Theatrocracy Unwired: Legal Performance in the Modern Mediasphere

Julie Stone Peters

Abstract, Writing in the middle of the 4th century BC, in an age of mass trials and dramatically trained rhetoricians, Plato worried that Athens was becoming a "*theatrocracy*" – a state ruled by theatre – in which audience applause or catcalls determined verdicts and established laws. In the 21st century – with legal news, television trials, reality police shows, YouTube execution videos (etc.) shouting at us from our many screens – Plato might think his theatrocratic nightmare had come true with a vengeance. In our theatrocracy, where the media and its ever-online TV spectators can determine guilt or innocence, are the boundaries of the legal system beginning to dissolve? Does theatrocracy threaten law's "stability," "legitimacy," "autonomy," and "authority," as some have argued? Is theatrocracy a threat to *nomocracy*, to the very existence of law? "Theatrocracy Unwired" looks at the nature of our legal theatrocracy (from the age of television to the age of the Internet), theoretical discussions of law and media (Deleuze, Virilio, Rancière, etc.), the (antitheatrical) anxieties awakened by the swelling of the legal mediasphere, and the significance of these to the force and meaning of law.

Keywords, theatrocracy, nomocracy, Plato, media, theatricality, performance, television, Internet, digital, video, camera, law, legal

I'm sitting in a bar, trying to write. Three large TV screens (silent but projecting images) are showing Judge Judy, an episode of Law and Order, and the evening news, whose headlines scroll across the screen: "Former in-laws identified among victims of Santa shooter . . ."; "Polygamy leader's alleged bride subject of custody trial . . ."; "Rogue FBI agent gets 40 years in mob hit . . ."; "Wanted: 850 new FBI agents." The Clash is on the sound system: "I fought the law and the law won. . . . I fought the law and the law won." Unfortunately, I find I am online. A pop-up appears on my screen inviting me to play a video game called "Solve The Murder": "A body is found in a bathtub. Was it an accident or not? Join the investigation now and help crack the case." On CNN.com Crime pages, titles flash at me: "Justices rule cheerleading is 'contact' sport"; "Doctor wants visits with kids, not kidney." Another pop-up appears: it is the "Judge Fudge Adventure Power Hour." Judge Fudge is a blaxploitation candy bar who presides over a courtroom. I turn off my

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wireless. But the three TV screens and the Clash play on: "I fought the law and the law won . . .."

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THEATROCRACY IN THE AGE OF OLD MEDIA

In a famous passage in Book 3 of the *Laws*, Plato launches into an excoriation of what he terms "theatrocracy" (*theatrokratia*): the rule of theatre, which he opposes to the philosopher's rule of law.[1] His real object is the defense of the rule of law generally. But, he begins with an extended trope on the degeneration of musical discipline into musical license, which figures the more general degeneration of law into theatrocratic license.

In former days, he writes, "the educated made it their rule to hear the performances through in silence," in order to "pass verdicts" on them and, "in case of need, to penalize th[e] infraction" of the rules that governed musical composition. Where necessary, they used "the discipline of the official's rod" on "the boys, their attendants, and the rabble at large," as a means of "enforc[ing] order." The "bulk of the populace" willingly submitted to this strict control. However, several of those ignorant "of what is right and legitimate" and "[p]ossessed by a frantic and unhallowed lust for pleasure" took over from the earlier generation. They "inspired the multitude with contempt of musical law, and a conceit of their own competence as judges." Pleasure became the measure of judgment, replacing standards of right and wrong. And music was thenceforth governed by "the clapping of applauders" or "the catcalls and discordant outcries of the crowd," which "pronounce[d] judgment by its clamors": "Thus our once silent audiences have found a voice, in the persuasion that they understand what is good and bad in art; the old 'sovereignty of the best' in that sphere has given way to an evil 'sovereignty of the audience' [*theatrokratia*]."[2]

For Plato, in short, as expertise began to disappear, the sovereignty of the most popular (determined by the uneducated rabble) displaced the sovereignty of the best. Criteria of rational judgment were supplanted by pleasure as the ultimate criterion, driven by "unhallowed lust." The audience, following its desire blindly in pursuit of pleasure, ceased to believe in "right and wrong." Relativity – aesthetic and moral – was the consequence. Musical theatrocracy was unfortunately only the beginning, for it opened the door to a more general theatrocracy. If not stopped, this general theatrocracy would ultimately lead to a wholesale "escape [from] obedience to the law." For it was musical theatrocracy that had given the rabble undue confidence in its own powers in the first place. "Starting with music, there grew the opinion that all are competent in everything, as well as the rejection of laws. And liberty has followed in their train." The "next stage of the journey toward liberty will be refusal to submit to judges," predicts Plato, "and on this will follow . . . the effort to escape obedience to the law." The "spectacle of the Titanic nature of which our old legends speak [will be] re-enacted; man [will] return to the old condition of a hell of unending misery."

Here, the excess of theatre threatens *nomocracy* (*theatrocracy's* antonym): the measured and rational rule of law, kept pure of theatrical taint.[3] However, in Book 7 of the *Laws*, Plato casts unruly, pleasure-driven, emotionally excessive theatre not as the opposite of rational, measured law, but as its rival (one of the reasons, among others, that poets, dramatists, and actors must be excluded from the republic). As Plato's Athenian explains to the tragic dramatist:

> We [lawmakers] are ourselves authors of a tragedy. . . . Thus you are poets, and we also are poets in the same style, rival artists and rival actors, and that in the finest of all dramas, one which indeed can be produced only by a code of true law. . . . So you must not expect that we shall lightheartedly permit you to pitch your booths in our market square with a troupe of actors whose melodious voices will drown our own, and let you deliver your public tirades before our boys and women and the populace at large – let you address them on the same issues as ourselves, not to the same effect, but commonly and for the most part to the very contrary. Why, we should be stark mad to do so [!][4]

Actors and playwrights must be banished not because they are agents of theatrocracy against the bulwark of nomocracy, but because they compete with and challenge *legal* theatrocracy – the theatre of law. Seducing women and boys (those same boys once ruled by "the ordering rod"?), they threaten law's monopoly on seduction. They drown out law's harmonies with their own melodious voices. In Plato's account (in Book 3 of the *Laws*) of the musical theatrocracy that will lead inexorably to a more general theatrocracy, theatrocracy is the opposite of the rule of law, and in fact threatens to destroy it. In Plato's explanation of his banishment of actors and dramatic poets (in Book 7 of the *Laws*), theatre is law's double, its same-yet-contrary, which must be destroyed so that law may have sole theatrocratic power.

Plato's coinage, "theatrocracy," appears only occasionally in the history of Western philosophical discourse. It is most notably present in Nietzsche's *The Case of Wagner*, where it indicates not the power of seductive spectacle to sway the laws, but the dominion of theatre over the other arts ("the nonsense of a faith in the *precedence* of the theater, in the right of the theater to *lord it* over the arts, over art").[5] But – even if infrequently referenced – Plato's double position reflects an ambivalence about theatre that deeply marks the entire history of law: in philosophical discussions of its foundations, function, and meaning; in jurisprudential discussions of its doctrines and techniques; in popular accounts of what law does. In these discussions, theatre stands for the sensuous passions, the deliberate inflation of the sphere of emotion, the rule of pleasure, and the sovereignty of the dissembler. Law stands for reason, the control of emotion, the rule of discipline, and the sovereignty of truth (enforced by "the discipline of the ordering rod"). Where law represents the

well-ordered soul, theatre is a kind of madness, the realm of illusion and hallucination, falsely divine and disturbingly dangerous.

It is, however, universally (if unhappily) acknowledged that law is, after all, a performance art: an art of public rhetorical suasion, in which compelling stories dramatized before the relevant audience (judges, juries) ultimately shape legal outcomes, often making doctrine simply irrelevant. On the one hand, in order to preserve its identity, law must suppress its own tendency toward spectacular, hysterical, emotional, visual, seductive theatricality, in the name of maintaining discipline, "what is just and legitimate," and the rule of expertise. It must avoid the degradations of theatre, securing its dignity and rationality through its disavowal of theatrical means (at the risk of "a hell of unending misery"). On the other, as back-up for the not-always-convincing ordering rod, it must employ every theatrical art in its means: sensational narrative, emotion-stirring speeches, dramatic staging, images meant to terrify and arouse.

I hope elsewhere to offer a fuller account of the significance of such ambivalence about legal theatricality for legal history: for its claims, its doctrines, and (above all) its self-staging as event and practice. Here, my central question is present- and future-directed: what happens to legal performance – and to the simultaneous desire for and fear of theatrocracy – in the modern mediasphere?

THEATROCRACY IN THE AGE OF TELEVISION

If Plato's ambivalence about the use and abuse of theatre for law have reverberated throughout law's history, his fears that theatrocracy was displacing the rule of law were (arguably) fully realized only in the age of modern mass media, when the theatre of sound and the moving image took over the public sphere, and brought the courtroom into our living rooms. By the 1960s, most homes had television, and television crews had become regular fixtures at what were soon to be called "media events." Still cameras had been banned in most US courtrooms since 1937.[6] But the doctrines that emerged in an attempt to control the media's new and seemingly overwhelming incursions into law came primarily from two cases about television cameras in the courtroom: *Estes v. Texas* (1965), in which a well-known financier was tried for "swindling"; and *Sheppard v. Maxwell* (1966), the famous murder trial, in which a wealthy doctor was tried for murdering his wife.[7] Both of these cases register an extreme sensitivity to the sensory saturation of mid-20th century televisual media. In *Estes*, for instance, we are told that the defendants were "subjected to … minute electronic scrutiny," and the community "bombard[ed] with [its] sights and sounds."[8]

> At least 12 cameramen were engaged in the courtroom throughout the hearing, taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor,

> three microphones were on the judge's bench and others were beamed at the jury box and the counsel table.[9]

The "snouts of the four television cameras protruded through the opening in the booth."[10] At one point, as the defendant's counsel made a motion to exclude all cameras, "a cameraman wandered behind the judge's bench and snapped his picture."[11] At the *Sheppard* trial, similarly, "bedlam reigned." Journalists took over the courtroom, hounding participants, who "were forced to run a gantlet of reporters and photographers each time they entered or left."[12] In his *Estes* concurrence, Earl Warren quoted a recent treatise: "'The criminal trial was the theater and spectaculum of old rural America. … All too easily lawyers and judges became part-time actors at the bar,'" commenting, "I had thought that these days of frontier justice were long behind us, but the courts [have] return[ed] the theater to the courtroom."[13] The trial had become a "circus,"[14] a "carnival."[15] "In this atmosphere of a 'Roman holiday,'" declared the *Sheppard* court, "Sam Sheppard stood trial for his life."[16]

In both cases the Supreme Court ruled that the disruptive presence of media in the courtroom had deprived the defendants of their rights to a fair trial under the Due Process Clause of the Fourteenth Amendment. Various reasons were given for suppressing this "theater [of] the courtroom."[17] First, "flamboyant pretrial publicity"[18] and "heightened public clamor" would "inevitably result in prejudice."[19] "Broadcasting in the courtroom would give the television industry an awesome power to condition the public mind either for or against an accused," explained *Estes*.[20] Television could effectively determine outcomes: offering selective "reenactment[s]" that would both consciously and "subconsciously influenc[e]" the country as a whole.[21] This, in turn, would influence jurors (who would be likely, explains *Estes*, to "return home and turn on the TV if only to see how they appeared upon it")[22] and produce "popular verdict[s]."[23] "To permit this powerful medium to use the trial process itself to influence the opinions of vast numbers of people, before a verdict of guilt or innocence has been rendered," explained *Estes*, "would be entirely foreign to our system of justice."[24]

Estes and *Sheppard* were concerned not only about jurors as subjects and transmitters of media but about participants generally as objects of media. "Judges," explained *Estes*, were "human beings also and … subject to the same psychological reactions as laymen."[25] Media consciousness would divert them from the real purpose of the law. "[W]e know that distractions are not caused solely by the physical presence of the camera and its telltale red lights," explained *Estes*.[26] Even without the camera's red lights, "[n]o one could forget that he was constantly in the focus of the 'all-seeing eye.'"[27] At the same time, media in the courtroom tempted trial participants "to play to the public audience."[28] While some might be "demoralized and frightened" by the camera, others would be "cocky and given to overstatement."[29]

As Estes explained, the resulting "natural tendency toward overdramatization" necessarily "impede[s] the search for truth."[30] While trial participants might be

tempted to falsifying "overdramatization," the media "might also decide that the bareboned trial itself does not contain sufficient drama to sustain an audience," worried Earl Warren in his *Estes* concurrence.[31] "I see no reason why [a] court might not move a trial to a theater, if such a move would provide improved television coverage," he mused.[32] And if quiz shows could be "corrupted in order to heighten their dramatic appeal," similar efforts might be made "to heighten the dramatic appeal of televised trials."[33] "Court proceedings," explains the opinion, "are held for the solemn purpose of endeavoring to ascertain the truth, which is the *sine qua non* of a fair trial."[34] Can we be sure, asked Warren, that if trials were regularly televised, "the public would not [come to] distrust our system of justice?"[35]

Even if television were somehow to avoid compromising the truth in law, what it would compromise was "the calmness and solemnity of the courtroom."[36] The courts were supposed to be "public tribunal[s] free of prejudice, passion, excitement,"[37] governed by proper "legal procedures."[38] Media presence intruded upon "the detached atmosphere which should always surround the judicial process,"[39] standing directly against the "judicial serenity and calm" to which the law was entitled.[40] The theatre of media thus threatened "the sense of fairness, dignity and integrity that all associate with the courtroom."[41] "[O]ur concepts of a fair trial do not tolerate such an indulgence."[42] It was thus not merely that "[t]rial by television" was "foreign to our system."[43] What happened in *Estes* was a "desecration"[44] of "that hallowed sanctuary," the "American courtroom."[45] The central point in *Estes* was thus the attempt to draw boundaries around "that hallowed sanctuary" (what one critic has called law's "distinctive temporal and spatial borders")[46] – to protect it from the incursions of the alternative court of media (with its "unhallowed lust for pleasure"). "The television industry," explained *Estes*, "has a proper area of activities and limitations beyond which it cannot go with its cameras. That area does not extend into an American courtroom."[47]

Attacks on mass media from the right in the era of *Estes* and *Sheppard* and the decades that followed often echoed Plato's concerns. Granting power (through the box office and network ratings) to the rabble, critics argued, television and film were undermining traditional values. They tended to honor the social outcast as a daring hero, and gave credibility to delinquents. Instead of deterring crime, they were more often criminogenic: producing criminal behavior by offering models for it. This could be clearly seen in the "copycat crime." An uncensored media – not just criminogenic but criminophiliac – would lead ultimately to "a reckless excess of liberty," "escape [from] obedience to the law," and a "contempt for … the plighted word, and all religion."[48]

If attacks from the right saw modern mass media as a fulfillment of the rabble-driven theatrocracy, attacks from the left during the same era saw modern mass media as a fulfillment of Plato's bid to monopolize theatre for law. The state effectively controlled the theatre (of film and television), but it did so ideologically: far

more nefarious because it was harder to trace. Though dressed up in the appealing garb of freedom-of-expression, the modern media complex was, in fact, a tool of the hegemonic state, and effectively indistinguishable from the modern legal-military-industrial complex. In this view, rather than the masses undoing the power of law (as Plato feared they would), law (disguised as entertainment) undid the power of the masses, acting as neo-totalitarian enchantment, mesmerizing the once-feisty rabble into slavery to the commodity, confirming its nationalist and anti-democratic prejudices, and thus consolidating state power and the power of the dominant classes.[49] The media theatre had become a kind of prosthetic governor, permeating the metropolis, reaching into the citizen's living room and bedroom, injecting legal discipline at the capillary level (in Foucault's memorable phrasing),[50] and penetrating the legal subject's brain with messages both conscious and subliminal. The "society of the spectacle" anatomized by Guy Debord[51] used the theatre of the commodity to stupefy us into compliance. Modern media indoctrinated us subliminally with the capitalist religion – its sense of invisible unity across the dislocation of short-term profit maximization – reproducing capitalism's instabilities and simultaneously offering palliatives for them.[52] Theatrocracy meant the rule of the lie, the pretense, the feint, and the surface, a dissociation of agent from message (though, for 20th-century media critics, it was precisely people like Plato's rulers who were behind it).

These views – many of them inspired by the Frankfurt School, by psychoanalytic theories of the subject, and by post-sixties ideology critique – were contiguous with strains of visual theory that took root in the decades that followed: emerging largely from feminist and psychoanalytic film theory in the 1970s but eventually heavily influenced by post-colonial theory. Though they were perhaps never so univocal and dogmatic as their dumbed-down versions suggested, they tended to view media and Law (in its most Big-Brotherish and violent sense) as co-implicated in an overarching modern "scopic regime" (with its undifferentiatedly "imperialist gaze" and its generally agentless "colonization of the visual"), controlling the subject through a carefully regulated sequence of images.

THEATROCRACY IN THE DIGITAL AGE

Such notions fit well with Cold War ideas about brainwashing and conspiracy. But sometime in the 1990s, the Internet arrived, at first the province only of technology experts, but soon the principal medium of information-gathering and communication for the rank and file. As the celebrants of the digital age informed us daily, we were no longer passive recipients of a stream of numbingly uniform, mesmerizing images, rolled out before us, as we were in the analog age. Moving images had come undone, fragmenting into a pluriformity of video, text, and sound. As devices became increasingly multifunctional and as large-scale media (such as the screens in Times Square) appropriated the aesthetics of the portable device, media could no longer be separated and sub-divided as they once were, nor can we separate

ourselves from them. Moving texts and images were everywhere (no longer contained in the movie theatre or living room): blaring across electronic billboards, talking to us in our taxis, and humming in the palms of our hands. Digital media traveled and we traveled with them: from one device to another (large and small), and around the world and back. We had become cyborgs, with our digital prostheses, living in their rhythms.

Whether or not we believe that the advent of the digital constitutes a radical historical break – a revolution of sorts[53] – there has unquestionably been a change in the universe of texts and images that has brought more structural socio-economic changes. Both low production costs and virtual interactivity have, in fact, eroded the distinction between media producers and consumers: consumers are often producers, and consumption is simultaneously production. The digital atmosphere is at once profit-driven (dominated, like television, by mind-numbing advertisements) and independent of the market: driven by the pleasures of self-display and of sharing one's fantasies, the compulsion to warn of the world apocalypse, the drive to shout one's views to the skies. Global diffusion, portability, ease of reproduction and alteration, and the general difficulty of tracing producers have destroyed traditional regimes of top-down regulation and made intellectual property all but obsolete.

All this has necessarily shifted media content as well, inviting narrative nonlinearity (multidirectional, simultaneous, no longer determined by temporal continuity), fracture (fragmented and fragmentable, no longer normatively committed to narrative wholes), open-endedness (subject to continual revision by both producers and consumers), fungibility (available for continual reuse, alteration, manipulation), and endless looping. Content is at once global (thrown out into the world) and parochially local, with sites catering to the Four Corners Bar Association of Dolores and Montezuma Counties (26 members), or the Friends of Atticus Finch Society (two members), in the search for a virtual community truly one's own.

Any regular media surfer cannot help but notice how much of this content – stories, images, texts – is about crime and law. Our devices are saturated with fictional crime and law shows (not just film and television, but also computer games in which the player commits a crime or captures a criminal), "real" law (news of high-profile media crimes and trials, reality crime shows, reality judicial programs, Internet content such as photos and videos of police encounters, trials, and executions), and the blurring of the two, which seems the most characteristic genre of new media. ("TruTV: Not Reality. Actuality.") Film and television crime and law stories are often based closely on real events. News of media trials blurs into entertainment ("infotainment," in the sociological coinage). Reality crime shows such as COPS are often staged. Reality trial programs such as Judge Judy (with their quasi-legal status) are modeled less on standard courtroom trials than on confessional talk shows such as the Maury Povich or Jerry Springer Shows. Internet crime and law stories on sites such as the Crime and Investigation Network copy and paste history into fiction and fiction back into history. Crime itself can hover at the border of the real

and the virtual, where half-real, half-virtual selves have half-real, half-virtual sex encounters with half-real, half-virtual others halfway across the world through the prostheses of keyboard and screen.[54]

At the same time, new media have changed the institution of law and its practices. Once a domain committed to the sanctity of the verbal text, law is now subject to a plenitude of moving images. While verbal texts proliferate (cases and precedents crunched by legal databases and reprocessed as briefs and judgments), video texts have become part of the texture of legal practice. Police surveillance devices have become pervasive and ever-more sophisticated, so that real crimes are instantly captured as videos, sometimes played merely for police officers, lawyers, or juries, but often broadcast on television shows or posted on YouTube. Hearings are recorded. Courtrooms are wired, and, of course, wireless. Electronic and video evidence (whose use from the Nuremberg trials to the Rodney King beating cases was hotly disputed) are now a normal part of most trials. Courts have significantly loosened admissibility requirements for video evidence, and most disputed video evidence is now ruled admissible.[55] Judges sometimes continue to resist video cameras in the courtroom or video-recorded trials, but nonetheless they have been admitted. With numerous cases in the past decades holding restrictions on the media unconstitutional (most notably *Chandler v. Florida* [1981], decided the same year The People's Court began the first long-running law reality show), there is now effectively a First Amendment presumption that journalists (with their electronic tools) may have access to both civil and criminal trials in state courts.[56] About a dozen states still prohibit filming in trial courts, but all allow it at the appellate level. High courts around the world, from the United Kingdom to Brazil, provide live video feeds of their proceedings. While a general prohibition on the filming of US federal trials remains in place, dozens of federal trials have in fact been videotaped and broadcast.[57] In the age of omnipresent media, insofar as law rules, it rules largely from the screen: whether in the courtroom, the living room, or the chat room. It is here that justice (in the old adage) is not only done, but also *seen* to be done.

At the same time, *Estes* and *Sheppard* continue to be regularly cited because they seem to capture law's age-old fears of an insurgent theatrocracy. In the age of theatrocracy triumphant, *Estes* and *Sheppard* continue to stand for an image of law: a "hallowed sanctuary,"[58] in which "judicial serenity and calm" reign,[59] protected from the rule of theatre. On the screens of the wired courtroom, sensationalist videos "inflame the jurors' emotions" rather than "assist[ing] their minds."[60] But judges continue to insist on the difference between "[t]he enterprise that we engage in" and "show business"[61] in an attempt to stem the theatrocratic tide. As the trial order for *Michigan v. Grant* [2007] put it, "cameras in the courtroom . . . only encourage the film and electronic media's competition for viewers at the expense and integrity of the judicial system and defendant's substantial right to a fair trial." Permitting cameras in the courtroom produces a "'feeding frenzy' . . . a continued

attempt to manufacture and maintain an audience."[62] The trial becomes a "'media circus' of cameras, equipment, satellite dishes, reporters and commentators,"[63] the "courthouse [is] given over to the public appetite for a carnival,"[64] and law becomes a "form of informative entertainment [aka infotainment]."[65]

The regime of law-as-infotainment not only subjects defendants to the rule of the audience, but also thrusts jurors unwillingly into the limelight: jurors who (explains *Sarasota Herald-Tribune v. State* [2005]), "did not come to the courthouse to be celebrity guests on a reality TV show."[66] And it turns otherwise sober legal professionals – judges, lawyers, and expert witnesses – into TV personalities: "household names and celebrities."[67] The promise of public celebrity can lure participants into "engag[ing] in a variety of antics to get camera attention."[68] It magnifies the age-old temptations of histrionic lawyering: the tendency to "engag[e] in theatrics designed to inflame the passions and prejudices of the jurors."[69] We belong to a "'YouTube' generation," explains *U.S. v. Megahed* (2008), a generation of digital sleights of hand, instantly diffused across billions of screens worldwide.[70] By tempting participants to "overdramatization" or seducing jurors into rendering a "popular verdict,"[71] modern media "distor[t] the integrity of the judicial process, [and] cas[ts] doubt on the reliability of the fact-finding process."[72] They turn "witnesses who [would otherwise be] open, candid, fully forthcoming, and truthful"[73] into mendacious performers. "[W]orld wide broadcasting, . . . either by television, radio or the Internet," offers "an open invitation to any trial participant to engage in showmanship or make a public spectacle for the world to see or hear," wrote Judge Leonie Brinkema in *U.S. v. Moussaoui* (2002), barring television journalists from the trial of Zacarias Moussaoui for conspiring in the September 11th attacks: "Excluding cameras and other recording devices from the courtroom will . . . 'minimize the potential for a popular verdict.'"[74] As law plays to the broader demos of the digital screen, judicial "integrity" seems to give way to mass verdicts, offering the kind of judgment by uproar that Plato most feared.

On the one hand, then, *Estes* and *Sheppard* have been effectively overruled. On the other, the infusion of media into the courtroom has led to the feverish proliferation of regulations, prescribing exactly when, where, and how legal officials may talk to the media or recording devices be used in the courtroom. At the same time that complex rules about courts' handling of media have proliferated, the discretionary power of the judge has expanded. Such discretion requires judges to become, in effect, producers of courtroom media: micromanaging cameras, screens, and soundtracks; determining who may talk to journalists and what they may or may not say; ruling on what kinds of equipment journalists may bring into the courtroom (the microphone must be no longer than 3 inches, cameras may use their flashes only during recess), whether or not soundtracks may play, and so on.[75] In assessing video evidence, judges must constantly rule anew: is it more probative? or is it more prejudicial? does it speak to the mind? or does it "arouse[,] . . . shock"[76] and "inflame [the] passions?"[77]

As a result, the proliferation of regulations and augmentation of judicial discretion – rather than diminishing the anti-theatrocratic rhetoric associated with *Estes* and *Sheppard* – intensifies it. For all its omnipresence, media must not "break through the barriers constructed" by the court;[78] one must, at all costs, "maintai[n] control of the courtroom."[79] The more law is determined to control show business, with all its flashing screens and stereo sound, the more it becomes complicit with it. As law rides media into the theatre of public images – as regulations and judicial decisions about media proliferate, as increasing numbers of lawyers and judges and court reporters and courtrooms are employed to deal with media, as legal video projectors whir faster and louder, and as evermore law is thrown into the mediasphere – it becomes ever harder to maintain the fiction that law resides in a "hallowed sanctuary," far from the madding crowd.

Let us, as a thought experiment, bring Plato back from the dead, imagining him, just for a moment, suddenly awakening, say, in Times Square or the modern courtroom, in the age of new media, with its constantly moving theatre of images, passing their light and shadows before our eyes on a once-unimaginable scale with a once-unimaginable speed. One might forgive him for thinking that his nightmare had come true, that theatrocracy had broken loose (with a vengeance), and that, in short, the "hell of unending misery" had arrived. We are (it must be confessed) "[p]ossessed by a frantic and unhallowed lust for pleasure":[80] ruled by intensified emotion, sensual libertinism, illusion and dissemblance, the surface, the feint. Ethos – the kind of moral credibility that the Greeks saw as an essential element of rhetorical persuasion – has disappeared into the ever-shifting identities of the virtual. All these have disabled the claims of expertise (or multiplied them into meaninglessness), defeating reason and leaving an anarchy of emotion and pleasure in its stead. Rather than serving as law's handmaid, the new mediasphere – intuitive, sensualist, anarchic, accessible, non-specialist, unregulated (and so on) – might seem to have overthrown law and set up the rule of the image, desire, and self-gratification in its place. The digital sphere's moving images – its Faustian promise of infinite pleasures and infinite possessions – govern our beliefs, structure our wishes, create dependencies more powerful by far than those produced by the state. (I am an Internet addict. I know.) Theatrocracy, it might seem to Plato, has finally vanquished nomocracy.

THE INFORMATION BOMB, THE SOCIETY OF CONTROL, OR THE EMANCIPATED SPECTATOR?

This might, in fact, describe (in magnified terms) the view of a number of legal scholars. With the shift "toward visual representations, including videos, computer-based animations, and reenactments," writes Richard Sherwin, law is "converging with the popular," and this convergence has "deleterious effects . . . on law's stability and continuing legitimacy in the eyes of the public."[81] As law in the age of new

media succumbs to "the influence of public relations, mass advertising, and fabricated media events," it appears subject to "the increasing conflation of truth and fiction [and] the image-based manipulation of irrational desire, prejudice, and popular passions."[82] In the digital age, in which simulated legal events are screened for us daily and are continually in our field of vision, writes Shulamit Almog, law's "specialized producers of meaning"[83] (lawyers and judges) and "distinctive temporal and spatial borders"[84] (courtroom, chambers, deposition rooms, the interior offices of the judiciary) have begun to disappear. The shift away from "defined, bordered spaces such as courtrooms ... to decentralized spaces" seems to mean the loss of law's "autonomy and authority."[85] As "the exclusivity of 'legal' justice"[86] is challenged and law's "specific meaning" eroded, so (it seems) is its credibility, its "potency," its "validity."[87] "Subvert[ing] the barrier between reality and image,"[88] the "digital spectacle"[89] erodes our faith not only in law's truth-finding capacity, but also in its stabilizing power.

Such views of digital theatrocracy as a threat to nomocracy (law's stability, legitimacy, rationality, and reality) may be juxtaposed with a strain of postmodern theory that sees digital theatrocracy as instead *serving* nomocracy, in an unholy alliance that masks domination, calling it pleasure and freedom. Digital theatrocracy and law are in league, joining forces to create the prison-without-walls of late modernity. In some ways this theoretical strain carries forward the views of the Cold War left. But for the post-Cold-War theorist, media society seems to have become a more amorphous menace – no longer an arm of Big Brother but instead set free of agency and thus all-the-more dangerous, beyond human control and with a monstrous logic of its own. Such views are reflected in one of Gilles Deleuze's short but influential essays, "Postscript on the Societies of Control," published in 1990, when computerization had, in less than a decade, changed the face of daily life, and the commercial Internet service providers and the World Wide Web were beginning to go public. Deleuze's essay argues that digitalization is bringing with it a "new system of domination": "societies of control," rapidly replacing the older "societies of discipline" described by Foucault, just as these replaced the early modern "societies of sovereignty."[90] The old "societies of sovereignty" relied on one sort of machines: levers, pulleys, clocks. The "societies of discipline" that followed them relied on another: industrial machinery, railroad cars, electric media such as radio, film, and television. The new "societies of control operate with machines of a third type, computers."[91]

Societies of discipline and societies of control, Deleuze writes, offer "two very different modes of juridical life."[92] In societies of control, our existence is not one of perpetual "*apparent acquittal* ... between two incarcerations" (as in the disciplinary society captured so chillingly by Kafka's *The Trial*), but one of "*limitless postponements* ... in continuous variation."[93] Here, law is "ultrarapid" and "free-floating":[94] functioning not through the spectacular punishments of the early modern society of spectacle, nor through the Benthamite panopticon (in which the disciplinary subject

was watched by an unseen watcher), but through the dense sensory medium in which we now move. If the disciplinary subject's energy and movements were regulated, "the man of control is undulatory, in orbit, in a continuous network."[95] In this "network," Deleuze explains, we are not merely viewers or objects of the state's surveillance but part of it. The disciplinary subject was ensconced in the space of the factory, the school, the army, and the family. The subject of control moves with apparent freedom, because the society of control is "essentially dispersive," not situated in space but cast in "coded figures – deformable and transformable."[96] Everywhere, "*surfing* has ... replaced the older *sports*."[97] Like Plato's theatrocratic subject, the spectator feels free – surfing and in orbit – but everywhere is in chains.

For Deleuze's colleague Paul Virilio, theatrocracy and nomocracy are similarly in league. The vehicle of this alliance, for Virilio, is the "automatic *vision machine*, operating within the space of an entirely virtualized geographical reality."[98] We may be part of a general system of surveillance (as in the society of control), but we are also victims of an "information bomb," diffusing in its wake "*instant transmission sickness*."[99] We are "'Net junkies', 'Webaholics' ... struck down with IAD (Internet Addiction Disorder), [our] memories turned into junk-shops – great dumps of images of all kinds and origins, used and shop-soiled symbols, piled up any old how."[100] Saturation-bombed with images, we have become incapable of seeing:

> [T]his generalized visualization is the defining aspect of what is generally known today as virtualization. The much-vaunted "virtual reality" is not so much a navigation through the cyberspace of the networks. It is, first and foremost, the amplification of the optical density of the appearances of the real world.[101]

This is "the most certain threat hanging over our old democracies."[102]

In law, once the very epicenter of democracy, one can see the gradual infiltration of the vision machine: first the 19th-century diorama and panorama, then the photograph, then finger-printing techniques, then the infinitely replicating and increasingly surreal images that make up law today. The earliest vision machines initiated the decline of the eye-witness account and the descriptive model:

> [T]he *human eye* ... no longer organises the search for truth, it no longer presides over the construction of truth's image, in this mad rush to identify individuals whom the police do not know and have never seen. ... What counts is what is already there, remaining in a state of *latent immediacy*, ... waiting to reappear, inexorably, when the time comes.[103]

The decline of the eye and ascent of the latent-yet-inexorably-there culminates in the use of video cameras as surveillance devices. "Allowed soon after this by the Code of Criminal Law Procedure, video proof would be used to convict criminals on the basis of documents supplied by cameras installed in banks, shops, at traffic lights."[104]

> [L]aw courts such as the district court of Créteil – which has a central projection room and scientific police laboratory fully equipped with video-imaging machines (the ultrasound machine used in medicine for taking ectographs or ecocardiographs) have little by little taken on the trappings of television studios.[105]

The machine's occupation of the court has inaugurated "the birth of hyper-realism in legal and police representation."[106] The electronic image has displaced the body, both that of the eyewitness account (with the live and present body at its center) and that of the accused:

> As one technician put it: "Now, with ultrasound, we can bring up the image of a person who's just a tiny speck the size of a pinhead on a video tape, even if they're at the back of a dark room." Eyewitness accounts having been devalued, it is now possible to do away with their body too, for we now have something more than their image: we have their real-time telepresence.[107]

The body has become, in a sense, an effect less real – and less credible – than its spectral emanations: the image, and the still more real "real-time telepresence." It is made real only through its subjection to the image machine. "Where the body of the accused is still brought into court," writes Virilio,

> it is encircled by electronic microscopes, mass spectrometers and laser videographs in an implacable electronic circuit. Now that the court arena has become first a movie-projection room, then a video chamber, legal representatives of all stripes have lost any hope of creating within it, with the means at their disposal, a *reality-effect* capable of captivating the jury and audience for whom video recorders, networking systems like Minitel, television and sundry computers have become a virtually exclusive way of gathering information, communicating and understanding reality and moving about in it.[108]

The loss of the ability to "captivate" an audience already under the sway of the vision machine means the disappearance of the old theatrocracy (for which Virilio

seems to feel a kind of nostalgic, if slightly sardonic, affection), overwhelmed by a much more dangerous one:

> How can we hope to pull off the old scenic effects, the *coups de théâtre* that were the pride and joy of our former ring masters? How can we hope to scandalise, surprise, move to tears under the gaze of electronic magistrates that can fast forward or reverse in time and space at will, before a judicial system that is now no more than the distant technological outcome of that merciless *more light* of revolutionary terror, which is, in fact, its very perfection?[109]

Where once the courtroom brought us under the sway of its sensationalist and tear-jerking "scenic effects" and "*coups de théâtre,*" now it transforms the image into an explosion of light that we call the Internet, a thing that has grown from the terror into a "*civilianized* military network, . . . relentless[ly] advanc[ing]."[110] The information bomb is an atomic bomb of sorts, whose necessary outcome is not just the death of the old legal order, but unimaginable catastrophe.

Deleuze's and Virilio's views of a dangerous alliance between theatrocracy and nomocracy are consonant with an entire genre of paranoid digital popular culture that arose in the wake of computerization and intensified with the omnipresence of the Internet. What they share with this genre is a certain conceptual architecture, a vision of a world trapped in a net of omnipresent visual and information networks, seemingly free-floating, multiform, and in the hands of its users, but in fact a space of chilling mutual surveillance, pregnant with catastrophe. In *The Matrix*, for instance (to take what has become the touchstone film of digital paranoia), what appears to be real is actually the product of digitally produced neural simulation: built to keep humans under control, "in a prison that we cannot see or touch," as one character says, "a prison for the mind."

Law – front and center in Deleuze and Virilio – is arguably the not-so-veiled subject of the digital paranoid genre. In *The Matrix*, the evil guardians of the invisible electronic prison seem to have an official monopoly on force. The film uses persistent visual cues to identify the guardians with the Law. They wear Gestapo-like boots and police uniforms, and we, the audience, get recurrent low angle shots of these boots and uniforms, looming at us from above and marching forward, disconnected from any reference to a human wearer. Law, it seems, is allied with a terrifying electronic net that traps the post-modern subject in its invisible strands. In *The Matrix* (as in Deleuze and Virilio), we are in a new legal-digital complex far more insidious than the old military-industrial complex. Law was supposed to stand up to the terrors of the Matrix (as it stood up to the bad guys in the older law-and-order genres), but it turns out to have been sleeping with the enemy. The antinomian, perhaps anarchist, utopia on the other side – implied by the film though never shown – offers liberation simultaneously from media (the vision-machine-

information-bomb) and from law. "I'm going to hang up this phone," says the young hero, Neo, at the end of *The Matrix*, "and then I'm going to show these people . . . a world without you. A world without rules or controls, without borders or boundaries. A world where anything is possible."[111]

These visions of a dangerous theatrocracy – either opposed to the benevolent law imagined by some jurisprudential ideologists, or, on the contrary, in league with the malevolent law imagined by some postmodern theorists and the digital paranoid genre – stand against a very different vision, perhaps best represented by the French philosopher Jacques Rancière. For Rancière (as for Deleuze, Virilio, and *The Matrix*), law is part of a general system of control, which Rancière refers to as "the police," essentially the function that allocates "ways of doing, ways of being, and ways of saying," controlling the distribution of the sensible and determining what is visible and audible, where and when.[112] Against the police power and everything it represents stands the possibility of a democratic utopia that is, like Neo's, essentially anarchist in nature, founded in an "equality [that] destroys all of the hierarchies of representation and also establishes a community . . . without legitimacy, a community formed only by random circulation of the written word."[113]

However, in Rancière's work, unlike in Deleuze, Virilio, and *The Matrix*, theatre and its media heirs are not allied with law, but set in opposition to law, and are crucial vehicles for resisting and disrupting the police power. Much of Rancière's early historical work was preoccupied with 19th-century workers' theatres as sites of resistance to the police power.[114] For Rancière, theatre is both a material-historical site of conflict and a *concept*, one closely associated with democracy: "Theatrocracy [*la théâtrocratie*]," writes Rancière in *The Philosopher and His Poor* (explicitly taking up Plato's discussion of theatrocracy), "is the mother of democracy."[115] For Plato, explains Rancière, the artist's power to judge art – and the ensuing theatrocracy – was the beginning of the descent into chaos. In their applause, the people laid claim not only to aesthetic judgment but also to leisure, both of which, according to Plato, should be reserved for the philosopher. And it is precisely for this reason (explains Rancière) that theatrocracy is an "anarchic principle" – standing against *The Laws* – a principle that is "the precursor of the power of the people."[116]

These views are founded on a theory of the spectator that Rancière has elaborated most recently in *The Emancipated Spectator*. Still-dominant modernist theories of spectatorship such as Artaud's or Brecht's view the spectator as passive and ignorant until transformed by the revolutionary director into an active and enlightened agent of change (just as much late 20th-century Marxist theory viewed the worker as passive and ignorant until enlightened by the revolutionary intelligentsia, a view that Rancière has spent much of his career contesting). For Rancière, on the contrary, there is no need to emancipate the spectator, because the spectator is (much like the worker) always already self-emancipating. Being a spectator "is not some passive condition that we should transform into activity. It is our normal

situation. We also learn and teach, act and know, as spectators who all the time link what we see to what we have seen and said, done and dreamed."[117]

Just as the 19th-century revolutions (forged in the popular theatres of Paris) were revolutions of the spectator, so is the revolutionary digital culture in which we now live. "[W]ith the Internet, blogs, and mobile phones of the network society," explains Rancière in an interview with *Le Monde diplomatique*,

> we also have "flash mobs", ad hoc networks that mobilize in protest – people assemble at prearranged times and places to take part in short and unambiguous demonstrations, disseminate texts and collect lists, videos, and images on the Internet. Then there are the combinations of media and "street" – like the impromptu demonstrations against the treatment of French youth or the Islamists who attacked embassies following the publishing of caricatures – actions that demand to be political by being visible and audible.[118]

For Rancière, the theatrocratic mediasphere, far from being allied with law, is a space of anarchic conflict and liberation from the culture of property. "[T]he Internet ... mean[s] the circulation of words and knowledge which [can] be appropriated by anyone." There "words circulate in a free and desirable way."[119] The exercise of leisure in the digital mediasphere is itself a form of revolt against exploitation and toil: idle, idiosyncratic, and unprofitable expenditure (in Bataille's sense),[120] leisure that flouts the laws of capital. As a place of contingent, mutating, improvised, imaginative participation, the digital mediasphere (read through Rancière) becomes the ideal theatrocratic destabilizer of the police power. Rancière thus helps to reclaim theatrocracy: wresting it not only from Plato's attacks, but also from left-wing ideology critique and neo-surveillance theory. For Rancière, media theatrocracy – rather than being a tool of the society of control (as for Deleuze) or a "*civilianized* military network" that is "the most certain threat hanging over our old democracies" (as for Virilio)[121] – is the foundation for a general emancipation that can – like the revolutionary aesthetics of the 19th-century worker – change the "distribution of the sensible."[122]

While Rancière is preoccupied more with the politics of aesthetics than with law *per se*, his celebration of the power of theatrocracy shares much with the work of Peter Goodrich. In his powerful essay on "Law" in the *Encyclopedia of Rhetoric*, "Europe in America," "Screening Law," and elsewhere, Goodrich has given us a rich account of the threat that both theatre and the image posed to the old legal "graphosphere."[123] The graphosphere's insistence that law was inherently a written thing (as opposed to a visual and performed thing) – its workings occluded by the esoteric textual formula in which it was couched – allowed a literate priestly class initiated in law's mysteries to retain its monopoly on both legal representation and legal interpretation. In the "clerical or professional and internal world of written law" – the "archaic and arcane world of writs and texts, of interminable delays and

prohibitive expense"[124] – authorities could always "hid[e] behind occult writs or invisible prior judgments."[125]

For Goodrich, the visibility of law in the new media "videosphere" has begun to unseat the historical ascendancy of the legal text, reinstating the centrality of image and performance to law's meaning. The videosphere effects a shift "from text to virtual relay, from the letter of the law to the public image of the politics of judgment."[126] The old graphosphere was continually struggling to keep down theatricality and the image. In the new media "videosphere," law is finally "cut loose from the esoteric and occlusive dimensions of its language and its precedents"[127] and becomes "visible and accessible."[128] As cameras begin to dissolve the walls of chamber and courtroom, historic restraints on the filming of trials lift, the major television networks cease to control the representation of law and crime, and myriad images of law emerge from the screen, spectators are freed to peer behind and around the scenes of law, to observe its theatrics from the underside, to reclaim the visual as legitimate source of legal knowledge. The videosphere, for Goodrich, discloses the once-secret, invisible, or only partly visible practices at the heart of the law. It makes of law a "transparent rite."[129]

The renewal of the power of image and performance for law – coming to take precedence over esoteric and occlusive text – has several effects. First, because law in the mediasphere is, as Goodrich writes, "chimerical," "evanescent," "amorphous," "indeterminate,"[130] claims for its stability and coherence seem to lose some of their purchase. This "necessarily breaks down or deconstructs certain of the more ancient truths or dispassionate protocols of legal judgment."[131] Second, the videosphere offers new embodiment to "[a]n abstract and disembodied system of rules," making visible the real, struggling beings who are law's objects, their suffering set against the abstract canons of law.[132] By placing the body front and center as a challenge to expertise and rules, the modern videosphere permits "the construction of identities and ethnicities, sexual preferences and group memberships that escape the laws of gray tarmac and its straight white lines."[133] Third (and most important), the legal spectator – for whom law is now newly visible, and who can now respond digitally to the law's revelations from outside the controlled space of the courtroom – is effectively emancipated, claiming the law for her own and becoming a legal actor: posting videos of crimes and trials, blogging, casting jury votes, judging, staging media trials in miniature. In all these ways, the modern videosphere "change[s] the political meaning of law," reintroducing the "play of life against the dead letter."[134]

If this liberation does not quite dissolve law *qua* law, is does attenuate its power. As Goodrich writes (paraphrasing Alain Supiot), with the advent of "new media and the chimerical and evanescent public spheres generated on television and the web, [l]aw . . . seems to disappear into an amorphous and indeterminate global realm of html, of universal text, and private computer portals,"[135] created and uncreated by trickster now-you-see-me-now-you-don't magicians of the videosphere. The government subjects us to surveillance, and we surveil it back with our cell phone cameras,

catching the law with its pants down and posting the pictures (anonymously) online. The juridical videosphere's resistance to regulation unmoors it from the hegemonic state and its singular police power. Subverting the uniform and totalizing, it renders law fragmented, pluriform, non-linear, open-ended, regulation-defying, hyper-ludic and unbounded. "Economics governs, law declines, the symbolic collapses."[136] If the economics that drive the videosphere destroy the unified symbolic order that structured the Law (the Law of the Father made manifest in the law of the paternal state), its low cost of production and breakdown of the distinction between producers and consumers at the same time make it seem free from the singular moneyed interests that drove the old media. We may still be the videosphere's subjects. But, as we post our home videos and blog through the night, we are also the sovereigns of its infinitely fragmented sub-domains, creating ever-shifting miniature worlds in the terrain of the hyper-real.

SCENES FROM THE LEGAL MEDIASPHERE

On CNN.com, a streaming headline flashes: "Breaking News!" "Kercher killer convicted; co-accused face trial." On November 2, 2007, in a villa in Perugia, a 21-year-old British exchange student named Meredith Kercher was found in her bed, half-naked, strangled, with 43 wounds, her windpipe crushed, and her throat slashed. Prosecutors later claimed that the killing had been part of a "drug-fueled sex game" with Kercher's 20-year-old American roommate Amanda Knox, Knox's Italian boyfriend 23-year-old Raffaele Sollecito, and their 20-year old friend Rudy Guede (originally from the Ivory Coast but living in Italy since he was a young boy). According to the prosecution, Sollecito held Kercher by her wrists, while Guede sexually assaulted her, and Knox repeatedly tortured her with a knife. When Kercher resisted, Sollecito held her down, Guede strangled her, and Knox stabbed her in the throat. Afterward, they staged a break-in to cover their tracks, shattering a window and stealing cash, credit cards, and cell phones. Rudy Guede fled to Germany, but was quickly located and brought back to Perugia, where he opted for a fast-track trial. In 2008, he was found guilty and sentenced to 30 years in prison. In December 2009, Sollecito and Knox were convicted of murder and sexual assault, and sentenced to 25 and 26 years each. In October 2011, after Sollecito and Knox had served almost four years, the appeals court overturned the convictions, largely because the evidence turned out (on closer examination) to be extremely weak. (It was also noted that Chief Judge Giancarlo Massei had used the word "probably" 39 times in his report of the trial.) On January 30, 2014, the Italian Supreme Court returned another guilty verdict, and Knox and Sollecito were again sentenced (Knox to $28\frac{1}{2}$ years, Sollecito to 25 years. They are both planning to appeal.)

The case – with its bad middle-class boys and girls, sex, drugs, and videotape, and infinitely bloggable indeterminacy – was (unsurprisingly) subject to a media blitz: looping and repetitious minute-by-minute reports on mainstream news sites;

ever-shifting spin. Almost instantly after the murder, images and videos were posted online: a police video of the crime scene; a virtual tour; the security-camera video of two indistinct figures (said to be Kercher followed by Guede) entering the cottage that night. Several books emerged soon after the events, along with eight documentaries and the true-life fiction film, *The Amanda Knox Story* (released in 2011).[137] Googling the name "Meredith Kercher" brings up 9,900,000 hits (at the time of writing); "Amanda Knox" brings up 29,200,000 hits. There were so many journalists present at the start of the Knox and Sollecito trial that some had to be seated at the defense table. Because of this overcrowding, and to prevent the disruptions it threatened, Judge Massei arranged for closed-circuit television during the initial proceedings, broadcast from the courtroom into the press room, so that journalists for whom there was no space in the courtroom could nonetheless watch the trial "live."

In addition to being inherently tabloid-worthy, the case came provided with a theatrical backdrop thick with popular culture imagery. The public prosecutor Giuliano Mignini (known for his preoccupation with diabolical sects and Satanic rituals) emphasized that the killing took place the day after Halloween, All Saints' Day (Hallowmas or All Hallows Day) and just before All Souls', when the night is overtaken by youthful bacchanal, mingling traditions of American Halloween, Italian masquerade, and pagan festivals of the dead. The night before the murder, Meredith Kercher had attended several Halloween parties dressed as a female vampire. Prosecutors discovered that Sollecito had Japanese manga comic books in his bedroom, including *Blood: The Last Vampire* (sequel to an animated film of the same name, and prequel to a 50-episode television series and a series of PlayStation video games), depicting the ritual murder of female vampires on Halloween night. Mignini theorized that the killing was part of a Satanic ritual orgy gone wrong. The Internet went wild. It was said (among other things) that the ritual was an attempt to reenact the violent images the three murderers had seen on their screens – an attempt to experience in reality the kind of "extreme sensations" that the mediasphere offered only virtually.

While the media seemed thus criminogenically involved in the crime, it was also a source of damning evidence. A day after Kercher's body was found, a video showed Knox and Sollecito kissing (a kiss that – rendered in slow motion for viewers hungry for lurid images – appeared to be long and lingering): "the question of Ms. Knox's sexual appetites, and how far she will go to gratify them, go to the heart of this disturbing case," explained Peter Popham of *The Independent*.[138] Knox's MySpace page contained a story she had written on the drugging and raping of a young girl, which, along with her own sexy mug shots, was seen as a key to her life as a sociopath. YouTube videos began to play, endlessly looping: Rudy Guede, high on something, chanting, "I'm a vampire, I'm Dracula. I'm gonna suck your blood";[139] Amanda Knox drunk and gesturing chaotically toward the camera, while in the background someone laughingly calls someone else a "dirty Jew."[140] At the same

time, Knox became a media star: "The vivacious, sexually adventurous, guitar-playing student from Seattle has become a minor celebrity in Italy, ranked in a poll in December 2008 as one of Italy's '[people] of the year,'"[141] reported the *Huffington Post*. In 2009, Knox beat Sarah Palin in popularity and placed only one spot behind Barack Obama. In 2011, she was identified by *Time Magazine* as one of the "People Who Mattered."

Unsurprisingly, the judges, lawyers, and parties repeatedly attempted to curtail media coverage. Trying to manage her media image, Knox sued to halt sales of an Italian tell-all book called *Amanda e gli altri* (*Amanda and the Others*), which she claimed was part of a smear campaign that would prejudice the jury, eventually winning a settlement from the author and publisher. The Kercher family had requested that both trials be held behind closed doors (Italian law provides that trials dealing with sexual assault may be closed to the public.) Judge Massei barred cameras from the courtroom. But he nonetheless ruled that the trial would remain public (though some of the more sexually graphic portions would be closed), reinforcing this ruling in his provision of closed-circuit cameras for the press room. Moreover, new technologies allowed regular circumventing of the ban on cameras during pre-trial hearings and the trials themselves. There were videos shot from above of Hekuran Kokomani (the star witness for the prosecution, who was thrown out of court because his testimony directly contradicted half a dozen known facts). There was an illegal cell phone video of Amanda Knox in the courtroom, and, even after the judge threatened prosecution of anyone violating the ban, another cell phone video of her was widely circulated. Although it was very grainy, showed only her hands, and had no audio, it was subject to minute Internet analysis: why were her hands twitching throughout the trial? Was that twitching a symptom of a disturbed mind? At the same time, while the court banned video reporting, the prosecution was allowed to show an animated reconstruction of the murder: cartoon versions of Knox, Sollecito, and Guede entered Kercher's bedroom and attacked. As the animated figures stabbed her, real photographs of Kercher's wounds flashed on the screen.

Media outlets seem to thrive on the restrictions on media, for restrictions raise the value of the video coverage actually obtained. "This image … shows American college student Amanda Knox in court in Perugia, Italy, on the first day of her sexual assault and murder trial, Jan. 16, 2009," and (brags the CBS news site), it was "taken from *exclusive* CBS News video."[142] At the same time, while loudly defending limits on media as safeguards for law, judges, lawyers, police, and other legal officials routinely leak information and images to the press. (Many of the "facts" about the case were damning pieces of evidence leaked from the prosecutor's office.)

Media restrictions are thus useful to media insofar as they raise the value of video coverage actually obtained. But they also serve a larger ideological purpose: giving voice to the insistent opposition between trial by media and trial by law. This is apparent in the discussion of the Knox case in the mediasphere itself: "Come on,

people. Can't you wait until she's proven guilty? Don't let the media influence your judgment, you know better than that, don't you? Let the judicial system take its course, will ya?" writes one commentator.[143] "I'm pleased the case is at the pretrial hearing stage, so that the three suspects are being tried in the courts now and not so much in the media."[144] Law is the purveyor of evidence, agent of truth. Media is the agent of rumor, hysteria, emotion, lies. At the same time, declaring against trial by media – declaring against legal theatricality – is itself part of the theatre of law. So, while some legal actors are just media actors *tout court* (Johnnie Cochran in the O. J. Simpson trial), other legal actors (Judge Massei, Prosecutor Mignini) are legal actors *against acting*. Declaring that there will be no cameras in the courtroom, criticizing cell phone videos, denouncing the "media circus" involves one in a highly theatrical performance of anti-theatricality. In effect, to declare against the theatricality of media is to participate in it, and thus to declare against oneself. "This is why I hate the news," writes one Internet commentator, in a moment of wry self-awareness, "it's mostly hearsay, unsubstantiated, and now I am caught up in spreading it. At least Geraldo Rivera isn't reporting on it . . . yet."[145]

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Another scene of law. In the 6.5-minute video, it is night. A handcuffed man is sitting in front of a car, hunched over, with his knees crossed, by the side of a two-lane road, on which a car occasionally passes. A police officer is walking away from the man toward his patrol car some distance away, calling back over his shoulder:

> You'll get run over, you can't sit on the side of the road.
> *Man*: (*Weeping*) My life would be better if I was dead.
> *The officer reports the incident on his police radio and then walks back to the man*.
> *Officer*: Mr. Buckley, stand up. Get up. Get up!
> *The man is still weeping. The officer tries to pull him to his feet*.
> *Officer*: Mr. Buckley, get up, ok? Trust me, you don't want me to have to get you to the car myself, ok? Stand up, ok? Are you going to stand up with me? I'm counting to three and you're going to the car, ok? One, two, three.
> *The officer tries again to pull him to his feet, but the man somehow slides a few feet further from the road. His weeping intensifies*.
> *Officer*: [*Inaudible*.] Hey, do you understand me?
> *Man*: Go ahead. (*Weeping*)
> *Officer*: Mr. Buckley, get up. [*Places a taser against his back*]. I'm fixing to tase you. Get up off the ground.
> *Man*: I don't care anymore. Tase me.
> *The taser is heard clicking repeatedly, for five long seconds, as the man screams and his body is rolled over until he is flat on the ground. Each time the man rolls, the officer presses his taser again against the man's back. The officer goes*

> *to his car, calls for backup ("No need to 10–18" [i.e. hurry]) and returns. The scene repeats itself twice. Each time the tasering lasts longer: five seconds, six seconds, seven, the man's body flailing, his screams escalating.*[146]

The incident shown in the video, shot by Deputy Jonathan Rackard's police car dashboard camera, took place in Washington County in northern Florida on March 17, 2004. The crime for which Deputy Rackard had arrested Jesse Daniel Buckley was speeding and refusing to sign the traffic citation. Buckley was 23 years old, lanky verging on gaunt, in the throes of severe family troubles, homeless, destitute, and suicidal. When Rackard stopped his car, Buckley was already in extreme distress. After warning Buckley that he would be arrested if he failed to sign the ticket, Rackard handcuffed him and led him toward the front of the car, where Buckley collapsed into a seated position and began sobbing. Each time the handcuffed Buckley rolled to get away from the taser, Rackard reapplied the live electrodes to his chest and back, discharging 50,000 volts for every 5-second tasering. The tasering left Buckley with 16 burn marks on his back, and severe scarring and keloid growth around some of the burns.

Buckley pleaded "no contest" to his conviction for refusing to sign the ticket and resisting arrest "without violence." But Rackard was sued for excessive use of force. The Eleventh Circuit heard the case and rendered a decision on September 9, 2008: Rackard, it concluded, should have been granted summary judgment and the case dismissed.[147] Although electrocution by taser is extremely painful, the court reasoned, Buckley was not fundamentally harmed. "If Deputy Rackard had used more severe techniques (beaten Plaintiff's head with a club or shot him, for example), this case would be a different case."[148] But here, "[n]othing showed second-order physical injuries or that the taser burns required medical attention." Moreover, "the deputy holstered his taser after using it."[149] In short, "[t]his case is not one where a compliant arrestee was abused for no good reason."[150] "[I]n the light of all the circumstances," the court concluded, "Deputy Rackard's use of force was not unconstitutionally excessive."[151]

Judge Beverly Martin, a Georgia District Judge sitting on the Eleventh Circuit by special designation, disagreed. "I write to express my view that the Fourth Amendment forbids an officer from discharging repeated bursts of electricity into an already handcuffed misdemeanant – who is sitting still beside a rural road and unwilling to move – simply to goad him into standing up."[152] The question in the case, Martin, argued, was "whether a taser gun may be used repeatedly against a peaceful individual as a pain-compliance device – that is, as an electric prod – to force him to comply with an order to move."[153] As she explained, the video of the incident – which had been entered into evidence and was officially part of the record – illustrated "that Mr. Buckley was in no condition to run, never kicked," and his "only movements after he collapsed on the ground were in response to each discharge of the taser gun."[154] A year earlier, in *Scott v. Harris* (2007), the Supreme

Court had taken the unprecedented step of incorporating a video not merely into the record but into the *opinion*.[155] Following *Scott*, Martin argued that the Buckley opinion ought to include the dashcam video, which showed clearly Buckley's initial passivity, his helpless sobs, and then his body flailing from the shock of the electrodes. Martin's proposal was ignored. The opinion was duly promulgated *sans* video. But – in a bid to erode the boundaries between the legal opinion and the opinions of the mediasphere – Martin proceeded to post it on YouTube.

Before it was removed from YouTube, the video was watched more than 23,000 times. More than 150 text comments were posted in response to it. "The cop had an orgasm in his pants the third time he tasered the obviously distressed guy. ... Here's to hoping us little guys survive the Tazer Age™." Or, "It is in the best interest of all parties that the officer maintain control during any arrest or someone is going to get hurt. ... Crybaby endangers himself and others by creating a chaotic situation and the rule of law steps in and restores law." Or (from a friend of Buckley), "I love you Jesse, hang in there hon. ... Jesse is one of my best friends I could of lost that night cause of that man. ... I['m] with you Jesse..hang in there Justice is coming! FINALLY." Or, "Think cops have too much power and not enough control? I'd like to see how we fare for an HOUR without them. I do nothing wrong so I have nothing to fear from them." Or, the lapidary "Pigs suck." Many of the comments criticize Buckley for resisting the law. Many also worry about whether Martin overstepped judicial boundaries in posting the video. "Is Judge Martin's decision the start of a new precedent? Will courts start making available all of the underlying evidence in a case online? And is it appropriate for [her] to make the material available where the court won't?"[156]

Although the Buckley case had nothing like the tabloid allure of the Meredith Kercher murder trial, one can nonetheless find in its Internet paratexts the same opposition between trial by law and trial by media, or (as one journalist put it) "the court of law" and "the court of public opinion – courtesy of YouTube."[157] And, as in the Kercher case, there was the same combination of perverse spectatorial pleasure in the sheer theatre of the event's media texts ("[t]hat was the funniest shit I have ever seen") and self-legitimating legalism (both for and against the officer):

> This officer has committed an act of TREASON, he has broken his oath to the constitution. Amendment 8 US Constitution. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Treason, which in many cases is punishable by DEATH. That oath is serious.

Or, from another YouTube Internet commentator:

> Hey hippies ... the court does not agree with you. Chief Judge J. L. Edmondson, the 11th circuit appellate, ruled: applying Taser prongs

> in an effort to motivate a nonviolent subject to stand up was not excessive force under Section 1983 of the federal Civil Rights Act; a single officer confronting a non-compliant suspect "need not . . . wait idly for backup to arrive to complete an otherwise lawful arrest."[158]

This legalism is accompanied by a suspicion that the evidence might be tainted by its inherent drama. Some Internet commentators are convinced that Buckley (shot repeatedly with 50,000 volts of electricity) was somehow faking his pain, performing for the camera: "Interesting how he stops his crying and carrying on the INSTANT the 2nd Officer arrives. Hmmmm, I wonder if he was playing . . .." Or, "The man could be feigning so the cop is off guard, there are a hundred things this man could have done to the officer."[159] This view turns out to be independent of the particularities of the Buckley video. There are now large numbers of taser videos on YouTube. In these videos, the effects of the taser are remarkably uniform: almost invariably, as the body is hit, it heaves spasmodically, is thrown several feet, and then falls to the ground; the person being tasered screams in pain and terror. Despite (or perhaps because of) their similarity, these videos provoke similar comments. For instance, in response to a 2007 video of the "don't tase me, Bro!" incident, in which Andrew Meyer, a University of Florida student, asked presidential candidate John Kerry a series of increasingly heated questions about the election, and was eventually silenced by police tasers, one Internet commentator writes:

> **Was He REALLY Tasered or was he Faking it?**
> Sorry, I watched the whole video. . . . I don't believe this guy was tasered at ALL. The cop actually says he was never tasered. After the guy screams he has been tasered (ow, ow, ow!) he WALKS out of the room (they don't carry him) all the while SCREAMING his head off. Wow, not very effective tasering! . . . Then he goes on screaming that the cops are going to take him away and KILL him. Personally, at this point he was making a huge scene it seemed just to get attention including making the accusation of being tasered.[160]

Yet one can hear the six police officers who are subduing him warn him that he will be tasered, followed by the familiar sound of the taser. (Police officers later acknowledged the tasering.)

It is well-known that tasering regularly causes lasting burn scarring, and it has in some cases caused death.[161] Why, then, are viewers convinced that taser victims are faking their screams? That such videos are theatrical farces? One answer, of course, lies in the fact that some crime and justice videos are, in fact, staged. Another may lie in the general unreality of the taser, which looks and acts like a video-game weapon, made for pretending to shoot the outlaw dead. He

falls, but no one has really been harmed, it seems – as in the playground or the theatre. But spectators of the mediasphere seem more generally to have inherited a kind of trickle-down hermeneutics of suspicion: once the property largely of literary critics and professional theorists of culture; now a general property of cyberculture. This general skepticism is intensified in the legal arena, where truth is always at issue, and thus its possible fabrication always at the forefront. When Buckley's videotaped screams become legal evidence, they become suspect. At one point, Rackard himself (or someone posing as him) posted on the YouTube comments section: "I wish the attorn[e]y would have posted the ENTIRE video."[162] The effects of skepticism about video evidence were already all-too-apparent in the first trial for the beating of Rodney King in 1991, in which the defense famously succeeded in disabling the emotional impact of the videotape by slowing it down to a frame-by-frame analysis, thus casting doubt on what it seemed to show (were the officers really beating King mercilessly, or merely lifting their batons in self-defense? Did not King – 6 foot 3 inches and black – look terrifying?).

While the suspicion that Buckley and others might be faking their screams or that the video may falsify events thus reflects a deep mistrust of the legal mediasphere (theatrical, mendacious), it also further underwrites the self-legitimating legalism that we have seen built into the opposition between trial by media and trial by law. Those invested in seeing through the theatre of the media – unmasking the media's theatrical feints – do so in part in the name of truth, but in part in the name of law. Seeing through theatrical lies can be a marker of amateur legal virtuosity:

> Even if the officers were liable under the Fourth Amendment, formal legal principles should not have allowed the taser video to be admitted as evidence. A courtroom isn't the place for this kind of drama, which gets in the way of correct legal deliberation. Buckley's recorded screams are highly prejudicial, and the video's admission was highly improper.[163]

Amateur legal virtuosity of this sort tends to take on a formalist cast, both as a measure of expertise and as a counterweight to the media's "hysteria," its excessive, uncontrolled, and irrational emotionalism. In this, antitheatricality allies itself (as it does historically) with legalism as principle: the more one can unmask legal theatricality for what it is (suggest the upholders of the law), the more faithful one is to the law and to the nomocracy for which it stands.

CONCLUSION

In the conjunction of law's exploitation of new media and its resistance to them, we can find a replay of Plato's ambivalent attitudes toward the theatrocratic world he

feared. For the blogosphere, theatrocracy – old and new – threatens law as it ought to be: subordinating the concern for justice to the drive for narrative and scopic satisfactions; displacing the rule of expertise with the rule of the vision machine; driving a deluded populace invisibly controlled "by a frantic and unhallowed lust for pleasure"[164] to "pronounce judgment by its clamors."[165] Theatre – the "rival artists and rival actors" who pitch their booths in the electronic marketplace, and address the populace "on the same issues" as law "but commonly"[166] – threatens law from the outside by competing with it and undermining its monopoly on judgment. At the same time, it threatens law from the inside, degrading its practices and rendering it as histrionic and mendacious as theatre itself. In reaction, law acts, on the one hand, as theatre's rival: attempting to harness the power of theatre as its own, propelling itself into the mediasphere to publicize and dramatize its gospels. On the other hand, denying and repressing its own theatricality, law asserts a countervailing nomocracy fitting its ostensible dignity.

For Deleuze and Virilio, rivalry has become merger: law has leagued itself with theatre to exploit its power, and the theatre of law has become indistinguishable from the digital media that serve it, in a systematic collaboration, in which law draws on theatre's power to produce together a society of control. Here, the legal subject is under continual surveillance, both object of the perpetual vision machine and controlled by its imaginary reality. For Rancière the theatrocrat, on the other hand, theatre stands against the police, in a war between nomocracy and theatrocracy in which, if theatre does not destroy law, law will destroy theatre.

But what – and where – is this vaunted nomocracy, this *eidos* of the law: dispassionate, rational, perfectly unspectacular? Perhaps true nomocracy is reserved only for the production of administrative regulations, corporate contracts, tax rulings, or the handing out of parking tickets. But even the most excruciatingly boring law can be produced in the crucible of mass emotion, tinged with the extremities of passion, verging on the histrionic. All the more so any police encounter, trial, or punishment. Even the most authoritarian legal machinery is messy, prone to error and embarrassment, more like the Keystone Cops than the perfectly choreographed blue-suited killing machines in *The Matrix*. Perhaps if true nomocracy exists it exists only behind the curtain of the law, produced through a divinely dispassionate sacerdotal ritual performed by judicial high priests, whose neutered vision cannot degrade it and who have no emotions to taint it. Maybe it has never been seen because its very exposure would instantly transform it into theatrocracy. This would mean, in a sense, that nomocracy exists only as an *imago*, made visible only in the mirror of theatrocracy. It would mean that nomocracy – far from being contaminated by theatricality – is created by it, an otherwise invisible and phantasmagorical other, but for the antithetical theatricality that breathes life and form into it. Nomocracy does not need theatricality merely as something to be against (as, for instance, anti-war activism needs war) or as an object for its expertise (as, for

instance, anti-global-warming needs global warming). Nomocracy needs theatricality as the vehicle of its creed, without which it would be invisible and inaudible.

Watching legalism thrive in the digital mediasphere, one comes to realize how parasitic nomocracy is on theatricality. Theatricality does not (as Almog puts it) erode law's "potency and validity," its "specific meaning," its credibility,[167] or, as Alain Supiot suggests, cause "law [to] declin[e]" while "the symbolic collapses,"[168] or, in fact, in the least attenuate its power. On the contrary, it augments law's opportunities. The ever-present media may seem to some to pervert law, but, as we have seen, its presence means more law in more places more of the time. Law's struggle with media theatricality produces a plethora of new issues for judicial pronouncement – issues of a highly media-genic kind: will cameras be allowed in the courtroom, or will they not? could the dashcam video of Rackard tasering Buckley become part of the judicial opinion? is the YouTube video of a drunken Amanda Knox admissible as character testimony? At the same time, legal theatricality produces a countervailing antitheatricality ("what a media circus!" "what a farce!") that serves as a buttress for the claims of nomocracy and is supremely effective at making legal subjects internalize law as their very own. Without the pleasure of condemning a trial for its failure to stand fast against the depredations of theatre – the pleasure of one-upping the law's official masters of ceremony and proving oneself more-legal-than-thou – law would lose half its charm. Far from being bad for nomocracy, theatricality appears to be not only good for it, but also necessary to it. One senses that Plato knew this, and that his distinction between theatrocracy and nomocracy was merely an ideological ruse. For his nomocracy was always already in part theatrocracy ("we [are] rival artists and rival actors," he tells the tragic dramatist). It was always already shot through with the theatricality that it also disavowed.

If the opposition between theatrocracy and nomocracy is false, however, it is nonetheless integral to the theatre of law, internalized as part of – indeed essential to – the experience of legal spectatorship. This opposition operates to sustain the ideology of law's separateness (its "distinctive temporal and spatial borders," as Almog puts it),[169] and thus the distinction between law and not-law. Much of law's legitimacy is, in fact, vested in this distinction, but the barriers are difficult to maintain. What is it that makes Judge Judy, or the Buckley YouTube video, or a virtual tour of the Meredith Kercher crime scene not part of law proper? Is Rackard's dashcam film part of law in the minutes he was tasering Buckley, but not part of law when posted on YouTube? If it belongs inside the courtroom for law but outside for media, where does the courtroom end and the mediasphere begin? During the trial of Rudy Guede, officials put paper up on the courtroom windows with masking tape, in a low-tech dramatization of the principle of judicial secrecy. Were the judges and other spectators inside the courtroom clearly distinct from those who peered through the cracks in the masking tape, and these clearly distinct from those who watched Guede walk through the halls of the courthouse on their computer screens?

Are these severable from law proper merely because they happened outside the walls of the courtroom, or appear as images thrown into the mediasphere?

To do battle against "media trials" or the mediatization of law is to buy into law's ideology about itself: the idea that law is autonomous from other spheres; the idea that law is *not* theatre, and indeed that its legitimacy is grounded in its successful resistance to the temptations of theatricality. And it is a losing battle. Law will never resist the temptations of theatre, because law's very being is a theatrical one. But it is a battle that will continue to be waged because antitheatricality is equally central to law: an essential self-authenticating mechanism. And, as it turns out, the fact that law is a hopelessly theatrical medium may not be the "hell of unending misery" that Plato envisioned. For theatricality, passion, and even hysteria do not necessarily vitiate law's decisions. Sometimes, the more histrionic, the better (one cannot help but think of the Chicago 7). This does not mean that – unregenerate theatrocrat though one may be – one must celebrate all moments of high legal theatricality: the Salem Witch Trials, or the Stalinist show trials, or the grotesque theatricalization of torture in Abu Ghraib come to mind. But it is not their theatricality that is wrong; it is the substance of what they've done.

1. Plato, *Collected Dialogues of Plato*, ed. Edith Hamilton and Huntington Cairns (Princeton, NJ: Princeton University Press, 1961), 1294–5 (*Laws*, trans. A. E. Taylor, Bk 3, 700a-1c).
2. Ibid., 1294 (*Laws*, Bk 3, 700a-1a). See Plato's similar critique of the reign of pleasure in tragedy (ibid., 285-6, *Gorgias* 502b-3a), and his discussion of the judging of musical and poetic contests earlier in *Laws*: "A judge who is truly a judge must not learn his verdict from the audience, letting himself be intimidated into it by the clamor of the multitude and his own incompetence, nor yet, out of cowardice and poltroonery, weakly pronounce a judgment which belies his own convictions. . . . [T]he judge takes his seat not to learn from the audience, but to teach them, and to set himself against performers who give an audience pleasure in wrong and improper ways." At present, Italy and Sicily "leav[e] things to the majority of the audience and decid[e] the victory by their votes, a practice which has corrupted the poets themselves – since their standard in composition is the debased taste of their judges, with the result that it is actually the audience who educates *them* – and equally corrupted the tastes of the audience"; ibid., 1256 (*Laws*, Bk II 659a-c).
3. Although "nomocracy" does not appear in Plato's lexicon, it has been regularly used to describe the regime envisioned by Plato's *Laws*; e.g., Leo Strauss, *The Argument and the Action of Plato's Laws* (Chicago, IL: University of Chicago Press, 1975), 71.
4. Ibid., 1387 (*Laws*, Bk 7, 817b-c). See the related discussion of Plato's banishment of the poet from the city in Kenji Yoshino, "The City and the Poet," *Yale Law Journal*, 114 (2005): 1835–1896. See also Martin Puchner's helpful discussion of Plato's attraction to and rivalry with theatre in Puchner, *The Drama of Ideas: Platonic Provocations in Theater and Philosophy* (New York, NY: Oxford University Press, 2010), esp. 3-5. I am also indebted – here and in my larger project – to Peter Goodrich, "Law," *Encyclopedia of Rhetoric*, ed. Thomas O. Sloane (Oxford: Oxford University Press, 2001), 417–26, with his discussion of law and theatre's simultaneous proximity and antagonism.
5. Friedrich Nietzsche, *The Birth of Tragedy and the Case of Wagner*, trans. Walter Kaufmann (New York, NY: Vintage, 1967), 182. See also the discussions of "theatrocracy" in Jacques Rancière, *The Philosopher and His Poor*, trans. John Drury, Corinne Oster and Andrew Parker (Durham, NC: Duke University Press, 2003), esp. 45-7 (discussed below); and Samuel Weber, "Theatrocracy; or, Surviving the Break," in *Theatricality as Medium* (New York, NY: Fordham University Press, 2004), 31–53.

6. The ABA Canons of Professional and Judicial Ethics called for the ban in 1937 in the wake of the Lindbergh trial. The ban was adopted in all states except Texas and Colorado. A decade later Congress ratified Rule 53 of the Federal Rules of Criminal Procedure, banning cameras in the federal courts. In 1952, the ABA ban was expanded to include television cameras.
7. *Estes v. Texas*, 381 U.S. 532 (1965); *Sheppard v. Maxwell*, 384 U.S. 333 (1966).
8. *Estes*, 381 U.S. at 538.
9. Ibid., 536.
10. Ibid., 568 (Warren, J., concurring).
11. Ibid., 553 (Warren, J., concurring).
12. *Sheppard*, 384 U.S. at 355.
13. *Estes*, 381 U.S. at 571 (Warren, J., concurring) (quoting Gerhard O. W. Mueller, "Problems Posed by Publicity to Crime and Criminal Proceedings," *U. Pa. Law Review*, 110 (1961): 1–26, 1, 6).
14. *New York Times*, June 12 (1966): 218.
15. *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966).
16. Ibid., 356 (citing *Sheppard v. State of Ohio*, 135 N. E.2d 340, 342 (1956)).
17. *Estes v. Texas*, 381 U.S. 532, 571 (1965) (Warren, J., concurring) (quoting Mueller, "Problems Posed by Publicity," 6).
18. Ibid., 593 (Harlan, J., concurring).
19. Ibid., 529 (majority opinion).
20. Ibid., 574 (Warren, J., concurring).
21. Ibid., 546 (majority opinion).
22. Ibid.
23. Ibid., 592 (Harlan, J., concurring).
24. Ibid., 574 (Warren, J., concurring).
25. Ibid., 548 (majority opinion).
26. Ibid., 546.
27. Ibid., 568 (Warren, J., concurring).
28. Ibid., 549 (majority opinion).
29. Ibid., 547.
30. Ibid.
31. Ibid., 572 (Warren, J., concurring).
32. Ibid., 572.
33. Ibid., 574.
34. Ibid., 540 (majority opinion).
35. Ibid., 574 (Warren, J., concurring).
36. *Sheppard v. Maxwell*, 384 U.S. 333, 350–51 (1966) (quoting *Cox v. Louisiana*, 379 U.S. 559, 583 (1965)) (Black, J., dissenting).
37. Ibid., 350 (quoting *Chambers* v. *Florida*, 309 U.S. 227, 236-237 (1940)).
38. Ibid., 351 (quoting *Cox v. Louisiana*, 379 U.S. 559, 583 (1965)).
39. *Estes*, 381 U.S. 532, 587 (Harlan, J. concurring).
40. Ibid., 536 (majority opinion).
41. Ibid., 574 (Warren, J., concurring). Similarly, see the language of "dignity" in the 1937 ABA report: "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings [and] degrade the court"; R. T. McCracken, *Supplementary Report of the Standing Committee on Professional Ethics and Grievances* (Chicago: American Bar Association, 1937).
42. *Estes*, 381 U.S. at 540 (majority opinion).
43. Ibid., 549.
44. Ibid., 568 (Warren, J., concurring).
45. Ibid., 585–6 (Warren, J., concurring).
46. Shulamit Almog, *How Digital Technologies are Changing the Practice of Law* (Lewiston: Edwin Mellen, 2007), 10.
47. *Estes*, 381 U.S. 532, 585 (Warren, J., concurring).
48. Plato, *Collected Dialogues*, 1294–5. See the discussions in Robert Reiner, "Media-Made Criminality: The Representation of Crime in the Mass Media," in *The Oxford Handbook of Criminology*, ed. Mike Maguire, Rod Morgan and Robert Reiner (Oxford: Oxford University Press, 2007), 302–37; Yvonne Jewkes, *Media & Crime*, 2nd ed. (Los Angeles, CA: Sage, 2011), 73–97; and Ray Surette, *Media, Crime, and Criminal Justice: Images, Realities, and Policies*, 3rd ed. (Belmont, CA: Thomson Wadsworth, 2007), 69–88. For "a reckless . . . religion," see Plato, *Collected Dialogues*, 1295 (Bk 3, 701a-b).
49. This kind of argument took several dominant forms. The first could be called the theory of totalitarian enchantment. Associated largely with the Frankfurt School and formulated in the face of the rise of Fascism, strongly influenced by the sociology of crowd behavior and Marxist ideology critique, and inflected by the language of brainwashing and indoctrination during the Cold War, it addressed state rule through mass media, with its ability to mesmerize the nation. The second could be called the theory of the media opiate. Associated largely with the British and US post-Vietnam era Left (for instance, Noam Chomsky and Stuart Hall), and strongly Marxist inflected, it similarly cast the modern media as an arm of state rule, but here as an opiate of the masses, used in the service of distracting from atrocities abroad and failures at home. The third could be called the theory of the master narrative and the stock character, which views media as representing

stock characters who need to be captured by law (unruly women, outsider criminals, etc.) Continuing to dominate much contemporary crime and media theory, it casts the media as a machine for processing and disseminating narratives structured to reinforce national and class ideologies, and to justify laws and policies excluding, controlling, and dispossessing aliens and "others" (in the language of the 1990s).

50. For instance, Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, 2nd ed. (New York, NY: Vintage, 1995), 198.
51. Debord, *La société du spectacle* (Paris: Buchet-Chastel, 1967).
52. Weber, "Theatrocracy," 52. For Weber, the media sutures up ruptures in coherent narratives of meaning, subliminally suggesting that "to survive the coming 'breaks'" (commercial breaks, tropes for the larger shocks of delocalization) "it may be prudent not to question their totalizing, framing function"; ibid., 53. Weber explicitly brings the term "theatrocracy" to bear on mass media, and speculates that "[a]ll of this is changing . . . with the Internet" (53), but his arguments seem to emerge largely from the television era and are very much in line with those of post-war left media critics.
53. For debates about the newness of new media, see, for instance, Wendy Hui Kyong Chun and Thomas Keenan, ed., *New Media, Old Media: A History and Theory Reader* (New York, NY: Routledge, 2006).
54. For a rich discussion, see Sheila Brown, *Crime and Law in Media Culture* (Buckingham: Open University Press, 2003).
55. 29A Am. Jur. 2d *Evidence* § 993 (2011): "[I]t is well established that motion pictures and videotapes, when properly authenticated and relevant to the issues in the case, are admissible in evidence, within the discretion of the trial court" (internal footnotes omitted).
56. Restraints against broadcasting began to erode in the 1970s. For instance, *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) held that any prior restraints on expression come with a heavy presumption against their constitutional validity. Stressing the importance of First Amendment free speech rights, *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976) held that pretrial publicity – even pervasive, adverse publicity – does not inevitably lead to an unfair trial. In *Chandler v. Florida*, 449 U.S. 560 (1981), the Supreme Court ruled that television (and photographic) coverage of criminal trials does not necessarily violate due process, opening the door to the widespread broadcasting of trials in state courts. Justices Stewart's and White's concurrences called for overruling *Estes*, which many consider to have been effectively overruled in *Chandler*. For an excellent overview of the history and current state of rules on media in the courtroom, see Kenneth Jost, *Cameras in the Courtroom*, 21 CQ Researcher, no. 2, January 14 (2011): 25–48.
57. The broadcasting of federal criminal trials is prohibited under Federal Rule of Criminal Procedure 53. In *Hollingsworth v. Perry*, 130 S. Ct. 705 (2010), while stating that it was not "expressing any view on whether [federal] trials should be broadcast" (ibid., 706), the Court did implicitly affirm the ban on cameras in federal courtrooms (ruling against the real-time broadcasting of a high-profile gay marriage trial to other federal courtrooms around the country). However, according to M. Kelly Tillery, 35 complete federal civil trials had been broadcast by 2001; M. Kelly Tillery, "Canceled: The End of Televised Federal Trials," *The Philadelphia Lawyer*, 74, no. 1 (2011): 34–37. Between 1991 and 1994, the Federal Judicial Conference ran a pilot program permitting camera coverage in select civil trial and appellate courts. The FJC decided not to authorize federal courts generally to allow camera coverage, but in June 2011 the FJC began another three-year pilot program.
58. *Estes*, 381 U.S. 532, 586 (Warren, C.J., concurring).
59. Ibid., 536 (majority opinion).
60. *Standard Chartered PLC v. Price Waterhouse*, 945 P.2d 317, 358 (Ariz. 1996) (prosecutor's closing statement showed a Hollywood film clip of the sinking of the Titanic to illustrate what negligent auditing did to one bank).
61. Ibid.
62. *Michigan v. Grant*, No. 2007-2480-FC, 2007 WL 5085212 (Mich. Cir. Ct. Dec. 6, 2007) (trial order).
63. *State ex rel. Missoulian v. Mont. Twenty-First Jud. Dist. Ct.*, 933 P.2d 829, 843 (Mont. 1997) (Nelson, J., dissenting).
64. *Robinson v. Gundy*, 174 F. App'x 886 (6th Cir. 2006) (quoting *Murphy v. Florida*, 421 U.S. 794, 799 (1975)).
65. *Sarasota Herald-Tribune v. State*, 916 So. 2d 904, 907 (Fla. Dist. Ct. App. 2005).
66. Ibid.
67. Ibid.
68. In re Pilot Project for Elec. News Coverage in Ind. Trial Cts., 895 N.E.2d 1161, 1165 (Ind. 2006) (Dickson, J., dissenting).

69. *Landrum v. Anderson*, No. 1:96-CV-641, 2005 WL 3965399, at 6 (S. D. Ohio 2005).
70. *United States v. Megahed*, 546 F. Supp. 2d 1299, 1302 (2008).
71. *Estes*, 381 U.S. 532, 592 (Harlan, J., concurring).
72. *Nichols v. Dist. Ct. of Okla. Cnty.*, 6 P.3d 506, 508 (Okla. Crim. App. 2000) (quoting *Estes*, 381 U.S. at 592 (Harlan, J., concurring)).
73. In re Pilot Project, 895 N.E.2d at 1165 (Dickson, J., dissenting).
74. *United States v. Moussaoui*, 205 F.R.D. 183, 187 (2002) (quoting *Estes*, 381 U.S. at 592 (Harlan, J., concurring)).
75. To take a rather random example, the King's County Superior Court in California permits media coverage "only on written order of the judge. . . . The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. . . . A completed, proposed order on *Order on Media Request to Permit Coverage* (form MC-510) must be filed with the request. The judge assigned to the proceeding must rule on the request. . . . The judge may hold a hearing on the request or may rule on the request without a hearing. . . . Unless the judge in his or her discretion orders otherwise, the following requirements apply to media coverage of court proceedings: (A) One television camera and one still photographer will be permitted. (B) The equipment used may not produce distracting sound or light. Signal lights or devices to show when equipment is operating may not be visible. (C) An order permitting or requiring modification of existing sound or lighting systems is deemed to require that the modifications be installed, maintained, and removed without public expense or disruption of proceedings. (D) Microphones and wiring must be unobtrusively located in places approved by the judge and must be operated by one person. (E) Operators may not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction. (F) Equipment or clothing must not bear the insignia or marking of a media agency" (etc.). The Superior Court of the State of California, County of Kings, Executive Officer and Clerk of Courts Courthouse and Courtroom Media Plan 9, 11 (effective March 1996, revised May 2009), http://www.kings.courts.ca.gov/News%20and%20Media/NM%20Docs/Media%20Plan%20Updated%20Rule%20No% 201.150%20May.28.09.pdf (accessed March 8, 2013).
76. *Clark v. Commonwealth*, 833 S.W.2d 793, 795 (Ky. 1991).
77. *United States v. Hassan Abu-Jihaad*, 553 F. Supp. 2d 121, 128 (D. Conn. 2008).
78. *United States v. McVeigh*, 964 F. Supp. 313, 316 (D. Colo. 1997).
79. In re *WMUR Channel 9*, 813 A.2d 455, 460 (N.H. 2002).
80. Plato, *Collected Dialogues*, 1294 (*Laws*, Bk 3, 700d).
81. Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago, IL: University of Chicago Press, 2002), 7.
82. Ibid.
83. Almog, *How Digital Technologies*, 142.
84. Ibid., 10.
85. Ibid., 142.
86. Ibid., 10.
87. Ibid.
88. Ibid., 142.
89. Ibid., 10.
90. Gilles Deleuze, "Postscript on the Societies of Control," *October* 59 (1992), 3–7; originally published in French in *L'Autre journal*, May (1990).
91. Ibid., 6.
92. Ibid., 5.
93. Ibid.
94. Ibid., 4.
95. Ibid., 6.
96. Ibid.
97. Ibid.
98. Paul Virilio, *The Information Bomb*, trans. Chris Turner (London: Verso, 2005), 16.
99. Ibid., 38.
100. Ibid.
101. Ibid., 14.
102. Ibid., 73.
103. Paul Virilio, *The Vision Machine*, trans. Julie Rose (Bloomington, IA: Indiana University Press, 1994), 43.
104. Ibid.
105. Ibid., 44.
106. Ibid.
107. Ibid.
108. Ibid., 43.
109. Ibid.
110. Virilio, *Information Bomb*, 12. Similarly, see Paul Virilio, *War and Cinema: The Logistics of Perception*, trans. Patrick Camiller (London: Verso, 1989), in which he argues that visual industrialization is logically linked to – and indeed a part of – militarization.
111. Larry Wachowski and Andy Wachowski, directors, *The Matrix* (1999).

112. Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis, MN: University of Minnesota Press, 1999), 29.
113. Rancière, *The Politics of Aesthetics: The Distribution of the Sensible*, trans. Gabriel Rockhill (London: Continuum, 2004), 14 (discussing Flaubert's style).
114. For example, Jacques Rancière, "Good Times, Or, Pleasure at the Barrière," in Rancière, *Staging the People: The Proletarian and His Double*, trans. David Fernbach (London: Verso, 2011), 175–232; and Rancière, *Proletarian Nights: The Workers' Dream in Nineteenth-Century France*, trans. John Drury, 2nd ed. (London: Verso, 2012), 24–48.
115. Jacques Rancière, *The Philosopher and His Poor*, trans. John Drury, Corinne Oster and Andrew Parker (Durham, NC: Duke University Press, 2003), 45.
116. Ibid., 46.
117. Jacques Rancière, *The Emancipated Spectator*, trans. Gregory Elliott (London: Verso, 2009), 17.
118. Jacques Rancière and Truls Lie, "Our Police Order: What Can be Said, Seen, and Done?," interview with Truls Lie, *Le Monde diplomatique* (Oslo), August (2006); repr. *Eurozine*, August 11 (2006), http://www.eurozine.com/articles/2006-08-11-lieranciere-en.html (accessed March 8, 2013).
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121. Deleuze, "Postscript"; Virilio, *Information Bomb*, 12, 73.
122. For example, Rancière, *Politics of Aesthetics*.
123. Goodrich, "Law"; also Peter Goodrich, "Europe in America: Grammatology, Legal Studies, and the Politics of Transmission," *Colum. Law Review*, 101, no. 8 (2001): 2033–84; and Peter Goodrich, "Screening Law," *Law and Literature* 21, no. 1 (2009), 1–23. Goodrich borrows the term "graphosphere" (distinct from the "logosphere" and "videosphere") from Régis Debray, *Vie et mort de l'image: Une histoire du regard en Occident* (Paris: Gallimard, 1992), 226.
124. Goodrich, "Europe in America," 2070.
125. Ibid., 2076.
126. Goodrich, "The Visial Line: On the Prehistory of Law and Film," *Parallax*, 14, no. 4 (2008), 53.
127. Goodrich, "Europe in America," 2076.
128. Ibid., 2070.
129. Ibid., 2076.
130. Goodrich, "Screening Law," 15.
131. Goodrich, "Europe in America," 2077.
132. Ibid., 2070.
133. Ibid., 2083.
134. Ibid., 2076–7.
135. Goodrich, "Screening Law," 15, citing Alain Supiot, *Homo Juridicus: On the Anthropological Function of Law* (London: Verso, 2007), 119–31.
136. Goodrich, "Screening Law," 15.
137. The film is also known as *Amanda Knox: Murder on Trial in Italy*.
138. Peter Popham, "Amanda Knox: Innocent Abroad, or a Calculating Killer?," *The Independent*, January 16 (2009), http://www.independent.co.uk/news/world/europe/amanda-knox-innocent-abroad-or-a-calculating-killer-now-the-jury-must-decide-1380404.html (accessed March 8, 2013).
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140. "You Dirty Jew," *The Stranger* (*Slog News and Arts*), November 15 (2007), http://slog.thestranger.com/2007/11/you_dirty_jew (accessed March 8, 2013).
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142. CBSNews.com, January 16 (2009), http://pop-urls.com/view/amanda-knox-s-lawyer-tears-up-in-court-cbs-news-40c1ea2b56d7ffe621ebb-b2e2acdb592 (accessed July 12, 2012) (emphasis added).
143. YouTube, November 7 (2007), http://www.youtube.com/watch?v = f2m5qSHU88A (accessed July 12, 2012).
144. Ibid.
145. Ibid.
146. YouTube, September 16 (2008), http://www.youtube.com/watch?v = SWC7iSGCk-s> (accessed July 12, 2012).
147. *Buckley v. Haddock*, 2008 U.S. App. LEXIS 19482 (11th Cir. September 9, 2008) (unpublished).
148. Ibid., 14-15 (majority opinion).
149. Ibid., 15 (majority opinion).
150. Ibid.
151. Ibid. It is worth noting that Rackard would have been familiar with the "Baker Act" (the Florida Mental Health Act of 1971), providing for involuntary examination of individuals who appear to be mentally ill (without use of force).
152. Ibid., 23 (Martin, J., dissenting).

153. Ibid., 30 (Martin, J., dissenting).
154. Ibid., 32 (Martin, J., dissenting).
155. *Scott v. Harris*, 127 S. Ct. 1769 (2007).
156. "Dissenting Judge Tells Lawyers to Take It to YouTube," Law.com, September 17 (2008), http://legalblogwatch.typepad.com/legal_blog_-watch/2008/09/dissenting-judg.html (accessed March 11, 2013).
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160. Farhad Manjoo, "Why are Students Getting Tasered on Video?" [comments], Salon.com, September 18 (2007), http://www.salon.com/2007/09/18/university_taser (accessed March 11, 2013).
161. For example, Douglas P. Zipes, "Sudden Cardiac Arrest and Death Associated with Application of Shocks from a TASER Electronic Control Device," *Circulation* (American Heart Association), 125 (April 30, 2012), 2417–22, online March 19 (2012), http://circ.ahajournals.org/content/125/20/2417.full (accessed March 11, 2013).
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166. Ibid., 1387 (*Laws*, Bk 7, 817b-c).
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Julie Stone Peters is the H. Gordon Garbedian Professor of English and Comparative Literature at Columbia University. She writes on the cultural history of media and law. Her books include *Theatre of the Book: Print, Text, and Performance in Europe 1480–1880* and *Women's Rights, Human Writes: International Feminist Perspectives* (co-edited). "Theatrocracy Unwired" is part of a longer historical study of legal performance and law's fraught relationship to its own theatricality.