Phi Kappa Phi FORUM

A QUARTERLY PUBLICATION

Winter 2002

Crime and Punishment

Phi Kappa Phi FORUM

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The Honor Society of Phi Kappa Phi was founded in 1897 and became a national organization through the efforts of the presidents of three state universities. Its primary objective has been from the first the recognition and encouragement of superior scholarship in all fields of study. Good character is an essential supporting attribute for those elected to membership. The motto of the Society is *philosophia krateitō phōtōn*, which is freely translated as "Let the love of learning rule humanity."

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PHI KAPPA PHI FORUM, Volume 82, Number 1

Crime and Punishment

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Phi Kappa Phi Forum publishes appropriately written letters to the editor every issue when submitted. Such letters should be 150-300 words in length.

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LETTERS TO THE EDITOR
Phi Kappa Phi Forum
129 Quad Center, Mell Street
Auburn University, AL 36849-5306
fax: 334.844.5994
e-mail: kaetzjp@auburn.edu

Columns:

A Note from the Editor

James P. Kaetz

NEW NAME

As you can see, we are no longer called the *National Forum*. At the last *Forum* Committee meeting, one of the points discussed was that our international chapters of Phi Kappa Phi did not particularly care for the word "national" in our title, for obvious reasons. Because some discussion has occurred about expanding the Society to more international chapters, the committee decided that perhaps a name change would be in order. After trying out several possibilities, we chose one that preserved the forum concept while making the Society's name more prominent so that whatever publicity the magazine gleans will be more firmly associated with the Society. After the 2001 national convention approved the change, we decided to institute the new name beginning with the new volume year. Therefore, welcome to the *Phi Kappa Phi Forum*.

IN THIS ISSUE

No one, especially after the events of September 11, wants to "coddle" criminals. People who assault and rape and kill, who commit robberies and sell drugs, who drive while intoxicated and injure or kill innocent bystanders — no one believes that these people should go unpunished. However, the question often is how much punishment to levy? Who should make the decision about the degree of punishment? Should a first-time offender get off more lightly than a habitual criminal? Should a person be sent to prison for life under a "three strikes" law, even if the "third strike" was a minor offense? Should possession of one form of a drug bring a stiffer penalty than another form? Should we continue to put people to death? These are difficult, practical, moral, and ethical questions.

In this issue, our authors grapple with a few of these dilemmas. To lead off, we have a pair of articles on that most controversial of criminal-justice issues, the death penalty. First Paul Rubin looks at whether the death penalty has any deterrent effect on the murder rate. After analyzing a body of data collected at the county level from states throughout the country using the latest methods for statistical analysis, he decides that yes, the death penalty does indeed help to prevent murders. Then John Bessler tackles the question from a historical and ethical slant, arguing that the very fact that we "hide" executions proves that we know they have a negative effect on society. He maintains that killing in the name of justice simply sends the wrong message to a violent society.

Next, Kate Stith-Cabranes looks at the federal sentencing guidelines instituted in 1987, arguing that the act establishing these guidelines radically changed the way federal courts have worked for two hundred years. She suggests that the guidelines take the power of judging out of the hands of judges and instead invests it in the prosecutor, which skews the system in a way that is not desirable. After that, Robert Batey discusses mandatory sentencing as it applies to drug arrests and convictions. He suggests that the original intent of imposing mandatory sentences, which was to take drug kingpins off the streets, has failed in that objective. Instead, drug kingpins testify their way out of the mandatory sentences while low-level, first-time offenders who have no testimony to trade and who are easily replaceable in the drug trade, fill up our jails.

Finally, Marc Mauer looks at the social cost of the tremendous rise in the number of people incarcerated in the United State in the past two decades. Mauer offers an instructive analogy: What if we had tried to attack the AIDS crisis by building new hospitals instead of addressing the root causes of the epidemic? By putting all our money into building new prisons and incarcerating instead of attacking the root causes of crime, we essentially are doing the same thing.

Needless to say, these articles can only scratch the surface of a tremendously complex problem. We hope that they offer some food for thought and for further discussion as we all try to think of ways to make our society a safer place for everyone.

APPRECIATIONS

We wanted to say thanks once more to the many teachers who took the time to send us their thoughts and experiences for our "Teachers Teaching" issue. The response we have had to the issue has been overwhelmingly positive, and the people who wrote deserve all the credit. Obviously the issue has struck a positive chord with many people who have seen it.

Enjoy the issue!

FORTHCOMING ISSUES

Spring 2002
TERRORISM

Summer 2002
FOOD & CULTURE

Forum on Education & Academics

Terry Palardy

Working Model

You have the chance to go to a brand-new school without leaving town, in a redistricting plan that will reduce crowding in your old school. You can be on the ground floor of a new organization, with new faces and new opportunities . . . .

The excitement level will be high; the town has spent millions of dollars; the administration wants this school to succeed and will no doubt showcase every accomplishment . . . .

Everything there will be sparkling clean; you will have electrical outlets where you need them, white boards instead of chalk dust, a new furnace, a wireless computer lab . . . .

You already know the curriculum; the parents want experienced teachers to make the move with the redistricted students; the new school's principal values a mix of old and new staff.

These are tempting arguments, but they overlook one essential key: you are comfortable where you are; the administrators in your current building are facilitators; they are coleaders who respect each other and respect you; they are people who have made it possible for you to teach to your highest potential, and to feel satisfaction in a job well done. Why would you want to leave?

Our society has a fascination with change. Some change is unavoidable, caused by growth. Some change is desirable and leads to growth. Some change is unsettling and can derail growth. It all depends on where and when.

I work with a principal and a vice principal who are coleaders by example, administrators who model cooperation and collaboration daily, whose skills complement each other's, and who empower teachers and students to achieve. They make leadership look deceptively easy, as though moving a building full of staff and students in a forward motion is effortless, as though the consistent momentum of improvement requires no leading. Look at their school.

This is a school where academics are taught in teams, creating a feeling of family among students and staff. Teachers operate as team leaders, managing team funds, organizing team field trips both within and independent of the grade level, and coordinating team activities that enhance school-wide curricula. Team-leader positions are fluid, and often teams rotate the leadership role and the accompanying stipend (provided by the school district) year to year. The building administrators give full rein to the team leaders in setting team agendas for the year.

This is a place where teachers willingly run after-school clubs for students. Club leaders are compensated with a stipend that the school-improvement council, made up of parents, teachers, and administrators, has defended in each school year's budget. Every week, students here work after school hours in many areas: creating a school literary magazine, a school yearbook, a school play, with all the props and costumes designed and made by students facilitated by teachers. Intramural sports are funded by the council and coached by several teachers two or three afternoons a week. After-school outings happen several times a year, organized and led by teachers. A chess club, cooking club, art club, golf club, sewing club, and a math team all meet weekly, staffed by teachers. An after-school organizational and tutorial-support club partners middle school learners with high school students, encouraged and recruited by teachers. Another group works charitably to raise public awareness and support for families in need, often collecting and distributing children's clothes, toys, and more. The building administrators encourage and publicly acknowledge teachers' and students' efforts and accomplishments in all of these areas.

The coleaders of this building encourage teachers to creatively extend themselves within the structure of the school day, as well. Four days a week, in addition to academic periods and integrated arts periods, the students attend enrichment classes, designed and led by teachers who have full freedom in creating these courses. These enrichments address subjects such as calligraphy, chess, aerospace design, debate, sewing, math problem solving, and reading for fun. Students in these classes also work as film critics, science sleuths, young authors, stock-market analysts, architectural designers, and more. Materials necessary for these enrichments are funded by the student council, and the classes coached by teachers, and controlled by the students themselves, who, with the organizational support of the vice principal and the parent organization, hold one fund-raising event per year. Students directly oversee the spending of the proceeds.

It seems as simple as the Golden Rule. The principal and vice principal facilitate each other's administrative role by working in tandem, collaboratively, cooperatively. As a team, they then cultivate valuable confidence in the teaching teams by recognizing teachers as talented individuals with creative styles, and by providing the teachers with the academic freedom and the tools that they need to implement course work with the students. The teachers then feel valued and work willingly in both their academic

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Forum on Business & Economics

Charles K. Davis

MIS Conceptions & Misconceptions

The strategic and operational importance of information technologies in modern organizations increased dramatically in the last half of the twentieth century, and this expansion is continuing apace into the twenty-first. Accordingly, it is not surprising that the Management Information Systems (MIS) major is a very popular one among students at most business schools. For example, at Virginia Polytechnic Institute's Pamplin College of Business, MIS enrollment climbed 216 percent during the decade of the 1990s. Similarly, at the Red McCombs School of Business at the University of Texas at Austin, MIS enrollments increased 342 percent (*ComputerWorld*, 7/12/00). Enrollments in MIS continue to grow explosively, often requiring that admission be capped to prevent over-subscription at many universities. MIS degree programs are now often among the largest in colleges of business across the country and around the world.

MIS AMBIGUITY

On a personal level, I have had a long and varied career working as a technician, manager, and executive with major U.S. corporations for twenty-five years, followed by another fifteen years of teaching graduate and undergraduate coursework in MIS at university colleges of business. During that time, I have never ceased to be amazed at the general lack of understanding and the resulting confusion about what the academic field of MIS entails. Many students, for example, and even some faculty view MIS as another name for programming and *computer science*. Others view it as the study of the management of *information technologies*, such as computers, databases, and networks and the people who build and operate them. Professor Gordon Davis (of the University of Minnesota), an intellectual guiding light in the field of MIS since its inception, once told me that, if MIS is anything, it is a branch of the field of *organizational behavior*. I doubt that he actually meant that literally, but his definition illustrates the ambiguities that have perplexed this field of study from its beginning.

What gives rise to these differing, often inconsistent perceptions? True, MIS is a relatively new field of academic endeavor (maybe forty years old). And, true, it is a field that constantly morphs and evolves as new computing and networking technologies are introduced and assimilated into the information systems of businesses and as new insights are gained about managing these complex technologies in modern organizations. But the turmoil in MIS is more than that. A fundamental ambiguity runs through the field and leaves many uncertain about what the field involves. My objective here is to try to alleviate some of these uncertainties.

MIS HISTORICAL PERSPECTIVE

The study of MIS evolved in the late 1960s and early 1970s. It derived from a need to better understand the use of computers in organizations, the objective being to improve the handling and use of information and to thereby improve organizational decision-making. At that time, MIS was a relatively arcane discipline dealing mostly with insignificant "back office" operations in organizations. Computerizing the accounting and payroll functions was certainly an important activity designed to achieve basic efficiencies, but the ultimate success or failure of organizations was far removed from the success or failure of such an effort.

In the 1980s, two revolutionary changes occurred that would have profound effects on MIS and the MIS curriculum. The first was the personal computer revolution, in which small, cheap computers became an integral part of every organization. The second was the rise to prominence of digital networking architectures to seamlessly interconnect computers of all sizes and to make the overall systems created more effective in meeting organizational needs. Both of these developments in information technology have become integral parts of the MIS research and curriculum puzzles.

More recently, the 1990s have been all about the Internet, client/server architectures, and the World Wide Web. Computing and networking today are ubiquitous, reaching every nook and cranny and providing critical support for decision-making at all levels of modern organizations. It is no longer possible to say that the destinies of business and governmental organizations are independent from their successes or failures in information technology.

MIS COMPLEXITY AND CHANGE

These changes over a thirty-year period have been enormous, and they have deeply affected the focus and curriculum of MIS as an academic discipline. As the body of knowledge surrounding MIS has grown through the years and the underlying technologies have evolved, the field has become richer and more complex at the same time. For example, fifteen years ago an understanding of networking technologies was of minor importance in the overall curriculum, while today it is central. The same thing was true of database architectures before that. So, as the MIS field has evolved to include first programming, then database, then networking, as key underlying technologies, it has shifted in its focus and content. While

MIS has always been about managing information resources to understand organizational information requirements and then to develop efficient and effective solutions, the systems used in this effort have become increasingly more diverse and complex over time. And with technologies such as the wireless Internet and optical computing on the horizon, there is no reason to assume that this rate of change will abate any time soon.

It has not helped people's understanding of MIS that its business counterpart changes its name periodically, about every decade. It was first called "Electronic Data Processing," or sometimes just "Data Processing." Then the term "Information Systems" or "Computer Information Systems" came into vogue. After that, most organizations began calling it "Management Information Systems," which both derived from and reinforced the academic name for the field. And lately, it is simply known as "Information Technology," this to emphasize the recent ascendance of networking architectures within the MIS pantheon.

Of course, one key aspect of MIS that does not change so dramatically is the basic systems-analysis and problem-solving expertise that is so fundamental to this field. In addition to such analytical skills, MIS deals with a series of complex organizational factors that have little to do with the specific technologies involved. For example, understanding a firm's core business dimensions and its organizational power structure is often basic to achieving MIS project success. So too are key requirements to evaluate information technology products and to assess potential implementation opportunities and risks. All of these issues greatly complicate the role of the MIS practitioner and influence the curriculum of MIS in universities accordingly.

MIS COMPONENTS

MIS is really not "computer science" by another name. The MIS degree is a business degree. The curriculum includes a standard college of business core with courses such as basic management, economics, accounting, logistics, and marketing, to name a few. Added to the business core courses are basic background courses focusing on competencies such as computer programming, database administration, telecommunications, and management of information resources. A student can subsequently specialize further in any of these areas by taking additional coursework to develop the requisite level of understanding for pursuing a specific career in this field.

The field of MIS is really a hybrid of many fields. A person with a degree in MIS has learned about both the business of providing information technology services to organizations and the technological underpinnings necessary to do this properly. This person speaks both the languages of business and the languages of the various technologies involved. Standing on the boundary between the business and technology groups of the organization, this person is in a perfect position to translate between the two camps and to help fulfill the needs of the organization with efficient and effective technical systems. No wonder these people are so highly sought after.

CONCLUSION

The growth in enrollments in MIS over the past few years has been tremendous. Nonetheless, too often a basic misconception exists about what the MIS practitioner actually does in real organizations. Students are drawn to the major by the promise of big salaries and by the Internet hype, among other things, and often do not know what they are getting into. Just as problematic are the students with excellent analytical and organizational skills who avoid MIS because they are not interested in becoming "computer programmers." Opportunities are missed on all sides.

Organizations that better understand the "essence" of an MIS degree are better able to match such graduates to positions where they will be able to make important contributions to the organizations' bottom lines. Similarly, students who better understand exactly what they are preparing to do for an organization after they graduate are better able to find the right career match for themselves and one in which they can build on their strengths to create early records of success. Universities that better understand what MIS really is are able to recruit faculty with appropriate skill sets that will help to prepare students to be successful MIS professionals after graduation. This will encourage ongoing relationships that can only be productive in the long run as organizations and MIS graduates find themselves well matched; ultimately everyone wins.

Charles K. Davis is a professor in the Cameron School of Business at the University of St. Thomas in Houston, Texas, and is a past chapter president of Phi Kappa Phi. He has taught previously at the University of Houston and held analyst and management positions with IBM, Chase Manhattan Bank, Occidental Petroleum, Pullman Incorporated, and Deloitte & Touchè.

(continued from page 3)

and enrichment areas, communicating their confidence in and enjoyment of the subject area to their students, who are in turn able to embrace learning as an achievable and empowering activity. The students in this building have an excellent, evident, visible model of the positive effects of teamwork. No wonder the school's motto forms the acronym "team": Together Everyone Achieves More.

The model works, and with care, it can be emulated and adopted in the new building as well. That's what leadership is really all about: collaboration, cooperation, competence, and confidence. No need to change that.

Terry Palardy is currently a middle school teacher in Massachusetts. Mrs. Palardy has taught elementary, special education, and graduate school classes. Her e-mail address is tepalardy@aol.com.

Forum on Science & Technology

Daniel Berger

Does Biochemistry Have to Be Organic?

Why should there be a separate field ("organic chemistry") for compounds of one element, carbon, while the other ninety-five or so chemically important elements are lumped together as "inorganic chemistry"? Worse yet, more than a thousand known compounds include carbon for each one that does not — even after more than fifty years of determined effort by synthetic inorganic chemists. And it is carbon, always and only carbon, that forms the basic molecular framework of living systems. Although there has been and continues to be speculation about inorganic biochemistries, most professional exobiologists (who search for signs of extra-terrestrial life) do not give them a moment's thought.

How can one element so dominate the provincial imaginations of chemists that exobiologists rarely bother to speculate about life based on any other element? Let's do a systematic search for *other* elements on which life might be based. They only need to fulfill a few characteristics:

1. They must be common in the universe.
2. They must be chemically reactive.
3. They must be able to form complex, branched compounds similar to those we know in organic biochemistry.
4. The two most common, chemically reactive elements in the universe are hydrogen and oxygen. Our candidates must have compounds that are reasonably stable in the presence of hydrogen and oxygen.

Let's see how many elements we can find that fill the bill.

THE ELEMENT MUST BE COMMON

If an element is rare, there will not be enough of it to form the chemical basis of large- or even small-scale ecosystems. As a reasonable cutoff, we will require life-elements to have at least one atom per billion hydrogen atoms. Of the eighty-five or so elements found in nature, twenty-two are common: hydrogen, helium, nitrogen, carbon, oxygen, fluorine, neon, sodium, magnesium, aluminum, silicon, phosphorus, sulfur, chlorine, argon, potassium, titanium, chromium, manganese, cobalt, nickel, and iron.

THE ELEMENT MUST BE CHEMICALLY REACTIVE

Three of our twenty-two candidates are completely inert chemically, so much so that they form no known stable compounds: helium, neon, and argon. This pares our list to nineteen: hydrogen, nitrogen, carbon, oxygen, fluorine, sodium, magnesium, aluminum, silicon, phosphorus, sulfur, chlorine, potassium, titanium, chromium, manganese, cobalt, nickel, and iron.

THE ELEMENT MUST BE ABLE TO FORM COMPLEX STRUCTURES

To form the chemical basis of life, an element ought to be able to form large and complex molecular structures, including branched rings and chains. It would be simplest if the element were able to do this by bonding to itself.

Most elements are metals, bonding to themselves only in infinite three-dimensional arrays, and the "metallic bonds" in these arrays are not localized between pairs of atoms. This means that they cannot be selectively broken and re-formed during biochemical processes, and small molecular structures with metal-metal bonds are almost unknown. We have ten metals left in our list: sodium, magnesium, aluminum, potassium, titanium, chromium, manganese, cobalt, nickel, and iron; almost all of the sixty-three elements that we eliminated earlier as being too rare are also metals.

This leaves us nine elements: hydrogen, nitrogen, carbon, oxygen, fluorine, silicon, phosphorus, sulfur, and chlorine. All of these can bond to themselves, by localized "covalent bonds" that could be precisely manipulated by biochemical processes.

But to form branched rings and chains, an element has to be able to form more than one or two bonds. Hydrogen, fluorine, and chlorine cannot form more than one bond, and so if they bond to another atom they are done. Oxygen and sulfur can form only two bonds; they can make chains and rings such as -O-O-O-O- or -S-S-S-S-, but that is all. So, from our original list of a quarter of the elements found in nature, we are left with only four candidates for life: nitrogen, carbon, silicon, and phosphorus.

And we have to throw out nitrogen, too. When nitrogen bonds to itself, it overwhelmingly prefers to make all three bonds to one other nitrogen atom: N≡N. Nitrogen-nitrogen single and double bonds are unstable enough to make such compounds explosive.

WAIT A MINUTE . . .

What if nitrogen formed single bonds in which it alternated with another element? For example, single-bonded compounds with alternating boron and nitrogen atoms, or alternating nitrogen and phosphorus atoms, are stable; nitrogen forms strong bonds to carbon, silicon, and phosphorus. Unfortunately, this is

essentially the same as making boron (a rare element), carbon, silicon, or phosphorus the basis of life. Besides, there is small likelihood of finding compounds lying around with the regular alternation required. So we can leave combinations of other elements with nitrogen out of consideration, at least for the moment.

We are left with only three candidates for the element of life: carbon, silicon, and phosphorus. All of our remaining candidates form bonds to themselves, and all prefer to form single bonds so that bonds are left over for rings and branched chains.

COMPOUNDS OF OUR ELEMENT MUST BE STABLE TO HYDROGEN AND OXYGEN

Hydrogen and oxygen are respectively the most common and third-most common elements in the universe, and are quite reactive besides. To have a fighting chance of forming any sort of life, compounds of other elements must be reasonably stable in the presence of these two elements. This stability can be approximated by bond strength: how strong are bonds to hydrogen or oxygen compared with bonds of the element to itself? If a bond is reasonably strong, there will be little if any advantage in forming a different kind of bond; and the bond will be more difficult to break in order to form a different kind of bond.

Our remaining candidates for "element of life" are carbon, silicon, and phosphorus. All of them form stronger bonds to oxygen and hydrogen than they do to themselves. But how much stronger?

Silicon's bond to oxygen is two-and-a-half times the strength of a silicon-silicon bond: so strong that in nature, silicon is *exclusively* bound to oxygen. We could conceive of a biochemistry based on silicon-oxygen polymers of the form -Si-O-Si-O-Si-O-; artificial polymers of this type (silicones) are common. Unfortunately, the silicon-oxygen bond is too strong. It is *hard* to break — as one would want to in order to work with biomolecules.

Phosphorus, like silicon, is almost always found in nature combined with oxygen. It can form stable, polymeric compounds with nitrogen (phosphazenes) that are similar to silicones. But the formation of such compounds is unlikely without strenuous help, given nitrogen's overwhelming preference for itself. (Besides, silicone and phosphazene chains and rings are oxygen-stable only if they have carbon-based side groups!)

Carbon, too, is more stable when bonded to oxygen, *but only by about 10-20 percent*. Carbon-oxygen bonds are common, but they are relatively easy to break in favor of carbon-carbon or carbon-hydrogen bonds.

Furthermore, under "reducing conditions" (an excess of hydrogen), phosphorus and especially silicon are not able to maintain bonds to themselves in favor of bonds to hydrogen: silicon-hydrogen bonds are 60 percent stronger than silicon-silicon bonds. Carbon-carbon bonds, on the other hand, are about 90 percent as strong as carbon-hydrogen bonds; hydrocarbons (compounds with both carbon-carbon and carbon-hydrogen bonds) are no more reactive than pure carbon.

A NOTE

To avoid infinite chains, a "chain cap" is needed, an element that forms only one bond. The capping element should form strong bonds to our life-element, but not too strong: it should be stable in the presence of oxygen, but not be too much stronger than the bonds of the element to itself. Because it is so common, hydrogen is the most likely candidate.

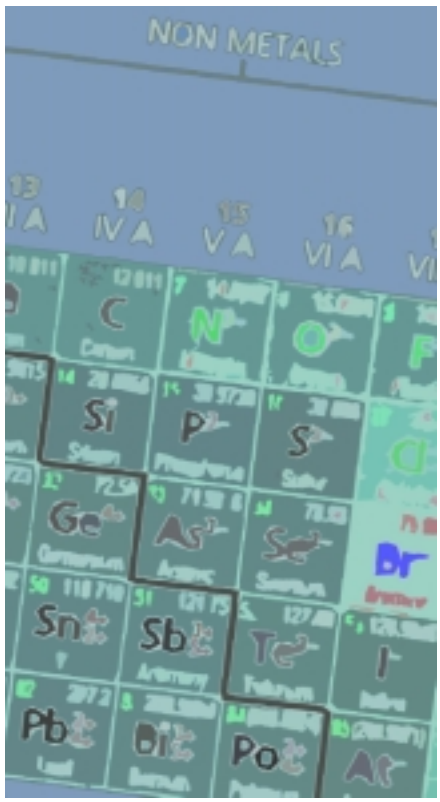
Only carbon is able to work well with hydrogen. Carbon-carbon bonds are strong in comparison with carbon-hydrogen bonds, so that hydrogen will not break up carbon chains. And carbon-hydrogen bonds are nearly as strong as carbon-oxygen bonds, so that hydrocarbons need a considerable energy "boost" to start reacting with oxygen. Silicon and phosphorus, on the other hand, form bonds to hydrogen that are too strong — SiH_4 and PH_3 are much more stable than the same number of Si-Si or P-P bonds — *and* not strong enough — SiH_4 and PH_3 burn spontaneously in the presence of oxygen.

The other common elements suitable as chain caps are fluorine and chlorine, but they are worse than hydrogen. Carbon, silicon, and phosphorus form extremely strong bonds to fluorine — so strong that silicon-silicon and phosphorus-phosphorus bonds cannot compete. And, except for carbon, bonds to chlorine cannot compete with bonds to oxygen.

ACCEPT NO SUBSTITUTES

Not only does carbon fit our requirements best of all the possible elements, it often forms stronger bonds to other elements than those elements do to themselves. This allows these elements to be incorporated into carbon-based biochemical structures, and makes the organic structure of life far richer. In fact, three-quarters of the chemically active elements we began with are involved in biochemistry!

Dan Berger is a professor of chemistry at Bluffton College. Like any other teacher, Dan likes to answer questions. Send e-mail requests for column topics to bergerd@bluffton.edu.



Forum on the Arts

Robert Burns

Real Life and The Comics

As I begin this essay exactly three months after the terrorist attacks in New York and Washington, it is tempting to use this platform to reflect on the architectural debate that has flourished in the aftermath. The structural characteristics of the twin towers that caused their failure or, conversely, that prevented their immediate collapse and thus saved untold thousands of lives, has engaged design professionals and the public equally. The attacks on the World Trade Center and the Pentagon dramatically demonstrate how buildings symbolize our national aspirations and values. And almost immediately, numerous proposals for rebuilding the WTC or new memorials to the fallen came from every quarter, including many from architects unashamedly seeking the inner track on future commissions certain to follow the unfinished task of cleanup. These thoughts were on my mind when I, as have most recent tourists to New York City, made a pilgrimage to Ground Zero. It is fair to say that the experience of glimpsing the devastation beyond the barricades on lower Broadway alongside milling crowds of visitors wearing caps and sweaters inscribed with FDNY and NYPD was deeply affecting.

That said, I have chosen to follow the instructions of our President who urges us to get on with our day-to-day lives even as the bombardment of the caves at Tora Bora intensifies; therefore, I will look at an aspect of our cultural life that many readers, if they notice at all, no doubt regard as frivolous — the comics. Nevertheless, the comics — and here I am referring primarily to comic books rather than their slightly more respectable newspaper or animated-film cousins — have been for many decades a rich source of emotional and esthetic pleasure for fans and even a few reputable critics and literary artists.

The immediate inspiration for this column is a delightful book, *The Amazing Adventures of Kavalier and Clay*, written by Michael Chabon, whose earlier novel *Wonder Boys* was made into a wry film about literary life and love in the university. The new book tells the story of two twenty-year-old male cousins, one from New York and the other an escapee from Nazi-occupied Prague, who together create an early hit comic book just as the form is emerging and not coincidentally at the beginning of the Second World War. Their costumed hero — "The Escapist" — inspired by Harry Houdini, battles Hitler and his Nazi hordes while effecting the escapes of imprisoned innocents in Europe in the interval before the United States even enters the war.

It is an affectionate fictionalized account of the early days of superhero comics when the "real" heroes — Captain America, Superman, Spy Smasher, Wonder Woman, Captain Marvel, The Human Torch, Daredevil, and hundreds of other superpowered patriots in brightly colored tights — took on the villainous forces of the Axis powers in earth-shattering fights each month. Fists were the preferred weapons, and a powerful sockeroo to the villain's chin typically brought the tale to a satisfying conclusion. It was a formula that was to dominate the new genre through the war years, later termed the "Golden Age" of comic-book history. The comics of this era were often poorly drawn, cheaply printed, purchased (10 cents!) by the millions, read and re-read, swapped, and read again by American boys too young to go to war themselves. Young girls were also fans of this phenomenon. As Chabon points out, the creators lavished their most creative skills on the slick, brilliantly rendered covers that screamed from the comics racks and spinners in the nation's dime stores, bus stations, and pharmacies.

Kavalier and Clay is drawn on a broad canvas and populated with scores of colorful characters, real and imaginary. Al Smith, former governor of New York and presidential candidate, appears in a vignette about a Brown Shirt plot to bomb a comic-book company's offices in the Empire State Building. In one of the book's wittiest inventions, Salvador Dali nearly dies of a deep-sea diving accident at a Bohemian party in a Greenwich Village drawing room (you will just have to read it). A shame it did not really happen — it would have furnished a true Surrealist ending to a career that went rapidly downhill after that period.

The book's foreground is woven into the broader events of the nation and the world at the dawn of World War II. Critics describe it as the kind of writing "that leaps 600 pages of fantasy and social history at a single bound . . . never before told with as much imagination, verve and affection" (*Time* Magazine). The *Atlanta Journal-Constitution* writes, "[It] starts out as one of the most pleasurable novels of the past few years. It ends as one of the most moving." It received the Pulitzer Prize for fiction in 2000; I have reached only page 298 and had a hard time breaking away to do this short piece.

The real art of comic books relies less on draftsmanship and production quality than on its formal graphic communications system and

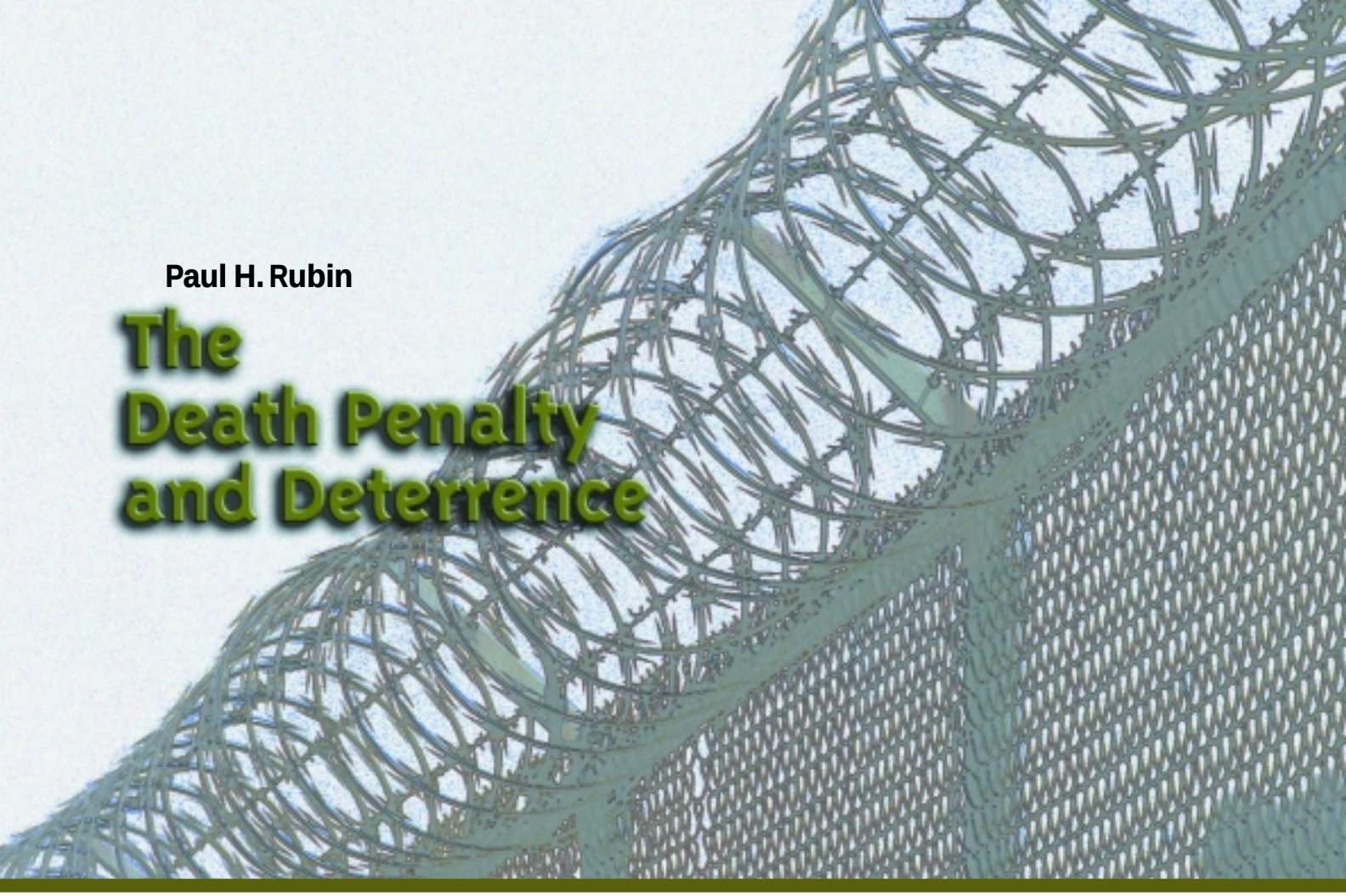
its highly versatile storytelling potential, enabling comic books to serve as effective vehicles for the most puerile of stories to the most serious of themes. Numerous genres have found a place in comics history since the early days so vividly evoked in *Kavalier and Clay* — funny animals, crime, romance, westerns, teen-age humor, horror, satiric humor, science fiction, eroticism, fantasy, realistic drama, biography and autobiography, and naturalism. All have found the sequential panel system a convenient and flexible technique for telling stories and expressing ideas and emotions. Innovative artists have greatly expanded the compositional and emotional potential of the medium by varying the size and shape of panels, overlapping images, and employing full- and double-page illustrations, called "splash pages." Comics share many visual methods with the modern motion picture, which has vastly enlarged the expressive potential of the film medium through camera and editing manipulations such as quick cutting, zooms, and simultaneous imaging. Two exceptional books — Scott McCloud's *Understanding Comics* and Will Eisner's *Comics and Sequential Art* — clearly set forth the theory and graphic techniques of comics art and are highly recommended for both the longtime fan and the novice.

Incidentally, Eisner is the revered dean of comics art and the creator of *The Spirit*, a funny, elegantly rendered detective series and one of the earliest examples of the comics' creative possibilities. While Eisner did not invent the "graphic novel," he was an early and brilliant practitioner of this relatively new hybrid that merges comics graphic techniques with extended and often profound literary themes and narratives. The graphic novel represents the most important step in the maturation of the comic-book form in the last quarter-century. Perhaps the most celebrated graphic novel yet published is *Maus*, which tells the story of Jews in Nazi-dominated Poland. What is so compelling about this particular book is that the Jews are represented as mice and the Nazis as cats, a concept that reveals the power and versatility of the comics medium. The author/artist is Art Spiegelman, who drew on his family history for the story's details. The simple line drawings support the serious themes of the novel without sentimentality or anger. Indeed, the *New York Times* called *Maus* "an epic story told in tiny pictures." The *Washington Post* went further: "A quiet triumph, moving and simple — impossible to describe accurately, and impossible to achieve in any medium but comics."

Spiegelman has now become an important national voice through his satirical covers and cartoon features for *The New Yorker*. His eloquent black cover with its faint, ghost-like image of the twin towers published immediately after the September 11 attacks closes this circle of commentary begun in contemplating the meaning of those events and the expressive potential of comics.

(Robert Burns wishes to confess a lifelong love affair with comic books, newspaper comics, and animated movies. He had hoped to become a comic book artist before leaving it behind for architecture. He owns a collection of vintage comics that he rarely reads but treasures nonetheless. His son Adam, whom he introduced to comics at an early age, owns *Adam's Memory Lane*, a comic-book store in Wilmington, NC.)

Robert Burns is a professor of architecture at North Carolina State University. He is a Fellow of the American Institute of Architects and recipient of the Holladay Medal for Excellence, the highest award made by the university to faculty members. Professor Burns was selected as Phi Kappa Phi's National Artist for 1998-2001.



Paul H. Rubin

The Death Penalty and Deterrence

Many arguments can be made for or against the death penalty. Many of them focus on aspects of morality: Is it just for the state to kill someone? Should a murderer suffer a punishment similar to the loss of his victims? Is "an eye for an eye" still appropriate, or is it barbaric?

I will not consider any of these arguments. I will not even argue a position with respect to the death penalty, or capital punishment. Rather, I will analyze the issue as an economist and ask the following questions: What are the consequences of an execution? Will an execution have the effect of deterring other potential murders, or will it merely satisfy some desire for vengeance? That is, I will examine the best evidence available on the question of deterrence. When I have discussed this evidence, readers will be in a position to make their own decisions as to the merits of capital punishment. One cannot make an informed decision without knowing the consequences.

HISTORY OF DETERRENCE RESEARCH

The question of deterrence has long been at the forefront of the debate on capital punishment. Theoretical arguments exist on both sides. Those arguing against deterrence claim that murders are not sufficiently rational to calculate probabilities or respond to incentives, or that murders are committed in the heat of passion and murderers do not consider the consequences. Those making the opposite argument claim that humans are generally rational and respond to incentives, and that criminals are not fundamentally different from others in such qualities. Among the major proponents of the latter view is Gary Becker, the Nobel Laureate in economics who, in a famous article published in 1968, argued that criminals respond to changes in conditions in about the same way as everyone else.

Because theory cannot definitively answer the question of the existence of deterrence, analysts have turned to empirical or statistical methods. Among the first to use such analysis on the question of the deterrent effect of capital punishment was Thorsten Sellin. In a 1959 book, Sellin compared states with and without capital punishment and found no significant difference in homicide rates. His methodology is improper, as I show below, but it is still used by some analysts: the *New York Times*, in an article published on September 22, 2000, used exactly this methodology.

Cross-state comparisons present two problems. First, they do not hold enough factors constant in a statistical sense. That is, even states that appear "similar" can differ in many ways that are relevant for determining the homicide rate, and a gross comparison of murder levels by state cannot adjust for these differences. For example, murder rates have been shown to respond to differences in incomes, racial composition, age of the population, and urbanization and population density. The probability of arrest is also a significant factor, and can also vary across states. A simple state-by-state comparison cannot capture these many differences. The only way to adjust for these multiple factors is to use a multivariate statistical tool such as some variant of multiple-regression analysis; simple two-by-two comparisons such as those used by Sellin and the *New York Times* are inadequate. (Sellin was writing before the statistical and computational tools were available to perform the sort of analysis required; the *New York Times* has no such excuse.)

The second reason for the inappropriateness of state-by-state comparisons is that causality can go either way. That is, a state may have capital punishment precisely because it has a higher murder rate and is trying to control this evil. In such a case, observing capital punishment and a high murder rate says nothing about causality, and the deterrence argument is that rates would be even higher if there were no capital punishment.

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The first serious attempts to examine these influences in a modern statistically valid model were made by Isaac Ehrlich, a student of Gary Becker's. In two papers published in the 1970s, Ehrlich examined the effect of executions on homicides, one at a national level and one at the level of states. In both he found a statistically significant deterrent effect. However, others have reanalyzed his data extensively and have found no such effects. Statisticians and econometricians have had a very active debate over this issue, using Ehrlich's data.

In 1972 the U.S. Supreme Court imposed a moratorium on executions, which was lifted in 1976. From the perspective of this article, the effect of the moratorium was that for four years no data was available to extend the data used by Ehrlich. Moreover, even when the moratorium was lifted, relatively few executions took place because states had to pass new statutes and determine whether these were acceptable to the Court. It was not until 1984 that more than five executions occurred in any given year in the entire United States. To date, no published study has used this data to analyze the question of deterrence.

OUR RESEARCH

Along with two colleagues at Emory University (Hashem Dezhbakhsh and Joanna Mehlhop Shepherd), I have performed a statistical analysis of this data. Our analysis has several advantages over previous analyses. First, we have used county-level data, rather than national or state data. The advantage of county-level data is that populations are more homogeneous within counties, so statistically the results are more accurate. Moreover, there are more than 3,000 counties in the United States, so there is a large amount of data. This large amount facilitates statistical analysis. Second, we use techniques (called "panel data") that were not available when Ehrlich did his research. Moreover, these techniques require large amounts of data, which again are available for the county-level analysis. Thus, we are able to advance the argument significantly because we have more and better data and better statistical techniques than were available to others.

A multiple-regression analysis such as that which we perform essentially estimates homicide rates as a function of demographic and other characteristics of the jurisdiction (here, the county). The analysis then can implicitly calculate the effect of each execution on the number of homicides that would otherwise have occurred.

In performing this analysis, we had to solve an important problem. We are interested in the effect of an increase in the probability of an execution on homicides. But a probability must be calculated with a denominator. The probability of an execution is the number of executions divided by the number of homicides. But it is necessary to determine the appropriate year for the number of homicides to put in the denominator. It appears that there is now an average lag of six years between commission of a murder and execution. That is, if an execution occurs in 2001, but the crime was committed in 1995, how do we measure the probability? Does the execution in 2001 deter murders in 1995, or in 2007, or for some year in between? To account for this difficulty, we used three measures of the lag structure. We also used two methods of adjusting for missing data. Thus, we ended with six equations measuring the deterrent effect of executions.

In all six cases, we found that each execution led to a significant reduction in the number of homicides. The most conservative estimate (that is, the one with the smallest effect) was that each execution led to an average of eighteen fewer murders. The "95 percent confidence interval" estimate for this value was between eight and twenty-eight fewer homicides. In other words, we can be 95 percent sure that each execution resulted in at least eight fewer homicides, and it is likely that each execution actually deterred more than eight homicides. All other estimates were even larger than this.

IMPLICATIONS

As I mentioned above, the existence of a significant deterrent effect does not prove that capital punishment is good or socially desirable. But it does indicate that if we decide not to execute murderers, then we are making a decision that will lead to many additional murders in society.

Critics of capital punishment raise numerous issues. I will consider one such issue here: the issue of race. Critics claim that African Americans are more likely to be executed than are whites. This may be true. But there are two relevant factors. First, U.S. Department of Justice figures show that African Americans are much more likely to commit homicide than are others. Secondly, and more importantly, African Americans are also more likely to be victims of homicides. For 1999, for example, homicide victimization rates per 100,000 persons were 3.5 for whites and 20.6 for blacks. For that year, there were 7,757 white and 7,134 black homicide victims. Thus, when an execution deters murders, many of these deterred murders would have been of African Americans.

Paul H. Rubin is professor of economics and law in the Department of Economics at Emory University.

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John D. Bessler

America's Death Penalty: Just Another Form of Violence

The September 11 terrorist attacks on New York City's World Trade Center buildings profoundly affected everyone. The images of smoke billowing from the twin towers, people plummeting hundreds of feet to their deaths, and then the collapse of the skyscrapers themselves, are gruesome and unforgettable. The coordinated terrorist plot, with hijacked planes also crashing into the Pentagon and in Pennsylvania, claimed thousands of lives even as the attacks steeled the world's resolve to fight international terrorism. As we mourn the loss of life, one question that will remain unanswered for some time is the extent to which the terrorist attacks will affect America's domestic anti-death penalty movement, which appeared to be gaining strength in the months before that fateful day.

In the aftermath of the hijackings and the mailing of deadly letters containing anthrax spores, the American people face a host of new challenges. How do we defend ourselves against future terrorist attacks while protecting the constitutional rights of Arab Americans? How do we bring Osama bin Laden and terrorists in al Qaeda to justice, yet not kill hundreds of innocent Afghan civilians in the process? And how should we administer justice to those who killed, harbored terrorists, or facilitated the terrorist attacks who are not themselves killed in the military campaign in Afghanistan? Openly or in secret? The answers to these questions are not trivial, for the whole world is watching what we do and how we conduct ourselves. Just what kind of example will America's government set for the rest of the world?

Although the world changed on September 11, my firm conviction is that we must not allow acts of terrorism to change our aspirations for a nonviolent society and a lasting global peace. The terrorists, of course, must be brought to justice, but on the home front and abroad Americans must act to reduce violence and human suffering, which are all too often a root cause of violence. In other words, as we tighten airport security and make the U.S. mail safe for everyone to use, we also must take concrete steps to reduce gun crimes and poverty; to address the global threat of chemical, biological, and nuclear weapons; and to eliminate the use of land mines. The death penalty — already abolished in Europe — needs to be done away with as well.

THE DEATH PENALTY IN A VIOLENT SOCIETY

While many people are sure to call for the death penalty's widespread use after the September 11 terrorist attacks, my own opposition to capital punishment remains unchanged. For me, even in the post-September 11 world, America's death penalty continues to be just another form of violence in an already too-violent society. The problems with the death penalty — the conviction of the innocent, racial discrimination in its application, and the abysmal quality of representation most death-row inmates received at their trials — are legion and have certainly not changed since September 11, and no past or future terrorist attack will affect those realities. Elected officials such as Illinois Governor George Ryan had compelling reasons before September 11 to call for a moratorium on executions, and none of those reasons has gone away. Indeed, so long as the death penalty exists, there will be men like Anthony Porter, one of many death-row inmates recently exonerated in Illinois alone, who are sent to death row in error.

Using capital punishment only sends the misguided message to members of society that killing already-incarcerated criminals can somehow solve the problem of violence in American life. Statistics and history, in fact, show that just the opposite is true; when the death penalty is used, it tends to brutalize society, not make our lives any safer.

When crimes of violence such as murder, rape, and assault are committed, any just system of laws obviously demands that the perpetrators be punished. This makes perfect sense. Maintaining public safety is one of the government's most important obligations, and justice requires that criminals be held accountable for their actions. Just as Osama bin Laden and terrorist networks around the globe cannot be allowed to continue to operate, anyone who murders, rapes, stabs, or shoots someone must go to prison after guilt is established. The whole purpose of incarcerating criminals is, after all, to eliminate the risk of future acts of violence in society at large.

What makes no sense to me is for a government that already has a criminal in custody to use violence — that is, the death penalty — to try to reduce violence. Using capital punishment only sends the misguided message to members of society that killing already-incarcerated criminals can somehow solve the problem of violence in American life. Statistics and history, in fact, show that just the opposite is true; when the death penalty is used, it tends to brutalize society, not make our lives any safer. While American death-penalty laws may give some a false sense of security, only incarcerating offenders and taking steps to prevent violence will make us safer in the end. Timothy McVeigh's execution did not put a stop to acts of terrorism on American soil, just as death penalty laws do not stop homicides in Dallas or Houston and did not deter suicidal fanatics from hijacking commercial airliners and killing thousands of innocent people in a single day.

I prefer life-without-parole sentences to the death penalty because capital punishment has a corrosive influence on any society, and there is no evidence that the death penalty really does anything to fight crime. In fact, a recent study commissioned by *The New York Times* examined FBI data and found that death-penalty states' average murder rates consistently exceeded those of non-death-penalty states. The study reached the very disturbing conclusion that, over the last twenty years, death-penalty states' homicide rates have been, on a per capita basis, an astonishing 48 percent to 101 percent higher than in non-death-penalty states. Of America's twelve non-death-penalty states, ten have murder rates that are below — often far below — the national average.

The State of Minnesota, where I live, for instance, abolished capital punishment in 1911 and yet has one of the lowest violent-crime rates in the

country. While the national homicide rate was 6.3 murders per 100,000 people in 1998, Minnesota's rate that year was less than half that figure; in contrast, active death-penalty states such as Texas and Louisiana regularly have some of the country's highest murder rates. I think anyone who fairly considers the evidence should be extremely troubled by the fact that, year after year, America's death-penalty states have higher homicide rates than do non-death-penalty states. Obviously, many factors can affect a state's homicide rate. However, these compelling statistics — indeed, logic itself — compel the conclusion that the death penalty is, at bottom, really nothing more than part of a culture (still prevalent in many places) that condones the use of violence.

EXECUTIONS OUT OF SIGHT

That executions are brutalizing to American society was actually clear at least more than a century ago. Indeed, in the 1830s, American states began moving executions out of public squares because of the general disorder that often prevailed at them. This trend started in northeastern states and then gradually spread to all parts of the country. Midday executions on the public commons were, over the next hundred years, gradually replaced by after-dark executions that, by the late 1930s, universally took place behind prison walls. State laws specifically limited attendance at executions to a few official witnesses, and county sheriffs and prison wardens regularly barred children and women from attending them. In the twentieth century, new laws were passed throughout the country forbidding television cameras from filming these events.

Because civic leaders saw public executions as corrupting morals, many states even passed laws in the nineteenth century forbidding newspapers from printing any details of executions. Public executions, it was recognized, often drew pick-pockets and drunken spectators, and state legislators concluded that if executions were creating unintended consequences, so too were newspaper accounts of hangings. Thus, in many locales such as Arkansas, Minnesota, New York, and Virginia, only the bare fact that a criminal was executed could be printed or published. Any reporter who violated one of these laws and described an execution in print could be criminally prosecuted and jailed.

To further restrict public access to information about executions, many states actually mandated by law — as some still do — that executions take place "before sunrise." The constitutionality of one of these laws, dubbed by its contemporaries as the "midnight assassination law," was upheld by the Minnesota Supreme Court in 1907. That court ruled that the "evident purpose of the act was to surround the execution of criminals with as much secrecy as possible, in order to avoid exciting an unwholesome effect on the public mind." Executions "must take place before dawn, while the masses are at rest," the court held, to give effect to the law's "purpose of avoiding publicity."

The modern-day contention by some that executions deter crime better than life-without-parole sentences is thus totally at odds with both American history and the facts. If executions were such a wonderful deterrent, why would the government choose to hide them from public view and even pass laws to prohibit the dissemination of news about them?

Today, most American executions still receive very little media attention, with the exception of higher-profile ones such as Timothy McVeigh's. Of the 313 executions that were carried out in the United States from 1977 to 1995, more than 82 percent of them actually took place between 11:00 P.M. and 7:00 A.M., when most people are asleep. More than 50 percent of those executions took place between midnight and 1:00 A.M., with laws in Louisiana and Delaware specifically requiring that executions take place between midnight and 3:00 A.M. Because they are conducted in private, American executions are, to most people, mere abstractions, not tangible events that would seem more real if they were broadcast on the nightly news. Ironically, while we see horrific film footage on CNN of the Taliban executing a civilian in an Afghan soccer stadium, American executions, without exception, remain hidden from public view.

What I find so troubling about the death penalty is that our most valued democratic institutions (the judiciary, the Congress and state legislatures, and the executive branch) all sanction (and are tainted by) the very same horrific act — senseless killing — that we so rightfully decry when terrorists or murderers commit their crimes.

Although executions are kept out of sight by state legislators and the federal government, it must never be forgotten that when a democratic government takes a life, it does so on behalf of its citizens. The United States of America is, after all, governed by "We, the People." Our own elected representatives pass death-penalty laws, ordinary Americans sit on juries that impose death sentences, and the public's money pays for lethal-injection machines and executioners' salaries. What I find so troubling about the death penalty is that our most valued democratic institutions (the judiciary, the Congress and state legislatures, and the executive branch) all sanction (and are tainted by) the very same horrific act — senseless killing — that we so rightfully decry when terrorists or murderers commit their crimes.

CURTAILING VIOLENCE BY COMMITTING VIOLENCE?

In the wake of terrorist attacks, workplace shootings, carjackings, or gun violence such as that which took place at Columbine High School, effective measures can and should be taken to curtail violence. More sophisticated computer systems to track offenders, beefed-up security at public places, and better regulation of firearms are all steps that we can take to make the United States a safer place in which to live and work. Although lethal injections have largely sanitized executions, it cannot be doubted that the death penalty is a form of violence. Whether carried out by firing squad, hanging, electrocution, the gas chamber, or lethal injection, the result is the same: the killing of human life.

In wartime or when someone acts in self-defense to preserve his or her own life, the use of violence can be justified to protect life. World War II, for example, was fought to stop Nazi aggression and end the Holocaust. But when a government already has someone in prison, what purpose is served by an execution? All an execution does is inject more violence into a society. Because the government should be setting an example for its people, executions are especially counterproductive. The need for public safety and what should be any government's goal — that is, a nonviolent society — can be easily reconciled by making life-without-parole sentences the maximum penalty allowed by law for murder.

The amount of violence in American society, whether on the streets or as seen on prime-time television, is astonishing. We see hijacked planes piloted into the World Trade Center and bursting into flames; we see murder scenes with yellow police tape on the evening news; and family-friendly television programming often seems to be a rare commodity. The media, acting under the guarantees of the First Amendment, must be allowed to report and expose acts of violence. However, the sheer amount of violence we face does not mean that we should inject even more violence into our lives by using the death penalty. Indeed, everyone from parents to our nation's lawmakers must play a role in shaping a better, more nonviolent future for our children.

Instead of putting needles into criminals who are brain-damaged, mentally retarded, or who do not share our value for human life, our crime-fighting efforts should focus on real solutions such as tougher gun-control laws, stiffer penalties for violent offenders, better child-protection laws, and combating truancy to keep kids in school and out of gangs.

When our country's governors or judges sign death warrants for people already confined in prison, they send the wrong message to our nation's youth. Do we really want some of our most educated members of society, who should be role models of the highest order, telling our children that killing locked-up criminals is the way to solve problems? We certainly do not hold up executioners as role models for our children, yet when executions occur, aren't all members of our society in some way responsible for what those executioners are doing? It is, after all, our own laws that allow executions to happen within our borders. If anything, the death penalty only perpetuates the mistaken notion that state-sanctioned executions can somehow curtail violent crime in the United States. Just as the NAACP successfully crusaded against lynching in the last century, it is time for all of us in this century to work to do away with state-sponsored executions.

If America is to have a safer society, we must stop seeing the death penalty as a "crime-fighting" tool, which it clearly is not. Instead, we must start seeing

capital punishment for what it is: just another form of violence in our society. Thus, as we grapple with the thorny issues of how to bring heavily armed terrorists in Afghanistan to justice, America's domestic political agenda cannot be allowed to stand still. The abolition of America's death penalty is, in fact, one way already within our grasp to reduce violence. Instead of putting needles into criminals who are brain-damaged, mentally retarded, or who do not share our value for human life, our crime-fighting efforts should focus on real solutions such as tougher gun-control laws, stiffer penalties for violent offenders, better child-protection laws, and combating truancy to keep kids in school and out of gangs.

In the final analysis, the death penalty does nothing more than validate the use of senseless violence, which is not a wise or sensible thing to do in the first place. As Martin Luther King, Jr., warned: "The ultimate weakness of violence is that it is a descending spiral, begetting the very thing it seeks to destroy." America's death penalty, inflicted after murders have already been committed, only creates more violence and represents yet another roadblock that we must dismantle if we are ever to realize King's dream of a nonviolent society based on the principles of equality and respect for human life.

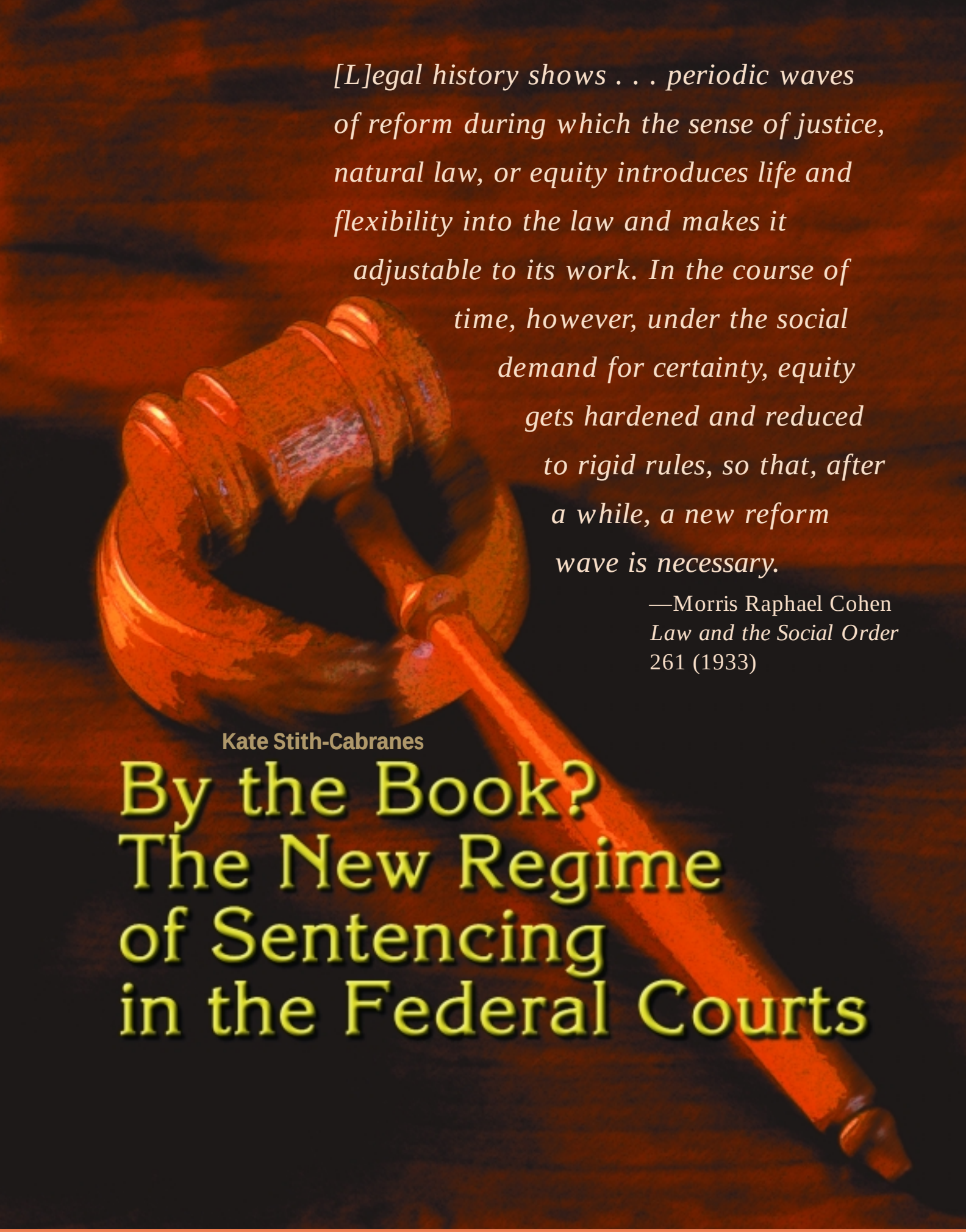
John Bessler is an attorney and an adjunct professor of law at the University of Minnesota Law School. He is the author of *Death in the Dark: Midnight Executions in America***, published by Northeastern University Press, and** *Legacy of Violence: Lynch Mobs and Executions in Minnesota***, forthcoming from the University of Minnesota Press.**

FIVE SUNDOWN SKIES IN AUGUST

(*after David Wagoner*)
1
A once-ago boy, sobbing, atop his sister's
Grave — fingers, clawing the ground.
2
The old man, asleep on the boathouse porch,
A red & white bobber, just *now*, tugged below surface.
3
Golden ears of corn, plump & roasting on an open fire.
Cows, huddled together, beneath walnut boughs.
4
Heat lightning, emptying over lemon-green
Hayfields. Weather-beaten cross above a vine-strangled church.
5
A family of Amish walking through heavens
Of dustclouds, swirling, from a passing *Greyhound* bus.

ROBERT NAZARENE

Robert Nazarene's poetry appears or is forthcoming in: *The Beloit Poetry Journal, Boulevard***,** *Callaloo***,** *Green Mountain Review***,** *Ploughshares***, and elsewhere. He is a graduate of the Georgetown University School of Business Administration and serves on the board of The St. Louis Poetry Center.**



[L]egal history shows . . . periodic waves of reform during which the sense of justice, natural law, or equity introduces life and flexibility into the law and makes it adjustable to its work. In the course of time, however, under the social demand for certainty, equity gets hardened and reduced to rigid rules, so that, after a while, a new reform wave is necessary.

—Morris Raphael Cohen
Law and the Social Order 261 (1933)

Kate Stith-Cabranes

By the Book? The New Regime of Sentencing in the Federal Courts

On November 1, 1987, two centuries of sentencing practice in the federal courts came to an abrupt end. A regime of sentencing guidelines prescribed by a federal administrative agency went into effect. The purpose of the new regime was to divest the independent federal judiciary of nearly all authority to determine criminal sentences. Federal judges would still be the formal locus through which criminal sentences would be pronounced. But the new regime sought to strip them of power to determine the purposes of criminal sentencing, the factors relevant to sentencing, and the proper type and range of punishment in particular cases. Henceforth, these powers would rest with a newly formed bureaucracy, the United States Sentencing Commission, located in Washington, D.C.

The Sentencing Commission was established by the Sentencing Reform Act of 1984 (Pub. L. No. 98-473, 98 Stat. 1987 [1984]) — legislation originally introduced by Senator Edward M. Kennedy, passed by nearly unanimous votes in both the Senate and the House, and enthusiastically signed into law by President Ronald Reagan. The 1984 Act sought to achieve "certainty and fairness" in the federal sentencing process by eliminating "unwarranted disparity" among sentences for similar defendants committing similar offenses (S. REP. No. 98-225 at 52, 56 [1984]). Two hallmarks of this legislation were the elimination of parole and, for the first time, the provision for appellate review of sentences. These achievements have been overshadowed, however, by the most far-reaching and dramatic provision of the Sentencing Reform Act: the charge to the newly established Sentencing Commission to develop and implement a system of mandatory sentencing guidelines.

The federal *Sentencing Guidelines* are the rules promulgated by the Sentencing Commission for imposition of criminal sentences by federal district judges. As of 2001, the Commission's much-amended *Sentencing Guidelines Manual* consists (including appendices) of more than one thousand pages of technical regulations, weighing more than four pounds — which may be usefully compared to, for example, the statutes and regulations (including appendices) of the Internal Revenue Service, whose four thousand pages, accumulated over nearly ninety years, weigh in at seventeen pounds. Thus, the *Guidelines* are almost a parody of the overly detailed, inflexible legal structures that lawyer and author Philip K. Howard criticized in his 1994 best-selling book, *The Death of Common Sense*.

The centerpiece of the *Guidelines* is a 258-box grid that the Commission calls the Sentencing Table. The horizontal axis of this grid, entitled "Criminal History Category," adjusts severity on the basis of the offender's past conviction record. The vertical axis, entitled "Offense Level," reflects a base severity score for the crime committed, adjusted for those characteristics of the defendant's criminal behavior that the Sentencing Commission has deemed relevant to sentencing. The *Guidelines*, through a complex set of rules requiring significant expertise to apply, instruct the sentencing judge on how to calculate each of these factors. The box at which the defendant's Criminal History Category and Offense Level intersect then determines the range within which the judge may sentence the defendant. The sentencing range in each box is small, the highest point being twenty-five percent more than the bottom point.

The Sentencing Reform Act provides that there be two circumstances in which a judge may "depart" from the calculated *Guidelines* range. The first circumstance is where the defendant has provided substantial assistance to law-enforcement authorities; the Sentencing Commission has added the important caveat that the federal prosecutor must first file a motion for a below-*Guidelines* sentence (U.S.S.C., *Sentencing Guidelines Manual* § 5K1.1). The judge cannot sentence a cooperating defendant to a lesser term either on the defendant's motion or on the judge's own accord.

The second situation in which a judge may depart, up or down, from the *Guidelines* is where the judge is able to demonstrate on the record that the case involves factors or circumstances that have not been adequately factored into the *Guidelines*' sentencing rules (18 U.S.S.C. § 3553 [b]). While the Supreme Court has held that a judge's decision to depart cannot be reversed on appeal unless it constitutes an "abuse of discretion" (*Koon v. U.S.*, 518 U.S. 81 [1996]), again there is a caveat. The Court made it clear that the federal appeals courts should not permit departures by sentencing judges on grounds that have been either (a) proscribed by the Sentencing Commission, or (b) already considered by the Commission. The Commission, in turn, has sharply constrained departures from the *Guidelines* by declaring that a defendant's personal history — including a history of misfortune or disadvantage, service to his country or his community, family responsibilities, and employment history — generally may *not* be a basis for departure (see U.S.S.C., *Sentencing Guidelines Manual* § 5K2).

Moreover, the *Guidelines* themselves prescribe precise, quantitative sentencing weights for most other circumstances that have historically been taken into account by judges to mitigate or enhance punishment: the individual defendant's role in the offense, the actual amount of harm caused, and the

defendant's acceptance of (or failure to accept) responsibility for his criminal conduct. These factors, too, are generally off-limits to sentencing judges as grounds for departure from the *Guidelines*. The result is that the judge's authority to depart from the *Guidelines* is notable not because it offers opportunities to individualize a criminal sentence, but because those opportunities are so limited, especially as to defendants who do not cooperate in the prosecution of others.

IMPLICATIONS FOR THE JUDICIAL SYSTEM

The federal *Sentencing Guidelines* were born of an uneasiness with the very concept of authoritative discretion, a naive commitment to the ideal of rationality, and an enduring faith in bureaucratic administration. The *Guidelines* "juridify" criminal sentencing (to use Max Weber's term) — that is, they encumber sentencing law with minute formal distinctions and administrative detail — much as has occurred in certain other areas of law, such as the law of torts and contract. The endless specification of formal rules in the *Guidelines*, their neoclassical preoccupation with artificial order, and their attempt to mechanize justice may seem anachronistic in what many intellectuals insist is our "postmodern" or "post-Enlightenment" age. In a time of discontent and fierce competition among value systems, the *Guidelines* represent the continuing triumph of the administrative state.

The federal *Sentencing Guidelines* were born of an uneasiness with the very concept of authoritative discretion, a naive commitment to the ideal of rationality, and an enduring faith in bureaucratic administration.

The new regime has changed the nature and quality of sentencing in the federal courts. To achieve sentencing free of "unwarranted disparity," the Sentencing Commission found it necessary to pigeonhole crimes and offenders along complex gradients of severity and to greatly confine judicial discretion in all but "special" or "extraordinary" cases. But every case that comes before a judge for sentencing is different and special, and no set of rules — simple or complex — can be appropriate for every case. The attempt by the Sentencing Commission to develop a system of rules that would both ensure uniformity *and* recognize the variability of crimes and offenders has generated inordinate complexity and confusion in *Guidelines* definition and application, imposed burdens on both trial and appellate courts, generated case-law jurisprudence that is at once trivial and interminable, dehumanized the sentencing process, and undermined the moral dimension of sentencing and punishment.

The transfer of formal sentencing authority from federal judges to the Sentencing Commission is probably the most significant development in judging in the federal judicial system since the adoption in 1938 of the Federal Rules of Civil Procedure. The new regime replaces the long-standing tradition that afforded judges broad discretion to determine criminal sentences within statutory limits. Despite the use of the term *guidelines*, the sentencing rules issued by the Sentencing Commission are binding on sentencing judges.

In addition to transforming the judge's role in criminal sentencing, the new regime transforms the federal criminal law itself. In the American constitutional tradition heretofore, a formal distinction has been made between the process of crime definition (the responsibility of the legislative branch) and the process of criminal sentencing within the maximum penalties provided by statute (the responsibility of the judiciary and, for several generations, of parole officials as well). The major exception to this division of authority has been those few occasions in which Congress has mandated a minimum, as well as a maximum, term of imprisonment for particular crimes. The *Guidelines* represent a radical departure from this tradition.

Although a formal distinction between crime definition and criminal sentencing persists, the *Guidelines* function effectively as an adjunct to the substantive criminal statutes enacted by Congress. Statutory law continues to prescribe the formal elements of particular crimes. But now, for purposes of determining punishment, these elements are supplemented by the factors that the Sentencing Commission has prescribed in its *Guidelines*. This is because the *Guidelines* implement, to a large extent, the concept of "real offense" sentencing — whereby the sentence that the defendant receives depends not only on the statutory crimes of which he or she was convicted, but also on the "actual offense conduct"

in which he or she engaged. In essence, the Sentencing Commission has identified a multitude of new "*Guidelines* crimes," each a variant of one or more statutory crimes and each with its own mandated range of punishment.

Determining what "*Guidelines* crimes" the defendant has committed requires fact-finding and the application of law (the *Guidelines*) to these facts. The sentencing hearing has thus been transformed into an adjudicatory process, in which the sentencing judge — not the trial jury — determines the extent of the criminal conduct for which the defendant must be punished. Most of the procedural protections that apply at trial (such as the requirement of proof beyond a reasonable doubt, the exclusion of illegally obtained evidence, and the prohibition on hearsay) do not apply at the sentencing hearing. The defendant is formally convicted of one crime at trial (or by plea of guilty), but usually is sentenced for additional criminal conduct as defined in the *Guidelines*.[1]

Once the sentencing judge pronounces sentence, either in or beyond the *Guidelines* range, the defendant and the government may each obtain appellate review of the judge's calculations, including each subsidiary determination made by the judge in the calculation of the Criminal History Category or Offense Level (the two axes designed to yield the sentencing range). They may also obtain appellate review of the lawfulness of the judge's departure, if any, from the prescribed *Guidelines* range.

Judges, prosecutors, defense attorneys, and probation officers find themselves operating under a labyrinthine system of rules devised by a distant and alien administrative agency, rules that generally ignore individual characteristics of defendants and often seem to sacrifice comprehensibility and common sense on the altar of pseudo-scientific uniformity.

While the *Guidelines* have thus introduced radical changes in sentencing law and procedure, the resulting sentences themselves also represent a distinctive break from prior practice in the federal courts. Most notably, the *Guidelines* prescribe a sentence of confinement for all but the most minor federal offenses (indeed, only twenty-three of the 258 boxes in the Sentencing Table contemplate even the possibility of a nonincarcerative sentence). Before the *Guidelines*, about fifty percent of all federal defendants received nonimprisonment sentences (Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* [1994] at table 5.27 [showing historical rates of incarcerative sentences]); in the last decade, that percentage has dropped to just over ten percent (U.S.S.C. *Sourcebook of Federal Sentencing Statistics* 27 [2000]) — 10.5 percent of defendants received probation; 79.4 percent received sentences of confinement; the remainder received sentences involving both confinement and probation). Moreover, under the Sentencing Reform Act, offenders sentenced to prison may not obtain early release on parole, which has been abolished.

The new system has distressed many who are most intimately involved in the criminal-justice process. Judges, prosecutors, defense attorneys, and probation officers find themselves operating under a labyrinthine system of rules devised by a distant and alien administrative agency, rules that generally ignore individual characteristics of defendants and often seem to sacrifice comprehensibility and common sense on the altar of pseudo-scientific uniformity.

One central reason for judicial discomfort with the new regime is the perceived transfer of discretion from the judge to the prosecutor. For example, a 1997 survey by the Federal Judicial Center showed that 86 percent of federal judges believe "somewhat" or "strongly" that the *Guidelines* give too much power to federal prosecutors (Fed. Judicial Ctr., *The United States Sentencing Guidelines, Results of the Federal Judicial Center's 1996 Survey* 6 [1997]). Because of their authority to shape charges, plea-agreements, and the facts of "actual offense conduct" that will be made known to the sentencing judge, prosecutors have enormous power to shape the ultimate sentence required under the *Guidelines* — as well as power to grant or withhold a motion to depart from the *Guidelines* on the grounds of substantial assistance to authorities.

It is important to recognize, however, that while the Sentencing *Guidelines* greatly enhance prosecuto-

rial power *relative* to judicial power, the *Guidelines themselves* are the primary locus of legal authority. The *Guidelines* represent law binding on both judges and prosecutors. To the extent that both prosecutors and judges seek in good faith to apply and enforce the *Guidelines*, the Sentencing Commission is the most powerful institution in the new regime of sentencing in the federal courts.

GUIDELINES FAILURES

If the new regime really did — if it *could* — eliminate unwarranted disparity in criminal sentencing, the dominant objective of the 1984 federal legislation, perhaps the considerable effort of the various participants to decipher and apply the *Guidelines* could be regarded as well spent.

Ironically, however, disparity — different sentences for defendants whose crimes and criminal histories seem similar — may be as prevalent under the *Guidelines* as it was under the discretionary system that it replaced (see James Anderson, Jeffrey Kling, and Kate Stith, "Measuring Interjudge Sentencing Disparity: Before and After the Federal Sentencing Guidelines", 42 *Journal of Law & Economics* 271, 303-04 [1999]). There is considerable variation in *Guidelines* application among different federal districts, different judges, and different prosecutors (see generally *Sourcebook of Federal Sentencing Statistics* [2000], *supra*, showing wide variation among federal districts with respect to, inter alia, frequency, and types of departures from the *Guidelines*). Inevitably, some prosecutors, probation officers, and judges have been disposed to implement the new sentencing rules without compromise or concession, while others have strained to achieve greater flexibility.

The exercise of both acknowledged and unacknowledged discretion by judges and prosecutors mocks the precision and obduracy of the *Guidelines*' sentencing calculus, while at the same time contributing to disparity in sentencing outcomes and cynicism about the criminal-justice system. The *Guidelines* ostensibly carefully calibrate the relative severity of each defendant's real offense conduct (for instance, with respect to role in the offense, "minor" players receive a two-level reduction in Offense Level, while "minimal" players receive a four-level reduction) (U.S.S.C., *Sentencing Guideline Manual* § 3B1.2). But there is always some "give" in the application of rules. Faced with the same set of facts, different judges may in good faith arrive at different conclusions regarding the appropriate category in which to place a particular defendant. More problematically, judges (like other rule-interpreters), recognizing that indeterminacy is inevitable when rules are applied, may deliberately shape fact-finding and rule-application so as to exercise what amounts to unauthorized discretion. Prosecutors may likewise exercise unacknowledged discretion by withholding (on the one hand) or overstating (on the other) evidence that relates to the defendant's real offense conduct.

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That unacknowledged (or "hidden") discretion is being exercised with growing frequency is suggested by recent empirical evidence that federal narcotics sentences — which were greatly enhanced by the *Guidelines* and the related phenomenon in the 1980s of statutory mandatory penalties — have been declining during the last decade. One recent review posits that this decline may be due to a "quiet rebellion" by both federal prosecutors and judges against the perceived excessive severity of the narcotics sentences under mandatory sentencing laws and the *Guidelines* (Frank O. Bowman and Michael Heise, "Quiet Rebellion? Explaining Nearly a Decade of Declining Federal Drug Sentences," 86 *Iowa L. Rev.* 1054 [2001]).

Many federal judges have been openly and strongly critical of the *Guidelines*; a long list of articles, essays, letters, and judicial opinions is provided in Kate Stith and José A. Cabranes, *Fear of Judging* (University of Chicago Press, 1998. See note, pp. 195-197). A 1997 survey of federal judges by the Federal Judicial Center reported that nearly three-fourths of federal trial judges and more than two-thirds of appellate judges "strongly" or "moderately" oppose mandatory guidelines as "unnecessary" (Fed. Judicial Ctr. 1997, *supra*). Significant dissatisfaction

with the *Guidelines* continues within the defense bar, even (perhaps particularly) within that small segment that has become thoroughly steeped in them. The Sentencing Commission itself has become, in the words of a recent chief counsel to Senator Kennedy, "the Rodney Dangerfield of federal agencies: . . . [d]espised by judges, sneered at by scholars, ignored by the Justice Department, its guidelines circumvented by practitioners and routinely lambasted in the press . . . (Ronald Weich, "The Battle Against Mandatory Minimums: A Report from the Front Lines," 9 *Fed. Sentencing Rep.* 94, 97 [1996]).

Yet over the past fifteen years, the new regime has become increasingly entrenched. Of the some 1,000 active federal judges sitting on U.S. District Courts and Courts of Appeal benches, the majority have been appointed since the *Guidelines* went into effect. Nearly all Assistant United States Attorneys (federal prosecutors) and many defense attorneys who work in federal court know only the new regime. Congress regularly refers to the *Guidelines* in enacting or amending provisions of the federal criminal code, often directing the Sentencing Commission to increase the *Guideline* range if one or another exacerbating fact is present.

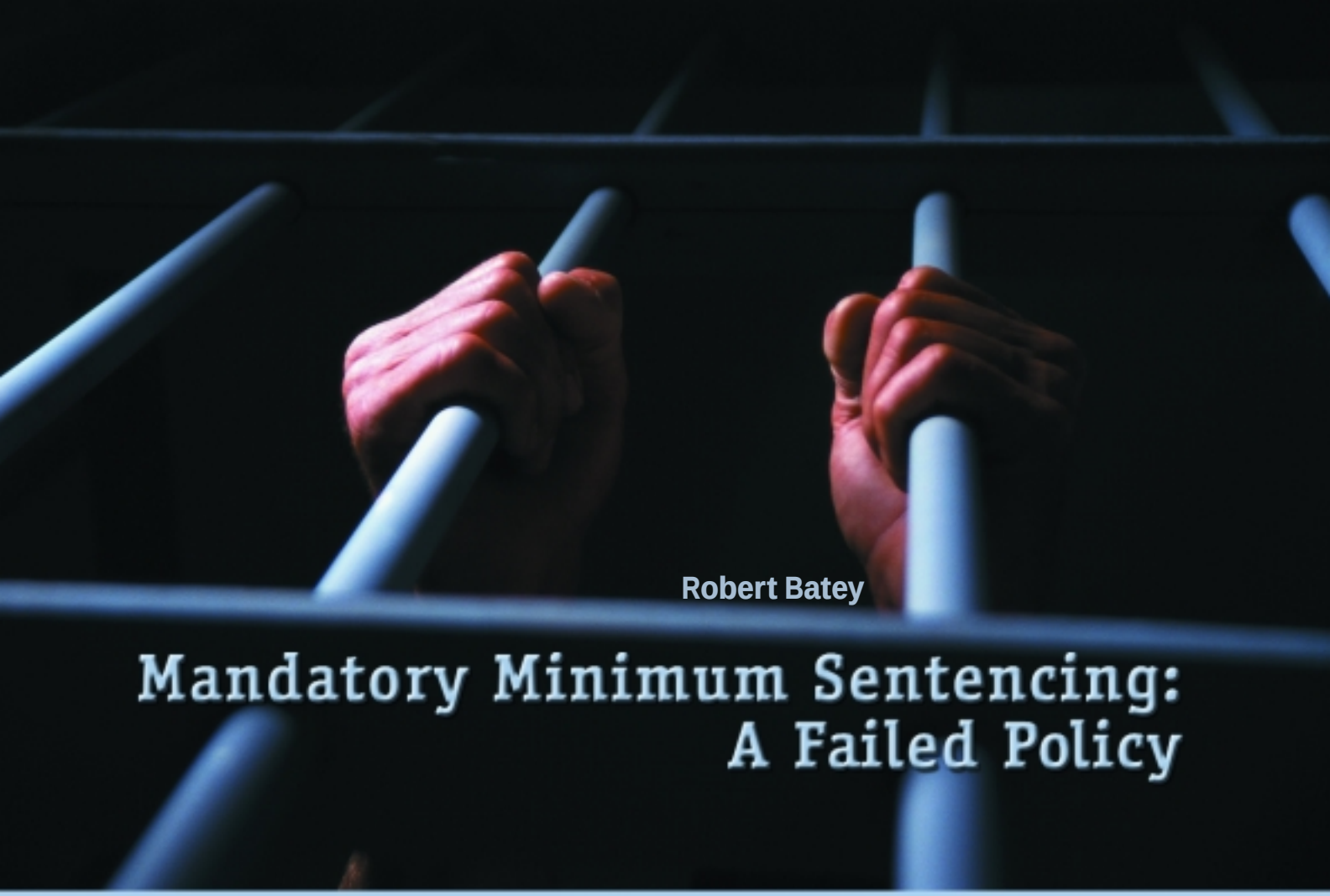
As the *Guidelines* have become entrenched, many of the critics appear (understandably) to have become resigned to them. Probation officers, who have been given the task of aiding judges in determining "actual offense conduct" and in calculating the required *Guidelines* sentencing range, have made an irredeemable investment in the new regime, and their status has arguably been enhanced. Most federal prosecutors, too, have come to appreciate the power that they now exercise without significant countervailing judicial authority. In addition, with each passing year, fewer probation officers or prosecutors have had experience with a non-*Guidelines* system. Even among judges, the quantity and vehemence of criticism of the *Guidelines* has dissipated in recent years — especially as new judges have been appointed, some of whom may welcome reduced responsibility over criminal sentencing.[2] In any event, judges as a group aspire to being vigilant law-abiders, and the *Guidelines* — whatever their faults, whatever they may have done to the quality of criminal justice in federal courts — are, of course, the law.

Kate Stith-Cabranes is Lafayette S. Foster Professor of Law at Yale Law School, where her major areas of research and teaching are criminal law, constitutional law, and the study of Congress. She graduated from Dartmouth College, Harvard Law School, and the Kennedy School of Government at Harvard and was a law clerk to Justice Byron R. White. Before joining the faculty at Yale, she was a federal prosecutor (an Assistant United States Attorney) in the Southern District of New York. By appointment of the Chief Justice of the United States, Professor Stith-Cabranes serves on the Advisory Committee on the Federal Rules of Criminal Procedure.

This essay is adapted from the Introduction to Kate Stith and José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (1998), copyright University of Chicago Press.

End Notes:

1. The Supreme Court has held that it is unconstitutional to withhold from the jury the finding of exacerbating facts "that increase the prescribed range of penalties to which a defendant is exposed." *Apprendi v. New Jersey*, 120 S. Ct. 2345, 2363 (2001). Apparently, however, this constraint applies only where the exacerbating facts increase the maximum *statutory* sentence. The *Apprendi* rule has not been applied to fact-finding that increases the *Sentencing Guideline* range, even though that range is mandatory in the absence of a lawful basis for departure.
2. Earlier surveys of federal judges reported even less satisfaction with the *Guidelines* than do the more recent surveys mentioned in text. See, for example, *Fed. Courts Study Comm., Report* 137 (1990) (consulting 82 percent of sitting federal judges and recommending that *Guidelines* be rendered nonbinding).



Robert Batey

Mandatory Minimum Sentencing: A Failed Policy

In the war on drugs, mandatory minimum sentencing is a strategy that has failed. Beginning a generation ago, legislators at both federal and state levels thought that they could "get tough on crime," especially drug crime, by removing the sentencing discretion of judges and replacing it with long minimum sentences that applied regardless of the defendant's individual circumstances. As a result, our national prison population has quadrupled, but the drug problem is no better than it was when we began what some have called our "orgy of incarceration."

Mandatory minimum sentencing seems like a simple idea. Pass a statute, as New York's legislature did in 1973, that says if you sell more than two ounces of cocaine, you will get a sentence of at least fifteen years in prison — no ifs, ands, or buts. Encouraged by Governor Nelson A. Rockefeller, who gave his name to this statute, the legislators thought that they were getting tough on pushers, and their mental picture of the pusher was that of a professional drug dealer, one who lives off the misery of the addicted.

But the reality of the Rockefeller drug law was quite different. It applied not only to professional dealers, but also to rank amateurs such as Angela Tompkins, a seventeen-year-old recruited by her uncle to sell cocaine. Despite a chaotic childhood in which she was passed from one home to another, Angela had no previous criminal record of any sort before she sold cocaine to an undercover agent, who repeatedly insisted that she increase the amount of the sale so that it would exceed the two-ounce level. Without the mandatory minimum, a sentencing judge could have taken all these mitigating facts into account in setting a punishment that fit this young girl's crime. Instead, New York's mandatory minimum sentencing law required a fifteen-year sentence, which the New York courts reluctantly upheld on appeal. (See *People v. Tompkins*, 633 N.E.2d 1074 [N.Y. 1994].)

WHO REALLY SUFFERS?

Angela Tompkins's case thus shows one failing of mandatory minimum sentencing statutes: They apply so broadly that they sweep in minor criminals along with the major ones, the "kingpins," who are the real targets of the statutes. But there is an even dirtier little secret about mandatory minimums: They usually do not get the drug kingpins that the legislature was after in the first place! This failure occurs because almost all mandatory minimum sentencing provisions allow the court to ignore the minimum sentence if the prosecution stipulates that the defendant has provided "substantial assistance" in prosecuting other criminals. So what do you think that your typical high-level drug dealer does when he knows that the state has caught him red-handed? He informs on everybody else in his organization and so gets credit for substantial assistance. Consequently, the drug kingpin gets a reduced sentence, while most of his underlings — the ones who have no one else to rat on — get stuck with much longer mandatory minimum sentences, even though they are far less culpable than the kingpin.

Some readers unfamiliar with our legal system must be saying to themselves, "America cannot work that way! Our prosecutors would not allow that to happen." But take it from someone who has taught prosecutors: They are human like the rest of us, and they like to win. By helping to coerce guilty pleas to lesser offenses, mandatory minimum sentencing makes it far too easy for prosecutors to win. This is how it works: Mandatory minimums take sentencing power away from the judge and give it to the prosecutor, who decides whether to charge the defendant with a crime carrying a long minimum sentence or some lesser offense. In exchange for exercising this discretion in favor of the defendant, the prosecutor expects something from the defendant — if not substantial assistance (by giving testimony, informing on others outside of the courtroom, or participating in dangerous undercover activities), then at least by pleading guilty to the lesser charge. So all a prosecutor has to do is dangle the possibility of a stiff mandatory sentence before a defendant — for example, Florida's twenty-five-year mandatory minimum for possession of more than an ounce of heroin — and that defendant will become very eager to plead guilty to a lesser charge, even if he or she has good defenses against it, such as that the heroin was found in a drawer shared with a roommate, by a police officer who did not have a warrant, and the defendant says he did not know the heroin was there. Thus another major reason why mandatory minimum sentencing has failed is that it has given America's prosecutors too much power in plea bargaining, an imbalance that has led to the incarceration of persons too fearful to insist on the trials that might have acquitted them.

HOW MANDATORY MINIMUM SENTENCES AFFECT SOCIETY

In short, mandatory minimum sentencing has filled our prisons with the wrong people: minor players, not drug kingpins, as well as some who are in fact innocent. The resulting glut of prisoners — more than two million at last count, which is more than four times what it was a few decades ago — has changed virtually everything in the United States, including politics and race relations. We have built so many new prisons that social theorists now warn against the political power of the "prison-industrial complex," those corporations and politicians who have profited from prison construction and management and who will fight to continue our incarceration binge. But even more significant is the way that the increase in the prison population, fed by mandatory minimum sentencing, has worsened perceptions of racial and ethnic bias in American society.

As America's prisoners have quadrupled in number, they have also grown more black and brown. African Americans and Hispanics are disproportionately represented in our prisons by a substantial margin, and the disproportion has grown larger in recent years, primarily as the result of convictions for drug crimes. This phenomenon had led some in the minority community to accuse white Americans of explicitly adopting the constellation of get-tough-on-crime policies, including mandatory minimum sentencing, as a scheme for racial and ethnic subjugation. This view is currently an extreme one rejected even by most of America's nonwhite citizens;

however, those of us in the majority persist in policies that give credence to this view, a persistence that may one day move to center stage the claim that the criminal justice system is a tool of explicit racial and ethnic discrimination.

At the head of the list of policies exacerbating America's race problem is the differential treatment of crack and powder cocaine in mandatory minimum sentencing laws. The most notorious example is the federal statute specifying that possession of five grams of crack cocaine will trigger a mandatory minimum sentence of five years, while the amount of powder cocaine that leads to the same mandatory minimum is five hundred grams. Known as the "hundred-to-one" disparity, this provision of federal law is racially inflammatory because of the perception that crack is a drug of choice for African Americans, while powder cocaine is more popular among whites.

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In 1995 the United States Sentencing Commission, a group not known for its liberal predilections, recommended that Congress equalize the treatment of crack and powder cocaine by raising the amount of crack needed to trigger the mandatory minimum to five hundred grams. The commission noted in defense of its recommendation: "Almost 90 percent of federal crack offenders are Black. This disproportionate impact creates a perception of unfairness and raises allegations of racial bias. Everyone concerned with the legitimacy of the criminal justice system — and with the willingness of all citizens to accept its judgments as fair and final — must be troubled by allegations of unfairness, particularly racial discrimination." (See United States Sentencing Commission, "Majority Statement in Support of Changes in Cocaine and Federal Sentencing Policy" [May 1, 1995].)

Apparently unmoved by these considerations, our federal legislators refused to go along. For the first time in the history of the United States Sentencing Commission, Congress (with encouragement from President Clinton) rejected one of the commission's recommendations, and the hundred-to-one disparity exists in federal law to this day. African Americans still constitute the overwhelming majority of cocaine defendants in federal court, lending undeniable support to the claim that American criminal justice is racially biased.

Legislation before the current Congress could accomplish what the federal sentencing commission tried to do in 1995. It and bills like it should be passed in every legislature in the country, state or federal. But more importantly, rather than just equalizing the mandatory minimum sentences for crack and powder cocaine, Congress and state legislatures from Maine to Hawaii ought to do away with mandatory minimums entirely, and return some sentencing discretion to the trial judge. Not only would this reform help to defuse the claim of racial bias in sentencing and to disable the prison-industrial complex, but it would also mean more justice in the sentencing of all those who come before the criminal courts.

FAMILIES AGAINST MANDATORY MINIMUMS

This reform has been the goal of Families Against Mandatory Minimums (FAMM) since its founding in Washington, D.C., in 1991. FAMM's motto, "Let the punishment fit the crime," evidences its commitment to appropriate punishment for America's criminals. FAMM supports the use of guidelines to influence the sentencing judge's discretion, but considers the retention of discretion essential to proportionate sentencing. Because mandatory minimum sentences effectively eliminate the judge's discretion, FAMM contends that they must be abolished.

The years since 1991 have seen some modest successes in the fight against mandatory minimums. FAMM led a movement in Michigan that gained repeal of the harshest mandatory minimum drug

sentencing provision in the country. In New York, FAMM is lobbying to change the Rockefeller drug laws that ensnared Angela Tompkins. Other successful efforts against mandatory minimums have recently been mounted in Connecticut, Indiana, Iowa, Louisiana, and North Dakota, and campaigns are being pursued in Alabama and New Mexico. At the federal level, FAMM was instrumental in the passage of the "safety valve" legislation, which frees some nonviolent first-time federal drug offenders from otherwise applicable mandatory minimum sentences. And FAMM currently is lobbying for California Representative Maxine Waters's bill (H.R. 1978, The Major Drug Trafficking Prosecution Act), which would eliminate many of the mandatory minimum sentences in federal drug laws.

I have been involved with FAMM as a local coordinator since 1995, because I consider its work to be of vital importance to the U.S. criminal-justice system. If you agree, please consider contacting the national office of Families Against Mandatory Minimums, at 1612 K Street NW, Suite 1400, Washington, DC 20006, at 202-822-6700, or at www.famm.org. Together we can convince the nation that mandatory minimum sentencing is a failed policy that must be scrapped.

Robert Batey is a professor of law at Stetson University College of Law in St. Petersburg, Florida. He holds an undergraduate degree from Yale University and law degrees from the University of Virginia and the University of Illinois. At Stetson he teaches criminal law and a seminar in sentencing. He also serves as coordinator for the St. Petersburg chapter of Families Against Mandatory Minimums.

THE DRUNK

When it happens, fences
Are shattered
And one walks on blue stones towards stars.

Kites fly out of the mind, but each kite
Resembles not a dragon or fish,
But a lost face.

The face has pale blue flowers
For eyes,
For lips, the infinity of coral reefs.

The string held by the brain limps
Towards soberness,
The wrist afraid.

DUANE LOCKE

Duane Locke has more than 2,000 poems published in more than 500 print magazines such as *Nation*, *Literary Quarterly*, *Black Moon*, *Bitter Oleander*, **and** *491*. **His fourteenth book of poems is** *Watching Wisteria*.

Marc Mauer

The Social Cost of America's Race to Incarcerate

In the mid-1980s, the United States was wracked by a profound health crisis that was both unique and frightening. As the nation began to learn of the rapid spread of the HIV virus, major federal resources and public attention were focused on attempting to understand the source of the virus and finding a way to respond to it. Fifteen years later, the virus has taken a tremendous toll in human lives and suffering, but major progress has been made as well. AIDS education and prevention curricula are now commonplace in a vast array of school and community settings, and the rapid development of new drug therapies has served to enable many with the disease to continue to lead productive lives.

Coincident with the rapid spread of AIDS in the mid-1980s was another epidemic that also brought great tragedy and suffering. This epidemic was one of violence associated with the introduction and spread of crack cocaine, initially in urban areas and then in other communities. As teenagers and others in many neighborhoods armed themselves with lethal weapons to protect their drug "turf," murder rates spiked sharply in the second half of the 1980s, particularly among African American males.

Policymakers' reaction to crack cocaine and violence was swift and certain. A host of harsh sentencing laws was adopted, the most notorious being the federal provisions providing for a mandatory five years of incarceration for possession of five grams of crack — the weight of two pennies. Along with this came a veritable orgy of new prison construction that has sent the nation's prison population soaring from 500,000 in 1980 to nearly two million today. This building frenzy served to accelerate the prison expansion that had begun in the 1970s, which has led to the United States now having attained the dubious distinction of maintaining the world's highest rate of incarceration, recently surpassing Russia for this honor.

TREATING TWO EPIDEMICS

The two epidemics of the 1980s offer a useful opportunity to contrast the development of public policy. Imagine for the moment that in response to the AIDS epidemic, national leaders had instead proclaimed a policy of massive hospital construction to cope with the sick and dying population. Ever-larger institutions would have been built through infusions of federal and state funds, even as the death toll continued to mount. No budget increases would have been sought for federal research on the disease or for investigating personal lifestyle changes to reduce the chances of contagion.

The notion of confronting a health crisis by building hospitals is ludicrous, of course, but in our national imagination the idea of building prisons to confront a crime problem has become the policy of choice. How, then, did we come to view these two crises in such different terms?

First, to be sure, the national response to AIDS was far from an entirely compassionate one from the beginning. As AIDS was initially perceived as a "gay disease," some Americans viewed it as a deserved punishment for "immoral" behavior. And political leaders in many cases acted only reluctantly after massive mobilizations by the gay community and public-health advocates. But in no instance did the notion of hospital construction as a "solution" ever enter anyone's mind.

Why we view disease and crime in such strikingly different terms is complex, but several factors can help us understand the roots of this dichotomy. First, many Americans quickly realized that a sexually transmitted disease was a threat not just to others but also to themselves and their loved ones. As such, "blaming the victim" was hardly an approach to bring comfort in most homes. And as more "celebrity" victims emerged, the public face of the disease changed, and a more compassionate and public health-oriented response emerged.

In examining the crime problem, though, the public perception of the "criminal" has become predominant in determining the direction of policy. Just as various waves of European immigrants were viewed as the source of the crime problem in the early years of the twentieth century, so too have African Americans now become the public image of the "criminal." As this perception has become more pervasive, the policy response that has developed has been one that emphasizes punishment and incarceration over an approach that engages the nation in a search for causes and cures.

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Just to be clear at this point – suggesting that we examine comprehensive approaches to problems such as crime does not absolve individuals of responsibility for their actions or suggest that crime, and particularly violent crime, is not a serious problem for the nation. But if we are to develop policy options that make the most effective use of scarce resources while also building on the strengths of communities, then we are obligated to consider a variety of frameworks for approaching such problems.

Prevailing crime policies should prove troubling to all Americans. First, we maintain the odd position of being the wealthiest society in human history while also locking up more of our citizens than any nation has ever done before. Second, the racial dynamics of this policy are profound: at current rates of imprisonment 29 percent of black males born today can expect to go to prison at some point in their lives, as well as 16 percent of Latino males (and 4 percent of white males). Surely these are not trends that should be welcomed, regardless of one's beliefs about the causes of such developments.

EFFECTS OF PREVAILING POLICY ON CRIME

To assess the impact of current incarceration policies, the traditional framework appropriately asks to what extent incarceration can be demonstrated to have had an effect on crime. Assessing this relationship turns out to be more complicated than one might assume. First, as with any social-science observation, a variety of factors that may affect crime are generally occurring simultaneously; sorting out their relative impacts is not simple. But the experience of recent years provides some guidance.

While one might assume at first that imprisoning a convicted offender would naturally affect the crime rate, if for no other reason than that the person is "off the streets" for a period of time, this is far from a strong correlation. While the experience of the 1990s would seem to "prove" the link between locking up more offenders and reducing crime, the period immediately before it provides contradictory evidence. In the seven-year period 1991–98, the national rate of incarceration rose by 47 percent and crime declined by 22 percent. But in the seven-year period 1984–91, crime rates increased by 17 percent despite a 65 percent rise in imprisonment. These contrasting periods do not suggest that incarceration has no effect on crime, but they should make us cautious about assuming that building and filling prisons will *always* result in less crime.

While it might seem intuitively obvious that putting more people in prison would reduce crime, in fact there are sound criminological reasons why this is not always the case. Among the most significant factors complicating this relationship is the effect of incarceration on varying types of crime. Prosecuting and imprisoning a serial rapist undoubtedly makes a neighborhood safer. But expanding the prison population by locking up tens of thousands of low-level drug offenders has relatively little effect on crime or drug abuse. After all, drug sellers, unlike serial rapists, are readily replaceable. As long as a strong demand and market for illegal drugs exists, new sellers will be easily recruited. And in fact, the incarceration of drug offenders is a primary reason for the expansion of prisons and jails in recent decades, with the number of drug offenders increasing tenfold from about 45,000 in 1980 to more than 450,000 today.

Recent scholarship on crime reduction in the 1990s suggests that perhaps 25 percent of the reduction in violent crime can be attributed to prison-building. Significant? Yes, but this also obviously tells us that 75 percent of the reduction was *not* related to prison. Other factors that have likely contributed to this trend include an improved economy, strategic changes in policing, reduced demand in the drug trade, and demographic shifts.

Criminologists differ on the degree to which incarceration can be said to affect crime, but it is fair to say that the prevailing mainstream view in the field is that this relationship is considerably weaker than that promised by the political sponsors of "get tough" policies. Recent scholarship on crime reduction in the 1990s suggests that perhaps 25 percent of the reduction in violent crime can be attributed to prison-building. Significant? Yes, but this also obviously tells us that 75 percent of the reduction was *not* related to prison. Other factors that have likely contributed to this trend include an improved economy, strategic changes in policing, reduced demand in the drug trade, and demographic shifts.

Even to the extent that incarceration can be correlated with reduction in crime, this correlation also does not inform us as to whether this is the only, or most effective, approach to the problem. After all, if half the U.S. population were in prison and were

guarded by the other half, we would no doubt see reduced crime, but we would hardly consider that an effective or humane approach to the problem.

In fact, research in a number of disciplines demonstrates that social investments can produce more significant reduction in crime than expanded prison construction. A RAND study, for example, found that spending on drug treatment would reduce serious crimes fifteen times more effectively than incapacitating offenders through mandatory prison terms.

EFFECTS OF PREVAILING POLICY ON SOCIETY

While examining the prison/crime relationship is important, it risks obscuring a deeper analysis of the effects of imprisonment on society. In times past, these issues were rarely explored. The experience of imprisonment clearly affected the individual inmate and his or her family, but the impact was not one that necessarily expanded beyond the family. But at the level of incarceration that we have reached today — an era of "mass imprisonment," as described by some — an analysis of the impact of imprisonment must of necessity go beyond the individual prisoner and explore how our policies affect society broadly.

Not surprisingly, this impact is felt most dramatically in the African American community, given the astonishing rates of incarceration that currently prevail. Among adult black males, one in twenty-one is in prison or jail on any given day. In the twenty-five to thirty-four age group, the figure reaches one in eight. Comparable figures for black women are lower overall, but have been rising at dramatic rates and outpace the incarceration of white women by a ratio of six to one.

While about half of black prisoners are incarcerated for violent offenses (as is true for all racial/ethnic groups), the explosion of drug sentences has affected African Americans profoundly. African Americans currently constitute 58 percent of all drug offenders in state prisons (and Latinos an additional 21 percent), while government surveys document that blacks represent only 13 percent of monthly drug users. The reasons for the disparity between drug use and incarceration are complex but in large part reflect two distinct approaches to the problem of substance abuse — a public-health approach emphasizing treatment in middle-income communities and a law-enforcement approach using incarceration in inner-city neighborhoods.

High rates of imprisonment in black communities have a direct effect on family structure. One of every fourteen black children today has a parent who is locked up; over the course of a year, or especially over the duration of childhood, the figures are considerably higher. How does this affect the fourth grader who is "acting out" in class, trying to cope both with the absence of a parent and with the stigma brought upon the family?

The economic effects on communities become profound as well. A stint in prison is hardly an impressive component of one's résumé, and ex-offenders returning to the community find themselves competing for even low-wage, low-skill employment. In broad terms, this then translates into less economic and social capital in low-income communities, and thus the beginnings of a vicious cycle that creates the underpinnings of neighborhoods where crime may flourish.

The punitive approach to social policy represented by mass incarceration has expanded to related areas of policy, often in ways that are dramatically at odds with effective crime-policy approaches. One such step was the 1994 decision by Congress to prohibit inmates from receiving Pell grants to pursue college education while in prison. Before that, the relative handful of prisoners with a high school degree and motivation to attend college could take advantage of college courses offered at prisons in many states by local institutions of higher education. Nationally, less than one percent of all Pell grant money went to support such programs. But in an act that can only be characterized as meanspirited, Congress cut this funding source. As a result, prison college programs in many states have dried up. The plain fact is that research has consistently shown that education is associated with reduced recidivism. So while the policy is "anticriminal," it is certainly *not* "anticrime."

Two years later Congress continued the excesses of the "war on drugs" as part of the passage of welfare-reform legislation. A little-noticed provision of the 1996 bill stipulated that anyone convicted of a felony drug offense would henceforth be barred from receiving welfare benefits for life, unless individual states opted out of the provision. Thus, under the logic of this policy, a three-time armed robber who is released from prison is eligible for welfare benefits but not a struggling single mother who engages in a one-time drug sale. Here, too, the effect of national policy will be to make it even more difficult for the largely female prisoners returning home after serving drug sentences who might need temporary welfare assistance to make the transition back to family life. It is unlikely that such a policy will have any deterrent effect on drug selling, but it is quite certain that it will have deleterious effects on many poor women and their children.

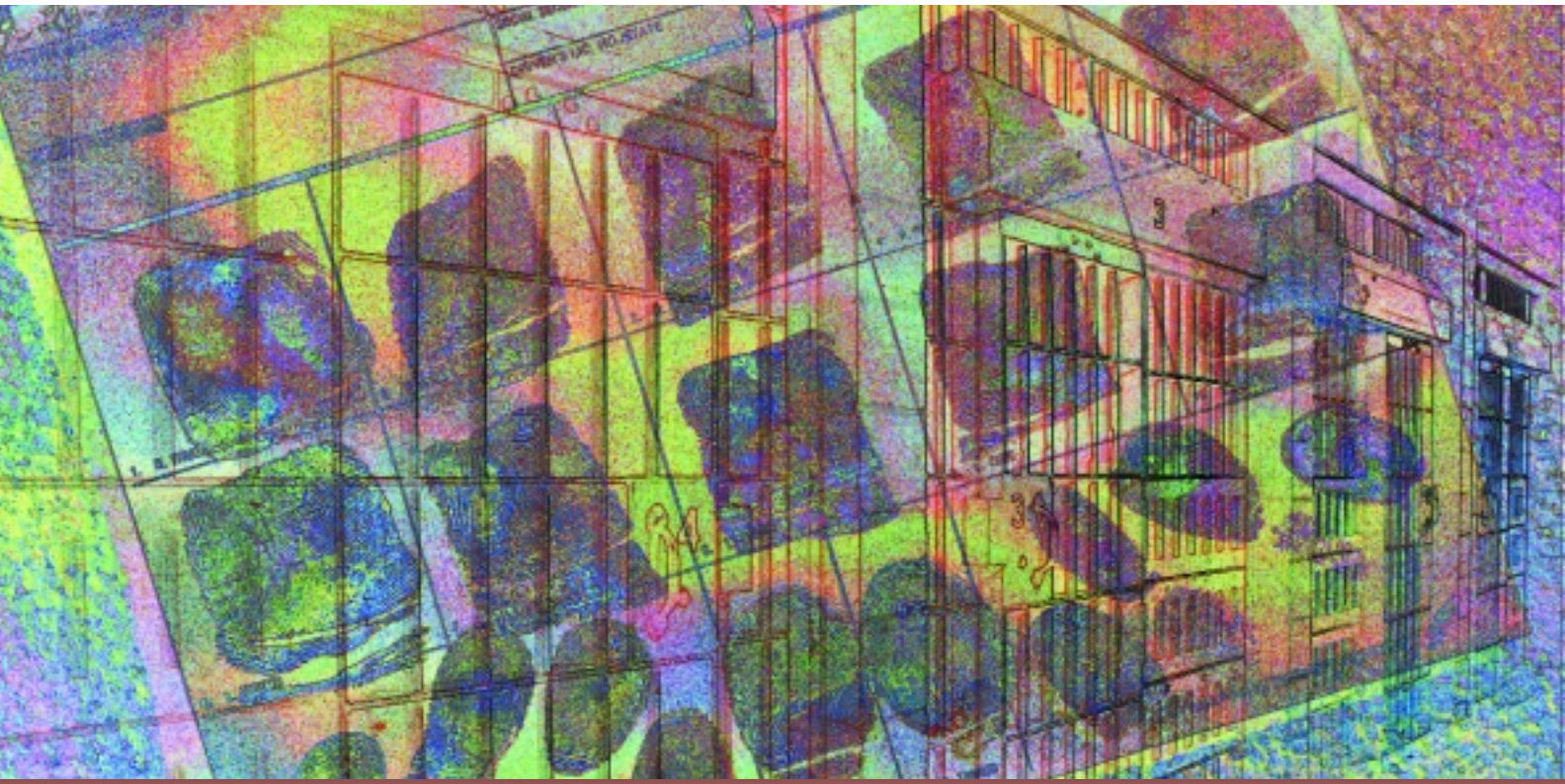
The movement toward mass incarceration is also affecting our democratic processes in ways that are increasingly profound. One such impact comes through policies that strip away the voting rights of convicted felons. Each state has its own policies in this regard, but in forty-eight states prisoners are not eligible to vote; in thirty-two states felons on probation and/or parole are excluded from voting; and in thirteen states ex-felons who have completed their sentences can still be barred from voting, in most cases for life. Thus, for example, an eighteen-year-old in Virginia who is convicted of selling drugs to an undercover agent is forever barred from the ballot box, even if he lives a crime-free life afterward. The only means of gaining one's rights back are through a gubernatorial pardon, a time-consuming and cumbersome process in many states.

While these laws have existed in some states since the founding of the nation, the scale of imprisonment today results in disenfranchisement rates that are far from trivial. Nationally, about four million Americans — two percent of the voting-age population — are currently barred from voting as the result of a current or prior felony conviction. Among African American males, the rates are much higher, an estimated 1.4 million citizens, or 13 percent of that population. In the historic 2000 presidential election, the exclusion of at least 200,000 ex-felons in Florida was clearly of such magnitude as to have potentially altered the course of the election.

The scope of these collateral effects of incarceration might be viewed by some as merely unfortunate by-products of an otherwise necessary approach to crime. But we have seen in recent years that there are far more effective, and socially less destructive, ways to affect crime. In Boston, a collaborative effort between criminal-justice agencies and community groups has resulted in an impressive reduction in youth violence. In states across the country, drug courts are now diverting addicted offenders into court-supervised treatment rather than prison. And many communities are engaged in restorative justice programs that bring together victims and offenders to engage in a process of fashioning appropriate ways for offenders to make victims whole again while also addressing the underlying causes of crime.

No single program or approach in itself offers a panacea for crime. But what is becoming increasingly clear is that the American mania for incarceration is having a broad set of consequences for the health of our society. To acknowledge this is not to suggest that crime is not a legitimate concern for all Americans but, rather, to encourage a reassessment of how we address this problem in a way that draws on the strengths of families and communities rather than increasing their fragility.

Marc Mauer is the assistant director of The Sentencing Project in Washington, D.C., and the author of *Race to Incarcerate* **(The New Press). He is currently coediting a book that examines the social cost of incarceration.**



Elaine S. Potoker

Click-and-Enter: A Dialectic over the Future of the Teaching/Learning Dynamic in an Era of Search Engines

I have helped to develop many students over the course of my teaching and business careers. I have taught graduate courses, undergraduate courses, on-location at businesses, and on college campuses during the day, on weekends, and in the evening. I have witnessed fads involving methodologies — indeed, I have championed a few of my own, and still do.

As to integration of technology into the teaching/learning dynamic, the advent of the Internet, intranet, and extranet has created (and continues to create) countless new learning opportunities for both teachers and students. Business applications — a primary academic area of interest to me — represent huge and important opportunities. In a conversation reported by Harvard Business School Publishing, Don Tapscott, David Ticoll, and Alex Lowy, authors of *Digital Capital*, elaborate, "The most important implication of the 'Net for business is not that it is becoming faster, safer, and more robust — but that it is becoming rich in function." (*Please minimize that thought for now, because I intend to maximize it later on in this essay.*)

Yes, we are a knowledge-based, relationship-based economy where use of computer-based technologies is vital, robust, faster, rich in function (and necessary).

Yet, for the first time, I am concerned about an observable negative effect of the World Wide Web that grounds many of us for large chunks of time in every working day. It is this problem that is addressed in this essay. If entertained unchecked, this potential problem may pose threats to effective teaching, learning, and ultimately to effective decision-making in future generations and organizations.

"And what is this great evil," you ask? It is what I not-so-fondly refer to as "click-and-enter mentality," particularly as it relates to student research and problem-solving efforts. Many students (of all ages) who exhibit click-and-enter syndrome:

a) believe that "the body of knowledge" is available and is there to be found through search engines (alone);

b) believe that research is compiled in a linear path that goes something like this:

- type in several key words;
- "ask Jeeves";
- Voilá! It will be there. (If it is not there, they conclude that no information is to be found on the subject.)

c) often underestimate the time and patience needed to do effective research.

Let's examine the real world. Consider marketing research as an example. Marketers (if allowed to do their work) infrequently enjoy the luxury of a linear research path. Their research process in reality is frequently circuitous and goes something like this:

> *There is an opportunity (and/or a problem). Information is needed. Marketers (if allowed) engage in an exploratory research process using qualitative and quantitative methods. Research sheds some light on the issue. Yet, they may be able to form only a tentative hypothesis (or, in the case of a student research topic, a tentative title). As more information is gathered, through review of varied resources (for example, books), and use of Boolean logic and creative brainstorming, the topic becomes more focused. Along the way, even the most diligent students (and marketing researchers) may become frustrated.*
>
> *"Gee, Jeeves, this research stuff takes time."*

Many problems (and opportunities) cannot be addressed through quantitative models that teach the need to begin with a topic (or a hypothesis). The qualitative model suggests otherwise. We begin with the wide end of a funnel; we investigate the relationships; we recognize that the topic may be elusive for a while. *Both* models are valid (and necessary) in today's academic and professional world. (*Please minimize this thought as well; we will return to it later.*)

How many of us recall that in the pre-Internet days, after searching card catalogs, we went to the library stacks only to find an exceptional book that was *next* to the book we were actually seeking? Once perusing that other one (and its bibliography), we discovered wonderful others. Those discoveries were reminders that cataloging is done by people; and, indeed, so are search engines. Students (and practitioners) in the new economy need to view *themselves* as the savvy search engines. Web search engines are tools. As tools, they are only as good as the craftsperson who knows which one to choose.

Additionally, much as with any tool or craft, one must learn how and when to use it. Therefore, students need to learn these competencies. Herein lies a piece of the future of the teaching/learning dynamic. And it begins with low (if any) tolerance for click-and-enter mentality.

"So what?" the reader may ask. What are faculty and others to do about this high tolerance for results and low tolerance for search? Well, *"First, you've got to get mad . . . I want you to get up now . . . I want you to get up right now; get up and go up to your windows and say . . . 'I'm as mad as hell! And I'm not going to take this anymore.'"* (This excerpt from Howard Beale [Peter Finch] from the movie *Network* works for me.) Indeed, no one committed to teaching should tolerate "click-and-enter" mentality. What should you do after you get mad — or at least considerably irritated?

- (*Time to maximize an earlier thought.*) Explore the richness of function of the Internet with students. Give them the time to be hypertextual. Allow them to make mistakes — to bark up a wrong tree, if you will, and then shift gears to discover a more enlightening avenue and/or argument. Tree-barking is fine, if it has a knowledge-based rationale. Shouldn't the college classroom be a place where students have permission to explore the possibility of "wrong," to address problems as opportunities, to explore how many issues might affect those opportunities? Even in real-world marketing pursuits, we may do all our homework diligently, and still fail.
- (*Time to maximize another earlier thought.*) Insist upon both quantitative and qualitative methodologies in coursework and in practice. For those who despise "rich description," ask them to illustrate what human activity is not characterized by it. For those who discount history, challenge them to identify any human endeavor that has not been touched by it.
- Teach students how to use the wealth of information available in virtual space. Do not assume they know. (Often, they do not.)
- As you are standing by your windows, continue to maintain that libraries still be places for books and journals and other media as may be appropriate. Yes, students can download articles, but they will miss much from not seeing the actual journal of origin and appreciating the related topics of the times. History matters. Do not allow "too much to be thrown away." (*U.S. News and World Report*, April 23, 2001). As Jay Tolson suggests, be the watchdogs that insist that libraries be intellectually responsible. Consider developing classroom exercises and/or virtual chat groups that involve discussion of other articles appearing in the same journal or magazine that might have been lost through dedicated search engines.
- Implement the message in the wonderful essay by Robert S. Root-Bernstein that appeared in *The Chronicle of Higher Education* (Jan. 14, 2000). Professor Root-Bernstein argues that students should master and practice different kinds of thinking. Espousing "click-and-enter mentality" does not take us to the places he advocates. There is much to be derived from that essay. It reaffirms my confidence in believing that the effective teaching/learning dynamic relies on *the teacher* to ignite the inventive capacities of students. Following that, are the tools that make it happen.
- Encourage students to think critically. This admonition is not new to academic discourse. However, to me, that endeavor includes, but is not limited to, asking "what if." It also means using techniques such as nominal group technique, as appropriate to class size, to ensure that diverse views are expressed and respected.
- For those who advocate critical thinking and proclaim zero tolerance of click-and-enter, insist that administrative policies "walk the walk" in support of critical thinking. Grade inflation, retaliatory student evaluations (written by those who are not enamored of reflection), and concern with enrollments are realities of academic enterprises. As with Howard Beale, let's not kill the messenger; let's support teachers who have the courage to be innovative, and let's recognize students who do as well.

For me, the teaching/learning dynamic and my love of teaching and continued learning depend upon low tolerance of click-and-enter and strong emphasis on reflection and critical thinking. If the opportunity to witness an "ah-hah!" experience ceases to exist, then there is no reason to be in teaching. Indeed, it is what the classroom has always been about. Some things should never change — and perhaps this is one of them.

Elaine Potoker is an associate professor of business in the Loeb-Sullivan School of International Business and Logistics at Maine Maritime Academy, Castine, Maine, and is owner of Interloqui, a firm specializing in international trade assistance, business development, and executive training. She is also a freelance writer on numerous topical issues. You can contact her at epotoker@mma.edu or pe@interloqui.com.

Book Review

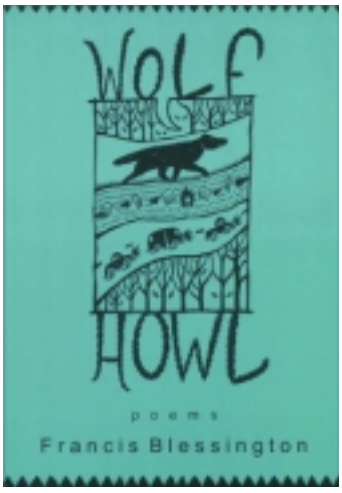
FRANCIS BLESSINGTON. *Wolf Howl*. Kansas City, MO: BkMk Press, 2000. 64 pages. $12.95.

Francis Blessington's *Wolf Howl* is a book of beautiful surfaces. If that were all — and isn't that enough for any poet to achieve? — I would return to this book and find something new to consider and to be enriched by. But beneath and beside and above these beautiful surfaces lie the dark and ominous that are often conveyed by bats, crows, cellars, and mines. No place is safe, not home, not an English field, and certainly not a Bombay hotel room where a crow stares and "barred shadows flutter across our eyes."

Even a child's first step occurs on a beach "without center." Standing, the child makes "Charybdis' steep/swirl of salt water." Above, of course, lurks the monstrous figure of Scylla; the terrible Odyssean choice presents the reader with no secure alternative. All passages threaten ruin, not least of those the perilous passage to adulthood as in "Self-Portrait as Bored Boy."

> In a black hole
> nothing bleats. For the time nothing
> hurts, and fear grips like love.

In such a world of gripping fear(s), as Blessington knows, hospitality remains of critical importance. Trick-or-treating children provide the occasion this time. In "Changelings," they present themselves "like Odysseus in disguise/testing old hospitality." They proffer tricks before they duly receive their treats and "lurch/again out of our lives."



These acts of hospitality, acts of kindness are absolutely necessary. In "Coal Mine Museum," "Shadow [is] everywhere;" and "more than black fills the shafts/beyond our adit." But it is the white spaces that offer a way out or a way back. "Chinese Gallery" presents figures in dark robes who climb mountains that are decorated with pagodas, teahouses, and foot bridges over ponds. Calligraphy in the margins (crows' feet?) comments on the art. The speaker notes all this yet finds the white spaces, the "negative forms," all the more interesting because they provide us "the way back again through/the vanishing ground and the words in the margin/that mark the way."

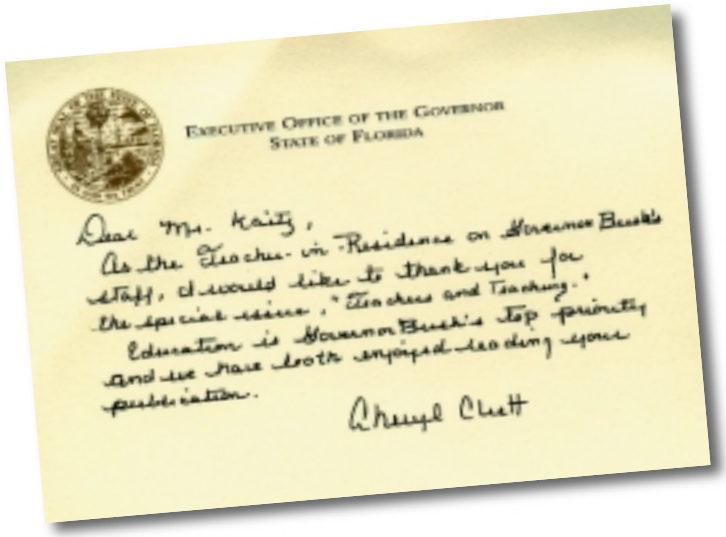
The concluding section of the book affirms and confirms the way back. The beautiful surfaces are still present, particularly in "Fern" and "Sailing to the Isle of Man," as are the ominous and the dark, especially in the title poem "Wolf Howl," in "Caribou," and in "Desert Ruins." Perhaps the opposition — if I may call it that — is sharper here, conveyed aptly in the matched pair of poems, "Icework" and "Firework." But nowhere do all the various strands of this book bind together better than in the wonderful concluding poem, "Afloat in Dogtown Moraine."

Bearing in mind that moraine refers to "a river of rock" left behind by a retreating glacier, the poem concerns itself with two painters, Marsden Hartley, a painter *of* rocks at Dogtown, and Roger Babson, founder of Babson College and a painter of pithy sayings *on* rocks, such as *Be on Time* and *Save*. Hartley thinks Babson commits sacrilege. The speaker is not so sure. The speaker knows that both acts, both actions lift us from the moraine:

> until I apportion with my eye
> *and* cut a rune sententiously.
> Then my shadow lifts free.

I for one am grateful for such knowledge and for this fine book with its glittering surfaces and dark recesses.

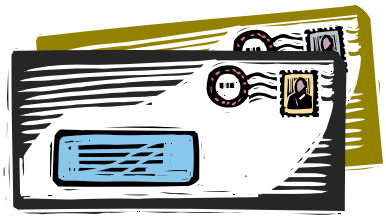
Peter Huggins teaches in the English Department at Auburn University. His poems have appeared in more than 100 journals, magazines, and anthologies. He has been a Tennessee Williams Scholar at the Sewanee Writers' Conference and has won the Dickinson Review Prize for Poetry. Two poems from his collection *Hard Facts* were nominated for a Pushcart Prize. His most recent collection of poems is *Blue Angels*, River City Publishing; *In the Company of Owls*, a novel for middle readers, is forthcoming from NewSouth Books.


EXECUTIVE OFFICE OF THE GOVERNOR
STATE OF FLORIDA

Dear Mr. Kaitz,
As the Teacher-in-Residence on Governor Bush's staff, I would like to thank you for the special session, "Teachers and Teaching." Education is Governor Bush's top priority and we have both enjoyed reading your publication.

Cheryl Cluett

Letters to the Editor



ART MATTERS

I wanted to write to tell you what a superb issue it was ["Art Matters," Summer 2001]. Over and beyond my pleasure at the fine layout and printing of my own work, I found the range and quality of all the articles to be extremely high. Among contemporary art journals that define themselves as "cutting edge," this issue of *National Forum* is stunningly current, and I've already used it countless times in my own classes here at VCU to let students see, especially, the pieces on Mark Dion, and ®™ark. I think George's [guest editor George Ferrandi] bid to engage layout and typesetting itself in her selection and presentation is extraordinary, and I commend you for your foresight in putting the journal at the service of this kind of vision and sophistication. The net effect is both progressively experimental in the best sense, and deeply human: George's uncanny hallmark. Moreover, it is good to look at it now, in the context of our national tragedies, just because of its humanism.

My praise and my thanks to you and to George Ferrandi.

Elizabeth King
Richmond, Virginia

CRISIS OF PHILOSOPHY

All the observations drawn from varied teaching careers in the latest *Forum* ["Teachers Teaching," Fall 2001] were interesting, but Laura Weller ["Crisis of Philosophy"] got right to the heart of the matter. We are trying to teach the use of the mind in a culture that is profoundly, passionately anti-intellectual. The degree of hatred for and suspicion of all people whose values support intellectual achievement suffocates any ambition for mental development our young people have. As a college teacher of humanities, I used to grieve for the many students who knew nothing about opera, Shakespeare, ballet, Greek sculpture, but hated it anyway and thought it insulting that I should even bring up such anti-American topics. Real men don't think; they play football.

Sharon Scholl, Ph.D.
Jacksonville, Florida

Literacy Initiative Work Group Needs Input

As part of its commitment to academic excellence, the Phi Kappa Phi Board of Directors has formed a work group to explore literacy as a national service initiative. Such a program would give all members the opportunity to contribute to the betterment of their communities.

The work group invites ideas and recommendations regarding literacy programs, affiliations, and work group membership. If you or your chapter is actively engaged in the cause of literacy, let us know. Please direct comments, suggestions, and questions to Dr. Pat Kaetz, editor, *Phi Kappa Phi Forum*, at kaetzjp@auburn.edu.

At present, the work group consists of Pat Kaetz, National Vice President Donna Clark Schubert, Regent Nancy Blattner, and Information Technology Director Carol Mosley. All members of the work group may be contacted through the Phi Kappa Phi web site: www.phikappaphi.org.

PONDEROSA OF A THOUSAND FIRES

Logs draw from the window's inch and pop,
pine blazing the splendor of a winter fire.
This mountain cabin's cold, and rafters creak.
Breeze seeps in from snow and a frozen stream.
Granddaddy hauled big logs for decades

after Grandmother died. Summers, I watched him
tugging claws from oaks, his thumb
and knuckles flicking blades into beaks
of hummingbirds, the brutal scowls of hawks.
A dozen carvings tumbled to my hands,

his hearth and mantle crammed with eagles
and owls of a thousand nights, flocks
he shaved from blocks of oak and pine,
aviaries he gave away. I'd swear those birds
could fly if he had cut claws loose

from twigs he carved them on. He taught me
the feel of Toledo steel, the taste
of xylem before it's ripe. I'm moved
by aromas of wood, and Granddaddy's tools
are mine, my thumbs less stiff than his.

But birds I've carved are warped
like cheap ceramics in mountain towns.
My hawks could pass for parrots or fat owls.
Granddaddy's lodge is ours five weeks a year,
most seasons booked by cousins

who bring their children with Nintendo.
Last night, scooping ashes from the hearth,
I found charred hardwood carved like wings.
I saw initials gouged in the hearth,
most birds stacked away like bowls.

WALT McDONALD

Walt McDonald was an Air Force pilot and now teaches writing at Texas Tech University. He has published nineteen collections including *All Occasions* (Notre Dame, September 2000) and others from Ohio State, Pittsburgh, Massachusetts, and Harper & Row. Four books have won awards from the National Cowboy Hall of Fame.

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Long-sleeve 100% ringspun combed cotton twill with detailed embroidery work, this long-sleeve shirt offers both style and comfort. Perfect for both office and weekend attire. Available in white and navy, and in men's and women's sizes S-XL. For sizes 2X and larger, add $3.00. *(1 lb)*
(White) Item #APP60 . . . $34.00
(Navy) Item #APP61 . . . $34.00

G. ΦΚΦ BASEBALL CAP
Made of durable, wheat-colored canvas and embroidered logo. *(.5 lb)*
Item #ACC11 . . . $15.00

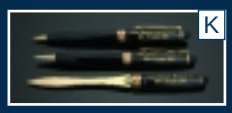
H. HONOR CORD
Braided navy and gold cords, ending in fringed tassels. *(.5 lb)*
Item #REC10 . . . $10.00

I. STOLE
Gold satin stole with navy blue embroidered ΦΚΦ and Society key. *(.5 lb)*
Item #REC20 . . . $24.00

J. ΦΚΦ Medallion
Two inch cloisonné medallion featuring the ΦΚΦ badge. *(.5 lb)*
Item #S-5 . . . $9.00

ACCESSORIES

PEN SETS



K. Engraved black pen, pencil and letter opener set. *(.5 lb)*
Item #ACC71 . . . $25.00

L. Blue marbleized pen and letter opener in attractive case. *(.5 lb)*
Item #ACC70 . . . $20.00

JEWELRY

LAPEL PINS, CHARMS AND TIE TACKS

M. Key Pin, 1/10K gold -- **Item #S-1 . . . $10.00**
Key Pin, 10K gold -- **Item #S-6 . . . $75.00**

N. Crest Pin & Tie Tack, 1/10K gold
Item #S-4 . . . $10.00

O. Greek Letter Pin, 1/10K gold Guard
Item #JE20 . . . $10.00
Greek Letter Pin, 10K gold Guard -- **Item #JE21 . . . $26.00**

P. Key Charm, 1/10K gold -- **Item #S-2 . . . $10.00**
Key Charm, 10K gold -- **Item #S-7 . . . . $75.00**

Q. Key Tie Tack, 1/10K gold -- **Item #S-3 . . . $10.00**
Key Tie Tack, 10K gold -- **Item #S-8 . . . $75.00**

WATCHES
Designed for ΦΚΦ, these Seiko watches feature the Society badge, a 3-year warranty and date function. *(1 lb)*

R. Men's watch with stainless/gold band & black face. **Item #JE30 .. $200.00**

S. Men's & women's stainless/gold band watches with white faces.
(Men's) Item #JE32 . . . $155.00 **(Women's) Item #JE42 . . . $175.00**

T. Men's watch with gold band and face. **Item #JE31 . . . $155.00**

CERTIFICATE FRAMES

Display your ΦΚΦ membership in one of these attractive certificate frames or plaques.

CERTIFICATE FRAME
Display membership certificate in style in this 18" x 15.5" decorative gold frame with navy and gold matting (certificate included). *(3 lbs)*
Item #REC50 . . . $40.00

CERTIFICATE FRAME WITH MEDALLION
Measuring 22.5" x 15.5", this distinctive gold shadowbox frame contains membership certificate and medallion. *(4.5 lbs)* **Item #REC30 . . . $75.00**

CERTIFICATE PLAQUE (not pictured)
Mounted on a 13" x 10.5" wooden plaque, member certificate is displayed beneath a sturdy plastic overlay. *(3 lbs)* **Item #REC60 . . . $25.00**

Please indicate your name, as you would like it to appear, initiation date and chapter into which initiated for certificate engrossing.

★ NEW ITEMS ★

SOFT AND FUZZY HEAVYWEIGHT NAVY FLEECE HALF-ZIP PULLOVER & FULL-ZIP JACKET

V. Jacket has a full length zipper with hood featuring the ΦΚΦ embroidered logo. **Item #APP70 . . . $49.00**

W. Pullover zips from chest to chin featuring the ΦΚΦ embroidered logo. **Item #APP71 . . . $46.00**

HOURS: M-F, 8 am – 4:30 pm CST
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ORDER BY PHONE 1.888.302.9728

DEATH IN LIGURIA

[The poet Percy Bysshe Shelley, with his friend
Edward Williams, drowned in the
Bay of Lerici, Italy, July 8, 1822.]

From the shore we could see
only the lanterns of the fishing boats
appearing and disappearing on the waves
as they searched through the night,
and knew that your bodies would not be found.
That a little storm could be so perverse,
the sea so obstinate . . . .
Words cannot save us from drowning with you.

We wanted a westwind
to waft your bodies gently to the shore
where we wept and waited
below the green gardens of sweet basil
in the hills above us.
Tomorrow we will be different
from what we are today.

After three days the sea turned you up,
a terrible gift by water,
profane to look upon, south,
on the sands of Viareggio,
an inconvenience to vacationers.
Under a searing sun,
our eyes burning with sweat and tears,
we labored to build the pyre,
then watched the black smoke billow
as you turned to ashes.

Mornings afterward I looked
for the little girl that appeared that day,
wearing a flowered dress and carrying a basket
of lavender, who skipped singing across the sands,
refusing the reach of her mother's hand.

JOSEPH A. SOLDATI

Joseph A. Soldati, Professor Emeritus of English at Western Oregon University, has published numerous articles and poems. He is the author of *Configurations of Faust: Three Studies in the Gothic* **(Arno Press, 1980) and** *Making My Name: Poems* **(Mellen, 1992), and coeditor of the bilingual volume,** *O Poetry! ¡Oh Poesía! Poems of Oregon and Peru* **(1997). A book of essays,** *English Lessons: Thoughts and Reflections on Literature***, is forthcoming. He lives and writes in Portland, Oregon.**