AMICI

Fall 2002
Volume 10 - Number 1

Newsletter of the Sociology of Law Section of the American Sociological Association.

"There is no history of politics, law, science, etc."

—Karl Marx.

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Editor's Preface

This issue of Amici features a first selection of papers that were presented at the recent ASA annual meeting in Chicago, August 2002. In the unfortunate case that I forgot to contact a member of the Sociology of Law section who also presented a paper on a sociological matter of law at the Chicago meetings, then please accept my humble apologies and notify me if you would like to submit an essay for the second selection of papers which will appear Summer issue! The present essays are written by Anna-Maria Marshall, Benjamin Fleury-Steiner, and Mary White Stewart, whom I hereby kindly thank for their splendid contributions.

—MD

RECENT SOCIOLOGY OF LAW RESEARCH: Papers from the 2002 ASA Meeting

Struggles Against Inequality: Law and Politics in Everyday Life

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Inequality structures everyday life. Systems of stratification based on class, race, gender, sexual orientation, ethnicity, for example, shape such crucial aspects of daily life as the schools we attend, the jobs we hold, the neighborhoods we live in, and the health care we receive. For the most part, these aspects of our daily lives and routines go unquestioned and unexamined. Patterned by broad social forces, these routines seem inevitable and natural. Thus, inequality in life circumstances becomes an unfortunate but widely accepted aspect of social life. I am interested in the ways that people resist these forms of inequality in their everyday lives and the role that law plays in that resistance. In this project, I develop a theoretical approach for understanding the relationship between law and social change from the bottom up that explicitly incorporates an analysis of politics into the legal consciousness framework. In this essay, I outline this approach to the law and politics of everyday life and use the case of sexual harassment to illustrate the promise of this approach.

At particular historical moments, social movements mount challenges to inequality and its lived consequences. Movements generally try to empower subordinated people to re-imagine their lives, to adopt resistant interpretations of everyday events, and to participate in social movement action. "New" social movements, in particular, politicize the personal. "Movements focusing on gay rights or abortion, health movements such as... anti-smoking,... and the women's movement all include efforts to change sexual and bodily behavior. They extend into areas of daily life: what we eat, wear and enjoy; how we make love, cope with personal problems, or plan and shun careers" (Johnston, Larana and

*—See **2002 ASA Meeting** page 3.*

From the Chair

So What Are the Rules Here Anyway?

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Very likely a poll of our section members would show that nearly all of us in one way or another study distinctions between the formal legal system and all of those other things that exist on its edges. For a quick and dirty verification, we could employ the old "how many words do Eskimos have for snow" method: law on the books vs law in action; bargaining in shadow of the law, "indigenous" legal systems in subparts of the society, legal consciousness, as well as our collective understanding that the legal system includes not just legislatures and courts but agencies that make regulations, regulatory bodies that enforce regulations, and the like. My own work is on the creation of rules inside medicine (clinical practice guidelines, rules about governance, and rules about the conduct of research) and how these rules are used both in the U.S. and in other countries in HIV/AIDS treatment and research. No doubt I've left out some members of our professional lexicon (but let's blame that on limitations of space rather than my ignorance).

That we can easily produce such a list implies that the legal impulse is alive and well. This may be good for business for those of us who study legal phenomena, but I'll suggest with a couple of quick examples that we can't simply study these as parallel legal systems. Rule systems are not all created equal.

Many rule systems lack key features of the formal legal system. Transparency is one of the most important of these. We may, at least in principle, be able to learn what the law is, but it can be exceedingly difficult to determine what rules are supposed to govern our interactions in the organizations in which we live, work, and even play. Although the theory may be that contracts are formed as a bargain between interested parties, inequalities between the parties all to easily mean that one party has no way of knowing the details of the contract. Deborah Stone (*Texas Law Review* 1994) tells of her frustrated attempt to learn about the elements of her university sponsored health insurance plans before signing the contract. No one could give her the relevant information until after she had made her choice. This is no surprise in itself, but does point to an interesting, albeit disturbing, side effect of moving toward private rather than state provision of goods and services.

The last time I made reservations for air travel, I suddenly woke up and noticed that I was being read a long series of rules. I've heard them many times, but this time I noted that the litany was prefaced with a statement about how these were the rules for "my" ticket. What's interesting here is the mixing of rule systems and markets, with (again not surprisingly) the exact form of the mixing determined by the airlines worrying about their interests rather than all of the stakeholders worrying about stakeholder interests. Yes, the rules are known here, but what we don't know is when and to whom each set of rules will apply, and the web systems to check on availability of cheap tickets are a poor proxy for citizen participation in the creation of the rules.

From these morality tales, I take the following: as scholars we should look especially for indicators of the existence of debate over rules, forums for discussion preceding the formation of rules, institutions that protect partisanship, and the sort of publicity that makes wide participation in even the agenda-forming stages possible. A key difference between private rulemaking and public rulemaking, then, has to do with barriers to participation. As Kafka and Habermas would tell us, the harder it is to find out how the rules are made and how to shape them, the more private rule systems will be opaque to outsiders and the more they will favor insiders and frustrate outsiders.

And just in case you think this applies only on the grander scale of largish bureaucracies, let me tell you that your section officers have only a precarious grasp of section bylaws —you try to find those bylaws on the web!

Carol Heimer is the 2002-2003 Chair of the ASA Sociology of Law section.

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Editorial Note

As always, section members are warmly encouraged to submit their ideas for contributions to the Newsletter Editor. I generally welcome original research essays in the sociology of law, essays on teaching issues in the sociology of law, and books in our sociological specialty to be considered for a symposium.

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...Amici Quotes...

Jerry: " What you're suggesting is illegal."

Kramer: "It's not illegal."

Jerry: "It's against the law!"

Kramer: "Well, yeah..."

— Kramer urging Jerry to get illegal cable installed.

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Gusfield 1994, 8). These movements problematize the taken-for-granted structures and social arrangements that shape everyday decisions and encourage subordinated people to challenge the sources of their oppression through both legal and extra-legal means (de Certeau 1984; Ewick and Silbey 1998).

Social movement messages can also reach beyond activists to ordinary people who never actually participate in collective action. A movement's oppositional ideas and interpretations can circulate in the wider public sphere, leading ordinary people to alter their expectations, their desires, their needs, their grievances B the very meaning of their daily lives. As those meanings change, subordinated people can be emboldened to make demands for better treatment from family members, employers, co-workers, teachers, neighbors and friends. But those demands can be controversial, especially when they challenge existing social arrangements. Ordinary citizens may never participate in a protest; they may never send money to an organization; they many never participate in movement activities in any way. Yet by drawing on new, oppositional interpretations circulated by social movements, people can find themselves embroiled in conflicts that reflect wider public debates.

Law is a multi-layered arena for these conflicts. Law can be an instrument for resolving these conflicts; many people turn to court to settle their disputes (Ewick and Silbey 1998; Merry 1990; Yngvesson 1993). Moreover, these legal claims may form the basis of litigation campaigns mounted by social movement organizations. Social movements use individual lawsuits not just to establish favorable judicial precedents, but also to mobilize new activists into the movement and to raise public awareness about pressing social issues (McCann 1994). On the other hand, law and legal institutions are powerful resources for the protection of the status quo. Law has often been a prominent force sustaining unequal and oppressive social conditions (Merry 1995).

Beyond its instrumental purposes, law also shapes the meaning of everyday life. Law provides frames and schemas that people use when they try to assign meaning to events in their lives. People may not know the exact rules and regulations that constitute our legal system, yet they are familiar with its logics, its reasoning, and some of its codes, even when they get the details wrong. This sense of legality derives its power from the continuing use of law in daily life. The application of legal frames in slightly different circumstances not only expands the reach of the frames, but also recreates them. Legal consciousness has been described as the set of social practices that people engage in when they invoke these frames. According to Ewick and Silbey: "Every time a person interprets some event in terms of legal concepts or terminology —whether to applaud or criticize, whether to appropriate or resist— legality is produced. The production may include innovations as well as faithful replication. Either way, repeated invocation of the law sustains its capacity to comprise social relations" (Ewick and Silbey 1998, 45).

Because of its focus on meaning, legal consciousness offers a promising approach for analyzing the everyday conflicts that emerge from social problems —conflicts that are often subject to multiple, often contradictory interpretations. First, studies of legal consciousness can be situated in particular social issues that reflect the political nature of everyday life. Following a strategy for narrative analysis, early studies of legal consciousness allowed individuals to define the circumstances in their everyday lives where law emerged (Ewick and Silbey 1998; Merry 1990; Yngvesson 1993). More recent research, however, has located the analysis of legal consciousness in more concrete social problems and has asked individuals how they deal with experiences stemming from these problems. For example, Laura Beth Nielsen (2000) has examined the legal consciousness of people who confront street harassment, and Kathleen Hull (forth.) has recently analyzed the legal consciousness of gay and lesbian couples seeking alternatives to marriage.

As these studies have shown, concentrating on broader political debates does not require abandoning the focus on everyday life. Structural inequalities are not mere abstractions. Rather, they generate concrete living conditions —crumbling schools, low-paying jobs, disrespectful treatment in public spaces, severe criminal penalties, communities suffering from environmental pollution, among others. The framework I propose urges choosing these specific kinds of problems for study and asking people how they address the problems that inequality creates. Thus, this approach begins by going to neighborhoods, workplaces, schools, and homes where these kinds of problem emerge. Moreover, in this approach, individuals are taken seriously as legal actors and as political actors who locate their lives in a complex social world and who reason through their experiences by drawing on sources of political resistance.

Sexual harassment is a particularly good example of a social problem that can be fruitfully studied by incorporating politics in the legal consciousness framework. By most accounts, sexual harassment reflects women's inequality in the workplace (MacKinnon 1979). Legal rules in the form of judicial opinions and EEOC regulations have prohibited sexual harassment since the mid-1970's. Yet the meaning of sexual harassment is a matter of extensive political debate (Saguy 2000). In the wake of well-publicized scandals, there has been considerable dispute about what practices constitute sexual harassment and how women

CALL FOR NOMINATIONS FOR SECTION OFFICERS

The Nominations Committee of our section has been seeking nominations for several Section positions, including a Chair-Elect and three Council Members.

Please contact Patricia Ewick (pewick@clarku.edu), who chairs the Committee, along with members John Sutton, Sarah Gatson, and Elaine Draper.

should respond. In response to legal liability, employers have adopted policies and grievances designed to redress problems as they occur. These institutional developments and political debates shape the way that women evaluate their experiences, attach the label of sexual harassment to those experiences, and decide what to do about it (Marshall 2000, 2001). The legal right to be free from sexual harassment may shape these experiences and decisions, but understanding the law's significance depends on this political and institutional context.

One way to account for the political context is to embed the analysis of legal consciousness in a competitive ideological environment that re-frames everyday events as political issues. In the midst of inequality, frames and schemas emerge from many different sources. Some frames are hegemonic, justifying and naturalizing inequalities, making them seem normal, beyond question (Morris 1992; Morris and Braine 2001). Other frames challenge these hegemonic meanings, generating a sense of injustice and prompting acts of resistance (Morris 1992; Morris and Braine 2001; Snow and Benford 1992; Gamson 1995). Various actors generate and manipulate these schemas, vying for the attention of a broad audience. Existing organizations and institutions defending the status quo, social movements challenging the prevailing powers, counter-movements mobilizing against any possible changes all participate in creating an ideological environment that shapes the way that ordinary people understand their lives.

Because of its cultural power, legality may be deployed in multiple, often contradictory ways by all these different interests. Legal concepts like "rights" are powerful ideas and help people to identify injustice in previously acceptable conditions (Polletta 2000; Scheingold 1974; McCann 1994). The "politics of rights" helps members of oppressed groups identify themselves as rights-bearers and encourages them to make claims and participate in actions that will help them vindicate those rights. Thus, law assists in the vital purpose of generating collective identity (Polletta 2000; McCann 1998). Law, however, also helps to construct hegemonic social and political arrangements. Studies of legal consciousness have demonstrated that people often perceive law as being a web in which they are trapped, unable to protect their daily lives from the overwhelming force of the legal system (Ewick and Silbey 1998; Sarat 1990). In this view, law resides with the powerful; it supports and fosters structural inequalities. Thus, as many have noted, people may have a double consciousness about law where law plays a part in both oppression and resistance (McCann 1994; Minow 1987).

Sexual harassment has multiple meanings negotiated in a public debate (Saguy 2000; Marshall 2001). With its origins in the oppositional feminist culture of the 1970's, the concept offered a critique of male dominance in the workplace (MacKinnon 1979). This critique is preserved, in part, in the legal claims for quid pro quo and hostile working environment sexual harassment. But that oppositional message has been mediated by hegemonic discourses of efficiency and productivity associated with capitalism and enshrined in employment policies that shield employers from liability for sexual harassment (Saguy 2000). In addition, there are powerful messages suggesting that women are too sensitive to sexual innuendo and that the restrictions on sexual harassment have a chilling effect on sexual encounters among consulting adults. Understanding this complex environment is crucial to understanding the way that ordinary women perceive their experiences with sexual harassment because women draw on these varied messages when deciding what happened to them, who is to blame and what to do about it.

This approach to legal consciousness also requires grounding the analysis in a specific set of legal rules and institutions associated with the particular social problem. When policy-makers try to redress conditions of inequality, they often turn to legal reforms that create new rights, obligations, statuses and punishments. Also, people confronting their problems may try to mobilize existing law in creative ways. On the other hand, law can impose a set of obligations and burdens that emphasize and aggravate a person's subordination. Of course, legal rules do not float from official policy-makers down to the ordinary citizens who are beneficiaries or the target of those rules. Instead, they are mediated by powerful influences. For example, the institutional and organizational sites charged with enforcing the law layer the rules with their own interpretations that reflect their own interests (Edelman, Erlanger and Lande 1993). Moreover, those interpretations and distortions are a source of schema for the people who interact with them and within the social spaces that they create. In the course of these interactions, legal rules are re-negotiated and re-formulated (Marshall 2001; Edelman, Erlanger and Lande 1993). A more grounded approach to legal consciousness, then, would be to examine conflicts in their habitats B specific workplaces, for example. By focusing on particular problems as they are refracted through organizations, institutions and other social locations, researchers can answer important questions about how law shapes social practices and how those social practices, in turn, shape the law.

The legal rules governing sexual harassment have had a profound impact on how women confront unwanted sexual attention at work. Based on a novel interpretation of the 1964 Civil Rights Act, judicial opinions and administrative regulations recognized the right to be free from sexual harassment. But the meaning of those rights is hotly contested in many workplaces. Research has shown that women are generally reluctant to label their experiences "sexual harassment." Rather, they usually reserve that characterization for only the most serious intrusions that do the most damage to their jobs (Marshall 2000; Welsh 1999). In addition, in spite of employment policies and procedures prohibiting sexual harassment, women rarely complain about these experiences. These policies and procedures are administered by employers who are generally more concerned with protecting themselves from liability than protecting employee rights. This bias in the procedures is well-understood by employees who report being afraid of retaliation or who believe that their complaints would not be taken seriously (Welsh 1999).

Moreover, women often perceive these procedures to be adversarial and geared toward protecting the powerful in an organization (Marshall 2001). These obstacles, then, narrow the protections the law offers in a particular workplace. So, sexual harassment laws and employment procedures should be included in a more comprehensive analysis of politicized legal consciousness.

Situating the analysis of specific social problems where personal experience is re-framed as a political issue brings several advantages to the legal consciousness framework. First, it de-centers the law by acknowledging and accounting for the complex ideological environment surrounding such social problems. Second, it accounts for the way that those multiple, often contradictory frames are deployed by ordinary people in their everyday lives. Finally, it shows that ordinary people in their social practices and invocation of law can be legal and political actors whose reasoning, decisions, and behavior recreate the meaning of law.

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Call for Submissions

DISTINGUISHED ARTICLE AWARD 2003

The Sociology of Law Section announces its biannual Distinguished Article Award. The Section will award a prize for the best article in the sociology of law published between 2000 and 2002. The submission deadline is **March 1, 2003**.

Winners will receive their award at the 2003 ASA Annual Meeting in Atlanta. Articles may be self-nominated by the author(s) or they may be nominated by other scholars, editors, or publishers.

To nominate an article, please send a brief letter of nomination and five (5) copies of the article by March 1, 2003 to: Susan Shapiro, American Bar Foundation, 750 N. Lake Shore Dr., Chicago, IL 60611; phone: (312)988-6583; fax: (312) 988-6579; e-mail: sshapiro@abfn.org.

This year's Distinguished Article Prize Committee will be chaired by Susan Shapiro (American Bar Foundation). Committee members include Jennifer Earl (Santa Barbara), Robert Emerson (UCLA), and two additional committee members (still to be selected).

* * *

Clarifying the Political and Social Contest of Corporate Crime: A Case Study of Breast Implants

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The political and social context of corporate crime is inextricably embedded in everyday corporate practices. The everyday, "taken for granted" activities of major corporations, especially their interest group activities, involvement in the production and dissemination of science, public relations efforts and tort reform activities provide contextual support for corporate crimes and must be considered in the effort to understand the commission of crimes by corporations. This context establishes a setting that nurtures criminal activity while reducing the possibility of criminal definitions, providing opportunities for corporations to minimize or obscure wrongdoing and to shape litigation.

Brief History

The corporations that produced breast implants, Dow Corning, 3M, McGhan, can be characterized by ordinary organizational qualities and business practices that serve as background characteristics supporting corporate crime. From 1962 until their sale was limited in 1992, millions of silicone gel breast implants were sold in this country. For almost fifteen years, because implants were categorized as "medical devices," there was no FDA oversight, but when the FDA began to demand pre-market approval safety studies, corporations rushed to get their implants "grandfathered in," ignoring their own research showing significant problems, including gel bleed, migration, autoimmune reactions and rupture (U.S. Congress, 1993, MDL-926 Silicone Breast Implant Litigation). While physicians assured their patients that implants were "one hundred percent safe," they had no reliable safety data..."All we could do was put it in and look and see what happens. There were no standards. There were no protocols. There was nothing" (Byrne, 1996a). An internal 3M memo from 1977 declared that "virtually no documented safety and efficacy data exist on McGhan's implant products" (U.S. Committee on Government Relations, 1993). "Lifetime studies" often lasted only months. Safety guarantees for the Meme implant for example were based on an eighteen month follow-up of only 81 Meme recipients in one case, and short-cut animal studies in another. Furthermore, the polyurethane foam used on these particular implants was designed for furniture upholstery, oil filters, and carburetors and was completely unmonitored for eight years. (Regush, 1992, 29).

Pharmaceutical reps revealed significant concerns... "To put a questionable lot of mammaries on the market is inexcusable... it has to rank right up there with the Pinto gas tank." Dow Corning was clearly aware of the tendency of implants to bleed and break, telling their field reps to visit the restroom and wash the implants with soap and water immediately before showing them to plastic surgeons because they became sticky in the display case (Angell, 1966).

When juries were convinced of corporate irresponsibility, they punished the corporations severely. Based on findings of fraud, defective design, manufacturers' failure to warn, "malice," "oppression," and conscious disregard for safety, juries awarded millions of dollars in punitive damages to plaintiffs: $1.7 million in 1984 to Maria Stern (*Stern v Dow Corning*), $6.5 million to Marianne Hopkins in 1991 (*Hopkins v. Dow Corning*, and $10 million to Charlotte Mahlum in 1995 *(Mahlum v, Dow Chemical*). When a Louisiana jury decided against Dow Corning in a class action suit in 1994 (*Spitzfaden v. Dow Corning*) and with over 19,000 additional cases filed against it (Brunk 1998), Dow and other manufacturers finally agreed to contribute $4.2 billion dollars to a global settlement with the over 400,000 women who claimed local and systemic damages from the implants. The is case mired in appellate proceedings, and is still in litigation limbo, due to Dow Corning's efforts to release and exonerate Dow Chemical from liability.

Relationships between Corporations and Regulatory Agencies

In addition to sharing some of the same people, corporations and their regulatory agencies are likely to share the same cultural definitions and assumptions about business and profit (Claybrook 1996). Regulatory agencies such as the FDA are often staffed by corporate scientific decision-makers whose sympathies may lie as much with those they are to regulate as with those they are to protect (Claybrook 1996). Charles Edwards,

Call for Submissions

ASA Annual Meeting, Atlanta, 2003

The 2003 ASA Annual Meeting will be held in Atlanta, August 2003. The following panels are organized by our section. Please note that all submissions must be made via the ASA's online submission system. People should *not* send any papers or proposals directly to organizers.

Session One: "Social Movements and Law." Open Submission. Joint session sponsored by the Sociology of Law and the Collective Behavior and Social Movements Sections. Co-Organizers: Anna-Maria Marshall, University of Illinois, Urbana-Champaign, and Kathleen Hull, University of Minnesota.

Session Two: "Professional Identities: Negotiating Legal and Medical Authority Inside Organizations." Open submission. Co-sponsored by the Medical Sociology and Sociology of Law Sections. Co-organizers: Sydney Halpern, University of Illinois, and Robert Dingwall, University of Nottingham.

Session Three: "Outside the Law: Challenges and Alternatives to Legal Systems" By invitation only. Organizer: Wendy Espeland.

Roundtables: Open Submission. Organizer: Elizabeth A. Hoffmann, Purdue University.

president of Scripps Clinic and Research Foundation and a former FDA commissioner, concluded the problems are so severe that they pose a threat to public health (Regush, 1998).

Both the American Medical Association (AMA) and the American Society of Plastic and Reconstructive Surgeons (ASPRS) joined the corporations in lobbying the FDA to keep implants on the market. The ASPRS went so far as to define breast implants as a medical necessity to treat the "deformity" of small breasts (micromastia) (Zones, 1992, p. 236). As a result, after rejecting safety studies as "inadequate" and "unconvincing," the FDA advisory panel (including many plastic surgeons) nevertheless kept implants on the market, simply calling for further testing. From 1976 until 1992, when implants were finally restricted, the manufacturers produced absolutely no data indicating they were safe. The FDA had the assistance of an apathetic government, "... more concerned with the safety of corporations than the safety of consumers" (Rynbrandt and Kramer, 1995, p. 223). The FDA itself kept secret hundreds of studies of silicone implants that had been conducted by Dow Corning until 1990 when litigation forced them to make them public.

The Production of Science

The 1993 *Daubert* decision (*Daubert v Merrell Dow Pharmaceuticals*) thrust judges, who have little scientific expertise, into the position of expert evaluators of very sophisticated methodological questions. *Daubert* has led to the production of science by corporations to convince judges of the scientific merit or lack thereof of the science put forward in the litigation.

The two breast implant studies most frequently cited are the Mayo study (Gabriel 1994) and the Harvard Nurses Study (Sanchez-Guerrero 1995). The validity, reliability, generalizability and utility of these studies are hotly debated by plaintiff and defense. More to the point here, however, is the involvement of implant manufacturers in the funding and oversight of these studies which are so critical to the defense. While Dow Corning claims "no input into the design, conduct, analysis, interpretation, publication of presentation of the results" of the Harvard Nurses Study, (Hennekens, et.al. 1996) it is also clear that Dr. Sanchez-Guerrero gave Dow Corning a draft of the study questionnaire prior to it being sent to the women (MDL-926 Breast Implant Litigation). Laing, a co-author of the study gave Dow information about the study while it was in progress (Stauber and Rampton 1996). Involvement of this sort led law professor Joseph Sanders to conclude: "It may be that [corporate defenders] are able to buy themselves something that should not be for sale" (Schmitt, 1997:B3).

While corporate sponsored research appears in influential medical and scientific journals, it is not uncommon for researchers to conceal their financial links to drug companies (Monmaney, 1999) and such researchers are more likely to report findings favorable to the corporations than are independent researchers (Davidson, 1986). These studies have been the biggest hurdle facing plaintiffs in breast implant litigation. Graham A. Colditz, co-author of the Harvard Nurses Study, testified that Dow provided between five and ten million dollars in funding for the Harvard study (MDL-926) Silicone Breast Implants Product Liability Litigation, deposition, pp. 23-24), a finding corroborated by another co-author, Dr. Matthew H. Laing, (deposition, pp. 49, 56). The other major study, the Mayo study, was funded in part by the Plastic Surgery Education Foundation of the ASPRS. While Dow Corning claimed this as a regular research expense, it also subsequently claimed defense as its *sole purpose*: "Dow Corning funded or contributed funding to a number of internal and external studies which were intended to provide the epidemiological data necessary to defend itself... each external scientific study that Dow Corning funded was only after consulting with the legal counsel to determine its impact on the breast implant litigation." (*Dow Corning v, Hartford Accident and Indemnity*, 1996, p. 3).

Concerned about the tendency of judges to be overwhelmed by the arguments of scientists ... Judge Bernstein warns that when "science" is allowed to become the centerpiece, "the testimony about the scientific research and literature should raise a red flag for any judge who considers abdicating the court's historical role in the resolution of disputes to any scientific establishment" (*Blum v. Merrell Dow*, 1996. p. 71). "If the law becomes the handmaiden of every self-defining "science" each trial judge can delusionally become the arbiter of ultimate reality (*Blum v. Merrell Dow*, 1996, p. 46).

The cross-over of researchers, editors of medical journals, consultants and reviewers who then testify as experts for the defense potentially obviates the neutrality of the research conducted and then relied on by corporations. Several authors of the Harvard Nurses Study (Laing, Schur and Colditz, MDL deposition, pp. 18, 90, 170-171) received undisclosed consulting fees from Dow during the breast implant litigation. They were co-authors of a study published that concluded that the epidemiological evidence did not support a relationship between breast implants and connective tissue disease (Stewart, 1998), a study relied on heavily by the defense, while simultaneously being listed as experts for the defense. These researchers hold positions of power in the medical and scientific fields that shape the landscape on which the plaintiffs must make their claims of illness and disfigurement.

Public Relations and Media

Dissemination of scientific findings takes place in powerful and influential peer review journals. These articles are then picked up by the national press and are widely disseminated through the media, giving these journals a great deal of power to shape public, judicial, and juror perceptions. This can be problematic when authors or editors are also involved in the public and legal debates about the use and meaning of scientific research. Despite concerns one might have had about corporate sponsorship of supposedly neutral research and financial relationships between researchers and defendant corporations, Marcia Angell, former editor of the which published the influential Mayo Clinic study,

joined Peter Huber in highly publicized condemnations of plaintiffs' evidence as "junk science" (Angell 1996) asserting that "no cause" has been proven in these cases and they should not be litigated. Prestigious medical journals not only have a pipeline to the public with a seemingly insatiable appetite for health news, but the media offer publicity and prestige for journals and scientists. More and more journals are supplying reporters with free or advance copies and providing news releases and "tip sheets" translating into English from 'medicalese' the hottest research of the upcoming issue (Johnson, 1996, 392). Dr. Peter Glassman at UCLA charges that the increasing reliance of professional medical journals on advertising places the medical organizations in the position of increased dependence and decreased objectivity. and the "had display advertising revenues last year of $19 million and $21.4 million respectively, the vast bulk of it from drug companies" (Shell, in Garry, 1998). With advertising revenues in the leading journals coming primarily from drug companies and soaring into the tens of millions of dollars, some critics suggest that there is a growing preoccupation on the part of medical journals with grabbing the attention of the mainstream media. Plaintiffs are at a significant financial disadvantage compared with corporations in access to the influential pages of medical journals as well as the popular press.

This ready access to the mainstream media is complemented by more direct public relations efforts on the part of corporations re-framing the harm caused by implants as an issue of "junk science, litigation-happy lawyers, and frivolous lawsuits. Corporations benefit from a 'presumption of innocence,' there being no media presumption that a product ought to be proven safe before being put into a woman's body" (Flanders, 1996, p. 11). And, corporations can simply buy ads to influence public perception, such as the one focused on a young girl with a shunt in her brain, captioned: "Silicone is not the problem. The personal injury lawyers and their greed is the problem" (Schmitt, 1997, p. B1)

Other public relations efforts are directed at legislators, judges and juries. Burson-Marstellar, the public relations firm hired by Dow Corning took several approaches. One was to build a "grassroots" patient and surgeon program to influence the FDA through lobbying their congressional representatives. Another was to get women angry about having the" right to choose" to have implants taken away (Rembrandt and Kramer, 1995, Claybrook, 1996). Burson-Marstellar organized letter writing campaigns, and an all expense paid "fly-in" to Washington for women to testify at FDA hearings, working with breast cancer support groups, because they would "engender more sympathy" (Matthews, 1996). This "bottom-up" campaign was in fact a "strategy that used corporate wealth to subsidize orchestrated mass campaigns that put seemingly independent citizens on the front lines as activists for corporate causes" (Stauber and Rampton, 1996). Other efforts included advising Dow to hire former U.S. attorney Griffin Bell to perform a review of the company that would be "somewhat tough" in order to demonstrate Dow's "credibility, (Stauber and Sheldon, 1996), and to recommend that Dow produce scientific data from "seemingly independent third party sources" (Burson-Marstellar, 1992).

Tort Reform

Corporate leaders play a significant role in the construction of laws that affect them, shaping the scope of the law, its application as well as the consequences for violation (Chambliss and Seidman, 1982, Quinney, 1972). One indication of corporate influence in law-making is the amount spent on lobbying. In 1998, lobbying expenditures at the federal level were $1.2 billion alone employs over two dozen staff lobbyists a year, and lobbying becomes a lucrative second career for many retired members of Congress, with 138 former members registered as lobbyists in 1998. Tort reform, particularly efforts to pass federal product liability legislation, may disproportionately negatively affect women. Women are more likely to be over-represented among product liability victims (Dalkon Shield, DES, Fen-Phen, in addition to breast implants) largely because of the medicalization of women's bodies and the fact that women's bodies are constant targets for improvement. Because the FDA has such an "unhappy history of failure to protect consumers from harm" (Steinman, 1992, 427) tort reform efforts must be scrutinized for their implicit impact on the health and safety of women.

Conclusion

During the seven and a half since Dow Corning retreated into the safe harbor of bankruptcy court, its' net wealth has increased by over one billion dollars but it has not paid out a single penny to its victims. Relying on bankruptcy laws and the contextual elements discussed above, are, of course, not corporate crime. However, we must broaden our discussions of corporate crime to include attention to the complex of mundane and legal everyday activities that envelop the more narrowly defined "crime" which dominates the attention of the public and the justice system.

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Call for Submissions
STUDENT PAPER AWARDS 2003

The Sociology of Law Section announces its Annual Student Paper Awards. The Section will award prizes for both the best graduate paper and undergraduate paper. Winners will receive their award at the ASA Meeting in Atlanta, August, 2003.

Papers may address any topic in the sociology of law, and may be reports of any kind of original research, including empirical and theoretical contributions or evaluations of existing scholarship. Originality, clarity, and analyses of substantive social issues are typically seen as important advantages.

Entries should be double-spaced and not exceed 35 pages in length (including tables, appendices, and references). Papers must have been written while the author was a graduate or undergraduate student. Papers that have been accepted for publication or are published at the time of submission are not eligible. Papers may be submitted by students or by professors on behalf of their students. The deadline for submissions is March 30, 2003.

Send one hard copy of the paper as well as an electronic copy (in Microsoft Word format). Please specify whether the paper is being submitted to the undergraduate or graduate paper competition. Prize submissions should be sent to: Calvin Morrill, Department of Sociology, 3151, Social Science Plaza, University of California (Irvine), Irvine, California 92697-5100; phone 949-824-9322; fax 949-824-9322; email calvin@uci.edu.

The Student Awards Committee consists of Calvin Morrill (chair, University of California, Irvine), Charles Cappell (Northern Illinois University), Erin Kelly (University of Minnesota), and David Shulman (Lafayette).

Hegemony, Identity, and the Consciousness of Capital Sentencing Jurors

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How is the consciousness of ordinary citizens enlisted as jurors in death penalty trials racialized? To investigate this question, my research (Fleury-Steiner forthcoming a; Fleury-Steiner forthcoming b) focuses on post-trial interviews with some 66 White and African American jurors who served on 24 capital trials in which either a White or Black defendant received the death sentence.

Specifically, my research calls attention to how racialized discourses of crime and criminals confirm taken-for-granted *understandings*—how they imply broader hegemonic stories (Ewick and Silbey 1995; Steiner 2001). By *hegemonic*, I refer to the taken-for-granted wisdom of the majority that is both situational and historically specific; stories that "everyone knows" and is familiar with. In this way, hegemonic tales embody general understandings that "go without saying, because, being axiomatic, they come without saying" (Comaroff and Comaroff, 1991: 23).

I. The Stories Jurors Tell

Findings among White jurors reveal a hegemonic tale of racial inferiority. However, other characteristics such as social class or relevant biographical experiences help to explain how jurors' stories are racialized. More specifically, racial inferiority is articulated in four congruous narratives: Individual responsibility, the tragedy of the "Black" group, "the bad kid and the caring family," and "the threatening outsider." Consider Sheila Brooks, a White, college educated hairdresser, and mother of two from North Carolina, who served on a capital jury that sentenced to death Ray Floyd Cornish a 20 year old, Black male convicted of shooting a White male convenience store clerk:

> I saw the defendant as a very typical product of the lower socioeconomic, Black group who grew up with no values, no ideals, no authority, no morals, no leadership, and this has come down from generation to generation. And that was one of the problems we had, for me, and in the jury. Because some of the jurors were looking at him as your average White kid: he wasn't a White kid. He came from a totally different environment. I'm just saying that he was the one that was the defendant. And I just saw him as a loser from day one, as soon as he was born into that environment, and into that set of people who basically were into drugs, alcohol, illegitimacy, AIDS, the whole nine yards. This kid didn't have a chance. That's how I saw the defendant. And there are 10,000 others like him out there, which is very tragic.

Sheila Brooks's tragedy of the "Black" group tale conveys what might best be called a "White racial dialectic." Labeling the defendant as part of a valueless,

"Black" group, she simultaneously reinforces her own superior "White" identity. Comparing her own view to her counterparts on the jury, Sheila informs them "he wasn't a *White* kid." Moreover, her use of ambiguous adjectives and phrases such as "that," "totally different," "that set of people," and the "whole nine yards" reveals a broader and more pervasive ideological means for distancing herself from a defendant she sees as lacking in individuality. Indeed, she sees him as part of a subordinate "Black" subculture.

Nevertheless, she observes, "there are 10,000 others like him out there, which is very tragic." The defendant is thus just another "character" in her story. Indeed, for Sheila Brooks, Cornish's "Black life" fits a tragedy that is *all too familiar*.

In this story, Cornish's life is part of a tragic story that Blacks "don't have a chance" *at the same time* that they are pitiful losers. Having difficulty relating to a defendant "born into *that* environment," Sheila Brooks's story marks entire places as breeding grounds for Black inferiority, as drug ridden, AIDS infested places; places far away (albeit, tragically) from where "average White kids" live. Next, she emplotts an individual responsibility story of her husband's struggles with addiction into her broader cultural distance narrative:

> I did think about my first husband who was a drug addict and that's how I know what a drug addict is. And they didn't prove that to me. And drug addicts don't go out and kill people.

"Drug addicts don't go out and kill people" serves important hegemonic ends in Sheila Brooks's story. By emplotting the story of her husband's addiction as a matrix for understanding the defendant's addiction, she is able to see Cornish as culturally remote—she is able to confirm what she already *knows* about drug addicts. At the same time, the story of her husband allows her to come across as "color-blind" or race neutral. Because "drug addicts don't go out and kill people" she is able to rationalize away the complexities of Cornish's *own* problems with illicit drugs. By contrast to her earlier story of the "lower, socioeconomic Black group," comparing the defendant's and her husband's addictions allow her to seamlessly transition to an evaluation of Cornish's culpability for murder.

Employing episodes from their private lives, White jurors tell stories that are inconsistent and often contradictory explanations for how they came to *know* the defendant. But it is precisely such inconsistencies and contradictions that help to explain how the racial inferiority narrative is a taken-for-granted part of "doing" death on the racially defined other. Unlike the subordinate racial group, White jurors need not be consistent. They need only to confirm what they already believe: That the defendant is everything or anything that *they* are not (e.g., "Black" *and* "addicted").

Black jurors' stories are influenced by their background experiences as well. More educated Black jurors employ a sympathetic discourse towards the "culturally distant Whites." On the other hand, working class Blacks that have had negative experiences with Whites in public are found to employ a narrative of "resisting White racism." Consider Harold Brown, a 54-year-old, high school educated carpenter explained how the jury made its decision to sentence to death Dwayne Whitmore, a Black convicted of killing a Black victim in an apparent gang-related dispute:

> People got their opinion before the trial actually started. Like this guy from up North. He had a totally different perspective of what happens in the inner city compared to the guy out in the suburbs who thinks, "If it's a Black thing than its automatic guilty." The White woman on the jury says the same thing. The White woman from West city who gets on the elevator with me, she got a problem. If something went down, the first thing that's gonna come out of her mouth, "It was a Black guy." It's an automatic thing. And it's a shame to think that way when these White jurors hooked up that they were so disinterested. They were more concerned about what we were gonna have for lunch, and how long was lunch, and when were gonna get out of there.

Harold Brown's story can be heard as revealing a powerful sense of resistance toward the racially biased White jurors. He emplotts a story from outside the jury room into his broader resisting White racism narrative. In this way, the hypothetical "elevator episode" serves not only to highlight racial bias among White jurors it conveys it as taken-for-granted. In other words, Brown's story can be interpreted as saying, "If Whites are racists in elevators then obviously they will be racist when deciding whether or not to sentence a Black defendant to death."

III. Toward a Theory of Legal Narrativity

Understanding the subtle influences of legal agents' multiple identities in the remaking of racial hegemony has broader implications for a revised constitutive perspective of law; what I call a theory of legal narrativity. First and foremost, a theory of legal narrativity posits "that it is through narrativity that we come to know, understand, and make sense of the social world, and it is through narratives and narrativity that we constitute our social identities" (Sommer and Gibson, 1994: 58). From this perspective, legal consciousness is understood by both elucidating the stories that give meaning to actor's identities (e.g. Oberweis and Musheno, 2001) *and, in turn*, how such identities give meaning to "law" as a site for competing hegemonic and subversive narratives (e.g. Ewick and Silbey 1995). It is only through the explication of both identity stories (e.g. narrativity) and the hegemonic force that constitutes such stories (i.e. That makes law's dominance taken-for-granted), that we can more fully come to understand the subtleties of legal consciousness.

A theory of legal narrativity also presents an alternative methodological focus to the theory of situational legal consciousness (Nielsen 2001). More specifically, rather than focusing on "variation across group when examining legal consciousness" (Nielsen 2001: 1088), a focus on narrativity forces us to move beyond an analysis of law as a single isolated

phenomenon occurring across or among isolated social groups. In this way, events are made episodic. This is accomplished by focusing on "emplottment":

> It is emplottment that gives significance to independent instances, not their chronological or categorical order. . . As a mode of explanation, causal emplottment is an accounting (however fantastic or implicit) of why a narrative has the story line that it does (Sommers and Gibson, 1994: 59).

It is also through the emplottment of identity stories that we learn *how* the law's hegemonic potential is mobilized and resisted. Thus, these data demonstrate the subtle intersections and tensions between race, identity, and hegemony in death cases. Indeed, "race" has been demonstrated to be a pervasive and complex grammar for doing death. Racialized discourses are, indeed, far more complex than "obvious" racial stereotypes of "Black" criminals. For example, capital jurors' racialized discourses are constituted by both their "ordinary" identities as "wives of addicts" (e.g. the story of Sheila Brooks' husband) *and* by their popular wisdom of "the low socioeconomic, Black group" more broadly. But it was only through the explication of narrativity in this context that we are able to see such subtle connections. To better understand legal consciousness in other sites, future research should pay greater attention to hegemonic narratives as both constituting and constituted by multiple identities.

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Congratulations to Devah Pager and to Yen Nguyen!

Winners of the 2002 Student Paper Competitions

The 2002 Student Paper Competition Committee of the Sociology of Law section of the ASA is pleased to announce that the winner of the 2002 Graduate Student Competition is Devah Pager for her paper "The Mark of a Criminal Record." Devah's paper focused on the consequences of incarceration for the employment outcomes of black and white job applicants. She used an experimental audit approach to formally test the degree to which a criminal record affects subsequent employment opportunities. Devah demonstrated impressive research design and analytic skills in her examination of this significant topic. She recently completed her degree in Sociology from the University of Wisconsin-Madison and has accepted a position at Northwestern University. Devah received her award at the Sociology of Law Section business meeting on August 19, 2002.

The winner of the 2002 Undergraduate Student Competition was Yen P. Nguyen for her essay "Creating Computer Crimes Units to Take a Byte Out of Computer Crime." Yen's paper draws on New Institutionalism and Rational Efficiency Models to discuss four local law enforcement agencies' creation and use of computer crime units. She displayed impressive scholarly ability in her study of the changes the law enforcement agencies underwent in their efforts to address computer crime. Yen completed her degree in Sociology from University of California at Santa Barbara and will enter Law School at the University of California-Berkeley.

On behalf of the committee, Anna-Maria Marshall (University of Illinois at Urbana-Champaign), Sarah Gatson (Texas A & M), and Kathleen Hull (University of Minnesota), I would like to congratulate our two winners on their fine work.

Submitted by Elizabeth A. Hoffmann, *Purdue University*.

Call for Papers

MIDWEST SOCIOLOGICAL SOCIETY 2003

Papers are solicited for the Sociology of Law session at the Midwest Sociological Society meetings in Chicago, April 16-19, 2003. Papers on any type of sociolegal research are welcome!

Please send your papers by Friday, December 13, 2002, to: Elizabeth Hoffmann, hoffmanne@soc.purdue.edu, Sociology and Anthropology Department, 349 Stone Hall, Purdue University, West Lafayette, IN 47907.

...Amici Quotes...

Rupert: "Brandon has told me a lot about you."

Janet: "Did he do me justice?"

Rupert: "Do you deserve justice?"

—James Stewart and Joan Chandler in *Rope* (directed by Alfred Hitchcock, 1946)

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Congratulations to John Braithwaite and Peter Drahos!

Winners of the 2002 Sociology of Law Section Book Prize

The 2002 Sociology of Law book prize goes to John Braithwaite and Peter Drahos for the stellar achievement of their book, *Global Business Regulation* (Cambridge University Press, 2000). According to the Committee, the book makes its contribution by studying many different regulatory regimes in historical depth, the actors who have created them and vetoed them, the regulatory principles that have been dominant at different times and in different subparts of the institutions, and the like. That is, it brings historical and interinstitutional variations in the regulatory institutions to bear on the central theoretical problems of the origin of regulations and their relation to business practice. Some institutions are effective in getting real compliance, some only produce token or ritual conformity. For example, on drugs alone, Braithwaite and Drahos study two regulatory regimes on prescription drugs, intellectual property in, and medical quality of, drugs. Then they study the almost non-existent regulation of over-the-counter drugs, the special regulation of the main legal addictive drugs (tobacco and alcohol); and the ambivalent American-induced fight over illegal drugs. This analysis of drug regulation is roughly a twelfth of the empirical material in the book. But we haven't had a systematic comparison of such enormous variation within a single business area, and it turns out all these are really different from the various global institutions that govern capital flows, or insurance, or environmental standards, the theory of the kinds of actors that build institutions therefore has to explain this variation. Similarly the effectiveness of institutions in getting conformity is to be explained differently when the CIA is against conformity than when environmental conformity is simply expensive, and both different yet from when a plimsol line painted on ships makes overloading of ships easy to monitor by anyone with binoculars.

Honorable Mention goes to Robert Kagan's *Adversarial Legalism: The American Way of Law* (Harvard University Press, 2001). Kagan takes a keen and nuanced analysis of adversarial legalism in the U.S., in contrast to much less adversarial organization in England, the Continent, and Japan. Then he gives us a concentrated theory of how this is caused by distinctive features of the political and judicial system of the United States. Then he undertakes to use this single, if complex, theoretical tool to show how many other uniquenesses, both positive and negative, of American criminal, tort, and contract practice, and much of the special character of American regulatory and administrative governmental practice and environmental law, are due to this peculiar system of legal practice. The wide range of scholarship and fact, and the theoretical elegance of the book's view of it all, made us think it a very honorable book to honorably mention.

Submitted by Arthur L. Stinchcombe, *Northwestern University*.

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