useful to see its rise as a ‘governmentalization’ of state power (see Foucault 1979). At stake here is not simply an expansion or retraction of state control, but a fundamental reworking of the political logics associated with modern juridical apparatuses. I refer to this altered environment as centered around “remote control”, where effective governance is no longer tied to the rigidities of state bureaucracies (1996a: 140-145). The dispute resolution ethos in contemporary societies is much more flexible, network-oriented and driven by cost, or even ‘market’, concerns. In addition, community mediation’s governmental (pastoral) power is deployed in the service of a re-jigged dispute resolution terrain that is calculated using very different images of justice than were evident even twenty-five years ago. In the postmodern epistemological horizons confronting us today, mediating community disputes defers to non-absolute calculations of ‘justice’ that intimate flexible idioms of dispute resolution (Pavlich, 1992a: chapter 2). Justice, we might say, is fragmented and the political relations between fragments are in the process of being forged. There are perils in such a transforming political ethos, but there is also the possibility that existing limits could be transgressed.

#### *Intimating an Alternative Politics of Dispute Resolution*

The implications of this study for developing a politics of dispute resolution beyond the limits of courthouse justice are diverse and far-reaching. Through it, I have tried not to suggest that community mediation is either all ‘bad’ or ‘good’; only that the movement is fraught with potential hazards that need to be

assessed in context. Moreover, the very attempt to diagnose and resist dangers within community mediation’s political logic implies something quite different from what either advocates or critics had formulated. For example, as noted before, community mediation relies on narrow visions of ‘individuality’, ‘self-settlement’, ‘freedom’, ‘empowerment’ and ‘community’, as unequivocally implying a release from existing power configurations (see 1996a: chapter 7 for other examples). Against this, it may be said that the claim to release subjects from power relations actually allows liberal, governmental techniques of power to operate invisibly (and thus extremely efficiently) in the shadows of control formations. This means that images of, say, liberty are woven into the very fabric of pastoral control techniques as such; they are not simply appendages of ‘democratic’ state power.

One consequence of this insight is to require us to see pastoral power less as an external mechanism of constraint than as an invisible power that – in part at least – colonizes our actions, shapes our aspirations of selfhood and demarcates the communities with which we identify. The intrusive operation of these regulatory

**‘governmentality’ allows one to explore community mediation, not as an addendum to the state’s *law and sovereign* model of power, but as a refashioned governmental form that embraces a *pastoral* model of**

environments suggests that Orwell’s “big brother” is only one part of a far more intimate network of control. There is little in our actions, self identities and communities that remains untouched by the ‘freedoms’ and ‘spontaneity’ of pastoral control, such as those expressed in community mediation. Consequently, resisting these arrangements might well involve acts of refusal – refusing narrowly formulated visions of self and community to which we are enjoined to aspire. Herein one glimpses what it is to resist those aspects of community mediation’s pastoral political logic that continue to subjugate in the name of a purportedly spontaneous subjectivity. Resistance of this kind implies an alternate politics of dispute resolution which has yet to assume a settled form.

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#### Endnotes

<sup>1</sup> See my account of a typical process for details (1996a: 46-51)

<sup>2</sup> I have elsewhere summarized the nub of this debate (see 1996a: chapters 3 and 4; 1996b).

<sup>3</sup> See Merry and Milner (1993), Burdine (1990) and Shonholtz (1987, 1988-89).

<sup>4</sup> These would include arguments adapted from debates on the 'fiscal crisis of the state' and its associated 'legitimation crisis' (Abel, 1982a, 1982b), Gramscian 'hegemony' (Hoffrichter, 1987; Santos, 1982)), 'neo-fordism' (Baskin, 1989, 1988; Selva and Bohm, 1987), and neo-Weberian bureaucratic reorganization (Harrington, 1985).

<sup>5</sup> See, for instance, Cohen (1988, 1985, 1984) and Abel (1982b).

