

Anne Wagner
Richard K. Sherwin *Editors*

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money and organized crime), which might invite a broad brush canvas other than the opening credits, most scenes unfold in intimate spaces like the confession at the end, inside buildings, in the homes and offices of suspects and victims, or on the more confined spaces of streets and alleys and sidewalks. Victims are often young, attractive, individuals of an age to be sexually active as are the perpetrators. Unlike crime stories that involve the scary “other” (people of different backgrounds, race or country of origin, etc.), *CSI* deals with perpetrators who, if they would just not be deviant in their thinking, would be just fine as members of the community. So social class is not a guarantee of innocence in *CSI*; it is very much in play in a majoritarian (and rather narrow) definition of the human community. Characters are mostly middle class, binding them to the viewers as potentially their friends, neighbors, family members. In the course of any episode, there are always groups of people talking about the victim, talking about the suspects, and talking to suspects to play them off each other. In fact, “any character not a member of the investigative team is either a victim, a murderer, or a suspect” (LaVigne 2009, 387). What about viewers? Do viewers want to be victims or suspects—or a member of the team? Who else can they identify with but with the investigators, adding the viewers’ own credibility to their power? Thus, these dramas might be compared to chamber operas with small casts, close-up, with intense inward action in intimate spaces. It’s all about what is in the mind. So what are these “operas” about as American cultural texts?

37.4 The Larger Frame for *CSI*: Science and Law

First, of course, the shows are about epistemology: How do we discover the truth about the crimes that intrude on our social space? The truth telling of the confrontation and confession takes place in the labs but not until after a lot of data has been gathered. We are not in the realm of psychological hunches or psychic phenomena, but in data that is independently gathered and subjected to testing, to science, and the *CSI* teams claim to represent science itself. Gil Grissom, team leader in the Las Vegas show, says in the pilot, “I’m a scientist. I like to see it” (prefiguring the enormous and soon to grow quantity of scientific pictures audiences are treated to), and he urges his team to “follow the only thing that cannot lie—the evidence.”¹⁰ Physical signs are left by the thing itself; sometimes, they require enhancement to be “read.” These traces are then analyzed, but they continue to carry with them that first impression of having been made by the thing itself—that gives them a special flavor of being factual. Then, because evidence is photographed and the whole show is the product of carefully coded photographic strategies, evidence is sealed in a form that we are inclined to believe is “true” because the camera lens is commonly believed not to lie.¹¹

¹⁰From “Pilot” first broadcast October 6, 2000.

¹¹There is a vast literature on photographic truth. For a general discussion of the role of photography in law, see Feigensohn and Spiesel (2009).

The investigation often involves changing the natural properties of the physical evidence—taking samples, using chemistry to reveal the hidden traces, using equipment to visualize, especially to visualize what cannot be seen by the unaided eyes, to interpret, to match. So analysis involves interpretation by means of “translation” where these “translations” are assumed to seamlessly connect one thing through a variety of states to the end of the series, thereby connecting the body of the perpetrator to that of the victim. Because the process is seamless, we are asked to believe that there are no slips in meaning, no introduction of the personal and speculative, the relative and contingent. Occasionally, the program offers explanations of what is happening in the analysis, but often we just watch as seemingly sacred rituals are being enacted. A shoe leaves a print on crime scene; a shoe is used to make a new print in the lab which is then scanned, may be enhanced by software, and then visual comparisons are made on a computer screen between the “original” print and the lab print for identification purposes, much like fingerprint comparisons. The outcome is regarded as self-evident as the audience can see the same thing the technicians are seeing.

Is this science itself? Viewers have little access to laboratory science. They do not necessarily apply their own experience of lawnmowers freezing up or computers misbehaving, paper running out and toner, too, to experiences of people working in labs. They do not imagine a difference between their bricolage in the kitchen with the careful protocols that must be defined to achieve significance in laboratory results. They have few yardsticks to measure the difference between what forensics professionals do, applying techniques to specific cases, and what scientists do. They are primed to believe the pictures, both cognitively and culturally (Feigenson and Spiesel 2009). One of the clearest statements in legal opinion on the nature of science comes from the legal challenge in America to the teaching of Intelligent Design in public schools in Dover, Pennsylvania (*Kitzmiller v Dover* 2005), by Judge John E. Jones III: “This self-imposed convention of science, which limits inquiry to testable, natural explanations about the natural world, is referred to by philosophers as ‘methodological naturalism’ and is sometimes known as the scientific method (5:23, 29–30 (Pennock)). Methodological naturalism is a ‘ground rule’ of science today which requires scientists to seek explanations in the world around us based upon what we can observe, test, replicate, and verify (1:59–64, 2:41–43 (Miller); 5:8, 23–30 (Pennock)).” Science is the counter story to the common sense knowledge that people use in living their lives; this common sense knowledge is full of generalizations based on the individual’s experiences and the surrounding or available culture, and while in general common sense serves us well, as a system of proof it is not reliable.

The labs the forensic scientists inhabit in *CSI* were transformed between the first and second seasons. I visited the Connecticut State Forensic Science Laboratory in the course of this research out of a need to test the realism of the shows. The set décor in the first season was much closer to the picture accompanying this article; in subsequent seasons, the physical space underwent transformation, rendering it more mysterious. Rooms flow into one another, substituting a clear plan view with a workflow view that emphasizes that it is all one thing, all the different functions

are part of one science story. Their lighting changed too, after the first season, becoming more dramatic in shifts from light to dark and overall, much darker, presumably to make machine reading clearer. I believe that lights are kept low in the service of underlying metaphors. It is impossible to tell day from night in these professional places, and the glamorous clothing worn by both the male and female investigators contributes both to the day/night confusion and to the sense that these are special people serving special rituals. The work of the team sheds light on the darkness of human action and brings to light data that provides information about what happened and who caused it. Light that does not change can be the equivalent of climate control, for sure, but it also is the light of the eternal or universal.¹²

CSI also tells us “stories” about our wonderful inventions, about the materially beautiful products of engineering that can reveal so much to us. The forensics teams of *CSI* are privileged to handle this powerful, shiny, high-design concept equipment that shines forth from the gloom of the low lighting. They do so with practiced ease of ritual performance, holding up beakers to the light so we see the color of the fluids they contain, or we watch with them colorful data visualizations made by computer graphics. They can handle things large and microscopic with equal and unerring skill. This mastery protects them as they go, unscathed, into dark places—literally into unusual scenes of crimes and metaphorically into unusually dark human situations. While they may not actually be very scientific (given all the debates about forensic science as science), they are certainly adept and admirable in their articulation of essential values that they try to adhere to with professional commitment. There are tests of character among the members of the various investigative units as well and moral queries. Grissom, leader of the Las Vegas team, often expresses concern if he sees that his employees are emotionally involved with a case, reminding them that they serve science, not feeling, and that doing the job properly and well requires devotion to values. “There is no room for subjectivity.” Their job requires them to understand the evidence through science, so that in serving a sacred ritual, they and their process must be ritually pure and complete.

These are also stories about the law, broadly conceived. The law stories start with a fuzzy boundary between police and forensics specialists who are, normally, not themselves police officers in real life.¹³ On *CSI*, forensic technicians get to investigate as well as scientifically explore, and they effectively get to compel testimony from the perpetrators. That is, they can bring them in, they can question them, they can confront them. These are all normally the province of the police. The televisual

¹²Color varies under different lighting conditions, hence, platonically inflected thinkers have long regarded color as unreliable compared to chiaroscuro, painting less reliable than drawing. The literature on this is large. Readers might try Gage (1993). Note that noir, meaning black, is a frequently used label for the whole class of crime fictions in various media, particularly arising from the dark lighting favored by filmmakers who created the genre.

¹³Elaine Pagliaro interview—noting disappointment of students who sign up for forensics training when they discover that the forensics people are not the investigators at all.

blurring is so effective that some articles written about the show carry this confusion forward. So the characters with whom we “live” through every episode function to link the heavenly view from above with the earthly, even below earthly view of what is underneath the problem. If we can call the shots into data that give the show its distinctive and new visual edge, the view into and under visual phenomena available to the unaided eyes (Gever 2005) mirrors this process. The investigators become “the law.” I will have a great deal more to say on this shortly.

While seemingly critical of the police, the program aligns itself with the prosecutorial side. It does not tell stories of exoneration of the wrongfully convicted. Only the “right” people get convicted in this system. Lawyers do not fare well on *CSI*. In the *Crime Scene Investigation New York* episode, “Past Imperfect,”¹⁴ Mac Taylor, the team leader, is in conversation with a defense attorney who accuses him of having a weak case against his client. Mac counters with the statement that lawyers are full of manipulative dodges where he, on the other hand, is about the certainty of scientific truth. He will stand by that standard against all efforts to deter him; he will get the perpetrator even if the lawyer springs him from custody on some kind of technicality. Grissom asserts that “they are trained to ignore verbal accounts.” While he is addressing the subjectivity of witnesses, this might also be a comment on the law, surely a discipline of words. This is a world freed from the burden of rhetoric, of psychological, especially unconscious, psychological motivation, liberated from all the ambiguities of words and their construction of social meaning. Clearly, rhetoric, the persuasive narrative that relates the facts to a moral story (Burns 1999), has no place in this fictional legal world.

The other story told by the shows is, not surprisingly, an erotic story, not just of deviant sexual practices leading to murder, or mistaken passions, but of erotic pictures. Often the homicide scene is the first thing we see, usually with the body of the victim in it. The ugliness of the death dealing wounds may be superseded for us by the inevitable scenes in the autopsy room where the corpse is not only displayed but cut open to view, parts sometimes held in hands rather like holding up a newborn. The camera may not only penetrate the corpse but it may move into the anatomy as animation taking the viewer on a “fantastic voyage” through the body in ways that even the medical examiner might find new and unusual. These potentially problematic pictures of damaged bodies (that might cause disgust or worse) are mitigated for the viewers by dialogue that restores “innocence” to the victim, sometimes accompanied by flashbacks that may show us the victim in life. Later display of the cleaned up corpse in the autopsy room, photographs from the person’s life, and reenactments of life events shown in the course of the narration all help to distract us from the terrible pictures. But we also get them—safely satisfying our curiosity about bodies without our having to leave our chairs. So there are remnants of dirty/the clean, cultural/ natural, corrupt/ incorruptible

¹⁴Original air date—April 25, 2007.

categories of a binary world ruled by what French anthropologist Claude Levi-Strauss has called “the raw and the cooked.” In a very real way, the job of the forensic investigators in the drama is to clean up the mess occasioned by crime and, as a result, restore the proper borders between things—whether it is human relationships or our places in the world. And through the ritual of watching a serial show, we too are kept in our proper places.

The examination of the corpse can play another role as well. When the body is that of an attractive young person, it can take on an erotic dimension, gratifying voyeurism while keeping any thought of action at a distance. The victim is, after all, dead, and most viewers are not necrophiles. “The erotic death...is a means of conjuring the limits of sexuality within a context that at once cautions and punishes, feigns objectivity, fantasizes power ...”¹⁵ (Tait, 57). But, because the body has also been “tortured” both by whatever brought about death and through the actions of the pathologists, viewers can find gratification not just of erotic voyeurism but of sadistic impulses as well. The pathologists are just doing their jobs, jobs that permit them to violate the body, to exercise power and control over it. These representations are not being shown randomly. Instead, we must look at *CSI* in terms of its—and our—historical moment.

John Yoo’s torture memo outlining the permissible range of military interrogation practices was written in 2003. The television show *24*, which debuted in 2001, has torture as a recurring method of obtaining information. It is not an exaggeration to suggest this as a leitmotif in the detailed and recurring scenes in the autopsy rooms. While the attitudes expressed there are not the anger and aggression we know from scenes of actual torture on film or written accounts, these horrific maimings occur as a result of both criminal acts and bureaucratic ones, “Reducing the other to a state of utter powerlessness gives you a sense of limitless power.... Transgressing human laws thus makes you feel close to the gods” (Todorov 2009, 58–59). So when the criminal transgresses the human law, it is out of bounds. When the technocratic bureaucrat, closer to the gods by definition within the program, does it, it is part of their job. They violate the integrity of the body and let us look bad people, or bad circumstances, acted on the living body, but now we can all safely see it. In contrast, torture of the living is openly discussed in *24*, and Jack Bauer is allowed to break a lot of rules, including acting on the bodies and minds of others, to achieve what is defined as a higher goal, a greater good, the end justifying the means. Most of the *CSI* episodes have been produced and broadcast in post-9/11 America. *24* was in production just prior to the terrorist attack. In 2000, the United States had the highest rate of incarceration of its own people in the world, and it continues to hold that lead (Niman 2000; Hartney 2006). As a culture, we have been exercising control over millions of living bodies, so much so that it is completely normalized and outside our daily consciousness.

¹⁵ Note that I have rendered the Tait quote gender neutral as heterosexual women viewers might well have the same enjoyment from the beautiful young men pictured dead.

While it is true that science strives to get past the limitations of our common sense and our subjectivities, scientists themselves may be very passionate about their work, their failures, and their results. So the emphasis on mental “purity” as well as careful practice comes across as religious vocation. Further, the implicit assumption that intuition is absent from science does not reflect the mental activity of creative scientists who use different mental habits to form hypotheses, create tests, evaluate data, and so on.

Along with the birth of this television show placing determinations of truth, especially legal truth (this is a crime drama, after all, even a new entrant into the police procedural formula), in the hands of scientists who apply rational deductive reasoning to data they consider facts, we have, in the real world, new doubts about the very science that is used to substantiate the truth claims. The press claims not just a “*CSI* effect” in decision making but also reports on discredited forensic work that has come to light, arising from carelessness or the willful desire to produce evidence that will serve particular prosecutorial (or government) objectives. Serious questions have been raised about how scientific some forensics practices actually are and how the lack of statistical data about outcomes make it very hard to assess their reliability.¹⁶ So many questions have been raised that Congress, in 2005, requested that the National Academy of Sciences review the state of forensics in the United States. The committee report, published in 2009, found that “in some cases, substantive information and testimony based on faulty forensic science analyses may have contributed to wrongful convictions of innocent people. This fact has demonstrated the potential danger of giving undue weight to evidence and testimony derived from imperfect testing and analysis” (National Academy of Science, National Research Council, Committee on Identifying the Needs of the Forensic Sciences Community 2009, 4). Before the report was issued, the necessity for it was laid at the feet of *CSI* audiences by National Public Radio “*CSI* viewers are part of the problem: After watching blood spatters analyzed and carpet fibers tweezered night after night, there may be a sense out there that forensic evidence is infallible” (Temple-Raston 2009). The academy in a section of its report titled “*CSI* effect” discusses it in relation to the pressures on forensics personnel as well as on police and prosecution.¹⁷ This mirrors comments of judges and lawyers. The target of their anxieties is not television but members of the public whom they assume to be influenced by the television. As we have seen from the empirical studies, that influence is not so clear. Perhaps this is what Freud called a “screen

¹⁶ See, for instance, Jeffrey Toobin’s article on hair and fiber evidence, “The *CSI* Effect,” *Annals of Law, The New Yorker*, May 07, 2007 at: http://www.newyorker.com/reporting/2007/05/07/070507fa_fact_toobin. For examples of coverage on other forensics problems, see Associated Press, “North Carolina: Crime Lab to Be Examined” March 5, 2010 at http://www.nytimes.com/2010/03/06/us/06brfs-CRIMELABTOBE_BRF.html?_r=1&ref=forensic_science; also Bob Herbert, “Innocent But Dead”, August 31, 2009 at http://www.nytimes.com/2009/09/01/opinion/01herbert.html?ref=forensic_science. All last accessed 8/4/2010CGI.

¹⁷ For the discussion of *CSI* in the NRC report, see pp. 47–48.

memory” transformed as a collective “screen issue.”¹⁸ It is a delightful pun in this circumstance when we are considering what is on actual screens. A “screen memory” refers to anxiety expressed about a subject that is a displacement of a deeper, repressed anxiety; it seems more acceptable and masks the real source of anxiety which may be much harder to articulate or accept. If members of the legal professions are anxious about something they call “the *CSI* effect,” and if that is a screen for something deeper that they worry about, what could it be? First, let me state clearly that all I can offer are a few speculations with no basis in empirically established data.

Increased public scrutiny, always a thread in the comments about *CSI*, might well be unsettling for a variety of reasons: the public is not uniform and the criminal justice system has many political dimensions, making it harder to steer through the public media sphere; “trade practices” that used to be in the penumbra of private professional work may be revealed, bringing an increase in accountability and a loss of discretion or reveal actual bad behavior or skirting the law. Legal decisions have to be made absent full knowledge on the basis of what facts are available and provable, and so there always remains uncertainty. In spite of television programming, very few cases actually go to trial, so as the level of responsibility for the decisions made in plea bargaining increases for the participants, so there is a large gap structurally between “the public” as represented by television viewers and their expectations of trials and the reality of criminal law now. In fact, given the statistics regarding plea bargaining, much of our justice occurs behind closed doors as far as the public knows, and so practitioners might fear scrutiny because they are not so used to it.¹⁹ Perhaps conviction rates in actual cases help practitioners to feel better about the numbers of untried defendants who are nevertheless put away for crimes on the basis of evidence not tested in court. This would cut in favor of their finding support in the belief in evidence in *CSI*, except that “science” is trumping police work, creating a new standard, perhaps, a changing notion of “beyond a reasonable doubt” that could also be unsettling. Finally, one reason why plea bargaining is playing such an important role is that it reduces overwhelming case loads. A demand for more and better forensic evidence similarly would stress the justice system which is already underfunded (Rath 2011). I am not a part of legal practice, and I am sure there are other factors that I cannot imagine. Finally, there may be observable elements in the *CSI* shows that are troubling for other reasons. It is some of these that I will explore in conclusion.

¹⁸I am grateful to Dr. Sydney Z. Spiesel for his suggestion that collectives can engage in this process mirroring individual psychology (Spiesel 2008). For references in the Freud canon to this subject, see Laplanche and Pontalis (1973), 411.

¹⁹There seems to be substantial agreement guesstimating that the plea-bargaining rates fall between 90 and 95% of all criminal cases. Established numbers for 2003 are in *Sourcebook of Criminal Justice Statistics*, 426 tbl.5.24.

37.5 *CSI and the Ordeal*

The world of *CSI* is a world where in a very real way law, as we know it, is unnecessary. The contest is over which physical traces are relevant. Once they are properly attached to a perpetrator, there is no need for an adversarial proceeding. So plea bargaining (which arises out of a set of humanly negotiated compromises, however many pressures there are), eliminating the need for a trial with a jury, is substituted for by “absolute proofs” in this fictional world; there are no alternative versions because the “revealed” truths of science rule the kingdom of evidence. I have briefly described how science in *CSI* is coded as the output of analytical machines (which seem to operate independently from the humans) and not as the results of science as it is usually practiced, which often accepts conclusions only tentatively, leaving room for exceptions or new knowledge. To believe in the identification of the perpetrator and truth told in his/her “confession” during a *CSI* episode, one has to believe that the machines always work, that they are properly calibrated, that they are up to date in their information, that they never need to be reset or run out of paper, and that what they show is incontestable. These machines have nothing to do with the tools we all use every day.

The otherworldly light (whether day or night), the jewellike equipment, and the practiced movements of the professionals who dress with care (not in police uniforms) and look nice, who have “vowed” to follow a clear intellectually and morally demanding vocation, all these evoke a different universal that of the church and religious practice. The forensics teams are shown to lack bad motives, to be able to stand against the blandishments of higherups who may have motivations contaminated by self-interest of one kind or another; their private lives are only glancingly referred to if at all, making them seem to withdrawn from worldly concerns and therefore more priestlike. There are no tests that fail, no competing hypotheses (in the scientific sense), and when a new thought is stimulated, a new evidentiary possibility, the hardware and software already exist to do the test. There is no need for invention in this enclosed world of the laboratory with its science appliances. And what are they looking at? Physical signs that explain the relation between the body of the perpetrator and that of the victim. From this perspective, we are looking at laboratory rituals that resemble the old medieval judgment by ordeal²⁰ that also linked physical signs to the discovery of truth.

The ordeal consisted in submitting the accused (in the absence of witnesses and perhaps, even, an accuser) to physical tests—the hot iron, boiling water, cold water, trial by battle, etc.—from which there would derive physical evidence of God’s decision. For instance, hands that had to carry the hot iron for three paces would be bandaged and inspected after 3 days for signs of corruption. A clean and healing wound would be a sign of God’s proclamation of innocence (McAuley 2006, 474). In this scenario, God speaks through the accused’s body and makes it testify to that

²⁰I am very grateful to Pamela Hobbs who initially suggested to me, in 2006, that I ought to explore the connections when I presented an earlier version of this chapter.

which could not be seen—the person’s soul that may or may not have committed crimes. Justice is done by the highest [imaginable] authority—and, by the way, an invisible one.

The ordeal was an extremely old way of proving guilt or innocence. Historians believe that it predated Christianity and the Christian kingdoms; there are suggestions that it had Frankish origins and was spread quite widely through Europe because it was one of those indigenous customs that the Church chose to absorb—I imagine like the Roman Saturnalia became Christmas. It was ended by canonical decree in 1215. Few customs so old go out quite so dramatically, but because it was administered by the Catholic Church and tied to Church ritual, it was possible for a powerful authority to accomplish this major change by decree.²¹ Generally, the ordeal took place within the Church after a mass and was a source of revenue for the places that held them. The modern ordeal takes place in a lab in my analysis, setting up an analogy lab = church.

“The core belief behind trial by ordeal is that when men are submitted to this form of test according to the proper rituals and invocations, God will reveal their guilt or innocence by changing the natural properties of the elements (i.e., hot iron will not burn, water will not allow a heavy body to sink)” (Bartlett, 162). In short, God will provide an indexical sign, unarguable because there is no “interpretation.”

The ordeal was the method of proof to be used when it seemed necessary that God decide what men (humans) could not. Cases not requiring the ordeal would be decided by assigning a number of people to be sworn witnesses on behalf of the accuser and/or the accused. These were called compurgators, and their oaths were essentially character references; we can understand them as a nascent jury—giving human judgment rather than divine, but only certain people qualified for this service. A stranger would be unable to supply the necessary social texture. A slave or servant would not be regarded as being able to swear an oath, nor would a woman. Toward the end of the practice, exemptions were granted to three classes of people: clerics, Jews (not being Christian, they could not participate in the associated religious rituals), and perhaps most interestingly, the nascent middle-class townspeople (exemptions only to the citizens and burghers, and not everywhere (Bartlett, 53–58)). We might say this represents the early ascendancy of a governing elite of persons with means but not royalty. Langbein suggests that “the collective judgment of an ad hoc panel of the folk, uttered as the voice of the countryside, unanimously and without rationale, seemed less an innovation than the principled law of the Medieval jurists” who took over justice after the ordeals were banned (Langbein et al. 2009, 77–78).

To believe in the ordeal, one would also have to believe (1) that God exists, acts, and knows, (2) that God can change the natural properties of the physical world, and (3) that God intervenes in the world to dispense justice (Paraphrase of Bartlett, 163).

²¹ There is substantial agreement between authorities on this history. The most complete version can be found in Bartlett (1986). Other sources include John Langbein (2006), Pollack and Maitland (1968), Plunknett (1956).

To believe in the *CSI* investigation, one would have to believe (1) that the science shown by our technology produces unambiguous truth, (2) that the properties of the physical world can give us sufficient knowledge about human situations, and (3) that the truths of crime are individual, are knowable, and arise from bad thinking and action and not from social circumstances or systemic issues. Interestingly, the Roman canon law administered by continental professional jurists after the abolition of the ordeal did not regard circumstantial evidence as strong enough for conviction²² (Langbein et al. 2009, 54). The moment of turning away from the ordeal might be seen as the founding moment of what became our modern western legal regimes. But this was not the end of the power of the indexical sign as a test of truth.

This association between “scientific” investigation and the ordeal has been made in print in a policy review on the potential use of polygraph evidence in Australia: “Does the coercion of people to undertake lie detector tests vary significantly from subjecting hapless women in the dark ages to trial by ordeal? Do these devices any more accurately determined truth? Or have we simply invented a modern form of witch dunking?” (Clark 2000) We are now offered ever more subtle temptations to use traces from machines as indexical signs to convict in the various brain imaging technologies in use now (Stronge 2009).

While the ordeal was discontinued, the witchcraft trials that occurred in both Europe and North America, particularly in the seventeenth century just after the founding of modern nation states, share some of the same features: legal rituals applied to the accused, the inspection of the bodies of the accused for signs, the public ceremonies of adjudication, and the death penalty carried out through ritual and through spectacle. John Demos suggests that the newly formed states were insecure in the legitimacy of their power and that they “were eager to harness the influence of the church” (Demos 2008, 54). In short, among other impulses behind witch-hunting (which is very complex, multifactorial, and has been studied with a variety of lenses) is that it is an instrument of governance—one that can unite a population against an “other” on which the population can project bad thoughts and actions, thereby “cleansing” the state. It is not possible to do justice to the story of witch-hunting within the scope of this chapter, but there seem to be thematic connections between *CSI* and witch-hunting. Women are often victims as well as perpetrators in both. The display of the body, especially private parts not normally on view, is part of the ritual. The proofs are read through physical signs, but some of the evidence in witch trials was “spectral,” “apparitions not visible to others, but imbued with supernatural powers and inseparably identified with the accused” (Demos, 160). Much of the “evidence” produced in the forensics labs can seem to be “spectral” to the audience because produced by evanescent flickering light. We see autopsies “protected” by the mediation of the camera and television screen. Monitors of all kinds show us these images of the world we see, revealing also new worlds in

²² For an extended discussion of the end of the ordeal and canon law, see McAuley (2006).

data world we do not see any other way. But whether descriptive or conceptual, pictures on screens are just made of colored light; most often their presence is fleeting, dematerialized, and untouchable. Handheld cameras (what most consumers use) can go with us wherever we go and respond to our searching impulses. But when these cameras record a picture, the picture is perceptual and perspectival because the camera's lens reflects a point of view, like human vision. Many of our optical devices and digital picturing tools are not perspectival at all. People who look down microscope eyepieces have their viewing controlled by the mechanism—they have to maintain a certain position to see at all. Video game pictures are generated by graphics engines similarly keep us in our place in front of the screen as long as we play. So as long as we are audience for those pictures, the mechanism of the production to some extent controls us. “Television and the personal computer, even as they are now converging toward a single machinic functioning are antinomadic... They are methods for the management of attention that use partitioning and sedentarization, rendering bodies controllable and useful simultaneously, even as they simulate the illusion of choices and ‘interactivity’” (Crary 1999, 75). What the forensics teams are particularly paying attention to is the output of these devices. (Their actions are mostly cerebral in contrast to those in *24*, a show that unfolds like a Hollywood thriller). This connects forensics yet further to religious sorts of cognition. The revealed truths of the sacred are not regarded as perspectival, but, instead, as universal and unchanging in contrast to all the contingencies of life on earth, even if perspective is used to lead the eye to a vision of God sitting at the vanishing point of converging lines. As *CSI* characters are fixed in space by their devices looking at pictures that do not seem to be contingent even as they may flicker, they connect the “heavenly” realm with the problem in the narrative and with us as viewers. When the pictures are generated by machines, they can perhaps make us feel godlike in our mastery—we have escaped the perspectival—but we must beware of thinking we can escape the human.

David Noble traces the origins of the west's path of technological invention in medieval monastic practice (allied to desires for human transcendence), “On a deeper cultural level, these technologies [in general—our modern explosion of tools] have not met basic human needs because, at bottom, they have never really been about meeting them. They have been aimed rather at the loftier goal of transcending such mortal concerns altogether. In such an ideological context, inspired more by prophets than by profits, the needs of neither mortals nor of the earth they inhabit are of any enduring consequence. And it is here that the religion of technology can rightly be considered a menace” (Noble 207). Menace is a strong word.

David Noble summarizes simply, “... the technological pursuit of salvation [in the religious sense] has become a threat to our survival” (Noble 1999, 208). The menace is that we may give over too much power and lose too much autonomy and be robbed of the opportunity to make important social choices by a powerful elite that has no interest in the rest of us. This theme is reflected in a recent opinion piece by technologist Jaron Lanier published in the *New York Times*: “When we think of computers as inert, passive tools instead of people, we are rewarded with a clearer, less ideological view of what is going on—with the machines and with ourselves...”

computer scientists are human, and are as terrified by the human condition as anyone else. We, the technical elite, seek some way of thinking that gives us an answer to death..." (Lanier 2010).

If the ordeal was created so that God could decide when humans were stuck, *CSI* shows us how godlike machines can play that role. Who needs a jury when we have a trained professional using the right stuff to do the job? Like other traditions of crime fiction, the crime stories in *CSI* are seemingly obvious problems whose solutions lie in specific evidence. We do not have to worry about "the system" itself, whether society is fair or justice is done. We do not have to think of problems of human conflict as arising from legitimate differences, and we do not have to leave it to a human judge to sort out on a case-by-case basis. All we have to do is provide the technologies for truth-finding and avoid reasonable doubt—in our technology.

CSI was created in an America already struggling with very deep ideological rifts. On the surface, the fault lines are over control of reproduction, evolution, psychology, over social studies curricula in the schools, not to mention other "lifestyle" issues, all generally subsumed under the term "culture wars." More deeply, they are over religion and its proper role in the cultural order. And race is never far from the questions. At the same time, there has been a turn to punitive law as opposed to rehabilitative law, "just deserts" jurisprudence, and, under the influence of our technological age, dreams of algorithmic judgment. The menace of *CSI* is that it can seduce people into accepting that technology can take care of the problem of human conflict and bad behavior, that it lulls us to believe in the smooth working of bureaucratic "machines." Concluding that religious zeal provided the driving force for the great witch hunts, Norman Cohn writes that massive killings occurred when people were forced to testify against others. "The great witch hunt can, in fact, be taken as a supreme example of a massive killing of people by a bureaucracy acting in accordance with beliefs which unknown or rejected in earlier centuries, had come to be taken for granted, as self-evident truths" (Cohn 1975, 255). Our information technologies have diverse and important uses. They are wonderful—to be solipsistic, when they let me sit at my desk and access most all of the research materials I need at any time of day or night. But we should pause when we think of their use in public administration and communications, opening the door to extensive surveillance. And that might be just the beginning.

The kinds of thinking I have outlined in *CSI* are invading the actual world of the law. A panel at the 2010 meeting of the American Bar Association asked "Justice 12.0—Is There an App for That?" The questions raised begin with convergence of artificial intelligence, cognitive science, and nanoscience. Will we be able to predict crime? Manage people through psychosurgery? Would judgment through artificial intelligence "go a long way toward eliminating the effect on case outcomes of the individual unconscious biases and passions of decisions makers, as well as disparities in the caliber of parties' legal representation, both of which result in inconsistency and unpredictability in the justice system today." (ABA 2010, 153–54) This outline raises the question squarely: Is the law about meeting a single standard, or is it about human problem solving? Should judgment be made by a "god in a machine" which may not have an intelligence that we could recognize as "human" even if it is

capable of unimaginably rapid calculations? Or should communities of humans continue to sustain a legal system that permits them to face each other? The problem with the *CSI* attitude is that we do not even get to raise these questions. It is all given, and we must accommodate to it without asking about the wizard behind the curtain or in this case, behind the screen.

The alternative to the promise of a highly efficient system is the very human system described by a philosopher and an ethnographer—Anthony Kronman and Bruno Latour. Writing about rhetoric and constructing an argument about the reasons for having the law in all its complexities, Kronman asserts that “Our humanity comes to light only within the horizon of the public world. Only here can we show and see the special being we possess. But the public world must be built and then guarded” (Kronman 1998, 700). And for Latour, the law is an “endeavor to make coherent through a continuous process of reparation, updating, forgetting, reification, codification, comments, and interpretations, so that nothing is lost and nothing is created, everything that passes by—time, humans, places, goods, and decisions—remains attached by a continuous thread, so that legal stability serves as a net for all potential applicants, and humans can live in the house of the law” (Latour 2002, 277). What will be the price of giving up this stage on which we can display ourselves (Kronman’s metaphor), this house in which we can live (Latour)?

It is a mistake to believe that mere exposure remakes the entire mental life of members of the audience for a television show. When it offers such gratifications—intellectual stimulation, godlike power, forbidden sexual impulses, beautiful things—and its deeper messages are left implicit, though, it should be answered. If participants in the legal system are feeling anxious about the effect of the show, maybe they need to ask again about what effects they are considering. Judges and lawyers face a task of restoring confidence in our system of justice itself. Well-substantiated cases, clear and just procedures, and effective communication are all a part of this. Science can tell us a lot, but maybe we should be paying more attention to its methods, its critical thinking, and less to “answers” produced by science appliances. Legal systems were created to solve human conflicts. Who better to understand them than human participants? And who better to restore the principle of the rule of human law than the judges and lawyers who participate in its application? A place to begin is to understand the effects of *CSI* not as an argument about evidence, but as an “argument” against the legal system itself. This argument needs a public answer.

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Chapter 38

The Visibly Offensive Offender: A Semiotic Phenomenology of an Execution

Jody Lynée Madeira

Abstract Starting from the premise that claims concerning “closure” from executions are actually claims about the lived experience of witnessing an execution, this chapter considers how the visual dynamics inherent in execution and the culture of capital punishment are impacted by execution method, whether and how an execution is witnessed, and the identities of the condemned and the execution witnesses. It focuses upon the semiotic interplay of visibility and invisibility in light of Oklahoma City Bomber Timothy McVeigh’s 2001 execution by lethal injection. Applying semiotic phenomenology to interpret witnesses’ conscious experience of McVeigh’s execution, this chapter illustrates how the condemned body is steeped in semiotic meaning and reveals three themes essential to the lived experience of witnessing McVeigh’s execution: the perception of being compelled to witness, a perception of communicative interaction, and a sense of completion. The lived experience of witnessing McVeigh’s execution was that of rendering “justice” visible and McVeigh invisible. This phenomenological investigation reveals that perception of “accountability” and “justice” is not related only to an offender’s crimes but also to his personality and level of visibility before and after trial and sentencing, and confirms that family members’ emotional needs are, for better or for worse, tied to the criminal justice system and certain procedural outcomes.

38.1 Introduction

Over the past 150 years, the practice of capital punishment has altered dramatically. The grisly public spectacles favored for centuries have been moved inside prison walls, and painful execution methods have been gradually replaced by ever more

J.L. Madeira (✉)
Maurer School of Law, Indiana University, 211 S. Indiana Avenue,
Bloomington, IN 47405, USA
e-mail: jmadeira@indiana.edu

humane and discrete lethal technologies. The rhetorical justification for capital punishment has also changed radically in the last 20 years, gradually becoming increasingly oriented toward murder victims' family members (Zimring 2003). Private executions, once witnessed exclusively by public officials and media representatives, now may be viewed by family members in most states as well. This shift in orientation has engendered controversy. Some claim that the death penalty is essential in resolving grief, minimizing trauma, and reaching "closure" to the murder; others argue that the criminal justice processing of capital cases intensifies suffering and delays healthy adjustment to the loss of the victim—without systematic empirical evidence on either side.

Whatever the case, "closure" concerns are omnipresent. Criminal justice officials use "closure" as support for capital punishment. Attorney General Ashcroft approved the closed-circuit broadcast of Timothy McVeigh's 2001 execution to Oklahoma City bombing survivors and victims' family members, stating, "I hope that we can help them meet their need to close this chapter in their lives" (Department of Justice 2001). Prosecutors often work directly with family members in determining whether to seek the death penalty (Karamanian 1998) and frequently cite a need for "closure" as justification (Gross and Matheson 2003). "Closure" is frequently cited in the media as an expected outcome for families of homicide victims in death penalty cases (Radelet and Borg 2000). Family members themselves, however, assert that "closure" in the sense of deriving a sense of absolute finality from an execution does not exist (Madeira 2010).

One might assume that these changes in the rhetorical justification of capital punishment were made on the basis of social science evidence that confirmed that witnessing executions brought "closure" to family members. Unfortunately, the state of research on "closure" and the impact of witnessing an execution is woefully inadequate. The massive body of research on capital punishment is either oriented toward theoretical concerns or documents patterns in implementation. In addition, the growing bank of literature on surviving family members of homicide victims has not adequately investigated the claims made on both sides of the capital punishment debate. Instead, it has chronicled the extreme psychological, emotional, and physical toll that victims' families endure for years. But this lack of empirical inquiry has not prevented policy makers and witnesses from asserting either that capital punishment offers something to murder victims' families that no other punishment can or that the institution harms more than it ever helps.

These "closure" concerns are in actuality phenomenological claims about the lived experience of witnessing an execution. Like other, less dramatic life occurrences, for witnesses, executions are "communicative events lived through as existential moments" (Lanigan 1988, 147). Therefore, it makes most sense to analyze the lived experience of witnessing executions through semiotic phenomenology, which "simultaneously has the capacity to engage the immediacy and concreteness of persons' lived experience without essentializing it" (Martinez 2003). While phenomenology as a methodology "is properly described as an attitude or philosophy of the person" and explicates research participants' experiences of certain phenomena, semiotic theory focuses on the expressive medium of language and on how meaning is embodied within signs (Lanigan 1988, 8). When these analytic tools are used

together, “language as signifier is intertwined with the significance of lived meaning...” (Wolff 220). A semiotic phenomenology of execution witnessing illustrates how victims’ families are reflexively interconnected to the lifeworld and its semiotic systems (Ihde 1986).

With respect to its methodological brick and mortar, applying semiotic phenomenology to interpret witnesses’ conscious experience of an execution entails the “synergistic” application of the description-reduction-interpretation sequence (Lanigan 1988, 8). Within this sequence, “relationships are created between ‘parts’ and these relationships become new ‘parts’ to be added into the total scheme” (Lanigan 1988, 8).

The first phase, phenomenological description, involves the deconstruction of conscious experience. For purposes of this study, the description consists of transcribed interviews with 28 Oklahoma City bombing victims’ family members and survivors, 9 of whom were execution witnesses. This analysis includes relevant parts of interviews with all 28 participants discussing reactions toward McVeigh and his communicative behaviors as well as more extensive parts of interviews with execution witnesses.

In the second phase, these descriptions are subjected to phenomenological reduction, in which the essential parts of the description are identified through imaginative free variation—systematically imagining each part of the experience with “cognitive, affective, and conative meaning” as present or absent in order to reduce the description to its key elements (Lanigan 1988, 10). These key elements often appear as “revelatory phrases,” expressions “that signify the lived-meaning of the discourse as life-event” and thus “function as existential signifiers” (Lanigan 1988, 147). Reduction can be both paradigmatic (within the responses of individual research participants) and syntagmatic (across multiple participants’ responses) (Wolff 221).

The third and final phase, phenomenological interpretation (also known as semiotic or hermeneutic analysis), involves the “specification of the value relationship that unites the phenomenological description and reduction” (Lanigan 1988, 10, 11). This step consists of two activities. The list of revelatory phrases is first subject to critical examination, and one or two phrases are chosen as the “signified”; that particular phrase is then “used as the key part of the hermeneutic proposition,” which is a “statement... that gives the meaning implicit in the explicit discourse” (Lanigan 1988, 147). Practically speaking, interpretation involves “finding further thematizations which bring together initial themes into all-encompassing ones” (Wolff 1999, 220). A hermeneutic proposition may either be constructed by the researcher, or it may be an actual sentence from the description (*Id.*). In either event, interpretation enables the researcher to define the phenomenon in a way which ties together all the themes embodied in the revelatory phrases.

38.2 Visibility and Invisibility and Objectivity and Subjectivity

Themes of visibility and invisibility have always been central to theories of discipline and punishment. These concepts are the cornerstone of the panopticon, a prison structure designed by Jeremy Bentham in 1785 that allowed one prison

official to supervise an entire population of prisoners while simultaneously keeping this supervisor invisible and isolating all prisoners from one another. Foucault described the panopticon as follows:

at the periphery, an annular building; at the centre, a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside, allows the light to cross the cell from one end to the other. All that is needed, then, is to place a supervisor in the central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy. (Foucault 1979, 200)

The panopticon's efficacy lies in its ability to isolate inmates while rendering them perpetually visible. The threat of this visibility stems not from a supervisor's actual presence, but from his implied presence; the supervisor is invisible, and so the central tower need not be manned at all times. Because the prisoners are always unsure whether they are actually being monitored at any given moment, they experience an "anxious awareness of being observed" (Foucault 1979, 202). The panoptic design also renders prisoners themselves invisible—segregated from one another, and from the outside world. Thus, "invisibility is a guarantee of order" not only because anxious inmates must continuously monitor their behavior out of fear of surveillance, but also because invisibility from imprisonment ensures that inmates are not at large committing further crimes (*Id.*).

The panopticon, then, is a mechanism with two interdependent effects: to make cell inmates continuously aware that they are being watched and to allow the tower supervisor to maintain constant vigilance and therefore control over them (*Id.*). It is an authoritarian structure, designed for the exercise of disciplinary power. Disciplinary power also depends on dynamics of invisibility and visibility; it "is exercised through its invisibility; at the same time it imposes on those whom it subjects a principle of compulsory visibility" (*Id.* at 187). For Foucault, visibility is inherent in every application of disciplinary power, and so disciplinary power requires the human gaze—of supervisors and others—to achieve its communicative goals. The communicative medium of disciplinary power, the text on display, is the incarcerated body.

In a panoptic setting, the imprisoned body is the target of an objective gaze. As Foucault notes, the prisoner "is seen, but he does not see; he is the object of information, never a subject in communication" (*Id.* at 200). The supervisor in the central tower keeps a prisoner under surveillance for purposes of control, not out of curiosity or for communicative interaction. Incarcerated bodies' behaviors are only important to the supervisor in that they may endanger the exercise of disciplinary power through rebellion or escape; otherwise, an inmate's individuality and personhood are of no more note to the supervisor than an insect's. The supervisor's gaze, then, regards the inmate as an object, not a subject. This objectifying authoritative gaze is no accident, but an inherent and integral part of the panoptic model; it is what induces in the inmate an anxious awareness of perpetual surveillance.

The objective gaze which surveys the inmate has as its antecedent the horrified and curious gazes with which anonymous masses viewed grisly medieval public executions. Most often, crowds attended public executions as a form of entertainment; their roles as spectators and sometimes participants usually stemmed not from

acknowledgment of a condemned's subjectivity, or a recognition of the criminal's individuality, but from other social and political causes. Power was communicated through pain; executions were public so that the citizenry could take away certain moral and civic lessons from the display, namely, the "truth of the crime," the vindication of the sovereign, and a healthy fear of his justice (*Id.* at 35, 47). Condemned bodies were but educational objects, bloody communicative mediums upon which penal lessons were inscribed; "in him, on him the sentence had to be legible for all" (*Id.* at 43).

Significantly, these bodies were kept invisible until execution; the condemned "body, displayed, exhibited in procession, tortured, served as the public support of a procedure that had hitherto remained in the shade" (*Id.*). Short of public punishment, criminal proceedings occurred in the absence of public witnesses and most times without the accused himself, and prisoners were hidden within the dark confines of jails or dungeons (*Id.* at 35). Most condemned prisoners were unknown to spectators, enabling attendees to objectify the prisoner as a medium of moral and civic instruction. This is not to say, however, that the masses never viewed an infamous prisoner beloved by the populace subjectively and were motivated to witness his last moments because they were *his* and not for prurient entertainment. Even after executions were moved out of public view, criminal bodies continued to serve as communicative mediums, albeit more bloodless ones. Punishment continued to necessitate physical privations that extracted tolls from imprisoned bodies through "rationing of food, sexual deprivation, corporal punishment, [and] solitary confinement" (*Id.* at 16).

At no time has the condemned body been more of a bloodless communicative medium than in execution by lethal injection. Dynamics of invisibility and visibility are still omnipresent in this execution method. The state still endeavors to keep the body of the condemned inmate invisible until execution, hidden away on death row. After his capital conviction, the condemned body appears most often as an impersonal textual presence in legal appellate briefs, asserting claims involving innocence, constitutional violations, or procedural error. The condemned prisoner's body enjoys only limited visibility at the time of his execution.

Contemporary lethal injection occurs in private execution chambers within prison "death houses." The architecture of execution chambers resembles an inverted panoptic model, with the inmate in a central lethal injection chamber around which are placed one or more viewing rooms separated from the execution chamber by one-way glass windows. Most witnessing rooms have a glass window with a curtain through which attendees may view the procedure; the curtain opens when the prisoner is strapped to the gurney and all preparations are complete, and closes moments later after the prisoner is dead. The lethal injection protocol casts the execution as a humane, quasi-medical procedure in which the prisoner, strapped to a gurney in a sterile room and often covered by a linen sheet, receives a sequence of injections of lethal chemicals via IV catheter that render him unconscious, paralyze his respiratory muscles, and ultimately cause cardiac arrest.

The sanitized nature of this execution method is critical; not only is it ostensibly more humane than hanging or electrocution, but it is also easier to witness. The United States Supreme Court itself has recognized that the paralytic in the lethal

cocktail helps to ensure death while preserving decorum: pancuronium bromide “prevents involuntary physical movements during unconsciousness that may accompany the injection of potassium chloride... the Commonwealth has an interest in preserving the dignity of the procedure, especially where convulsions or seizures could be misperceived as signs of consciousness or distress” (*Baze v. Rees* 2008, 1535). Thus, the ultimate exercise of disciplinary power, once displayed through a bloody and battered body, is now reduced to the bloodless sight of a condemned inmate falling asleep. Although the execution may still be witnessed, death itself is rendered invisible.

However, distant this aesthetically clinical execution process is from medieval butchery, one key visual dynamic of the execution has been left intact. Scholars portray the modern execution as an event where the exercise of disciplinary authority is still enabled by a criminal body, put on display to be objectified by witnessing gazes. Prison officials, representatives of the media, and victims’ family members are there to watch the state execute the inmate, not to engage in interpersonal interactions with him; they witness to see what the prisoner will do or because of his criminal involvement, not because of who he is as an individual. Such witnesses are concerned with the condemned’s behaviors for reasons directly related to their motive in attending the execution: because such behaviors must comply with certain codes of conduct, or are newsworthy, or reveal reactions to being held accountable for another’s murder. Thus, the condemned prisoner theoretically still finds himself under the same objective scrutiny as an insect under a magnifying glass.

38.3 The Semiotic Dimensions of the Condemned Body

The condemned body as depicted in Foucault’s writings is steeped in semiotic meaning. According to Lanigan’s theory of semiotic phenomenology, communication is “constituted and regulated by systems of signs” and thus is comprised of “formal and structural relations between *signifiers* (elements of expression) and *signifieds* (elements of perception)” (Lanigan 1982, 63). Communication is also phenomenological “by force of being constituted and regulated by consciousness of experience (the signifier) and its entailment as the experience of consciousness (the signified)” (*Id.*). Therefore, for execution witnesses, the condemned body would be the most significant semiotic sign, uniting a signifier—such as the gestures and positioning of the condemned body in the state’s hands—with a signified, such as the perception of these behaviors as a manifestation of the state’s disciplinary power. Phenomenologically, the condemned body would unite a signifier—an awareness or consciousness of viewing the condemned’s body—with the lived experience of that awareness.

It is not a given, however, that these semiotic and phenomenological characteristics are universal properties of each condemned body. Because the person is phenomenological subject in conscious experience, we must look not only at the properties of the condemned body but also at those of other bodies: the execution witnesses (Lanigan 1992).

It is significant that Foucault's execution witnesses are mere spectators, with no personal connection to the capital crime necessitating execution. Democracy entails a certain level of complicity for the execution witness. Unlike in medieval times, when the condemned was punished in the name of a king ruling by divine right or right of conquest and not by citizen election, citizens of a democratic state who witness an execution are at least implicated in the execution in that the state is punishing the offender in their names by a method authorized by their elected representatives. However, this rather tenuous connection pales beside the intimate connection between murder victims' family members and the execution. Thus, a semiotic phenomenology of the lived experiences of murder victims' family witnesses should yield very different insights than that of Foucault's "anonymous masses," media representatives, or public officials.

Similarly, in contemporary society media technologies permit condemned bodies to be visible in novel ways. Before photography, the state had to literally produce a prisoner's body in order to make its exact image visible; the only alternative was hand-drawn representations. Today, a photographic image or video of the condemned may be taken, stored, and continually broadcast in a variety of print and electronic mediums. Thus, although the actual body of that prisoner may be incarcerated and invisible, it is still visible in the sense that its exact image may be endlessly produced and reproduced. In addition, condemned bodies themselves might not be as cooperative in maintaining their invisibility. The very same media technologies that enable a condemned prisoner to be visible via photographic representation also may penetrate prison walls and "extract" an inmate through a media interview, or an inmate may reach beyond prison walls through media statements. These types of contacts give rise to textual representations of the condemned body that may not replicate its exact image but nonetheless render it visible by publishing its characteristics, activities, or concerns.

The semiotic dimensions and phenomenological experience of each execution are unique for each individual witness, although there are certainly similarities between witnesses and among executions. An initial investigation into the semiotic phenomenology of executions may properly start with a case study analyzing the lived experiences of many different witnesses to one execution. Thus, this chapter will focus on the execution of Timothy McVeigh, who, in collaboration with Terry Nichols and Michael Fortier, designed, built, and planted a truck bomb that blew up the nine-story Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, on April 19, 1995.

38.4 The Oklahoma City Bombing and McVeigh's Communicative Visibility

The damage from the Oklahoma City bombing was profound. A total of 842 persons were injured or killed as a direct result of this tragedy; 168 were killed, 19 of whom were children (Sitterle and Gurwitch 1999). The blast left 462 homeless

and damaged 312 buildings and businesses (*Id.*). In subsequent trials, Timothy McVeigh and Terry Nichols were indicted and charged with eight counts of first-degree murder for the deaths of federal officials and three other charges, including conspiracy. While McVeigh was convicted in June 1997 on all counts and sentenced to death, the jury in Nichols' trial found him guilty of involuntary manslaughter and conspiracy after deliberating for 41 h, failing to reach a unanimous verdict on whether Nichols planned the bombing "with the intent to kill." After being sentenced to life in prison without the possibility of parole, Nichols was tried and convicted in 2004 of 162 counts of first-degree murder in Oklahoma state court, but again escaped the death penalty.

The legal aftermath of the Oklahoma City bombing culminated in McVeigh's execution. On June 12, 2001, 232 witnesses—10 in the death house at the state penitentiary in Terre Haute, Indiana, and 222 at a remote viewing location in Oklahoma City—gathered for McVeigh's last moments. Whereas "live" witnesses viewed a side profile of McVeigh, "remote" witnesses observed the closed-circuit feed from a camera positioned on the ceiling of the death chamber directly over McVeigh's face.

From the beginning, Timothy McVeigh was a very different type of offender. Shock greeted McVeigh's arrest; few expected to see a white, 27-year-old decorated American veteran charged with the crime, particularly after the 1993 World Trade Center bombing masterminded by Ramzi Yousef, a citizen of Kuwait with ties to Al Qaeda. It did not take long for participants to form impressions of McVeigh; most stated that images of McVeigh being led out of the Noble County courthouse in Perry, OK, were tremendously influential in forming impressions of McVeigh as a defiant, cold, and remorseless individual.

Survivors' and victims' families' lived experiences of McVeigh's execution were heavily influenced by his media visibility. A very outspoken defendant, McVeigh granted numerous media interviews from the time of his arrest to his execution. In 1995, McVeigh was the subject of cover stories in *Newsweek* and *Time* and was a runner-up for *Time*'s Man of the Year. Numerous media interviews followed; this panoply also included one television interview with *60 Minutes* reporter Ed Bradley in February of 2000, which aired that May. Victims' family members and survivors viewed McVeigh as someone with great communicative agency who could manipulate them through the media, but over whom they had little communicative control. Many participants reported that McVeigh was an unwelcome presence in their lives, indicating that their relationship to McVeigh was parasocial in nature, one-sided, and mediated (see Madeira 2008; Madeira 2009). This relationship was pregnant with communicative necessity and perceived obligation; victims very much wanted to hear "why" and how McVeigh carried out the bombing, and many yearned to speak with him in person, but did not want him to enjoy such media access.

McVeigh's high visibility clearly is at odds with the ideal of the invisible condemned body; he was certainly too visible for the federal government's comfort. McVeigh's unprecedented visibility was perceived as threatening to those killed or

injured in the bombing and their families and to American institutions and cultures. Shortly before McVeigh's execution, Attorney General John Ashcroft asked the media to exhibit restraint:

If the news media conducts an interview with Timothy McVeigh, I would ask them for self-restraint. Please do not help him inject more poison into our culture; he has caused enough senseless damage already.... I would ask that the news media not become Timothy McVeigh's co-conspirators in his assault on America's public safety and upon America itself. (DOJ Press Release)

Additionally, in 2001, upon the request of the Warden at Terra Haute, Indiana, the Director of the Federal Bureau of Prisons revised bureau policies to ban in-person meetings between reporters and all federal death row inmates (most of whom are housed in the Special Confinement Unit in Terre Haute) (see Federal Bureau of Prisons Institution Supplement THA 1480.05A). Many have construed this ban as an attempt to suppress death row inmates. Attorney General Ashcroft announced this new policy change in a public statement regarding McVeigh's execution, stating that "[a]s an American who cares about our culture, I want to restrict a mass murderer's access to the public podium" (Department of Justice 2001). Presumably, the federal government wished to tighten access to its death row inmates so that they might no longer enjoy the same heightened visibility as McVeigh.

McVeigh's refusal to remain quiet and therefore invisible behind prison walls was also a constant irritation to many victims' families and survivors. There was a strong sentiment that murderers such as McVeigh and Nichols should not enjoy any visibility, but should be forced into silence and therefore invisibility. Commenting on a press statement that Nichols had released from prison, one participant compared Nichols to the infamous murderer Charles Manson, stating "he [Nichols] should be dead, he shouldn't be capable of speaking, and I knew that this was something that could happen because Manson is alive. And he's still impacting people and... and that shouldn't happen, and that can't happen for McVeigh, he's gone" (12). This individual stated that even life imprisonment should mean an inability to communicate with others:

they should not see another living human being, they should not be able to communicate with another human being.... I don't care what they do, it's what they say, if they can impact, affect have any type of bearing on any other human being, it's wrong. And if they're dead, they can't do that. (12)

Similarly, a survivor who did not witness the execution connected McVeigh's high levels of visibility and media access to a need to see him executed:

it's not so much that he is or isn't alive, it's that his -- here we go again, access to media. See he had access to media and you know maybe that's another thing, maybe that's another type of punishment that needs to be given is non-access to media because if he wouldn't have been writing people and calling people and giving interviews and making pronouncements and so on, you know, it'd be a lot easier to live with him, being in prison for the rest of his life. (19)

Participants also felt resentment toward the media for their seemingly endless coverage of McVeigh. One survivor who did not witness the execution stated that "I just wanted the media to quit talking about it [the execution]... I just wanted some return to, as much return

to normalcy as I could have” (3). Another was kept “on edge” by media coverage: “I just felt like, it was kept stirring up, stirred up, stirred up, stirred up... all the time and it just, there was still Terry Nichols to deal with, that all the media and everything, it just -- that kept me toned up... constantly bringing everything up again” (11).

McVeigh’s remarks were thought to be harmful and destructive. Participants were overwhelmingly saddened and angered when McVeigh termed the deaths of 19 children in the America’s Kids day-care facility within the Murrah building “collateral damage”: “that was a very, very painful, when he came out and said the children were collateral damage and it was like, that was so hard on the families” (21) (Michel and Herbeck 2001, 188). McVeigh’s willingness to use the media to continue to inflict harm on family members and survivors was one reason why one participant felt McVeigh needed to be executed, in contrast to Nichols, whose quiet prison presence meant that he could “live with” his continued existence:

McVeigh, even though he knew that he was getting the death sentence, he was defiant all the way up to the point where it actually happened, okay? He would speak out to the media. He would tell the families to grow up, it’s collateral damage that we killed your kids, you know. And everything that he did was doing nothing but hurting the family members here in Oklahoma. So the only way for us to have any kind of peace was to execute this man. Now on Nichols, Nichols is a little different because since he’s been tried and convicted, you don’t hear about him. And so even though he was ninety percent involved... I can live with him being in prison for the rest of his life, for the simple reason that he is not defiant and he’s not going out and getting on the news and so forth and trying to hurt the family members. (25)

Thus, for the federal government and for family member and survivor witnesses, McVeigh’s execution was not only about the display of disciplinary power but about silencing McVeigh. McVeigh’s communicative visibility contributed to family members’ and survivors’ perceived need for the state to render visible McVeigh’s actual body in an event that would lead to his death and consequent invisibility.

38.5 Thematising the Lived Experience of Witnessing

Phenomenological reduction revealed three thematic categories essential to the lived experience of witnessing McVeigh’s execution: the perception of being compelled to witness, a perception of communicative interaction, and a sense of completion.

38.5.1 Being Compelled to Witness the Execution

Participants spoke of being compelled to witness McVeigh’s execution because of a perceived need to “see justice done” by being present when McVeigh died. Each word in this phrase will be examined in turn.

With respect to “seeing,” McVeigh’s execution was the last in a long string of legal proceedings; participants felt it was very important to attend for that reason

alone. In addition, a number of participants had become personally invested with the closed-circuit broadcast of the execution. Though hundreds wished to witness the execution, only 10 could be accommodated in the witness room adjoining the lethal injection chamber in Terre Haute where McVeigh would be executed. Thus, numerous Oklahoma City bombing survivors and victims' families sought to persuade Attorney General John Ashcroft to arrange for a closed-circuit broadcast of the McVeigh execution from Terre Haute to Oklahoma City. On April 10, 2001, Ashcroft visited Oklahoma City and met with 100 survivors and victims' families who asserted that they had a right to witness the execution and explained the importance of witnessing. Two days later, on April 12, 2001, Ashcroft acceded to the request to televise McVeigh's execution via closed-circuit broadcast, citing "closure" as a paramount reason.

Witnessing fulfilled a strongly felt *personal* need to see McVeigh's final moments for one's own self: "At that point it was more for myself. To see justice done. From start to finish" (7). Another participant stated: "I had watched that man and I needed to complete the process. I needed to see it through" (22). It was important to many not to have to imagine what the execution looked like: "I did not want to have nightmares for years to come after the execution about what I thought it must have been like. Again, I wanted to deal with reality" (22).

Personal involvement in the struggle to have McVeigh's execution televised intensified the personal commitment to witnessing: "We had to fight for close circuit. We had to meet with General Ashcroft and talk him into doing close circuit for execution..." (22). Attending was the counterpart to their negotiations with Ashcroft to have the execution televised and demonstrated the strength of their personal commitment: "You know, I had talked the talk. Did I... was I big enough to walk the walk? And I was..." (28). Though viewing via closed circuit was enough for most participants, many also very much wanted to witness the execution live in Terra Haute and were thrilled when they drew a seat through the lottery process: "I think that was the most important thing to me.... I could have viewed it as the FAA center if I had to.... But it was just... complete relief when I found out I was one of the 10 selected... there aren't enough words to describe how important it was for me to do that... I don't know how to say it" (29).

References to "justice" capture participants' feelings that McVeigh's execution was a dialogic response to his involvement in the bombing: "The execution was something I needed to do for myself because I deserved; I believed he needed to be punished because he knew those babies were in that daycare" (15). Participants spoke of "justice" as if it were the same as McVeigh's death sentence.

Finally, it was important to participants that justice was "done," or accomplished. Though the element of completion is a theme in its own right, it must also be noted that the fact that the execution marked the end of McVeigh's life and the culmination of legal proceedings against him had much to do with witnesses' sensation that they were compelled to witness the execution. Finality left participants with no option but to witness: "I have to do this. That's the least I can do is follow it through. I fought a long, long battle to not face, to not see it to the end" (28).

38.5.2 *The Execution as a Communicative Interaction*

For participants, the lived experience of witnessing McVeigh's execution was that of a communicative event, a specific episode in which someone makes meaning by drawing on enculturated systems of communicative practices, strategically choosing spoken, written, or gestural behaviors. In perceiving the execution to be a communicative event, witnesses found their lived experiences of the execution structured through McVeigh's gazing behaviors and his silence. Witnesses also expected that McVeigh would be impacted by the communicative dynamics of the execution. They had hoped that the execution would be a suitably harsh response to McVeigh's culpability, but were disappointed when they witnessed a death that was "too easy."

Execution witnesses were intensely interested in watching McVeigh's face throughout the procedure. Closed-circuit witnesses felt that the placement of the camera directly over the gurney in Terre Haute was ideal because it allowed them to clearly see McVeigh's facial expressions. The desire to see McVeigh face-to-face fueled some witnesses' desire to view the execution: "I'm glad I saw him that close up and everything cause that way I knew from his eyes and his expression what he was feeling" (5). Seeing McVeigh's face enabled a healing transformation: "I think the face thing is what, really brought it to reality with me... it was a face-to-face thing and I think that's probably what drew me in to what I needed to go through" (21).

McVeigh's gazing behaviors gave rise to an intense perception among closed-circuit witnesses that McVeigh was aware that his death was being witnessed, that he wanted to create a certain image, and that his gazing behavior produced an interactional expectancy for witnesses. Closed-circuit witnesses believed that McVeigh was staring at them through the camera and that he was conscious of their presence: "He knew that people were looking at him, watching him..." (5). When McVeigh's face appeared on the screen, it seemed to closed-circuit witnesses that he was making eye contact with live witnesses in the viewing rooms:

you almost, you could see him almost like visibly like he's looking at each person in there. Specifically making specific attention of the fact that he's looking at each person in there... It's almost like he's looking at each family member or whoever's there... (7)

Not only did witnesses feel that McVeigh was aware of live and closed-circuit witnesses, but there was a definite perception that he was actually and purposefully *looking at* all witnesses, even those viewing by closed circuit. Three closed-circuit witnesses described McVeigh's gaze as unmediated, despite the closed-circuit feed: "he raised his head up and... it was almost like he was just staring at each person... and it was something he did on purpose... It's almost like it was a face-to-face contact with him" (21). One participant recalled, "there's his face looking at you" (22). Closed-circuit witnesses were struck by a sensation that McVeigh was staring right at them:

And as he stared at the camera, knowing that we were watching,... he would just stare at that camera. And it was just...like it was just he was just staring right through you. I mean

absolutely everyone said the same thing. It looked like he was looking right at you, like he was looking right at me. (28)

Witnesses in the death chamber in Terre Haute had a different experience of McVeigh than closed-circuit witnesses. Live witnesses only had seconds of perceived eye contact with McVeigh, but that was enough for McVeigh's behaviors to send the impression that he was trying to see their faces: McVeigh "glared into the room, you know, trying to figure out who was who, who was in there and where we were standing at" (25).

When closed-circuit witnesses locked eyes with McVeigh, the effects were profound.

Witnesses certainly perceived that McVeigh was attempting to send a message. Witnesses described McVeigh's expression as either confrontational ("staring" into the camera), "stern," or "defiant" ("I've seen it a lot in my grandchildren. You know that kind of defiance of ah, you can whip me if you want to but it's not hurting."); overtly malicious (a "go to hell" or "eat sh** and die" expression, one that "just spit on us all some more"); and "evil." For one participant, McVeigh's expression was so defiant that a relaxation in his facial posture signaled his death. Witnesses also stated that McVeigh's face registered pride or arrogance, describing it as "triumphant," a "f*** you all, I won" look, one that said "I did the right thing and I'm not sorry" or "I'm willing to die for my idea." Ironically, witnesses further described McVeigh's expression as registering absence, explaining that it was blank ("nothing"), unremorseful ("no remorse"), uncaring ("didn't give a flip," "didn't care"), and free of suffering ("you're not hurting me," "no sign of discomfort," "showed no pain"). Interpreting McVeigh's gaze as communicative had interpersonal consequences from survivors, from angering them to disappointing them to hurting them further or, in one case, enabling forgiveness. As one participant stated, "he died like he didn't care and I cried because of that, because he did not care" (15).

Live witnesses who viewed the execution in Terre Haute did not sense that McVeigh was attempting to communicate with witnesses. Other than perceiving that McVeigh "glared" into the witness room, witnesses were unsure as to whether McVeigh was trying to send a communicative message or what that message would have been.

Witnesses, whether viewing live or by closed circuit, wanted to respond communicatively in turn to McVeigh's gaze. One participant wanted McVeigh to be able to see her, "[j]ust so that he could see that I'm not a monster. That we are not monsters, we're just people too. You know and all we did was go to work that day. That's it" (7). Another stated:

I would like for him to look at my face and know the pain that I knew he's caused. And to see, you know, to see my daughter and to know that you know, you killed my daughter and her baby. You killed them. You know, yeah, I wish he could have seen my face, because I saw his, I wish he could have seen mine. (28)

Though live witnesses may not have felt that they had an opportunity to communicate their thoughts to McVeigh, this did not prevent them from wishing they

could have done so. This is evident in the remark of one participant: “I wanted to see him when he was in the chair, like that, and I wanted him to see me. Because I wanted him to know that no matter what he did or didn’t do, we were going to survive this thing and we would be better afterwards” (25).

Some live witnesses stated that they actually made communicative gestures toward McVeigh, although they believe that he did not see them. Two of the live witnesses who sat in the front row of the witness room brought in small photographs of their murdered loved ones and held the photographs up against the glass during the execution. This was intended as a communicative gesture that simultaneously signaled witnesses’ defiance and served as a summons to invoke the victims’ presence. As one of the participants described this experience:

I got in the front row and [another live witness] and I had both had a picture... She had her [child]’s picture and we put them right up to the window. Not that he could see it. It was more symbolic and we had to do it very discreetly because we had guards behind us. But yeah, stuck a picture up there so [sibling’s name] could watch it happen. (29)

The other witness stated that “He [McVeigh] couldn’t see them, but our sons were right there and her brother was there, watching.”

Perceiving an execution to be the exercise of disciplinary power, many participants believed it appropriate for social censure to be communicated through pain. Some witnesses were disappointed to find that McVeigh appeared to die peacefully, and felt that this diluted the execution’s punitive message. For witnesses, the rebuke was not merely delivered by taking the offender’s life in turn, but doing so with a certain level of violence. His manner of death and its apparent ease was contrasted with victims’ terrible deaths and survivors’ years of painful physical and mental suffering and recuperation.

Participants commented frequently on the fact that McVeigh’s death, however unnaturally induced, visually resembled a “good” death—a peaceful, rapid, and painless instance of passing away while asleep. Other “outdated” methods of execution, participants opined, would have been more painful. A number of participants who witnessed the execution felt that it was not right that McVeigh’s death did not involve more suffering; reactions included statements that McVeigh should have been electrocuted, hanged, or mutilated: “Like I said, it’s too peaceful. I was very, very sorry that he didn’t get the electric chair, like *The Green Mile* where they forgot to put the sponge. No, it was, hanging would have been great. That would have been [a] good satisfaction and [the] electric chair would have been a nice satisfaction. But for a criminal that’s committed so many murders it was way too peaceful” (30). Another participant stated, “I think he should be hanged, you know, and in the public... because you know, injection was too easy. You know, even the electric chair execution to me, was too, too easy. You know. But of course that’s been outlawed and that didn’t happen of course. That was just my point of view... I wanted something severe...” (28).

Witnesses appeared to have been ready to see McVeigh suffer: “He pissed me off cause he didn’t show anything. I wanted him to do a little sufferin’. It upset me because he didn’t” (5). Another participant remarked, “I don’t think it was a

gruesome enough. I, I think it should have been more painful. I think it should have been the electric chair at the minimum.... He just went to sleep. That's the easy way out" (7). Some even wanted complete parity between the deaths McVeigh had inflicted on his victims and the means by which his own life was taken: "to be honest with you I wanted them to blow him up. I wanted him to be hurt. I think he was actually afraid cause it was the unknown but I wanted him to be mutilated like my friends were" (15).

Witnesses were also disconcerted by the fact that it took McVeigh only moments to die and juxtaposed this brevity to the years of suffering: "I was [angry] cause I thought you know this hasn't taken any time to kill him and you know it took hours to get some people out, some people didn't come out alive. You know I have friends that are still getting glass out of their body" (15).

Thus, participants felt that the two communicative messages that they had hoped to see as execution witnesses—the state's punitive message and McVeigh's response to that message—were both weakened by the apparent ease of McVeigh's death. In this respect, the lived experience of witnessing entailed disappointment: "to me it was a letdown because it didn't last long enough. I wanted him to suffer. I wanted him to hurt you know... people that were hurt had to walk, to endure the pain..." (15). As will be seen, however, the most basic communicative message of the execution—that McVeigh had to pay for his crimes with his life—was successfully imparted, and as the following section will explain, it was this message that participants deemed most significant.

38.5.3 *The Execution as Completion*

McVeigh's execution was literally a completion—of legal proceedings against him and of his death sentence. Beyond serving as a conclusion in this explicit sense, however, the execution enabled forms of completion that were less predictable and more personal. Completion was a phenomenological theme for witnesses to McVeigh's execution in two contexts: silencing McVeigh and enabling a healing transition.

The importance of silencing McVeigh stemmed from his communicative visibility, which frustrated and angered victims' families and survivors. It was as if rendering him invisible was as important as holding him accountable for his role in the bombing. Seeing McVeigh stifled was a key reason to witness the execution:

Seeing it through and to know that he really was silenced. That he really is dead. I saw him die. It can't be any of this - we saw President Kennedy on a yacht or we saw... you know, Elvis Presley working at Burger King or whatever, you know. I mean you hear all this crap. And I mean I know I saw him die and I know he is silenced. And that is what I wanted. I wanted him to be silenced and I saw him being silenced. (28)

The silence—of McVeigh and of the media—following the execution was also transformative, bringing peace and respite to both witnesses and nonwitnesses: "when

those people are executed and you know they're *gone*, there, there is a change for the people that were victims of that crime. It's gotta be better. It was for me" (1). For participants, silence was how a sense of completion announced itself: "You know, after someone is executed you are completely finished with every battle you have to fight in that arena. No more McVeigh battles to fight. Don't have to worry about what's gonna come out in the newspaper that he said to some reporter somewhere" (24). Prior to that time, constant media communications about McVeigh had made it impossible for many participants to heal:

I think I t[old] you the story about the reporter who asked me about closure and why we kept opening up our wounds and my answer to that was I never closed and I never will. As every time you write a story, every time you, you know, question what happened or who was involved and those kind[s] of things, those lesions were always there, period. (24)

Participants connected this post-execution silence to a sense of peace or relief: "It's still death but yeah there was that relief. We don't have to hear his crap anymore. He can't he can't hurt us. He's gone. He got what he deserved... You know he can't write no [sic] books any more, he can't grant no [sic] interviews..." (8). This sensation also was linked to the realization that they had survived McVeigh and would no longer have to share any social space with him:

Peace. I mean I felt a real peace. Within my self. And again because I'm not carrying him in my head. He's gone. He's out of my head now. And that's more room for [my brother]. To think I have to share room with that son of a b**** with such a nice guy like my [sibling]. That sucks. (29)

There was a perception that had McVeigh remained alive, the silence would have been broken, bursting any fragile bubble of peace that might have formed: "I think that would have been harder because he would've, you would've heard things. Every now and then I'm sure he would've wrote something or talked to a reporter or you know it would have been in your face for life" (8). Thus, forgiveness or healing was only truly possible "[w]hen his mouth was shut" (8). This sense of relief might even have been a physical catharsis: "when McVeigh was killed I felt a huge sense of relief... I think physically it was a major uh benefit to me, and uh I think spiritually um he's not making headlines, no one is reading his letters in the newspaper..." (12). This awareness conferred freedom: "all the media packed up, like you know what, we are free, they will not ever come back in this manner again ever, you know, you will not ever get any more pronouncements from McVeigh on anything" (19).

In addition to realizing that McVeigh was finally silenced, viewing the moment of McVeigh's death could enable other especially intense moments of realization and transition. A closed-circuit witness describes her lived experience of catharsis as follows:

when I was there viewing him and watching him, it was like, all of sudden he came to me, [I realized that] I don't know what's on the other side and when I get to the other side all of this may mean absolutely nothing. I started to think[] of him as Timothy McVeigh, the soul and not Timothy McVeigh, the man and I started praying for him that this is his last chance, this is his last breath and I prayed for him and it just like overtook me.... Um, I was able to let it go, I guess to me that was the true forgiveness.... (21)

38.6 Visibility as the Hermeneutic Key to Understanding the Lived Experience of McVeigh's Execution

Each of these three phenomenological themes—feeling compelled to witness the execution, the execution as a communicative interaction, and the execution as completion—must now be further reduced to their phenomenological essence: visibility. One participant's comment best exemplifies why visibility is the hermeneutic key to McVeigh's execution:

McVeigh, even though he knew that he was getting the death sentence, he was defiant all the way up to the point where it actually happened, okay? He would speak out to the media. He would tell the families to grow up, it's collateral damage that we killed your kids, you know. And everything that he did was doing nothing but hurting the family members here in Oklahoma. So the only way for us to have any kind of peace was to execute this man. (25)

Each phenomenological theme encapsulates dimensions of visibility and invisibility, highlighting the semiotic significance of McVeigh's condemned body.

38.6.1 *Explicating Visibility*

It is admittedly easy to reduce visibility to its most literal meaning, a quality associated with viewing McVeigh's actual, observable body. Visibility, however, also penetrates beneath the skin, extending from a body's corporeal presence to its semiotic dimensions, contributing to a rich lived experience of observation. This lived experience expands and extends the body's corporeal presence in physical and temporal space so that it becomes a visual or textual presence that may be accessed in myriad locales and times. McVeigh's body, therefore, was not restricted to a gurney in the lethal injection chamber at Terra Haute since its presence extended to the remote viewing center in Oklahoma City via the closed-circuit image.

Cultural norms govern the propriety of bodies and their visibility—when it is permissible for a body to be visible and to whom and with what properties. These norms vary by social context. In the execution, for instance, rules proscribe who is to see the condemned body and when. Condemned bodies are to be made visible only to a select population that until recently has been limited to media representatives and public officials. Now, this small group has been expanded to accommodate victims' family members. The state intends for the condemned prisoner to remain invisible behind prison walls until the day of his execution. On that day, he will be made visible to this carefully circumscribed body of witnesses for a very brief time. The visibility of condemned bodies during the execution procedure varies from state to state. Some states, such as Ohio, allow witnesses to view the insertion of IV needles into the prisoner's body before the prisoner even enters the chamber. Others only allow witnesses to see the condemned prisoner after all preliminary preparations are completed and the prisoner is strapped onto

the gurney in the chamber shrouded by a sheet. Significantly, visibility is always on the state's terms; if something goes wrong during the execution, the curtains mounted on the witnessing room window are closed, terminating witnesses' view of the prisoner. Visibility occasionally has its surprises. On September 15, 2009, Ohio's attempts to execute Romell Broom by lethal injection failed after the execution team tried for at least three hours to insert an IV while witnesses viewed via closed-circuit television.

In the context of execution witnessing, visibility has another counterpart: noise. "Noise" here refers to the speech of McVeigh and speech about McVeigh, communications that maintained his pervasive presence between his trial and execution. Similarly, the correlate of invisibility was silence; McVeigh's execution ensured his death, thereby terminating both his access to the media and the media's incentive to regard him as newsworthy.

Visibility as noise could be harmful for family members. As the remarks of participant 25 make clear, a condemned prisoner does not lose his potential to wound victims' families until he is silenced, and family members may long for a communicative prisoner's execution for reasons other than accountability. McVeigh was unorthodox in the sense that he did not accept visibility on the state's terms and continued to give many media interviews in the period between his trial and execution. His codefendant Terry Nichols, however, remained silent, and so any desire that family members and survivors may have felt for his execution was limited to holding him responsible for his role in the bombing.

It comes as no surprise, then, that invisibility as silence could be healing. Participants speak of attaining peace and relief when McVeigh was dead and could no longer communicate. Though the lived experience of McVeigh's execution may have included disappointment over its ease and brevity, what ultimately was most significant is the transition to healing that participants assert his death enabled.

38.6.2 Visibility and Compulsion, Communication, and Completion

Having acquired a deeper understanding of visibility, its properties, and its proprieties, we may better comprehend the link between visibility and each of the three phenomenological themes by posing a series of questions. Why was McVeigh's execution visibly compelling for witnesses? What was the importance of rendering McVeigh's communicative gestures visible, and what was their conscious experience? Finally, what forms of completion did visibility enable?

Feeling compelled to witness the execution meant taking advantage of one last opportunity to see McVeigh's actual body, which for years had been hidden away on death row; this desire was strengthened by witnesses' awareness that McVeigh's eternal invisibility through death was looming in the shadow of his execution.

Witnessing satisfied both physical and symbolic needs: a physical need to actually view his last moments and seize one last opportunity to look upon his body, and a symbolic need to watch the exercise of disciplinary power and to see McVeigh silenced. Justice was construed as a performative exercise of authority over McVeigh that simultaneously held him accountable and rendered him invisible; this is very closely linked to completion as this demonstration of disciplinary power was to be the final legal proceeding. The execution as a ritual would wring justice from McVeigh's life force; family members and survivors were unwilling to leave legal proceedings behind until they knew that his death sentence had been carried out. Until there was justice, there was no healing; accountability for McVeigh enabled a degree of emotional satisfaction for family members and survivors.

Comparing emotion to a phantom limb, phenomenologist Merleau-Ponty once asserted that "the impulses arriving from the stump keep the amputated limb in the circuit of existence. They establish and maintain its place, prevent it from being abolished, and cause it still to count in the organism. They keep empty an area which the subject's history fills,..." (Merleau-Ponty 1962, 86). For participants, the trauma of the bombing highlighted an aching and palpably painful loss which "justice" helped to assuage. Bound up in legal proceedings, it was difficult for participants to move on, partially because they were determined to see proceedings through. According to Merleau-Ponty, "to feel emotion is to be involved in a situation which one is not managing to face and from which, nevertheless, one does not want to escape... the subject, caught in this existential dilemma, breaks in pieces the objective world which stands in his way and seeks symbolic satisfaction in magic acts" (*Id.*). While participants could not face the void caused by the bombing, they did not want to escape it until they were sure that McVeigh had been held accountable through the magic act of the execution ritual.

Regarding McVeigh's execution as a communicative interaction was related to visibility on two levels. First, it signaled interest in McVeigh as a communicative subject, a side of him that was alien to witnesses who had only seen his actual body in a few contexts: continually rebroadcast images from his perp walk, at legal proceedings, and during the *60 Minutes* interview. Interacting with another as a communicative subject ideally entails the opportunity to see that person face-to-face to assess his verbal and nonverbal behavior. Witnesses to McVeigh's execution did not merely feel a need to see his last moments; they felt the need to acquire a lived experience of that time period. They sought not only a record of McVeigh's final behaviors, but an orientation to McVeigh as an individual, a deeper awareness of who he was as a communicative subject. The orientation between one's self and another object is of great phenomenological concern; self and object form a perceptual unity that informs the lived experience of that object. As Merleau-Ponty has noted:

the normal subject penetrates into the object by perception, assimilating its structure into his substance, and through this body the object directly regulates his movements. This subject-object dialogue, this drawing together, by the subject, of the meaning diffused

through the object, and by the object, of the subject's intention... arranges round the subject a world which speaks to him of himself, and gives his own thoughts their place in the world. (*Id.* at 132)

Although McVeigh was not an object in the traditional sense, his execution marked his transition from a communicative subject into a body, an inanimate object. Moreover, each of McVeigh's behaviors constituted an object in and of itself. As Merleau-Ponty has explained, "[t]he gesture which I witness outlines an intentional object. This object is genuinely present and fully comprehended when the powers of my body adjust themselves to it and overlap it. The gesture presents itself to me as a question, bringing certain perceptible bits of the world to my notice, and inviting my concurrence in them" (*Id.* at 185). Therefore, the execution as a communicative event facilitated a subject-"object" dialogue, enabling revision for witnesses, a reorganization of emotions, priorities, and statuses.

Acquiring a lived experience of the execution necessitated personal presence. According to Merleau-Ponty, "sight and movement are specific ways of entering into relationships with objects and if, through these experiences, some unique function finds its expression, it is the moments of existence [which]... links them to each other,... by guiding them toward the intersensory unity of a 'world.'" (*Id.* at 137). The most efficacious way of acquiring knowledge of others is by observing them in person, as a spectator; only then can a subject-object dialogue occur: "It is through my body that I understand other people, just as it is through my body that I perceive 'things'" (*Id.* at 186). Personal presence is therefore a key element of any subject-object dialogue: "[w]hether it is a question of another's body or my own, I have no means of knowing the human body other than that of living it, which means taking up on my own account the drama which is being played out in it, and losing myself in it" (*Id.* at 198).

To witness a gesture is to form a lived experience of its perception: "expressive behavior is "a certain manner of relating oneself to the world, and correspondingly, a style or shape of experience"" (*Id.* at 191). Some semantic elements are inherent in a gesture's physical movements:

one can see what there is in common between the gesture and its meaning, for example in the case of emotional expression and the emotions themselves: the smile, the relaxed face, gaiety of gesture really have in them the rhythm of action, the mode of being in the world which are joy itself. (*Id.* at 186)

The act becomes the actor's status; McVeigh's gaze constitutes his defiance, and his death embodies his silence.

In addition, the execution provided visual access to McVeigh in a forum where an entirely different type of communicative interaction was possible. In the courtroom, McVeigh had shared the spotlight with many other legal actors, it was very unlikely that he would take the stand, and many of the behaviors that witnesses most ardently desired (e.g., displays of remorse or apologies) had no legal relevance. In the execution chamber, however, the focus was entirely on McVeigh himself, and apologetic or remorseful expressions were entirely appropriate.

Witnesses could both observe McVeigh's behaviors and figuratively "respond." Witnesses probably knew that literal attempts to communicate with McVeigh would be futile; their communicative desires were not pinned on the hope that McVeigh would actually receive and understand their communicative message. Instead, their personal satisfaction was derived from merely performing certain communicative behaviors—staring at McVeigh or holding a victim's picture up against the glass of the execution chamber. It was making the communicative gesture that mattered.

Finally, witnessing to attain a sense of completion signaled the visual significance of McVeigh's death sentence, the scribing of social censure upon his body. It also accomplished McVeigh's invisibility and enabled a sense of emotional completion in the sense of a closing of that life chapter. Ultimately, the ends accomplished by McVeigh's execution proved more important than its means; although McVeigh's death was more peaceful than many witnesses would have preferred, it mattered most that McVeigh was dead. Significantly, this completion was imperfect; McVeigh's death did not bring loved ones back or make injured survivor bodies whole. As Merleau-Ponty once explained:

Time in its passage does not carry away with it these impossible projects; it does not close up on traumatic experience; the subject remains open to the same impossible future... New perceptions, new emotions even, replace the old ones, but this process of renewal touches only the content of our experience and not its structure. (Merleau-Ponty 83)

For witnesses, an imperfect sense of completion was preferable to no sense of completion at all; although they could never consign the bombing and McVeigh entirely to the past, they could now compartmentalize these toxic events and personalities and thereby unfreeze personal time.

38.7 Conclusion

In summary, the lived experience of witnessing McVeigh's execution was that of rendering "justice" visible and McVeigh invisible. This phenomenological investigation reveals that one's perception of concepts such as "accountability" and "justice" do not relate only to an offender's crimes but also to his personality and level of visibility before and after trial and sentencing. The semiotics of witnessing a condemned inmate's final moments are not reduced to the mere exercise of disciplinary power, but are replete with other forms of meaning, including dimensions of invisibility and silence. "Closure"—appropriately defined not as absolute finality but as peace or relief—is accomplished by rendering an offender invisible. It is likely that the more defiant and visible the offender, the greater victims' families perceived need to witness "justice." There is an urgent need for additional phenomenological research to document the lived experiences of other executions, particularly those

of offenders who commit less sensational crimes and do not have the media cache of Timothy McVeigh.

This research also highlights the degree to which family members' emotional needs are, for better or for worse, tied to the criminal justice system and certain procedural outcomes. The mere knowledge that an offender has been tried, convicted, sentenced, and executed is often insufficient; family members must form lived experiences of these proceedings for themselves. Significantly, the lived experience of witnessing an execution is informed by the family members' expectations that they will be able to witness executions and that executions will be meaningful in the sense of removing the offender as an unwelcome presence in their lives. The visible exercise of disciplinary power is not only to preserve and enhance state sovereignty but also to assuage victims' families' outrage and sense of loss. More so than ever before, the criminal justice system is no longer merely concerned with crime and its punishment, but also with victims' suffering and therapeutic support for those wronged.

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Chapter 39

A Tale of Many Newspapers: Perversion, Criminality, and Scopophilia in the Edison Chen Scandal

Marco Wan and Janny Leung

Abstract This chapter examines the reportage on the Edison Chen sex photo scandal in Hong Kong. Chen, a popular actor and singer, took pictures of himself and his various sexual partners, and the pictures were leaked onto the internet in late 2007 and early 2008. The incident received widespread coverage in the local media. This article examines the construction of Chen's identities as sexual deviant and criminal in the journalistic discourse of this period. It also argues that this discourse tapped into local readers' scopophilia and epistemophilia in its presentation of the event. It concludes by using the Chen case to highlight the need for cultural-legal scholars to scrutinise media representations of issues relating to sexual identity and behaviour.

39.1 Chen as Pervert and Criminal

In late 2007 and early 2008, a number of salacious photographs mysteriously appeared on the internet in Hong Kong. These images showed Edison Chen, a singer and actor well known in his native city and throughout Asia, in the middle of various sexual activities with his partners, many of whom were local female celebrities. Police efforts to stem the dissemination of these images seemed futile: despite their attempts to trace the people uploading the pictures and to close down websites, the images appeared with increasing frequency. It was subsequently revealed that Chen did indeed take the photos himself and stored them on his personal computer. He then sent his computer for repair at a computer centre, where one of the technicians discovered the files. The scandal culminated a high-profile trial in which the computer technician was found guilty of the offence of obtaining access to a computer with dishonest intent.

M. Wan • J. Leung (✉)

School of English, University of Hong Kong, Pokfulam, Hong Kong, China
e-mail: janny@cantab.net

A sex scandal involving Asia's top celebrities unsurprisingly generated intense media attention both locally and internationally. On a local level, the Chen incident dominated the front pages of Hong Kong's newspapers and magazines, and the articles were invariably accompanied by doctored images of Chen and his sexual partners. The international media also recognised that at stake was not only a sensational story involving popular actors but was arguably 'the biggest celebrity sex scandal in the history of the Chinese internet' (Watts 2008).¹ As a result, the press responded with nothing short of a 'media frenzy' (Pedroletti 2008).

The scandal had a major impact on Chen: he fled from Hong Kong to Canada in order to avoid the social censure of his behaviour, and he also made a public apology to Hong Kong society at large, in which he vowed to withdraw from the entertainment industry as proof of his contrition. It is noteworthy that though the scandal was a legal event which raised issues of obscenity, negligence, theft and copyright, amongst others, a strictly legal analysis cannot do justice to the incident in its complexity: Chen was forced to leave Hong Kong and to cut short his promising acting career not because of legal censure, but because of the force of public opinion. His absence from the trial of the computer technician who accessed his files can be read as a reminder of the limits of legal analysis; the court did not require his presence because it recognised that he had committed no crime, and this recognition forms a contrast with the public understanding that culpability should be firmly fixed in the celebrity himself.

Given the widespread media coverage of the incident, one undeniable cause of this public opinion which acted as the final arbiter of Chen's fate was the press, for it constituted the main source of the public's information on the scandal. Indeed, the very designation of the event as a 'scandal' can be said to be the result of the journalistic portrayal of the event. The role of the press in mediating the public's access to the reality of the event is complex: on the one hand, it is the social responsibility of journalists to discover the details of events of public interest, a view defended in an editorial comment of *East Week Magazine*, a popular local Chinese-language magazine: 'the task of the media is to expose the truth of the event, to reveal the true face of our celebrities'.² On the other hand, it is apparent to students of semiotics that journalistic discourse is never innocent; it plays a role in determining, perpetuating, and regulating the public's understanding of an incident through its reportage. The latter view is eloquently recapitulated in a recent article by the sociolegal scholar Ummni Khan:

That the media *makes* news, and does not merely relate facts, has been widely posited among media and criminology experts. Newsmakers are not purely fact-finders disseminating the 'truth' to the public, but are implicated in the for-profit business values and structures

¹ For further articles in international presses which reflect an interest in the scandal, see Joanne Lee-Young. Vancouver media abuzz with trial of Edison Chen. *Vancouver Sun*, 24 February 2008; 'Sexy photo gate' mesmerises Hong Kong, China, and sparks police crackdown, backlash. *Wall Street Journal* 15 February 2008; China arrests over Hong Kong sex scandal. *BBC News* 20 February 2008.

² We must not mix up truth and falsehood. *East Week Magazine* 20 February 2008, 1.

that influence, if not completely overdetermined, a hegemonic social construction of reality. (Khan 2009, 391–392)

Khan not only highlights the way in which the media plays an active role in shaping the public's understanding of the reality of an event such as the Chen scandal, but helpfully reminds us that this construction of reality takes place according to the logic of the marketplace: the events are always represented in such a way as to ensure maximum sales for the newspapers and magazines.

This chapter attempts to shed light on the public reaction to the Chen scandal – a reaction which was more powerful than the reaction of the courts in determining Chen's fate – by examining the dynamic of representation at work in the journalistic discourse. In what ways were Chen's identity and behaviour presented to the public, and what is the logic of visibility at work in the encounter between reader and journalistic text? Though not all the newspapers will be cited, this article is an exhaustive study of the major newspapers and magazines in Hong Kong. It covers publications with different styles of reporting, from more conventional newspapers such as the *Ming Pao Daily* to tabloids such as *The Sun*. It also covers newspapers across the political spectrum. The publications examined include *Apple Daily*; *Ming Pao Daily*; *Oriental Daily News*; *Sing Tao Daily*; *The South China Morning Post*; *The Sun, Ta Kung Pao*; and *Wen Wei Po*, as well as *East Week Magazine*; *Ming Pao Weekly*, and *Next Magazine*.

The chapter is divided into two parts. Part I examines the ways in which Chen is constructed as both a pervert and a criminal within the journalistic discourse and argues that such constructions of perversion and criminality are achieved through the press's reliance on the authority of other discourses. Given that the public's main source of information on the scandal was the press, the analysis of such representations contributes to our understanding of why Hong Kongers so readily regarded Chen as a sexual deviant and a law breaker. This section draws on the work of Michel Foucault because the notions of discourse and power most usefully highlight the interplay between journalism, law, medicine, and education in the current context. In particular, it aims to move beyond the traditional canon of Foucault's writings by drawing on his newly translated lectures on abnormality given at the *Collège de France*. Part II deploys Sigmund Freud's notion of scopophilia to investigate the logic of visibility at work in the coverage of the scandal and argues that the press ironically places the readers in the same spectatorial position as the person whom they condemn.

The reportage on the Chen scandal can be said to influence the public perception of the event in two ways: first of all, it presents Chen as a sexual deviant or a pervert, and secondly, it presents him as a criminal who has violated the privacy and the bodily integrity of the female celebrities. Even a rudimentary glance at the Chinese-language newspapers reveals the first dynamic at work: the popular press repeatedly designates him as the 'pervert of his generation' or 'the pervert of a thousand years'. Moreover, there are also calls for him to publicly explain his 'special interest' in the bedroom.³ Finally, newspaper articles about Chen often associate his penchant for

³Voices call for Edison Chen to be arrested. *Apple Daily* 11 February 2008, A1.

taking photos during sex with forms of sexual behaviour conventionally categorised as abnormal, such as bestiality.⁴ This insistent journalistic portrayal of Chen's behaviour as a form of perversion is curious because taking pictures of one's sexual partners is emphatically not constructed as a form of abnormal sexual activity in psychiatric discourse. The current definition of paraphilia states that a sexual activity would only be classified as abnormal if it involved nonhuman objects, children or non-consenting persons, or the suffering or humiliation of oneself or a partner, none of which applies to Chen's behaviour (Halgin and Whitbourne 2003, 231). The journalistic discourse is therefore at odds with the construction of perversion in psychiatry.

The assumption that Chen's action is tinged with criminality also underpins the reportage: in the midst of the scandal, the *Apple Daily*, the most popular Chinese-language newspaper in the city, published an article with the headline 'Voices calling for the arrest of Edison Chen', and the article itself is an exposition of various bloggers and protestors who believe that Chen should be imprisoned because of his behaviour. In the words of one protestor, 'If you are aiming to arrest the culprit, why not arrest the one who took the pictures? Why allow him to hide behind his lawyer?'⁵ This public reaction is curious if one remembers the exact nature of Chen's action, which was to take pictures of himself with various women of adult age with their consent. Such an activity emphatically – and obviously – does not constitute a criminal offence, and it is strange that the press would portray it as such so readily.

More significantly, the representations of sexual deviancy and criminality are interlinked; the underlying logic seems to be that Chen's behaviour ought to be regarded as illegal because it is perverse. This linkage between the two concepts can be interpreted as a manifestation of the meshing of sexual and criminal identities which Foucault highlights. As he underscores, the discourses between madness and crime, between psychiatry and the law, and between perversion and criminality are always connected, for there exists a dual medical and judicial system which allows the law to draw on expert medical opinion to turn madness into crime. Foucault argues that this dual system leads to a 'power of normalisation' whereby behaviour that does not conform to social conventions is branded not only as a form of perversion, but as a form of illegality (Foucault 2003, 42). When Chen's deviation from sexual behaviour was exposed, it was easy for the press to sensationalise the story as one of illegal behaviour even though Chen's behaviour was permitted by the law. The reportage reflects Foucault's insight that the pervert and the criminal are easily imagined as two faces of the same person.

So how does the press represent Chen as a pervert and a criminal? By what mechanism of power does the journalistic discourse influence the readers' conception of Chen's identity and behaviour? To understand the construction of Chen in the press, it is necessary to deploy an 'analytics' of journalistic power by examining the ways in which this journalistic discourse interacts with other discourses to

⁴ Gillian Chung twice attempted to kill herself. *East Week Magazine* 13 February 2008, 38–41.

⁵ Voices call for Edison Chen to be arrested. *Apple Daily* 11 February 2008, A1.

determine the means and outcomes of representation (Foucault 1998, 90). When placed within a Foucaultian framework, it becomes evident that one way through which the press constructs Chen as a pervert and a criminal is by *appropriating* other discourses. In other words, the reportage shapes public understanding through a strategic reliance on the authority of other discourses, including those of medicine and education.

An article in *East Week Magazine* provides an illustration of this appropriation of medical discourse. The piece is an interview which the magazine conducted with a professor of psychiatry at a local university. 'Expert says that Edison Chen is sick', runs the headline; it is printed in bold and is accompanied by a subtitle in the form of a Chinese adage cautioning that 'It is best to cure an illness at an early stage' and that 'the male lead [Chen] should take heed!'⁶ The prominent headline together with the use of the catchy adage already creates within the mind of the casual reader the impression that Chen's behaviour is indeed a form of sexual illness, and the article exploits this impression to the full by suggesting that Chen exhibits symptoms of narcissistic personality disorder: self-aggrandising behaviour, an obsession with success, an unreasonable belief in one's superiority, a constant need for praise, a constant need for special treatment, a tendency to humiliate other people, disregard for his peers, a strong sense of jealousy, and the demand for gratitude from others.

Foucault cautions against an uncritical reliance on psychiatric or medical opinion because of its complicity with the juridical apparatus's attempt to define abnormality: he notes that our society is caught in 'an immense process that has still not come to an end; the process that enabled psychiatric power centered on illness within the mental asylum to exercise a general jurisdiction, both within and outside the asylum, [...] over the abnormal and all abnormal conduct' (Foucault 2003, 134). Foucault's warning is a reminder of the need to treat the authority of medical discourse on purportedly abnormal behaviour – in this instance, an erotic interest in photography – with caution, and this warning is doubly relevant given that the expert opinion is presented to the reader through another layer of discourse, the reportage. A close reading of the article, of the kind which students of semiotics are trained to do but which the casual reader is unlikely to attempt, shows that the news article in fact frames the discourse of the medical expert in a way which recontextualises his words and distorts their meaning to exaggerate the initial impression of Chen's perversity.

The professor of psychiatry says that 'people who derive pleasure or excitement from humiliating other people are in danger of being diagnosed with narcissistic personality disorder'.⁷ There is no evidence that the female celebrities depicted in the photographs felt humiliated or debased at the time the pictures were taken. On the contrary, they fully consented to being photographed and at no point in the scandal was their agency questioned. Moreover, the use of the epithet 'in danger of' highlights that the diagnosis is not complete and that it would be premature to

⁶Expert says Edison Chen is sick. *East Week Magazine* 13 February 2008, 50–53.

⁷Expert says Edison Chen is sick. *East Week Magazine* 13 February 2008, 50–53.

designate Chen as a deviant. The incompleteness of the diagnosis is further underscored when he notes that a person would only be regarded as ill in the clinical sense if 'he is focused solely on his own gratification and neglected the feelings of others' (Id, 51). Again, there is no evidence to show that Chen disregarded the pleasure or the feelings of his partners. In fact, when one reviews the factors required to diagnose Chen with narcissistic personality disorder, there is little evidence that they would all apply to Chen. Finally, the expert himself emphasises that 'an exact diagnosis requires an in-depth understanding of the subject's psychological state' (Id, 53). A close reading of the text shows that the psychiatrist is in fact hesitant to characterise Chen as suffering from any form of mental illness; he repeatedly insists on the need for further information on the subject's psychological state and lists symptoms which he does not exhibit. However, the reframing of his words within the article has the effect of removing such crucial self-distancing and recontextualises them as evidence of Chen's sexual deviancy.

A similar tactic is deployed in the left-wing newspaper *Wen Wei Po*: one headline reads: 'Behavioral expert analyses Chen's bizarre interests', and the body of the text paraphrases this expert, who condemns Chen's behaviour by comparing his attitude towards his pictures to a hunter's attitude towards his prey.⁸ Over three quarters of the article is devoted to this opinion, and it is not until we reach the end of the article, when the readers have been exposed to prolonged discussions of Chen's apparent perversity, that we get an alternative opinion: another psychologist notes that the desire to capture one's sexual prowess in pictures is 'a very natural thing' and is 'completely understandable', thereby undermining the opinion of the previous expert. However, this latter section is given little narrative space. Even though the tone of the reporting is one of objectivity and neutrality – nowhere is the journalist's own opinion explicitly articulated in the article – the text subtly but effectively portrays the actor's behaviour as abnormal by devoting greater narrative attention to the figure who favours perversity and sidelining the figure who stresses Chen's normalcy.

The press also appropriates medical discourse through the presentation of Chen as a subject with a case history. The politics at work in the construction of a medical case is again highlighted in Foucault's lectures: in his discussion of Henriette Cornier, a woman in nineteenth-century France who was convicted of murder despite an apparent absence of motive, Foucault shows that the law relied on medicine's construction of a case history in order to convict a person on the basis of her identity rather than on the basis of a specific act. In the case of Cornier, the facts of the defendant's life were rearranged and re-presented in the name of objective medical knowledge so that 'symptomatology, nosographies, prognoses, observations, clinical files, etc.' combined to create the profile of a mentally deranged person who should be removed from society (Foucault 2003, 118). The construction of a case history therefore operates as part of a process which designates a new category of 'abnormal' people as distinct from those who are 'normal'.

⁸ Behavioral expert analyses Chen's bizarre interests. *Wen Wei Po* 5 February 2008, A4.

Such a process of categorisation through the establishment of a case history is at work in the reportage on Chen. In the midst of the scandal, a number of newspapers and magazines ran special features on Chen's life, and what is intriguing about these articles is that they almost invariably present his upbringing in teleological terms, so that his childhood and teenage years are revealed as precursors to the final adult perversity, and isolated facts of his family background are put forward as explanations for his supposedly transgressive behaviour. These features in effect present the reader with the complete case history of Chen.

East Week Magazine again serves as a case in point. The headline reads: 'An exposé of Edison Chen's path to perversity', and next to the headline is a picture of Chen which, in context, arguably takes on the quality of a mug shot. The subheading underneath explicitly states that Chen's "unique behaviour" and his complicated family background are not unrelated.⁹ The article begins by noting that Chen was often teased by his sisters as a child: the readers are told that they repeatedly called him a crybaby when he was little, and their attention is drawn to one particular incident in which one of his sisters refused to allow him to buy an ice cream. Such early encounters with women are described as 'formative of the behavior of "the pervert of a generation"'; the implication is that such teasing by the women of his family as a child constituted the first step towards his objectification of women through photography as an adult (Id, 55). Unremarkable family squabbles are therefore re-presented as the first step towards perversity and criminality. Similarly, his parents' divorce is presented as a form of trauma which purportedly sheds light on Chen's later transgression: 'his parents' separation was the greatest blow to Chen, and even as an adult he never managed to fully recover' (Id, 54). In this quasi-clinical light, Chen's sexual behaviour is recast as a form of working through, the repetitive and persistent act of taking pictures appear as a way for him to come to terms with a childhood trauma. The point to be made is that the divorce is an event which is distinct and unrelated to the behaviour for which he is socially condemned, yet the reportage forges a link between the two and by doing so depicts the latter as a symptom of mental maladjustment. This link is reiterated when the narrator notes that 'as a child who grew up with a group of women around him, Chen is used to dealing with members of the female sex and is well trained in their ways'. His early upbringing as a child is thus retroactively construed as a latent stage of his later perversion.

In addition to his family background, his behaviour as a teenager is also interpreted in a similar light. Chen tells the *Ming Pao Weekly*:

I've done a lot of bad things, things that upset my parents. I developed some bad habits between the ages of ten and nineteen: I ignored my parents, I played truant at school, and I would come home at five in the morning even though I was told to be back by midnight.¹⁰

Such acts of teenage rebellion are narrated by Chen himself, and the direct discourse gives the impression of objective reporting. Yet this confession is presented

⁹ An exposé of Edison Chen's path to perversity. *East Week Magazine* 13 February 2008, 54–58.

¹⁰ Remembering his wild days: Edison Chen's confession of contrition. *Ming Pao Weekly* 2 February 2008, 82–87.

as a first step towards his final sexual deviancy, so that individual acts become depicted as part of the case history of a type of individual who is likely to become a deviant. The logic is that someone who would play truant at school, go home late, and ignore his parents would unsurprisingly end up as a sexual transgressor. In other words, just as Cornier's past actions were retroactively put together and interpreted as evidence that she was the type of person who would kill, so that 'her act [of murder] is already present in a diffused state in her whole life', so Chen's past actions are seen as developments in the personality type of a sexual deviant, so that *his* act (of taking erotic photographs) was also already present in a diffused state in *his* whole life (Foucault 2003, 124). This is a classic instance of the situation in which 'one is a potential subject for medicalization as soon as one is naughty' (Foucault, Michel 2003, 150).

Chen's love life is also recast as a 'cause' of his sexual deviancy. The readers are told:

[Chen] had a girlfriend when he was 15, and the relationship was a devastating blow to him [...] All of a sudden the girl said to him that they were only "best friends". *That broke his heart and made him lose all confidence in friendship and in love. As a result,* between the ages of 17 and 19 he refused to date. He preferred to hang out in bars, indulged in one night stands after getting drunk, and his sexual attitudes became increasingly lax'.¹¹ (my italics)

The construction of Chen as deviant takes place through the blurring of fact and speculation here. The end to the relationship is presumably a fact, but the sentence that follows ('That broke his heart and made him lose all confidence in friendship and in love') is nothing but the narrator's speculation of the event's impact on Chen. However, nothing in the text signals this shift from fact to speculation, a signalling which could have been easily achieved by punctuation or by a shift from direct to indirect discourse. Instead, the tone and the style of narration remain constant, so that the break-up's purportedly traumatic impact is presented as part of the actual development of events rather than as a bridge which the narrator himself establishes between Chen's past love life and his current behaviour. The narratorial intervention is particularly apparent in the last sentence of the paragraph cited: the use of 'As a result' represents the point at which the narrator establishes a cause-and-effect relationship between the present and an unrelated event in the past, and the final comment about Chen's increasingly lax sexual attitudes again moves the reader closer to the final sexual behaviour for which Chen is condemned.

Chen's other love interests are presented in a similar way, and the fact that he dated women of different nationalities – an otherwise unremarkably fact – is again set in the context of the erotic photography and presented as a stage towards perversion. The narrator notes:

His past girlfriends include a black American, a white girl, a Korean girl, as well as Chinese girls living in Vancouver and Hong Kong. Even before he reached adulthood, his relationships were already internationalized, and his "expansive love" spread all over the world (Id).

¹¹ An exposé of Edison Chen's path to perversity. *East Week Magazine* 13 February 2008: 54–58.

The willingness to enter into relationships with girls of multiple racial backgrounds is here construed as a form of sexual excess, and the implicit stigma in the Chinese expression for 'expansive love' underscores the idea of a lack of restraint (an effect which is perhaps lost in translation). The implication is that non-Asian or Westernised-Asian girls are perverse object choices, and that a person who indulges in his desire for them would unsurprisingly end up engaging in socially unacceptable sexual practices. By reconstructing distinct incidents in Chen's life as a teleological development of the character type of a sexual deviant, the narrator can conclude that, based on his analysis, it is 'obvious' that Chen would end up as an outcast and a transgressor (Id).

The interaction between discourses is not limited to the press's appropriation of the authority of medical discourse. The reportage also makes use of educational discourse in its representation of Chen. Throughout the period of the scandal, the reportage in Hong Kong gave prominent place to educators who were concerned about the impact that the exposure of Chen's behaviour may have on children. As Richard Dyer notes, stars and celebrities are 'supremely figures of identification', and Chen's purported deviancy was regarded as a threat to the psychological development of the younger generation (Dyer 2008, 99). As in the case of the reporting of the views of medical experts, however, the way in which the views of educators were framed and presented was also problematic. There is no transparent window into the minds of the educators. Instead, the press puts the educational discourse to use through the technique of contrast: by juxtaposing the values propounded by educators and schools with values supposedly held by Chen, it sets up a binary opposition between the morality of the former and the immorality of the later, between normalcy and abnormality, between acceptable behaviour and perversion.

A representative from the Society for Family Values makes the following comment: 'There is a need for schools to bolster their moral education, and parents should take note of this incident and give their children proper guidance'.¹² The reporting of the view of someone who unequivocally accepts the ideology of schools as 'moral' has the effect of presenting Chen's values as its opposite, that is, as immoral. Yet this binary opposition is an untenable one: there is nothing immoral about someone who takes pleasure in erotic photography given that the models gave their consent and the pictures were taken in private, and it is questionable at best whether the ideology of family and reproduction which the schools are asked to propound can be regarded as inherently moral (Lee 2004). In a similar vein, one commentator notes that there is a need to 'increase our efforts to strength sex education and instill a sense of ethics in young people'.¹³ Once again, given the clear lack of coercion and the private nature of the acts, it is unclear on what basis Chen's behaviour can be described as unethical; yet the call for educators to instil a sense of ethics in schools immediately and reciprocally identifies it to be so. The press thus portrayed the educators as representatives of the 'rule of conduct, informal law, and principle of conformity', and

¹² Educationalists worry scandal will encourage voyeurism. *Wen Wei Po* 12 February 2008, A3.

¹³ Chan Chi Si: a major challenge to the education sector. *Ta Kung Pao* 22 February 2008, A2.

reciprocally defined Chen as a symbol of ‘irregularity, disorder, strangeness, eccentricity, unevenness, and deviation’ (Foucault 2003, 162). Finally, one educator is quoted as saying that ‘there are two things that this incident leads us to reflect upon. First of all, we need to lead respectable private lives. Second of all, we shouldn’t place other people’s private property on the internet, [because] such an action is not only immoral but illegal’.¹⁴ The notion of ‘respectable private lives’ also functions to set up a contrast: the sexual preferences and behaviour of the educator is presented as respectable, while those of Chen are, by implication, disreputable. Moreover, the association between Chen’s act of photo taking and the act of uploading those photos on the internet by the as-yet-unidentified culprit unfairly tinges Chen with criminality; the comment urges the reader to see the two acts as interrelated through their juxtaposition, when in fact the criminal act is the act of uploading the pictures alone, for which Chen is emphatically not legally responsible.

Foucault’s lectures show us that psychiatry and the law, madness or perversion, and crime are always interlinked. In his lecture of 5 February 1975, he sets up a dialogue between the two discourses. Law will say to psychiatry: ‘Give me grounds for exercising my punitive power or grounds for not exercising my right to punish’ (Foucault 2003, 122). Psychiatry will in turn reply: ‘I can show you that there is potential crime in all madness’. Medical and juridical knowledge both ‘need’ and ‘desire’ one another; behaviour which is designated as mad or perverse is more likely to be deemed criminal. This insight sheds light on the construction of criminality in the reportage on Chen scandal: by depicting Chen as a sexual deviant who has his own case history and who is condemned by psychiatrists and educators alike, the journalistic discourse also plays a crucial part in constructing his identity as a criminal. This link between the discursive construction of Chen as a pervert and the discursive construction of Chen as a criminal can be seen as one explanation of why Hong Kong society so readily identified Chen as a law breaker despite the fact that he has done nothing illegal. Evidence of the public’s assumption that Chen is a criminal is everywhere apparent. The lawyer defending the computer technician who was convicted stated that ‘the real culprit is the person who took the photos!’¹⁵ The *Apple Daily* quotes one blogger’s comment that ‘the person who took the pictures must bear the greatest responsibility’, and this comment is echoed by another commentator, who notes: ‘Chen is trying to shift the blame onto the person who uploaded the pictures – that person should of course be chastised, but who is the real culprit here?’¹⁶ Most disturbingly, even the Commissioner of Police seems to have forgotten that Chen has done nothing illegal by taking the pictures and seems to take Chen’s criminality for granted, and a newspaper quotes him as saying that he would not allow the person who took the photos to walk free.¹⁷ Of course, the fact that these comments were reported in the most popular local

¹⁴ Material from sex photo scandal can be used to teach ethics. *Apple Daily* 9 February 2008, A1.

¹⁵ Police demand explanation from Chen. *Apple Daily* 13 February 2008, A1.

¹⁶ Voices call for Edison Chen to be arrested. *Apple Daily* 11 February 2008, A1.

¹⁷ Commissioner of Police: I will not let loose the person who took the photos. *Apple Daily* 14 February 2008, A1.

papers compounded the process through which Chen's identity as a criminal was established in the social imagination: the more these comments were disseminated in the press, the more easily they became ingrained in the minds of the readers. The journalistic appropriation of the authority of medical and educational discourses created Chen's identity as a sexual deviant and as a criminal, and it was the power of the media, more than the force of legal punishment, which dealt the blow to Chen's career and led to his exile from Hong Kong.

39.2 Reportage, Scopophilia, and Epistemophilia

In addition to the uncritical acceptance of Chen's perversity and criminality on the part of the reading public, one further aspect of the local reaction to the reportage of the Chen scandal deserves attention. On the one hand, Hong Kong society purports to be disgusted by Chen's behaviour and by the sexual explicitness of the photographs. Evidence of such disgust is found readily in the ways in which the scandal is described in the popular press, as well as through more anecdotal discussions with the average news reader: Hong Kongers claim that this incident 'makes us vomit', and that the salacious nature of the images force us to 'avert our eyes'.^{18,19} On the other hand, the scandal undoubtedly excited the imagination of Hong Kong society, and the newspapers and magazines undoubtedly followed the event closely because it boosted sales. A recent survey identified the Chen incident as the news event which attracted the greatest attention amongst young people in Hong Kong in 2008, and Chen's name has also become the most popular search term on the internet in China that year.²⁰ Throughout the scandal, the press boldly reprinted Chen's pictures on their front pages, though with certain body parts blacked out to comply with censorship rules, in order to give the reader a glimpse of the private domain of Chen and his partners. These images were often presented as a single enlarged picture of one of the female celebrities in a seductive pose or as a series of images with both Chen and his partner in the midst of sexual activity. In fact, two magazines were brought before the city's Obscene Articles Tribunal because they could allegedly be classified as 'obscene' due to the pictures reproduced.²¹ In other words, the press reprinted the pictures precisely because it knows that readers *want to see the photos* despite their vocal disapproval.

This observation leads to a question. If readers were as offended by Chen and his pictures as they purport to be, then there should be very few people buying these newspapers which unabashedly reprint the images. Readers who genuinely believe

¹⁸ Full set of pictures to be posted online. *Sing Tao Daily* 9 February 2008, A6.

¹⁹ Expert says Edison Chen is sick. *East Week Magazine* 13 February 2008, 53.

²⁰ Sichuan earthquake takes second place to sex photo scandal in top ten news items of the year. *Ming Pao Daily* 18 December 2008, A25.

²¹ Mags in the clear over nude pics. *The Standard* 21 February 2008. http://www.thestandard.com.hk/news_detail.asp?pp_cat=11&art_id=61867&sid=17694181&con_type=1&d_str=20080221&sear_year=2008. Accessed 14 January 2010.

that such images make us 'avert our eyes' would not want to have those images in their living room. However, the sales figures of the papers soared in late 2007 and early 2008, when the Chen story dominated the front pages. So how can we think about the coexistence of the rhetoric of disgust, the explosion of reader interest in the scandal, and the success with which newspapers sold the story? Is this merely collective moral hypocrisy on the part of Hong Kong society? Or is there more at stake to this curious scenario?

One way of thinking about the scenario is to place it within a psychoanalytic framework and to examine it through the Freudian notion of scopophilia and an associated concept, what one feminist critic has termed epistemophilia (Moi 1989). Scopophilia, or the erotic pleasure in looking, is always intertwined with epistemophilia, or the pleasure in knowing. Freud identifies the onset of the desire to know in early childhood, between the ages of three and five:

At about the same time as the sexual life of children reaches its first peak [...] they also begin to show signs of the activity which may be ascribed to the instinct for knowledge or research. [...] Its activity corresponds on the one hand to a sublimated manner of obtaining mastery, while on the other hand it makes use of the energy of scopophilia. Its relations to sexual life [...] are of particular importance, since we have learnt from psycho-analysis that the instinct for knowledge in children is attracted unexpectedly early and intensively to sexual problems and is in fact possibly first aroused by them. (Freud 1905, 194)

From an early stage in an individual's psychic development, the drive for knowledge is linked with the drive for visual pleasure; the pleasure from looking is in part derived from satisfaction (however partial or imaginary) of the desire to know. Crucially, both drives are structured by the subject's attempt to understand sexual difference and the mysteries of the origin of life. As the literary critic Peter Brooks notes in his study of nineteenth-century realist fiction and painting, 'the erotic investment in seeing is from the outset inextricably bound to the erotic investment in knowing [...] the value given to the visual in any realist tradition responds to the desire to know the world: it promotes the gaze as the *inspection* of reality' (Brooks 1993, 99; original italics). In the current context, one could arguably substitute the word 'journalistic' for the word 'realist': the value given to the visual in the journalistic discourse in Hong Kong responds to the twin desires to see and to know in the consumer of news, hence the endless reproductions of Chen's images on the front pages of all the newspapers and magazines. In other words, the pictures are reproduced as a way of tapping into, and eliciting, the collective scopophilia and epistemophilia of the readers.

However, the textual effect of the reproduction of Chen's images in the journalistic discourse is only part of the dynamic of generating reader interest. This is because the images are not reproduced in their entirety. Instead, the editors ensure that certain body parts are either partially blacked out or are entirely cropped from the images, so that the breasts of the women and genitalia of both Chen and his partners cannot be seen. On one level, such alterations are of course made to ensure that the publications conform to the rules of censorship; the press simply cannot show these body parts without being classified as 'obscene' by the OAT. One can, however, move beyond this surface reading of the blacking out or cropping of the images. Given that the readers' drive to see what Chen has seen, and the readers' desire to know what Chen knows, are elicited by the reproduction of the very same