

International Society  
of  
Barristers

Volume 50

Number 1

STORYTELLING AND RADICAL EMPATHY  
*Sarah Stillman*

INTERVIEW RE: *GHETTOSIDE—A TRUE STORY OF MURDER IN AMERICA*  
*The Honorable M. Margaret McKeown and Jill Leovy*

NOVEMBER 8, 2016  
*Christopher Duggan*

CALL ME LOYD  
*David Owen*

SIDEBAR  
*David Owen*

Quarterly



## **Annual Meetings**

2017: March 19–25, Ritz Carlton  
Cancun, Mexico

2018: April 15–19, Dorchester Hotel  
London, England



# International Society of Barristers Quarterly

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## STORYTELLING AND RADICAL EMPATHY \*

Sarah Stillman †

### I INTRODUCTION

I can tell you from the bottom of my heart that I feel very lucky to be here today with the International Society of Barristers because I have a completely serendipitous and deeply felt connection with the group and to your organization that's long made me consider you all of you my personal good luck charm, and I want to tell you the story of why that is.

It's a quick story, but it will explain why I have an attachment to the Society, and it's also a story of kind of the angst-ridden ups and downs of life as a modern magazine muckraker trying to write about topics that many editors consider just too depressing or too unsavory or too commercially toxic to write about.

It was about five years ago this week that my dear friend the combat photographer Peter van Agtmael gave me a call and he said, "Look, I've got some bad news for you: my girlfriend and I broke up. It's really sad and it really sucks. And one of the things that really sucks about it is that I have this invitation to go speak to this fancy group of lawyers all about my war photography and now I don't have anyone to go with me." And of course I said, "Well, Pete, you're in a real pickle. Who's going to want to go with you to a resort in Hawaii and hang out on the beach with a bunch of lawyers?" I'm a really good,

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\* Edited transcript of address at the Annual Convention of the International Society of Barristers, San Diego, California, 14 April 2016.

† Author and *New Yorker* staff writer; Visiting Scholar, NYU Arthur L. Carter Journalism Institute, New York, NY.

really loyal friend. So after taking a moment to think about it, I said, “Well, I have an idea: What if you brought me along as your guest to check out this very illustrious-sounding but slightly mysterious society?”

At the time I was a struggling freelance writer—an investigative reporter—just trying to figure out if there was such a thing as staying afloat amidst the kind of journalistic apocalypse that followed the post-crash economy. And it was a despairing time in my life because I’d been a freshman in college when the Iraq war began, and I knew I really wanted to cover the war; I didn’t really know how I would, but I knew that it defined something central for my generation.

After I graduated, I did a stint in graduate school studying anthropology. But then I’d gone on to do exactly that—flying off to a war zone with no formal employer, no formal training. (As you can imagine, my parents were not really excited about any of this.) I got my body armor from a website was called [bulletproofme.com](http://bulletproofme.com). I can highly recommend it; it was very cheap. I had a number of ideas about what I wanted to cover. I soon discovered that freelancing from a war zone often paid about \$150 a story, which as you can imagine is not a whole lot to survive on. Oftentimes, websites were saying, “Oh, we’ll run your piece; we don’t pay these days, but we’d be happy to take it.”

So what I was earning was hardly covering the cost of this crappy flak jacket, and that was around the time that Pete invited me to come to Lanai and I agreed to join him. I had just gotten back from my second reporting trip to Iraq and Afghanistan to investigate the story that had become basically my life’s biggest obsession: human trafficking on US military bases there, revolving around tens of thousands of foreign logistics workers we’d hired to work on US military bases in Baghdad and beyond. They were on hundreds of bases in Iraq and Afghanistan, and we brought them in from countries like Sierra Leone and Uganda and Sri Lanka and all over the world, really. Many of these workers were being starved and in some cases subjected to indentured servitude and even sexually assaulted with

impunity on US bases by a string of defense-department subcontractors and sometimes sub-subcontractors.

So I'd returned from these two war zones thinking, Okay, I feel like I've got the goods that I was looking for. I thought I had all the makings of a major magazine exposé. I pitched the idea, and it was roundly rejected from all directions by various editors. Of course, some of this was because I was young and completely untested. And a significant part of it, I'm sure, was just my hubris or naïveté to think that I had any idea that I could actually write this lengthy piece.

But worse, in a way, was that when I showed editors the labor contracts of these workers or showed them the pictures and told them the stories, a lot of them said, "This is really troubling, but frankly we're at a point where Americans no longer have an appetite to hear about these wars." The wars had gone on too long and we had reached a point of compassion fatigue. One editor even told me, "You know, human trafficking is as old as the pharaohs, so who's going to care?" Basically, why bother?

So I'd started to get nervous that maybe the story in which I had invested all that time and energy wasn't going to find a home at all. But, in fact, right before I boarded a plane to go join Pete in Lanai, I met with a major magazine editor at one of America's best publications to pitch this piece and he said maybe he was interested. I told him all these details of the human trafficking ring I'd uncovered, and he paused and he looked me in the eye and said, "If you could re-pitch this story and tell me, in the Hollywood version, who would Julia Roberts play?" At this point I had to sneak off to the bathroom to pull myself together. I thought, Okay, maybe I'm just not cut out for this journalism thing, after all.

I began to wonder what would happen if I just sat down and wrote up the story as my heart really wanted to write it? What if I just on a lark wrote up the platonic ideal of this piece and just sent it in to *The New Yorker*? Again, as I recount this, it sounds like a little bit of hubris was involved. But I did exactly that right before I left for Hawaii.

I sat down and I wrote 20,000 sprawling words about these workers. Then I boarded the plane to come join the International Society of Barristers, to drink martinis with all of you on the beach and try to put all of this out of my mind.

On my second day at the International Society of Barristers conference, I got an email from the editorial director of *The New Yorker*, telling me that he had read my draft on human trafficking, which I had entitled the *Invisible Army*, and that he wanted to publish it. Two months later the magazine actually ran the story, and a few months after that, Congress responded by passing new legislation to help prevent human trafficking on US government contracts overseas, which was later bolstered by the President's executive order trying to ban it, as well.

I've been writing for *The New Yorker* ever since. I worked first as a freelancer, covering mostly US criminal-justice issues in the criminal-justice system. For the past four years, I've worked there as a staff writer—I get to investigate topics ranging from Mexico's drug cartels, to Bangladesh's garment factories, to American prisons. My mom is a lawyer who does human-rights work, so a little bit of that drive is in the blood stream. I've written about civil forfeiture and the return of debtors' prisons and immigration detention. All this is to say that I sense that each of you sitting here right now as members of the Society are one source of my life's best journalistic juju, so thank you for that.

## II THREE LESSONS

I want to share with you three specific lessons that reporting in dark corners of the world has taught me about the intersection of storytelling and empathy and about how we all might better harness the skills of the former and the service of the latter in some practical ways.

I've truly come to believe few skills are more powerful than those I'm calling storytelling for radical empathy. I mean this whether in the realm of the professional or in the realm of the personal. Few skillsets are capable of changing peoples' minds more effectively. Few skillsets are capable of changing the policies of local governments and states and nations and international bodies. And few are more helpful for loosening up, illuminating, and transforming really difficult situations and topics that seem irredeemably entrenched and maybe even hysterically polarized.

I thought maybe the best way to introduce these three lessons would be to start at the beginning and tell you the story of the very first investigation I ever pursued and the story that it ultimately became.

### *Lesson 1: Noticing Negative Space*

That first story starts at, of all places, the gym. I was on the elliptical machine and watching Fox News. Fox News is not something I usually subject myself to voluntarily, but this was playing at the gym with no volume, so it was just pure culture being pumped out. (Remember, I majored in anthropology.) They were reporting on the case of a young woman named Jessica Lunsford, a nine-year-old girl who had gone missing in Florida.

It was one of those cases that was just full-time Nancy Grace, all hours of the day and night, reporting on this missing girl. A ton of people had come from all around the country to search for this girl—hundreds of people, on horseback and on foot, were scouring every last inch of the county in Florida where she'd gone missing. And the news had that little ticker-tape scroll running at the bottom of the screen, which said a body found in a lake had not been Jessica. This was supposed to be the celebratory news of the day—like hoorah, we found this other body and it's not Jessica, and thank goodness we can keep searching.

Of course, this young girl's disappearance, which ultimately proved to be a death, was incredibly tragic. But to me the obvious question was, Who is the other body in the lake? This stayed in my mind and kept haunting me. When I got back to my apartment, I decided, Why don't I go online and call the sheriff's office down in Florida and ask whose was this other body they'd found in the lake?

So I did. I called, and they gave me a name, and the name was Donna Cook. I did a public-record search, a quick criminal-background check. I found that Donna Cook was a twenty-two-year-old young woman, just about a year older than I was at the time of all of this. She'd been arrested on multiple occasions for charges of prostitution, starting at a very young age, I believe. And, from the point of view of Fox News, she was basically considered Not-Jessica, so we could all move on.

That ticker tape just stuck with me, and for months I wondered about this woman and how it was that we had carved out a society where we had the Jessicas, who mattered, and the bodies that didn't—that registered only as negative space, as the body who was not another body, another human being.

In the summer of 2006, right after I graduated, I decided I had to find a way to tell the story of this other body, this body in the lake, Donna Cook, to try to find her family and figure out who she had been, what she had been like, and what we had all lost by the fact that she had died this nameless death.

I flew down to Florida. I had her last known address from the court documents, and I started knocking on doors. I had her picture from the arrest report, so I knew that she had worked in a strip club. I just showed up there with her picture and said, "Does anyone know this person?" And I got nowhere.

But then I thought, Okay, before I give up, why don't I go to this one last address? And there I found the john who had hired Donna, and he led me to her stepmother. Her family told me a pretty chilling story about how Donna had been mentally disabled and had been



unable to pay off her prostitution penalties. The police had offered her a deal whereby she could come work for them as a confidential informant and they would do away with the penalties. So she would go do this really dangerous work. Ultimately, she had ratted out a drug dealer who was getting out of prison. He started threatening her and the family. The family went to the police looking for help, but she got no protection. She was then found dead in the lake.

The first of my three lessons about storytelling and radical empathy has a lot to do with the body that was Not Jessica and how you have to ask the right questions in the first place. Often that means making the previously invisible visible or legible, and that starts by cultivating a radical curiosity and trusting your instincts about what does not add up and what isn't being said. Investigative journalists, certainly, and the rest of us as human beings have to start training our eyes to notice the negative space—the *other* dead body, the body in the lake—when everyone else is looking for the Jessica—and then to go asking after that. I often find no one is going to help with this. And that's not a lesson just for journalists: I'd argue it's true for corporate executives; I'd argue it's definitely true for trial lawyers. But you have to be curious and trust your instincts about what you're seeing, even when a lot of other people simply aren't seeing it.

The essayist Leslie Jamison writes, "Empathy isn't just listening; it's asking the questions whose answers need to be listened to. Empathy requires inquiry as much as imagination. Empathy . . . means acknowledging a horizon of context that extends perpetually beyond what you can see . . ." <sup>1</sup> The question is, How do we actually do this? How do we operationalize such a principle?

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1. LESLIE JAMISON, *THE EMPATHY EXAMS* 5 (2014).

*Lesson 2: Stepping Back*

And that leads me to my radical-empathy lesson number two, which begins with another metaphor. I began researching the strategies that scholars and activists and psychologists and writers employ for expanding on the boundaries of the moral imagination. And I quickly came upon an artist named Ellen O'Grady, who happens to be based in North Carolina. She creates beautiful works that are almost like adult picture books. One of those is entitled *Outside the Ark*. It's about her reporting on the ground in Israel and Palestine and it explores the theme of which bodies count.

She tells a little story at the beginning that I thought contained a bombshell of a metaphor for exactly what it is I'm talking about. O'Grady writes,

When I was a little kid my favorite book was a Hallmark version of the Noah's Ark story. My fantasy was to live in my own ark with my own family and my own personal zoo. I thought of the cold rain outside pounding against the ark's shutters, while inside the ark, all of us were warm and safe.

One day my Sunday school teacher Mrs. Graff read the Noah's Ark story aloud to our class. When she came to the part about the flood waters drying up, she held the book open to the picture of the sturdy, gleaming ark surrounded after the flood by the lush green of trees and colorful plants, all under the beautiful rainbow in the sky.

The entire class was entranced except for Joel[,]the boy sitting beside me.

Joel stared at the picture our teacher held up and yelled suddenly. "WHERE ARE ALL THE BODIES?!?"

Our teacher looked puzzled and annoyed. She put the book down.

“What bodies, Joel?”

Joel twisted in his chair. He squinted at the book in her lap, then looked at all of us staring at him.

“THE BODIES!” he cried. “WHERE ARE ALL THE BODIES OF THE PEOPLE AND THE ANIMALS THAT DIED IN THE FLOOD?”

Our teacher narrowed her eyes. The room was very quiet. Then in a gravelly, disappointing voice she told Joel he was “a very rude boy.”

When our teacher continued with her story, holding up for us that glorious rainbow in the book, I saw the bodies.

Lifeless bodies lying along across the weather[-]beaten landscape. Some bodies lived in the safe and protected ark, while other bodies drowned in the holy flood.

It was the first time I was aware that there could be a story behind a story.

A story we tried to hide.<sup>2</sup>

That resonated deeply with me; that’s why I wanted to share it. But lesson number two, I think, is that it’s not enough to simply listen to your curiosity and ask the right questions and wonder abstractly from the San Diego poolside about the body that wasn’t Jessica. I think you also have to do the work of figuring out how to get that body, whether

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2. ELLEN O’GRADY, *OUTSIDE THE ARK* [1–7, excluding pictures] (2005).

it's a literal body or—ideally, a metaphorically body—back onto the ark.

How do we do that? For me and my profession, it's really through the process of immersive reporting, spending many weeks and often many months living alongside people and getting to know the most granular details of their lives.

Pete van Agtmael and I took a visit to Ohio, where Gladys, Donna Cook's sister, lived. She was working at a Super 8 hotel. We just hung out for days. Being there was akin to the basics I learned as an anthropology student of ethnography, being rooted in immersion. Gladys took me through her sister's Bible, where she'd written various comments in the margins. She showed me Donna's journals and photographs of her childhood. And told me about the verbal and sexual abuse in her family.

I learned about the things that had brought Donna joy, as well, like her infant son. I learned about all the troubling ways she'd been failed by the state, including by the police, who were seemingly not concerned by the fact that she was mentally disabled when they sent her into one of the most dangerous forms of work a person could possibly do and then failed to provide her with any protection. And then she wound up dead in the lake.

I'm almost never interested in just the singular stories of injustice or the singular stories of a tragedy. Stories of individual abusive actors, too, can be easily dismissed as bad apples. The broader picture is the truer picture, and the broader picture means taking a step back. So, after many months of pursuing these details and sweating all the small stuff, I took a big step back. And stepping back is part of step two. I asked the questions about the structural realities underpinning what made Donna Cook's death possible. First of all, what rules do we have governing the use of confidential informants? What I found when I pulled back and looked nationally is that the stunning answer is this: Almost none. In many states, a ten-year-old can be a confidential informant in the war on drugs.

I wound up writing my second *New Yorker* piece about this phenomenon. Donna was not really a feature in the piece; I focused instead on four or five young people from around the country, some of whom were as young as thirteen, who had essentially been doing the outsourced, incredibly dangerous, work of police departments as informants and many of whom had wound up dead.

*Lesson 3: Travelling Alongside the Ark*

One question is, How do you find the points of intersection between radical empathy and storytelling? If you imagine a Venn diagram, ideally you have a sweet spot where the individual trauma and grief intersects with this larger set of injustices. The question is, How do we find those?

In order to get another body back onto the ark—and this is lesson number three—you have to travel alongside it. Several years ago, I was interested in covering the toll of the drug war in Mexico. That was another of those topics I thought would be highly sensational, perhaps because it's unfolding so close to us. Right now in San Diego, you could walk across the border to Mexico and see some of it. Yet it's actually another one of those really tough things to sell editors on. I found that I was interested in the question of how border militarization, this "Build the Wall" rhetoric, has resulted in making it significantly harder to get across the border. But this militarization and rhetoric has thus made crossing the border significantly more lucrative for human smugglers, which has led groups like the Zetas, one of the most dangerous drug cartels in Mexico, to get highly involved in the human smuggling trade. Now, they're not just running drugs; they're also both moving migrants and kidnapping Central American migrants who are trying to get to the US. The smugglers are calling migrants' families in the US or down in Central America and asking for ransoms.

I wanted to look into this kidnapping-for-ransom phenomenon, and I decided to travel down to Mexico. I had heard that there were

forty mothers from Central America getting on a bus and traveling to twenty different Mexican cities, starting at Mexico's border with Guatemala and heading all the way north to the US–Mexico border, looking for signs of their loved ones.

We traveled to morgues; we traveled to hospitals; we traveled to migrant shelters and town squares. Every woman would wear the photo of her child or missing husband around her neck. I had thought this was going to be more of a symbolic march, but this was literal: the women would stand in the town square, hoping that someone would walk by and see these photos around their necks and say, "Oh I know that person. I know where they are; I know that they're safe." Of course, for the most part, that did not happen. Only two women were reunited with family members.

Every night along the route on the journey north I would sleep alongside the women on the floors of migrant shelters. It was a pretty grueling journey. At that point, I was in my late twenties and these women were mostly in their forties and fifties. I had no idea how they kept going. But in these shelters was often where the most amazing conversations would take place. At the end of these long days, in cots on the floor in the dark, we would tuck into our sleeping bags: that's when the most interesting parts of the women's stories would come forward.

I found that I never get good information if I just try to parachute in and parachute out and tell the story that way. I'm convinced that it's only by going through the exact physical steps of these mothers and getting the same evil stomach viruses that they were getting. All of those physical parts of the journey were what gave me just the beginning of a fraction of a clue of what their journey was actually like, even if I understood intellectually that there were inherent limits on what I could ever truly know and understand about that.

On the trip I learned this remarkable word, a verb in Spanish. It's *desahogarse*, and it translates in a very literal sense "to undrown" yourself. The basic theory of *desahogarse* is that sharing your story is

also a way to unburden yourself and to lighten your load, to become undrowned, to become transformed.

By walking with these women, I could see them doing exactly that—undrowning themselves. And even if I couldn't bring back these women's kids, if they died in the desert of dehydration or I couldn't rescue their husbands from captivity in the hands of the Zetas or other drug cartels, I could at the very least start to relay their acts of undrowning in the pages of *The New Yorker*. That was some small start.

I really believe that all of you sitting here today can do that, as well. When you ask a client about a difficult time they've been going through and you sit across from them and truly listen, you're helping them to undrown themselves. And I believe that when you sit silently in the physical presence of an ailing, aging parent, or with a child, and you stroke their forehead, you're doing a version of that, too. I believe you're saying, Come here and undrown yourself with me; let me lighten your load.

The act of presence matters most. In these sorts of circumstances, people are sometimes carrying such a heavy burden and such unimaginable grief that they're unable even to begin to verbalize it. Sometimes that's due to shame and stigma. Often, I find it's due to the basic fact that many, many people out there who are going through crazy, awful things believe that no one in their life would ever want to listen to them; no one out there would actually come, care, and want to—in Spanish—*desahogarse* with them.

This is true of many of the people whose stories I've heard. Just seven weeks ago, I returned from France, where I'm currently reporting a story about a young Syrian girl, a refugee who's truly remarkable. She's a Hip Hop artist who fled the war at the age of fourteen by herself, made this journey across twelve borders, risking her life crossing the Mediterranean, thinking she was going to die in the middle of the sea when the motor went out, being beaten by the

Serbian police on her way north, and finally making it to France and starting to resettle there.

She's now learning to play the double bass in Grenoble, France, and drawing pictures. She drew sketches and self-portraits all along her terrifying journey escaping from Syria to help herself escape her own head. These portraits are, to me, an example of *desahogarse*.

When you walk alongside someone, you find that almost never are they a faceless victim to be pitied. Pity is so often the emotion we conjure up when we think about Syrian or Iraqi or Afghan refugees, or when we think about Central American mothers and missing migrants. But most of them—perhaps all of them—are already engaged all these acts of undrowning themselves.

#### *Applying the Principles of Radical Empathy*

To return to the very beginning of this talk—about the story of human trafficking on US military bases in Iraq and Afghanistan: That reporting project allowed me to stretch all three storytelling principles and to feel them at work. When I first learned about that trafficking story, I was a graduate student at Oxford, studying anthropology. I was writing about the politics of young, missing, murdered women and the history of sensational coverage stretching all the way back to the times of lynching. But one day, for a break, I went to an Indian restaurant. I had a waiter named Tony, who, when he greeted me, heard my American accent. He said, “Oh my god, are you an American? I used to work on a US military base in Iraq.” He had had a great experience—he pulled out his cell phone and showed pictures of himself with Jessica Simpson on her USO tour to Iraq. Tony had a number of fun, quirky stories, but it slowly came out that he had friends who had had very different experiences: some friends had lost a leg from a rocket attack in Iraq and not gotten health insurance; other friends had been promised great jobs elsewhere but instead had been brought to this warzone.



I started doing some research and found that there were 70,000 of these workers on US bases in both Iraq and Afghanistan from India, Nepal, Bangladesh, and Fiji. And they were doing some of the wars' most dangerous work and often getting the lowest pay for it.

So I flew off to Iraq, knowing that this was the story I wanted to tell and the story I felt equipped to tell. I thought I'd have to work really hard for it. But to the contrary, immediately after I arrived, I see giant Pizza Hut with a bunch of Bangladeshi workers and a giant Cinnabon with a bunch of Fijians, I believe, or Ugandans working there. I get a few steps farther along I see a beauty salon where they're offering manicures and pedicures and massages to soldiers. I go inside for an undercover manicure and I start talking to the women. A Fiji woman named Vini has a crazy tale that I didn't get right away—it all unfolded slowly because she was terrified to talk about it. But basically, she had been approached back in Fiji where she was working in a nice spa, and someone came to her and said, "Would you like this really amazing job of making 4000 US dollars a month at a nice place, at a spa in Dubai?" She said, "That sounds great." And she agreed to turn over her passport and go. She leaves her family behind and mourns losing her children for that period, but she says, It's worth it for my family.

They get to Dubai and they say, Oh, sorry. There's one detail we forgot to mention: You're going to work on a US military base in a warzone. And Vini goes with these other Fijian women. It turns out, instead of making \$4000 a month, they would be making \$350, working seven very, very long days a week, risking their lives.

One night, I knocked on Vini's door to visit. Where she lived was called a CHU, a containerized housing unit, and I found her and another woman crying. It turned out that the other woman had been sexually assaulted, she said, by her male supervisor. All across the base had been posters saying, Here's what to do in case of a sexual-assault emergency. I called the number. This emergency hotline just rang and rang and rang. No one answered. I called again, and I called

again a few hours later, and it just rang and rang. No answer. Finally, a few days later, I got through, and they said, You know, I'm really sorry, but if they weren't assaulted by a US service member, and they're not Americans, so there's really nothing we can do. You've got to call the company. I called the company; they said you've got to call the military.

So, basically, these women existed in a legal black hole. They were, to me, what Ellen O'Grady might've called officially "off the ark." Writing seemed like way of bringing them back onto the ark— not just these Fijian beauticians, but all of these 70,000 workers we'd almost entirely forgotten in the context of war reporting.

To write this story, I marshaled all three of the tactics I described: The first was the principle of radical curiosity, of training my eye to look for the bodies that other people were ignoring. Nearly every journalist who traveled to this warzone had seen these workers—they were everywhere, ubiquitous. On the one hand, it was an undercover story; on the other hand, they were everywhere—cooking your food, cleaning the latrines. It was just that no one had deemed them worth writing about.

The second principle was the idea of empathy as action, empathy as a verb—empathizing—that it requires not just noticing the invisible bodies, but moving to get them back onto the collective ark, by immersing ourselves in the granular details of other peoples' lives and by assessing the actual structural facets of the problem. So I spent more than a year digging into that side of it and doing Freedom of Information Act requests. At that point I felt I could tell the story of these beauticians in a vivid way.

Last was the principle of kinetic empathy—the idea that whenever possible you really do have to walk alongside someone. And that empathy is in many ways just a physiological experience, the physicality is central to the process. Only by being there when one of these women was sexually assaulted and going through this

Kafkaesque process myself, of trying to find some redress, could I truly capture just how broken the system had become.

So, after the good news I received when I was in Lanai with all of you five years ago, I was able to tell these workers' stories in the pages of *The New Yorker*. There were some positive outcomes, including the passage of legislation. But I'll also tell you the truth: I'm really skeptical that many workers on the ground actually saw the fruits of this progress. I've recently heard there are workers still there, living in some pretty abysmal conditions and facing some pretty awful things.

That brings me to my very last ingredient of radical empathy. It's item number four on my list. After you listen with curiosity, after you recognize that empathy requires not just deep listening and deep immersion, but also kinetic, almost physiological investment, and after you step back and look at the big picture, you also have to take one long, last step and recognize that the fight to undrown oneself and the fight for all of us to undrown each other is a perpetual one. When we engage in it, we're doing more than just doggy paddling: we're being transformed in ways that are truly transcendent. We're realizing our highest selves.

Wisława Szymborska, the famous Polish poet and translator, who won the 1996 Nobel Prize for poetry, spoke in her Nobel Prize acceptance speech about how, through her poems, she searched for astonishment in everyday life:

“[A]stonishing” is an epithet concealing a logical trap. We're astonished, after all, by things that deviate from some well-known and universally acknowledged norm, from an obviousness we've grown accustomed to. Now the point is, there is no such obvious world. Our astonishment exists per se and isn't based on comparison with something else.

Granted, in daily speech, where we don't stop to consider every word, we all use phrases like "the ordinary world," "ordinary life," "the ordinary course of events" . . . . But in the language of poetry, where every word is weighed, nothing is usual or normal. Not a single stone and not a single cloud above it. Not a single day and not a single night after it. And above all, not a single existence, not anyone's existence in this world.<sup>3</sup>

I've come to think of that as the challenge of nonfiction storytelling: to transport the language of poetry, the language in which every single existence in the world is astonishing, into other facets of life.

I really do get all of my best story ideas from lawyers, so I hope that you all come and chat with me afterwards. It's such a pleasure to be back with you, and thank you so much for listening.

### QUESTIONS & ANSWERS

**Q:** What happened to the company that was involved in the trafficking of the Fijian women?

**A:** What's amazing is that the man who started that company in Fiji has actually faced criminal prosecution. But what's even more remarkable is that there have been almost no US prosecutions of anyone involved in this massive trafficking apparatus . . . because it wasn't just the Fijians. I swear: Almost forty percent of the workers I spoke to had a story like that, so we're talking tens of thousands of people. And there's not been a single, real trafficking prosecution for anything that's taken place on a US military base in Iraq or Afghanistan. I'm glad you asked, but I wish I had a better answer.

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3. Wisława Szymborska, *The Poet and the World*, Nobel Prize Lecture 1996, [http://www.nobelprize.org/nobel\\_prizes/literature/laureates/1996/szymborska-lecture.html](http://www.nobelprize.org/nobel_prizes/literature/laureates/1996/szymborska-lecture.html).

Part of it, I think, is that there are these very convoluted subcontracting chains. I'm sure many of you can vouch for how complex it is to find legal accountability when everyone can say the US government is paying KBR, and KBR is paying a subcontractor, and the subcontractor is paying a sub-subcontractor. That's a big part of the problem.

**Q:** I really enjoyed your piece, *The List*. I was shocked at how little it takes to get on the list sometimes—especially with teenage romances and things like that. Could you tell this group a little bit about that piece and if there are any legislative efforts to truly rehabilitate people who are not a threat to our society.

**A:** I'm so glad you asked. I came across the sex-offender list in the process of doing other juvenile-justice reporting. I kept hearing these stories, some of which, at the far end of the spectrum, involves things I wrote about in the piece, like a ten-year-old girl in Texas who "pants" another kid on the playground and was prosecuted for a sex offense and wound up on a sex-offender registry. Now she's in her twenties, trying to get a job, trying to be a good citizen and give back; yet she can't keep a job, she can't live a day of her life without worrying about vigilantes knocking down her door.

A lot of the people whom I interviewed have seen their houses firebombed; they've been harassed; they'd had a hard time staying in college because of that. Again, on that front, I wish could have better news about the legislative trajectory. But part of what's so unique about sex crimes is that it's an area we're all so afraid to talk about—we tend to look at the nuance. Many legislatures don't want to touch it with a twenty-foot pole. That's been a big part of the problem.

But we're also seeing a transformation in our society right now in how we think about hyperpunitive sentencing in general, in looking at and turning away from mass incarceration. So it's my hope that some of that will be tucked into some of these issues regarding both

young people on the registry and also some of the entirely unregulated treatment programs that these people are sent to. (I won't go into too many details, but some children are made to do these penile plethysmographs: they're shown sexually deviant images and made to listen to an audio to see if it stimulates them. I mean, all these things are pseudoscientific and entirely unregulated—but very, very, very lucrative.) There's a big lobby in the other direction. I fear there aren't a lot of people willing to speak up, or write, about it.

**INTERVIEW RE: *GHETTOSIDE—A TRUE STORY OF MURDER  
IN AMERICA* \***

**The Honorable M. Margaret McKeown\*\* and Jill Leovy†**

**INTRODUCTION**

*Jill Leovy became a Los Angeles Times reporter and editor in 1993. And then she got the police beat. That was her thing. She started “The Homicide Report,” a blog, the first of its kind in the US, in which she reported on what were chronically 900 murders in a year. This led, eventually, to her book *Ghettoside—A True Story of Murder in America*. It’s a compelling story about a tragic and senseless murder of an eighteen-year-old African American named Bryant Tennelle and those who tried to do something about it. The homicide statistics are no less compelling and themselves chronicle an epidemic in this country of black-on-black crime. Young black men are the number-one crime victims in this country. Their murder rate is five to seven times higher than that for white men, and two to four times higher than that for Hispanics.*

*Jill says the LAPD once had an unwritten rule: these murders are labeled “NHI”—“No Human Involved.”<sup>1</sup> The prosecutors in Los Angeles used to laugh about this; they said, This is just population control.<sup>2</sup> Murders of young black men don’t matter because nobody cares. Jill*

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\* Interview conducted at the Annual Convention of the International Society of Barristers, San Diego, California, 11 April 2016.

\*\* Circuit Judge, United States Court of Appeals for the Ninth Circuit, San Diego, California.

† Reporter, *Los Angeles Times*, Los Angeles, California; author, *Ghettoside: A True Story of Murder in America* (2015).

1. JILL LEOVY, *GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA* 6.

2. *See id.* at 6–7.

writes, “The system’s failure to catch killers effectively made black lives cheap.”<sup>3</sup> Yet the refrain in today’s political world since Ferguson, Missouri, is the opposite: “Black Lives Matter.”

Jill’s thesis is simple: When the criminal-justice system fails to respond vigorously to violent injuries and deaths, homicide becomes endemic. “This is not a problem that liberals like to discuss,” noted one reviewer, “for fear that doing so will reinforce racist stereotypes. But in *Ghettoside*, possibly the most important book on criminal justice in the past decade, Jill Leovy takes on the problem directly.”<sup>4</sup>

Judge Margaret McKeown, who interviews Jill about *Ghettocide* is uniquely qualified to do so, for she worked her way through Georgetown Law School as a criminal investigator. She practiced for twenty-three years with Perkins Coie in Seattle and in Washington, DC. She opened the DC office for that firm, doing complex litigation. She was named “Outstanding Lawyer of the Year” by the King County, Seattle, Bar Association. And the *National Law Journal* named her as one of the fifty most influential women lawyers in the United States. President Clinton appointed her to the Ninth Circuit in 1998, where she has been ever since. And she has been a leader: she has been president of the Federal Judges Association; she has chaired the ABA Latin American and Caribbean Council, the Judicial Advisory Board of the American Society for International Law, and the Managerial Board of the International Association of Women’s Judges; and she serves on the Council of American Law Institute, which focuses on several international projects. And, with all of that work, she has time to be a judge, too.

Among Judge McKeown’s many accolades and awards over the years is the Girl Scouts’ “Cool Woman Award,” the criteria for which is women whose personal and professional lives make them consummate role models for girls. What greater honor can there be?

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3. *Id.* at 8.

4. David Cole, *The Cops and Race and Gangs—and Murder*, N.Y. REV. BOOKS, April 7, 2016 (reviewing *Ghettoside: A True Story of Murder in America*).



### THE INTERVIEW

*Judge Margaret McKeown:* To set the stage before Jill tells you more about her book, we're talking about the early to the mid-2000s. In 2007, Bryant Tennelle, eighteen years old, was murdered. His father was an LA police officer. The other hero in the book you will hear about, of course, is the detective, Detective Skaggs. Detective Skaggs is, as you can imagine, one of those clean-cut guys. He's a lifelong Republican and he is dedicated to his job. Ultimately, he and his team catch a break, but not without a lot of gumshoeing and careful investigation do they find the perpetrator. In some ways the trial is anticlimactic. The perpetrator is convicted.

What you see in the book is that Jill combines a reportorial style—whereby we get a lot of facts, figures, and analysis—with a lyrical style. In describing Bryant's mother at the trial, Jill said that her face was so deep that it seemed ancient.

As for the book's thesis, the defense attorney said it all, of course. He said, at the end, that if every one of these homicides was investigated to the degree this homicide was investigated, we would never have any unsolved murders.

So, Jill, let's start with the title of the book: "Ghettocide." And you use these terms, "ghettocide" and "almocide" in the book. What do you mean by that?

*Jill Leovy:* Well, they're actually two different terms. "Ghettocide" is S-I-D-E. And "almocide" (C-I-D-E), as one of the detectives says, are cases often tried as attempted murder, injury-assault cases, which are a great dark zone, in terms of prosecutions. There are very low rates of prosecutions for gunshots that hurt but don't kill their victims in LA. The detective calls those "almocides," because they're not quite homicides.

“Ghettoside” is just a word that the young men on the street used. And it’s used, of course, by the police who talk exactly like them. To me, it expressed something that I don’t build on in great detail in the book because I’m trying to stick to the narrative, but the key thing in understanding black-on-black homicide in the US is residential segregation. That enclave nature of black urban communities is what makes the whole machinery work.

And in South LA, of course, nobody says the words “South LA.” They do say, “South Central,” but they also say “west side” and “east side.” And that does not mean Santa Monica and Boyle Heights. It means east side or west side of Main Street, which was the old covenant boundary. The memory of that division is so deep that it remains the way the neighborhood is referred to. So “ghettoside” is east side, west side—either way, it’s ghettoside—is a play on those old covenant boundary names. And significantly so, I think.

The residential segregation and the way it has worked over the last fifty years is important. It’s something that hasn’t changed a lot. The segregation indexes are calculated in different ways, and LA is very diverse. Or, rather, not diverse. It’s a mostly Latino city, so Latinos tend to be mixed in everywhere. But if you look at black–white residential segregation, it did not change in any significant way between 1950 and 2000. So there has been no progress. That’s why a word like “Ghettoside” has resonance.

*Judge McKeown:* Wow. And you took ten years to write this book, which was a pretty remarkable investment. So what were some of the two or three biggest either challenges or surprises you found as you researched and wrote the book?

*Jill Leovy:* You know, I spent years stuck on the problem of why Latino death rates from homicide were so different from black death rates. That was something that tripped me up. I could not figure it out. It was completely mystifying. These are highly integrated populations

in south LA—street by street and block by block. There is lots of intermarriage and about equal median household income, so rates of poverty are very similar. And if you look at the way law enforcement counts gang membership, you will see that gang involvement appears to be about the same. There are huge numbers of both Latino and black gangs. And yet a young black man in his twenties was four times more likely to die from homicide than his Latino neighbor of the same age down the street. Why?

That problem was like the trap that catches your legs and you have to chew it off to get out. It drew me deeper and deeper into the problem of black homicide. It was mystery: Why would that be?

*Judge McKeown:* Speaking of homicide, the *New York Times* has started a new series on the Bronx, and they've decided that they should humanize homicide, focusing particularly on the victims. So if you pick up the *Times* now, you can read story after story about the recent homicides.

But Jill was actually way ahead of the *New York Times*. Years ago she proposed to her editor, "Why don't we run some stories and start printing the names of the victims so that these homicides are not just statistics?" Even back then, the newspapers weren't reporting the statistics. You didn't even know that homicides had occurred. Ultimately, Jill, you created a blog where you detailed these, "The Homicide Report." Will you tell us about dealing with the newspaper on this? And also dealing with the community and the public on how do you really get this information out there?

*Jill Leovy:* You know, it worked because everything was going online. So suddenly we had abundant space. It was a bit of a gimmick; it actually came after years and years of feature reporting I had done on homicide. It was in some ways easier. But the reason "The Homicide Report" got the attention it did originally, I think, is that I added the race of every victim in the lists of who had been killed. And

usually I had about twenty per week—nearly all black or Latino. I would say so-and-so, this age, a black man or a Latino man, a Latino youth. That goes against AP style; it goes against newspaper conventions: you don't mention the race of the victim. And I did it deliberately. It was controversial when I first did that. But I included the victims' race because my main reason for doing "The Homicide Report" was a sort of desperation about making people see what the numbers really were.

You'll see violence-prevention programs and research and advocacy programs to prevent child abuse, domestic abuse, and elder abuse—all of which are a small percentage of the total number of LA city murders. There's lot of money for those programs. Programs focusing on youth violence came along in the 1990s. "Youth" once meant teenagers up to age eighteen, but the CDC eventually had to acknowledge that it needed to push the age for these statistics up to twenty-four. However, black men have high rates of victimization, well past "youth." Their death rates take off at eighteen and remain relatively high going into the late twenties, thirties, even into the forties and fifties. But we're not doing anything for those adult male homicide victims.

I felt it was really important to say who it is being disproportionately victimized. You are not serious about homicide unless you are talking about adult black men. And ten percent of our homicide victims in LA were under eighteen. So even the youth-violence-prevention programs kind of missed it. My main goal was to have that list, to make people see how concentrated this problem was, and who the victims really were.

*Judge McKeown:* One of the things you write about is that everybody who lives in this area—and sometimes part of it is referred to as Watts—is trying to figure out how their children will get out of there alive. Not just get out, but *how* do they get out alive? Some

parents move, of course. They may work in the county, but they'll live way farther out to try to avoid these issues.

The characters are so real here. I want us to hear about the Tennelle family. And Bryant was a good boy. I think that's fair to say.

*Jill Leovy:* Well, you know, I initially resisted writing about the Tennelle murder. I had an abundance of material; there were so many murders I could have written about. I had long had an ambivalent relationship with the innocent-victim story: if gang shootings or urban violence got more than brief coverage in the *LA Times*, it tended to be because of the innocent victim—the “A” student, the child hit by a stray bullet.

To me, you send your fire trucks to where the fire is and not to where it isn't: if we didn't look at criminally involved young men who were fighting each other, we weren't going to where the numbers were concentrated. But I came around to Bryant partly after my own statistical study. It's amazing, when you hear the term “gang-related” in LA, you might assume it's just gangs fighting. But in the years that I looked at it, the number of victims who were actually not party to any gang dispute was about a third. It wasn't their argument. That was Bryant's situation. In those cases, only the perpetrator was in a gang. It only has to be one of them.

The other reason I decided Bryant was representative was that he had his problems. And I think he shows very well what people would often express to me, which is that to have problems in a safe neighborhood is likely to have a very different outcome than in a dangerous one. Bryant had problems in school. He had problems graduating from high school. He had a learning disability or dyslexia that was holding him back. Something that might be gotten over in a safer context proves to be deadly in this context.

This is also really, really tough subject matter. As a writer I had learned ten different ways to Sunday how to write about homicides like these so that people had no interest in them. I had written many,

many unsuccessful newspaper articles before writing *Ghettoside*, so I knew the challenges. I needed a story that people could actually go into with me, and follow it through.

*Judge McKeown:* Did you get any criticism for writing about a victim who was related to someone in law enforcement? And tell us about Detective Tennelle, and his family.

*Jill Leovy:* Detective Tennelle was a very well-respected homicide detective in the department. He is an African American detective. He actually always said, "Don't say African American. I'm black. I'm from that generation." And he is married to a Latina woman. And the kids, as so often is the case, called themselves black. Bryant was, I think, medium skinned, as they say. His father raised him in a very nice part of South Central, in part out of conscience. He noticed that many police officers commuted from outside of the city. But he didn't believe that was the right way to do the job; he believed that you ought to be committed to the community you police. So he had stayed in this neighborhood. And his own son was killed a few blocks away from his home and the case quickly falls into this very large category of unsolved gang killings.

But another reason I chose his family's story was that the police did succeed in solving the case, and I needed a solved case. It's too dangerous to write about people in unsolved cases. The witnesses are out of their minds with fear. It's very, very hard to do journalism in that context. The point of the book is that this was the exception-that-proves-the-rule case. Obviously, everybody involved desperately wanted to solve this case. Can you imagine your colleague's son being murdered? And particularly Wally Tennelle, a much-loved detective within the department.

The detective they ultimately pull in to investigate Bryant's case had been doing this kind of work on other cases. He's a meticulous detective. What's interesting is that his higher-ups don't even know

him. They don't even know that he has a good record of solving cases. He's in a backwater division. They have to go looking for him and pull him out of obscurity to solve this case. Which, in itself, is a demonstration of how important investigative quality is within all of the other priorities of the LAPD.

So I came to think that this case showed what I wanted to talk about, which is this question of vigor in law enforcement and of how and when it is applied.

*Judge McKeown:* Tell us, then, about Detective Skaggs. He is not initially on the case. He then arrives and is assigned to the case. What is it about him and his team that made the difference here?

*Jill Leovy:* This is something we don't talk about a lot. We talk a lot about bad law enforcement, and there is a lot to talk about on the subject of bad law enforcement in the US. But we don't talk a lot about good law enforcement—what that is and what that means. The people who care about being good police officers—and there are such people—are on their own to figure out what it means.

In his case, Detective Skaggs was in Watts—this sort of hard-knocks division that no one was paying attention to. I was there one year that they had sixty homicides, and not one of those homicides made the news in Watts. That was in the early 2000s. This is a problem that we don't address: how emotional and compelling and war-zone-like some police environments are. The police develop their own ideas about it and sometimes end up going really off the rails. In this case, the police unit responded by deciding they wanted to have a great rate of clearing cases. They developed a perverse, underdog-pride kind of issue, even if no one was paying attention. They decided, by god, they were going to be a great unit. So several of the detectives that came out of Watts in that era were extremely high-performing. And Detective Skaggs was one of them.

Detective Skaggs was known among a wider group of colleagues as being egotistical and arrogant. He and the officers close to him would defend that and say, “Look, we are dealing with all black-on-black murders, and maybe about ten or twenty percent Latino-on-Latino murder in a place that gets no press coverage and no attention, with no resources. We’re buying our own binders. We’re buying our own chairs for our desks. And so all we have is ego.” That was the school of thought he came from. Unlike most detectives, he had about an eighty percent clearance rate going into the Tennelle case. That compares to an overall average of about thirty-five to forty-five percent for the LAPD as a whole, for solving cases in which adult black men were victims. (By the way, think about that: that latter rate is more than half, cases in which you have total impunity, in which the suspects aren’t being caught.)

*Judge McKeown:* How did these characters, who were real-life players in the story, react to your researching the book? And then, how did they react when it came out?

*Jill Leovy:* The thing about character is that it really is such a consistent thing. Writers always tend to underplay it. I portray Skaggs as a sort of nonreflective, success-oriented kind of guy. And yet I underplayed it. He is much more a caricature of himself than I made him. To give an example, when the book came out, he called it “the book about my case, and then all the filler”—meaning all of the stuff that I said about 100 years of black-on-black homicide.

He had a few questions for me. All of his questions had to do with my interviews with the defendants. He wanted to know, “Did he say where he was at about 9:15 that morning?” I realized that even though the case had been tried, he was still investigating it in his head. To him, there were all these threads that had not been tied up. That is all he cared about. He did not see the rest of it. He is very much a type. The



very good detectives tend to be tunnel-visioned—and not particularly imaginative.

*Judge McKeown:* When I was working my way through law school as a criminal investigator, one of my jobs was to find witnesses. And these were usually witnesses who either had no name or who had one initial. Or, more than likely, they didn't even exist. So I raced around Washington, DC, looking for the impossible. But one thing I realized from the lawyer's perspective, though I was not yet a lawyer, is the meticulous detail of putting these cases together. And your detectives here seem to focus on these details, though they did also catch a break with a witness, finally.

Would you talk about both the politics and the practicalities of solving murders in that environment?

*Jill Leovy:* Well, you're right: It is all about witnesses.

Though I've been out of this for awhile, I would occasionally go back and visit the parents of victims. Not long ago, I was talking to a mother whose son's murder was unsolved. She said to me, "Well, I've heard from the street. . . . I've heard some real leads on who killed my son. And I've heard that if you really want to know who killed him that you've got to go down to Compton and find the guy that they call 'Money Mike.'" And I thought, "Wow—I'm right back in it." There is this other America where the outcome of a murder case depends on finding that guy in Compton whom they called "Money Mike." It is so otherworldly. It is so different.

One of the subtexts of *Ghettoside* is that—though I like Skaggs, and I admire his energy—much of what he does is just tenacity. It's just a determination to solve the cases, not genius. One of the early witnesses tells him an important tip after they've gone back five or six times to re-interview, and re-interview, and re-interview the same person. It's very expensive, obviously, in terms of public funds. But it's not rocket science.

We have—especially in the last twenty years, but throughout American history—a real intellectual bias against approaching law enforcement this way—by reacting to and solving cases after the fact and not preventing them from happening. When you talk to historians about legal development, when you talk to international scholars, the way they respond is to talk about rule of law all of the time. They talk about the state’s monopoly on violence all of the time. If you talk to people who have worked in South Africa, they talk about how police don’t solve cases, and this being implicated in the high rates of violence in that country. It’s an obvious thing.

But for some reason we never apply that thinking to our own endemic American murder problem. And why is that? It’s for a number of reasons. Going big picture here, in the whole course of American history we’re a very anti-law-enforcement country. It’s our nature as Americans not to like the law and not to like lawyers. Eric Monkkonen, in his history of New York City murders, talks about the comic atmosphere of nineteenth century courts and the way that juries sympathize with the defendant. Rates of conviction all the way throughout the nineteenth century were very low. And when there *was* a conviction, jurors would sometimes take up collections for defendants at the end of the trial, after finding them not guilty.

Communal justice is also part of our history, and not just in the south. Historically, our legal apparatus has been ragged and threadbare. Our cops are blue-collar. The system is extremely fragmented. Our highest crimes are state crimes investigated by municipal officers. Our highest courts, federal courts, deal with what William Stuntz called “exotic but less consequential fare.”<sup>5</sup>

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5. WILLIAM STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 66(2011). Stuntz pokes holes in the unquestioned prestige enjoyed by federal law-enforcement officers, prosecutors, and court officials. He points out that local police investigate the crimes that actually do the most harm and that people care about. By contrast, federal officials enjoy vastly greater funding to take on “exotic but less consequential fare.” Despite the constant attention given by journalists and scholars to the federal system, Stuntz

All of this is weird. And the result of it, in the eyes of historians—and I think they continue to be right—is that law enforcement is weak. We don't think about that in the climate of present-day politics. But think about the weak king. The weak king has to lop off people's heads to keep control, right? The strong king can be merciful. I think this applies to a long history of discretionary, street-level police violence, partly because prosecutions were ineffective in American history. Police had to be more violent to teach people lessons.

So that's the starting context for why we don't care about investigations. And then, on top of that, we have years and years of fascination with preventive policing. The Department of Justice's COPS (Community Oriented Policing) program was all about saturation, uniforms on the streets.<sup>6</sup> Now it's all about targeted and predictive policing. Among progressives, it's interesting: you'll hear people criticize "stop and frisk," yet praise statistically based targeting policing in the same breath. But those are exactly the same things. What do you think those officers are doing when they get to the targeted neighborhood?"

So the focus on prevention has eclipsed focus on reactive policing. But what do you do after a crime? You investigate it.

Finally, we have a treasured legacy of opposing the oppression of law enforcement in the courts in the context of the civil-rights movement. This is interesting. I'm not sure that I would go as far as this, but William Stuntz said that procedural reform actually went too far in the US.<sup>7</sup> We had a flurry of things—I wouldn't even put it in the '60s; I would say beginning in the 1940s all the way through the '80s—that put the bar for prosecution high. People quibble with me about *Ghettoside*, saying that this is lawlessness going way back, because police departments used to report very high clearance rates

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emphasizes the reality: federal officials handle just seven percent of felonies in this country. *Id.* at 65–66.

6. See <https://cops.usdoj.gov/about>.

7. See generally STUNTZ, *supra* note 5.

for murder, all the way through the '70s. They would dutifully report to the federal government that they were solving most homicides. And then, mysteriously, clearance rates plunged; fewer and fewer cases were solved.

What I think was happening was that when they were solving a lot of cases, the cases were actually falling apart in court. There were a lot more dismissed cases, not-guiltys and plea bargains, and sentences were light. That's when you had a lot of extremely short sentences; the average murder convict was getting out on parole after about seven years in California in the 1970s. So the system was weak farther along in the process, and defendants were falling out later on.

Then it shifted. Conviction rates rose and solve rates fell. One way or another, it has always been weak, all the way along.

So, to answer your question, you have all of these things combining to divert our attention from a strong investigative tradition in the US. It is not what journalists talk about, when we evaluate the police. It is hard to get good numbers on cases being solved. We think, "Oh, that's after the fact, so what good is that? It's so much better if you can stop the crime beforehand." Well, there are legal problems with stopping the crime beforehand, because, ultimately, law rests on judging people by their acts, not by who they might turn out to be.

*Judge McKeown:* You make some interesting observations about the role of the investigation. In civil-law countries, the courts actually play a much more active role in the investigation. But in common-law countries, we are in basically an adversarial system in which the courts are not involved. Courts are the neutral deciders, along with—in the case of many criminal trials—the jury, to determine innocence or guilt.

But you also mentioned procedural issues. One of the most famous issues in the United States, of course, is Miranda rights and one's right to remain silent, et cetera. In the US, most teenagers could even recite the Miranda rights.

We had an interesting case in the Ninth Circuit that came out of the California state system. (Of course, all these cases involving murder and many other crimes go through the state systems first, then they come up to our federal courts on habeas review.) In this particular case, the defendant was very young and distant from his parents. At one point in the interrogation, he said, "I take the Fifth." And one officer turns to the other, and you can see and hear this in the video, and he says, "What do you think he means by that?" The California court held it was ambiguous what the defendant meant by "I take the Fifth." I do want to say that in the Ninth Circuit we saw it a little differently. And when the case was appealed to the Supreme Court based on the Ninth Circuit's determination that the defendant knew exactly what he meant, it denied cert.

And we had another case in which a very young guy had been sent down to the police station by his father. The young man gets there and says, "My father told me to ask for a lawyer." Some of the lower courts said, "Well, he didn't ask for a lawyer. He said his dad told him to ask for a lawyer." So there is a lot of quibbling over Miranda rights.

But the most interesting thing in your book of interest to lawyers is that for strategic or other reasons, you are suggesting that in a lot of these gang murders the defendants are not invoking their Miranda rights. What is behind that?

*Jill Leovy:* Well, mostly they don't in fact invoke their Miranda rights. It is not always, but it is usually the case that these are people who have been arrested repeatedly and are not unfamiliar with the system. It's amazing to walk the streets of Watts. You will find people are more politically savvy than anywhere else in LA. They know every single person at every rank in the police department by name.

*Judge McKeown:* It pays to research, right?

*Jill Leovy:* Again, I am probably going to go too big-picture on

this. But consider this: Social justice advocates worry about oppressive government holding people down. What they don't talk about is how people can also be held down by the *absence* of government intervention—in fact, this can even be deliberate policy.

As Bob Dylan says, “You’re gonna have to serve somebody.” You going to have to serve either formal authority or an informal authority, outside the law. In human societies it’s always one or the other. Some hunter-gatherer societies, for example, have relatively little in the way of formal legal systems. But they have homicide rates of about 40 per 100,000. That is about equal to the rate in south-central LA in the late '90s and early 2000s.

That’s why I assert that homicide is a default setting. It’s the way human societies work. To live with a lot of violence, a lot of intimidation—and to be surrounded by people who might hurt you—is not an unusual situation for many people in the world today, nor has it been in history. When people are not protected by law, they are laid open to these other forces—informal, defused personal violence, or retaliation, or feuding, or mob justice.

People respond to those conditions by forming groups or clans—by cliquing up. Cliques can get bigger, and turn into gangs. Gangs can develop a relationship with the sleeping masses, and become instruments of communal justice. Et cetera.

By the way, these societies all tend to have some similar characteristics. They all have intimidated witnesses. They all have prohibitions on snitching. They’re all full of rumors, and they all place importance on reputation. Damage to reputation through loose talk is often very inflammatory. In Watts, lying on people is something that draws very severe punishment. And similarly, in the Bible, calumny is up there on the list of the things that are most prohibited. I really think these are kind of fundamental forces.

So, let’s get back to the gang member in the interrogation room. He doesn’t demand an attorney, and he agrees to talk. Why? Because he is trying to get information about the other oppressive forces in his

life: he is trying to find out what is going on in the street. Who is after him? Who is lying on him? Who is going to say what in the course of this investigation? There's an opportunity in that room to find out that potentially lifesaving information. The suspect may know the cops are lying. But he also knows there might be fragments here and there that reveal intrigues among his homies. These suspects are trying to figure out how to negotiate their informal world of street justice at the same time as they negotiate the police investigation. They inhabit two worlds, two law-enforcement systems—a formal, legal one and an informal one.

*Judge McKeown:* I think that's what I would characterize as a Darwinian view. I'll have to contemplate this, about homicide's being a natural state, and the evolution of society governed by a rule of law a progression out of that state.

I have a lot more questions about the role of lawyers, about whether there is any hope, about how if you write about homicide every day like these detectives, what do you do to let loose the steam?

I will say this—that is said in many of the reviews and in your book—that not one single person, when talking about this case, did not weep. [To the audience:] I think you're going to feel that way when you read the book.

## QUESTIONS & ANSWERS

**Q:** Was Detective Skaggs a Caucasian or a black man?

*Jill Leovy:* Detective Skaggs was white. And the homicide ranks of the LAPD, especially the high-level ones, tend to be more white than the rest of the department. The LAPD, of course, is majority minority at this point. I think that well under thirty percent of LAPD officers are white. But the detective ranks tended to be a little whiter, partly, I think, because they represent an older LAPD. It also annoys me—and

I've given them a hard time about this—that there are not a lot of women in that division; they really need to get more women into the homicide ranks of the LAPD.

**Q:** Your comment about the natural default setting of murder piqued my interest. If you look at the national statistics, minorities are killed by minorities ninety-one percent of the time, but white people are killed by white people eighty-three percent of the time. So it seems to me that homicide happens largely within the community or the people you know. But when you started talking, one of the first comments you made was the significant discrepancy between the Hispanic murder rate and the African American murder rate in that same community. Do you have any sense of why that is?

**Jill Leovy:** This question was the first thing that made me stop and say, Okay, let's get away from the word "minority"—what makes black people distinct? Well, I think it's obvious: their history is completely different. And, by the way, what is it about that history? What is it that is so distinct about black history? A great deal of it is blacks' relationship with the *law*. I mean, think about it. That is so much what, going back to Jim Crow, it all is. Going back to Reconstruction. Even a civil war is an argument about legal authority. All this history makes black Americans a distinct cohort. And of course, focusing on those distinctions proved extremely fruitful.

I do think these dynamics are universal: certain conditions will create them, and they can be created overnight in any group of people of just about any ethnicity. It's been amazing to see, for example, the explosion of violence in a place like Egypt after the Arab Spring. Egypt is one among the numerous Arab countries that had very low homicide rates—despite its general population's being quite poor and having a lot of young males, demographically. And yet it explodes. The same thing happened with Baghdad in the early 2000s, right? You saw



this explosion of violence in a population that previously wasn't so homicidal. So I think these dynamics are universal.

I would suspect that if you were to separate out a stratum of Latinos living in Watts, for example, and just look at their homicide rates, it would look a lot more like blacks. But because Latinos are such a large and diffused group in California—and, compared to blacks, spread so well throughout the region and so well mixed with whites and Asians—they have a low suburban rate that drowns out the high homicide rates in what we would consider the traditional inner-city areas. I don't know that that is true, but I suspect that it's part of what is going on.

But I also think that Latino history is very, very different. Part of what we're seeing with black Americans, as crazy as this sounds, is an unbroken legacy from Reconstruction and redemption. If you look closely at that history, it really is an insurgency history. It's really very much like Baghdad in the 2000s—a kind of low-level, sectarian war. I don't think that war was ever resolved. I don't think, from Reconstruction on, that black Americans ever had a low homicide rate, ever. That problem moved from the south to the north in the great migrations, and nothing ever changed. I think you need generations and generations of legitimacy and good rule of law to bring a population's homicide rate down. And I just challenge anyone to show me when that happened for black Americans. It has not happened.

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## ***VIEWPOINT***

**NOVEMBER 8, 2016**

**Christopher A. Duggan\***

The presidential election, like all elections, left some elated, some discouraged, and many relieved that the process had finally come to an end. Although the vote totals showed that a substantial majority of voters in my home Commonwealth of Massachusetts did not support the winning candidate, we all should keep a few things in mind:

First, over 120 million people cast ballots on or before November 8<sup>th</sup>. People came to the polls in huge numbers to participate in the democratic process, reaffirming the fundamental right of a free people to choose its leaders. Yet, during the debates at the Philadelphia Convention in 1787, there had been real concern whether a republican form of government could survive over such a vast expanse of territory that ran from Maine (then part of Massachusetts) to Georgia and as far west as the Appalachian Mountains, or perhaps even farther, to the Mississippi River. When the Convention concluded, a woman asked Benjamin Franklin what kind of government the delegates had created. Franklin famously replied, "A Republic[,] if you can keep it."<sup>1</sup>

The recent election, and those before it, at least since 1864, have proven that the United States has been able to keep the Republic. A republican form of government depends on civic involvement, and although many were very tired of the process by

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1. Papers of Dr. James McHenry on the Federal Convention of 1789, 11 AM. HIST. REV. 618 (1906), *available at* [https://www.jstor.org/stable/1836024?seq=24#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/1836024?seq=24#page_scan_tab_contents).

November 7<sup>th</sup>, citizens were engaged—not only in the presidential election, but also in myriad other contests, from elections for federal and state offices to a variety of ballot initiatives. As long as we, as citizens, remain engaged, the Republic will survive, even though our preferred candidates or political philosophies will not always prevail.

Second, America has a long and proud tradition of respecting the outcome of elections. That principle is at the heart of our democracy—really, it is at the heart of any true democracy. Candidates and parties campaign, put forth their beliefs, positions, and personalities, and then The People vote. The majority, as calculated under the rules established by “We, The People,” wins. The adoption of the Constitution itself affords a prime example of respecting electoral outcomes. In many states, the ratifying conventions were hard fought and the margin of victory razor thin. In Massachusetts, the Constitution was ratified by only 19 votes out of 355 cast (187–168). In New York, the vote was even closer: 30–27. Yet when it was over, those opposed to ratification admitted defeat graciously and agreed to work together with the victors for the greater good. Those who prevailed understood that they needed to recognize the legitimate concerns of the dissenters, especially to ensure certain protections for all citizens against potential overreaching by the new national government. The result, of course, was the first ten amendments. On December 15, 2016, we celebrated the 225<sup>th</sup> anniversary of the adoption of the Bill of Rights. It is a lesson we would all do well to remember.

In her concession speech, Secretary Clinton acknowledged that Mr. Trump had won at the ballot box under the governing rules. She said to her supporters, “. . . I still believe in America, and I always will. And if you do, then we must accept this result and then look to the future. Donald Trump is going to be our President. We owe him

an open mind and the chance to lead.”<sup>2</sup>

That could not have been an easy thing for Mrs. Clinton to say, but the sentiment was no doubt sincere. It is rooted in a firm understanding that a peaceful transfer of power to a democratically elected leader is still a rarity in the world, and a practice we must protect zealously. If it is ever lost, it will never be regained.

Contrary examples abound across the globe. Millions of people groan under military governments, dictatorships, and tyrannies of many kinds. Those governments have one thing in common: they are based upon the principle that might makes right. In contrast, our country follows a rule of law founded on the belief that we have, in Abraham Lincoln’s lyrical prose, “a government of the *People*, by the *People*, and for the *People*.”<sup>3</sup>

When Lincoln spoke that those words at Gettysburg in November of 1863, he stressed the word “People” rhythmically, all three times.<sup>4</sup> An accomplished orator, this was no accident. The

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2. Hillary Clinton, Concession Speech (Nov. 9, 2016), *available at* <http://www.cnn.com/2016/11/09/politics/hillary-clinton-concession-speech/>.

3. President Abraham Lincoln, Gettysburg Address (Nov. 19, 1863) (emphasis added), <https://www.ourdocuments.gov/doc.php?flash=true&doc=36&page=transcript>.

4. Challenged by this editor, who thought that Lincoln had surely stressed the varied prepositions, rather than the repeated “People,” the author provided the following proof otherwise: Valerie Komor, archivist for the Associated Press, describing the experience of Joseph I. Gilbert, an A.P. reporter, who had been present when Lincoln delivered the Address.

“Fascinated by Lincoln’s intense earnestness and depth of feeling, I unconsciously stopped taking notes and looked up at him.” Had Gilbert not been so moved, he may not have noticed how Lincoln enunciated his closing words. Gilbert believes Lincoln placed the emphasis on “people,” not on the prepositions “of,” “by” and “for,” thereby expressing fully his intention to save the nation the people founded, governed, and comprised. “That the nation shall, under God, have a new birth of freedom, and that government of the *people*, by the *people*,

People make the laws through their duly elected representatives and the nation accepts the decision until the next election. Again in Lincoln's words (because there are no better), the "great civil war . . . test[ed] whether that nation, or any other nation so conceived, and so dedicated, can long endure."<sup>5</sup> Since then, we have long endured. It is up to us now to prove that we will continue to do so.

Billions of people across the world look to our country with envy and awe—not because they agree with The People's chosen officials, but because our citizens choose their officials freely and peacefully. Those who rioted in the wake of the election because their candidate lost missed this fundamental point. One cannot riot in protest of the outcome of an election and claim to be doing so in the name of democracy.

The converse is also true. In America, the winners do not persecute the losers. Even before the Constitution was adopted, the practice was firmly established that the prevailing candidate may not, and will not, use the power of office to prosecute the vanquished. Otherwise, we would have a return to the War of the Roses. Today's losers are tomorrow's winners, and America has no Tower of London to lock up Lancastrians.

The president-elect appeared to recognize this truth in his November 9<sup>th</sup> victory speech. Despite months of vitriol, Mr. Trump was gracious in victory. He declared,

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for the *people*, shall not perish from the earth."

"If he did choose this emphasis," Komor continues, "Lincoln was voicing his deepest political belief. He served the people. He called the people his 'rightful masters.' On his moral compass, the people occupied true North. At Gettysburg, Lincoln spoke from that place. Of those who listened, at least one actually heard." Valerie Komor, Founding Director, A.P. Corporate Archives, Address at the Union League Club of New York: The A.P at Gettysburg: Capturing what Lincoln Wrote and Said (March 14, 2013). 5. *Id.*

Hillary has worked very long and very hard over a long period of time, and we owe her a major debt of gratitude for her service to our country. I mean that very sincerely.

Now it's time for America to bind the wounds of division; [we] have to get together. To all Republicans and Democrats and independents across this nation, I say it is time for us to come together as one united people.<sup>6</sup>

In this, there are echoes of Thomas Jefferson's 1801 inaugural address. Those who think that political backstabbing and name-calling are a recent invention should look back to 1800, the nation's first truly contested presidential election. The invective thrown by supporters of the three candidates, President John Adams, his Vice President Thomas Jefferson, and Senator Aaron Burr, would rival or surpass almost anything we have heard since. The election was so close that it was decided by the House of Representatives under Article II, §1, cl. 3—one of only two times that has happened in our nation's history.

In his Inaugural Address, given just three weeks after he had finally prevailed on the 36th ballot in the House, Jefferson addressed his rivals' supporters and called on all citizens to see a greater meaning in the election:

We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left

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6. Transcript of Donald Trump's Victory Speech (Nov. 9, 2016), *available at* [http://www.nytimes.com/2016/11/10/us/politics/trump-speech-transcript.html?\\_r=0](http://www.nytimes.com/2016/11/10/us/politics/trump-speech-transcript.html?_r=0).

free to combat it.<sup>7</sup>

President Obama made exactly the same point the day after the 2016 election. The President affirmed that “everybody is sad when their side loses an election, but the day after we have to remember that we’re actually all on one team. This is an intramural scrimmage. We’re not Democrats first. We’re not Republicans first. We are Americans first. We’re patriots first.”<sup>8</sup>

When each contest ends, the President’s metaphor reminds us, there are winners and losers. How the contestants treat each other when the clock runs out speaks much about real character. Just fifteen days after the 2016 presidential election, Ralph Branca died at the age of ninety. Even casual fans of major-league baseball recognize his name: Branca forged a solid twelve-year career as a pitcher, mostly with the Brooklyn Dodgers. In 1946 he led the National League in saves (36), and in 1949 he topped the league in winning percentage (.722). Few major-league pitchers have accomplished that double feat. But Ralph Branca is remembered most for the one time he failed. In 1951, he gave up a walk-off home run to Bobby Thomson at the Polo Grounds in a playoff game that capped a remarkable comeback for the New York Giants. In August of that summer, the Giants trailed the Dodgers by 13½ games, and the Dodgers looked as if they would breeze to the title. But the Giants battled back, forcing a three-game playoff. With the series tied one game each, the Dodgers took a three-run lead into the ninth inning of the decider, but Thomson’s 9<sup>th</sup> inning, three-run blast gave the Giants a 5–4 victory and the National League Pennant. Thomson’s homer

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7. President Thomas Jefferson, Inaugural Address (March 4, 1801), available at <http://www.heritage.org/initiatives/first-principles/primary-sources/jeffersons-first-inaugural-address>.

8. Transcript of President Obama’s Remarks on Donald Trump’s Election (Nov. 9, 2016), [https://www.washingtonpost.com/news/the-fix/wp/2016/11/09/transcript-president-obamas-remarks-on-donald-trumps-election/?utm\\_term=.d7fb191080f4](https://www.washingtonpost.com/news/the-fix/wp/2016/11/09/transcript-president-obamas-remarks-on-donald-trumps-election/?utm_term=.d7fb191080f4).



became known as “the shot heard ’round the world,”<sup>9</sup> and achieved almost mythical status in baseball lore.

Yet Branca was never bitter about his role in the game, or about the fact that few remember that he was a three-time All Star in an era when selection to the team evidenced true excellence. He and Thomson became friends and often appeared together at charity events after they retired from baseball. Hall of Fame broadcaster Vin Scully, who was recently awarded the Presidential Medal of Freedom, once said about Branca,

He never let that incident define him. He was bigger than that. When he retired five years later in 1956, he did so with his self-respect intact. Some men display heroism in victory. But far more impressive is the display of heroism in loss. Ralph's acceptance of that loss, without rancor or bitterness, is one of the most inspiring examples of sportsmanship I've been privileged to witness.<sup>10</sup>

We now have an opportunity to demonstrate to the world that America can still be Augustine's City on a Hill. It starts with all of us following the example of the Framers—the Federalists and the Anti-Federalists—who proved that humility in electoral victory is not a sign of weakness, and that graciousness in defeat does not compel submission. If we can pass these lessons to those who follow, the 2016 election can be a victory for America, and a reaffirmation of the vitality of self-government.

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9. Eyder Peralta, Ralph Branca, All-Star Pitcher Who Gave up “Shot Heard ’Round the World,” Dies, *The Two-Way*, National Public Radio (Nov. 23, 2016), <http://www.npr.org/sections/thetwo-way/2016/11/23/503185207/ralph-branca-all-star-pitcher-who-gave-up-shot-heard-round-the-world-dies>.

10. *Id.*

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**CALL ME LOYD—  
THE STRANGE POWER OF NICKNAMES\***

**David Owen \*\***

My nickname when I was in junior high and high school was Loyd, my father's name. It was given to me, inadvertently, by my seventh-grade math teacher, who had taught my father thirty years earlier and sometimes forgot which of us he was calling on. In my father's day, the math teacher's nickname had been Tarz, short for Tarzan, because he was built like Johnny Weissmuller; by the time I had him, his nickname was Wheezer. He looked like Lyndon Johnson, with tremendous gravity-stretched jowls and ear lobes. Age must have lengthened his scrotum, too, because he was always careful to lift his testicles out of the way before sitting in a chair or leaning back against the front of his desk. Sometimes, my friends and I, as we took our seats for math, would pretend to lift our testicles out of the way, too.

Wheezer supervised one of my study halls. One day, an eighth-grader hid a running tape recorder inside a locker in the back of the room, and every five or ten minutes the tape would scream, "WHEEEEEEE-ZER!!!!!" There would be pandemonium; then, gradually, everyone would settle down; then it would happen again. Wheezer never identified the responsible jerk—his term for any troublemaker. One day, before homeroom, he wrote the heading

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“First Class Jerk” on the blackboard behind his desk, along with a list of defining traits, and Ralph Lewis raised his hand and asked, “Sir, is a first-class jerk a jerk in the first-period class?” Wheezer glared at him for a long time, then said, “Guy, you’re a jerk.” He kept a jar of candy on his desk, and before math tests he would let each of us take a piece, calling it brain food.

My science teacher that year we called either Wayne (his real first name), Fleet (his real middle name), or Chutes (short for Parachute Pants). He wore baggy gray flannel trousers and pulled them up so high they seemed to belong to a different clothing category: his bowtie and belt buckle almost touched. He made us memorize the names of all the bones, muscles, and major nerves, assignments that infuriated me because they seemed lazy and pointless. One day when we were studying the muscles, Chutes held up one hand, raised his index finger and slowly moved it back and forth, like a low-speed metronome, and said, “Kinesiology: *kineese*—movement; *-eology*—the study of.” We cracked each other up with that line for days, and, even now, almost forty years later, I sometimes repeat it to myself. When we were in high school, a few of us drove to a pharmacy we’d heard about, in a Kansas City suburb where none of us lived, so that we could use someone’s older brother’s driver’s license to try to buy a bottle in the liquor department in the back of the store, but we found Chutes working the cash register and had to pretend we’d come for something else—maybe cigarettes, which, in those days, grownups didn’t care about very much. Chutes had demonstrated the dangers of tobacco in science class by lighting one of his own cigarettes and blowing the smoke through a Kleenex, making the paper turn brownish, but his concern had to do mainly with the possible effect on our “wind,” important to him because he coached track.

Chutes did most of his own smoking in his office in the gym, or in the faculty lounge, which was sometimes so clouded you could barely see all the way from the door to the coffee maker; teachers who

smoked pipes smoked right in class. My seventh-grade English teacher, whose nickname was Ashcan, was famous for having once set his tweed jacket on fire by absentmindedly stuffing a lit pipe on top of a book of matches in his pocket; he was also famous for having once become trapped, flat on his back, between his desk and the rear wall of his classroom, after tipping too far in his chair. My eighth-grade French teacher—who had the same first and last names as a celebrated poetess—would occasionally smoke a cigarette while standing in the doorway of her office, which adjoined her classroom. She would hold the cigarette behind the door, where we couldn't see it, and duck her head around to take puffs. She told us that the streets of Paris were superior to the streets of Kansas City because they had names instead of numbers, although, apparently, she had no quarrel with the numbering of arrondissements. One day, when she had stepped out of the classroom for a moment, several of us lifted her desk, intending to turn it a hundred and eighty-degrees, and accidentally tipped it over—a stunt that made her cry and got us in trouble with the principal, whose nickname was J. J. and whom we imitated, constantly, by grabbing one another on the shoulder with a Vulcan nerve pinch and barking “Wanna borrow two-fifty?”—the price of a haircut.

Giving teachers nicknames is a way of weakening their terrible authority, probably. Assigning a nickname is usually flattering to the recipient, however, even if the nickname itself isn't, and if I were a teacher I'd rather be a Wheezer or a Chutes than one of the faceless, unremembered ones known only by their real names. My friends and I had teachers and coaches we called Flipper (real last name, Flappan), Stublet (not very tall), Stank (hygiene problems), Bat (short for Wombat; real name, Wambold); Dawg (short for Schoondog; real name, Schoonover), Papa Joe (longtime gym teacher), Easy Ed (beloved basketball coach), Myhoo (real last name, Mayhew), Woodchuck (real first name, Charles). There was a Latin teacher whose real last name was Wucker, an unfairly easy target; we called

him Ed (his first name), Tony (what his wife called him), or Wuck. My American history teacher we called Gil, his real first name, but I knew from reading old yearbooks that he had once been called The Fox. (A student of his in the mid-sixties, who had been famous for his Fox impressions and whose high school nickname had been Josh, later returned as a teacher in the same department and was known to his own students as Squirmer.) Gil, by the time he taught me, had poor eyesight and almost no peripheral vision and was therefore easy to play tricks on. There were students in the class named Yeckel and Eager, and Gil, who couldn't see very far beyond the front of his desk, often amalgamated them into a single student, whom he called Yeager, leaving the two of them to decide which should answer any question directed to the merged entity. My chemistry teacher we called Fred, his real first name. I once met him unexpectedly coming around a corner and, without thinking, said, "Hi, Fred," surprising both of us. He used colored chalk in class, and, through the course of a typical day, would gradually become coated with pastel dust: hands, pants, jacket, nose, forehead, hair. There was a math teacher named Mr. Meyers, whom we called Mr. Mars after the way he drawled his own last name. Mr. Mars once gave me a detention for smoking a cigarette in the bathroom while I was serving a detention for a different offense. On another occasion, he suggested that it would be funny if the student newspaper referred to Neil Newhouse, an upperclassman, as Nail Oldbarn.

The person with probably the best nickname of anybody I've ever known was an early childhood friend of mine, Bumpy Macomber. The Macomers lived diagonally across the street from us, in a house that appeared briefly in a Hollywood movie concerning juvenile delinquents. (A teenager comes running out of the Macomers' front door and jumps into a car belonging to another teenager, and they drive away.) Bumpy's real name was William. His father, also William, had been called Bumpy, too, during some earlier part of his life, perhaps when he was in the Marine Corps., but had handed his

nickname down to his son, like a treasured pocket watch, and now was just Bill. Bumpy's parents were generally known to be the best-looking grownups in the neighborhood and probably for several miles. They, unlike my parents, slept in a double bed, which I often saw unmade, and their house was the only one I knew where you could find a copy of *Playboy* just lying on a coffee table. I was aware, because Bumpy had told me, that his father considered my father to be somewhat boring, and there was evidence to support his opinion: my family never did a thing the Macomers did pretty often, which was to dress their kids in pajamas, load them into the back of their station wagon, and take them to a drive-in movie. I spent the night at the Macomers' house once, the summer after first grade, and Bumpy's parents asked me if I was sure it would be all right with my parents if I stayed up with everyone else to watch *The Tonight Show*. I was with Bumpy the afternoon he determined, by repeatedly banging it against his family's white upright piano, that the black plastic shell of a Magic 8-Ball concealed a breakable jar-like glass vessel filled with a dark fluid closely resembling ink. Bumpy had two younger sisters, the younger of whom, Lizzie, called my mother Mizzenowen.

Until my family moved a half-mile away, in the fall of second grade, Bumpy was usually either my best or my second-best friend. We started a boys' club whose only rule was that you had to swear you would never get married, and we had a fight with a neighborhood girl who had claimed that, because she was one year younger than I was and two years younger than Bumpy, we would die before she did. Recently, I saw an old black-and-white photograph of Bumpy, his sisters, me, my sister, and Freddy Wells—my next-door neighbor and backup best friend, whose father was a pilot for T. W. A.—and suddenly realized that we grew up not just a certain number of years ago but in the lost, archaeological past, when people didn't look or dress anything like the way they do now. In the photograph, Bumpy, Freddy, and I are wearing improvised cowboy outfits that no modern boy would be seen in, and all six of us look like children from history,

from a time when brand consciousness was limited to a preference for either Keds or P. F. Flyers.

At some point, Bumpy began calling me Dodo, like the extinct bird, because of my initials, and I found that I liked being known by something other than my name. When I went to sleep-away camp for the first time, the summer after third grade, one of my counselors, whose name was Michael but was called Boogie, asked me if I had a nickname, and I, remembering Dodo, said I did and that it was Dumdum. I don't think I had planned that in advance—unlike my mother, who told her fellow campers to call her Matzy (a nickname she had devised for herself on the train to Minnesota, based on her real last name, Matz), or my wife, who tried, unsuccessfully, to use summer camp as a transition from Ann to Twink. A nickname, because it's custom-made rather than installed at the factory, can seem like a better reflection of one's true self, so often invisible to others. Summer camp, potentially, provides an opportunity to begin life anew, with a fresh identity and erased personal history, like the Witness Protection Program.

Calling myself Dumdum for a couple of weeks turned out to be a good move and a valuable lesson in human nature: people are predisposed to like people with disarming nicknames. At camp that summer, three or four older girls, who were probably going into fifth or sixth grade, enlisted me and a couple of other younger boys to play post office with them; a pretty twelve-year-old girl borrowed a sweater of mine, wore it for two or three days, and gave it back, having changed its smell and slightly changed its shape; and another girl, on the last night of camp, took me for a long walk through the woods, sat next to me under a tree, and told me it was too bad that things could never work out between us, on account of her being thirteen and my being ten. I realized (many years later) that all these girls must have begun to be interested in boys in general, rather than in me in particular, and wanted to work out a few kinks on a harmless version,



a Dumdum, before attempting the real thing. I don't remember any of their names.

When I began junior high school, I associated with the kind of students who had good grades and served on the student council, but I yearned to associate with the kind who got detentions for smoking during their detentions. Having a Wheezer-bestowed nickname helped to make that change possible, somehow; so did playing football and being a class clown. By the middle of eighth grade, I had partially repositioned myself as a troublemaker, and, in doing so, had acquired friends with troublemaker nicknames: Hinkley (real name, Howard; known to teachers and parents as Howdie); Dick (real name, Richard; known to teachers and parents as Ricky); Pajamas or Peter (real name, Perry; known to teachers and parents as P. J.); Bayshup ("Bishop" as pronounced by both Wheezer and Mr. Mars), and Henry (real name, Greg). I also had friends called Boym, Soz, Gordo, Dunc, Twig, Dab, and Piller.

Hinkley and Henry had both been given their nicknames by friends of Hinkley's older brother, whose real name was Alexander but had been known since birth as Ack, the nickname that his father, also Alexander, had wanted for himself but had never been given. ("Hinkley" was inspired by the name of the dim-witted felon played by Donald Sutherland in *The Dirty Dozen*, Vernon L. Pinkley. We also often addressed Hinkley by the name his mother used for him when she was angry: "Howard" compressed to an explosive monosyllable.) Ack's best friend, whose real first name was George, was called Cookie. In high school, Ack and Cookie survived a car accident in which much of the engine of Ack's muscle car ended up in the front seat between them. They had been drinking and were not wearing seatbelts, which, in those days, were still treated mainly as nuisances or curiosities. Ack and Cookie and their friends held wild parties. They served a beverage they called Mother Hunch Punch, which consisted of equal parts fruit juice and clear liquor, and was mixed in a large barrel in the backyard. My friends and I lurked around the edges of

those parties, smoking Swisher Sweets or Mississippi Crooks or some other easily pilfered brand of cigars, and making off with the occasional bottle of gin. The house in which I threw up more often than I did anywhere else, in those years, was Hinkley's.

One of Hinkley's best friends was Richie, whose brother—two years older, a star athlete in three sports—was called Stump because he was so short. In high school, Stump suffered what at first seemed to be a football injury but turned out to be cancer, and one of his legs had to be amputated, making his nickname seem like an eerie foreshadowing. He died before graduation. Because of Richie, my preferred cigarette brand for a while was Old Golds. Richie had offered me one and said, "I bet you a dollar you can't smoke it down to where it says O. G." I took deep drags until I had obliterated the initials printed near the filter tip, and he shrugged and said, "I didn't hear anything." Richie, who was married for a while to one of my sister's best friends, died before he was forty. He was playing golf, and suddenly gripped the back of his head and said, "Something is really wrong," and fell to the ground. A day later, he was dead, of a brain hemorrhage.

When I was a teenager, I knew girls called Brownie, Gonger, Book, Icebox, Momo, Jaybird, Cuppy, Haz, and Hat, among others. Gonger went on to marry someone who isn't related to me but is also an Owen; I would have been concerned, in high school, if her future married name had been revealed to me. Haz died. Hat was my girlfriend for the second half of high school and for a little while afterward, and we shared a single private nickname, never used in front of others. She and Gonger had a classmate named Martha who was almost as skinny as I was; Martha and I called each other Pencil Legs. My sternum projected beyond my ribs when I was young, a malformation called a pigeon breast. In the locker-room one day, I noticed that my toughest ninth-grade football teammate, who played fullback and middle linebacker and was called Mad Dog by our coaches, had a pigeon breast, too. I told him what it was, and, off and

on through high school, we called each other Chicken Tit, making me mind mine less.

Being known to my friends by my father's name created occasional opportunities for comical confusion, as when one of them would telephone our house, ask for Loyd, and get him instead of me. Hearing my friends call me Loyd must have made my father wonder whether he and my mother had been wrong not to give me that name officially, making me Loyd Cylven Owen III. But his own name was sometimes troublesome to him: people were always restoring the missing *l* or garbling his middle name, which looks vaguely Welsh to a non-Welshman but must have been made up by one of our semi-literate northern Missouri ancestors, plenty of whom had had peculiar names of their own: Risdon, Fleeta, Orvall, Olin, Melton. For me, being called Loyd became a mild problem only later, when, for a couple of years, I had to keep track of which friends knew me as what. In college once, I telephoned a girl I had known slightly in high school, in order to ask her out, and was pretty far into an already awkward conversation before realizing that, because I had identified myself as David, she had no idea who I was.

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When my father was in high school, he and his best friends called each other Lombus (real last name, Lombardi), Groans (real last name, Groner), Tube-Ear (a parent-and-teacher-resistant spelling of Two-Beer), and Loyd-o. I know from old letters that they also occasionally addressed each other as Turd Bird, Crummy Chummy, Trash, and Cesspool, among other things—not so much nicknames as epistolary flourishes. They had been best friends and neighbors since childhood and would remain best friends and neighbors throughout their lives. For many years, they and their wives regularly played poker together—on a long table covered with an old army blanket when the game was at our house. Every five years, the poker group hired a photographer to take a picture of them dressed in humorous

costumes. In the picture from 1962, my father is wearing tails and riding a tricycle, and my mother is wearing a full-length raccoon coat to conceal the fact that she is pregnant with my little brother. In the picture from 1967, my mother is wearing a wooden barrel and, seemingly, nothing else—a visual play on one of their nicknames for her, Carol Barrel.

My father's mother was called Nellie when she was born. At some point during her childhood, she crossed out that line on her birth certificate and wrote in "Mary Helen," the name she used from then on. She was a Christian Scientist, although she allowed my father, when he was growing up, to be treated by doctors and given vaccinations. When I was in college, I broke my arm after being pushed from a high mantelpiece, on which I had been dancing in a tuxedo, and she paid her Christian Science practitioner five dollars to join her in praying for my recovery. My siblings and I called her Gaga, and we called our grandfather, who had worked for an insurance company and always wore a necktie, Dada. My other grandmother, a forbidding widow who had grown up in a fancy family in Austin, Texas, wasn't the kind of person to whom children easily give a cozy nickname—although she and I got along well and, when she was in her eighties and I was in college, sometimes had cocktails in her living room at nine or ten in the morning, Scotch for her and bourbon for me. She often drove back to Texas from Kansas City, where she had moved in 1921, when she was twenty-six, and during those trips she stopped near the border between Kansas and Oklahoma to use the restroom at a particular Texaco station, whose owner saw her so often he assumed she lived nearby. She told him he had the nicest ladies' room she had ever seen on a highway, and on the basis of that they exchanged Christmas cards for many years. When I was two, I addressed her once as "Mrs. Matz," the only thing I'd ever heard anyone call her, and it was hastily decided that from then on she should be known to her grandchildren as Grandmother. My father never called her Anne, her first name, until she was in her late eighties

or early nineties and had forgotten that she didn't approve of familiarity. "I like you better than Carol's first husband," she told him at one point, referring to himself.

When Ann and I were first married and living in New York City, we had a neighbor, a little older than we were, who, for some reason, began calling me Steve, and then, equally mysteriously, switched to Scott. I have never liked being addressed as Mr. Owen. The foreign woman who cleaned our apartment every other week insisted on calling me that, and ignored my many requests to use my first name instead—until, finally, she gave in, to some extent, by calling me Mr. Davis; because of her, Ann and I sometimes call each other Davis and Avis. Before we became parents, we discussed what we wanted to be called by our children. Ann, at first, said she wanted be Mum, which is what she had called her own mother; I objected that "Mum" sounded British and, besides, was already taken. We ended up being, initially, just Mommy and Daddy, but when our daughter—whom we had named Laura, after the author and main character of Ann's favorite books when she was growing up—was about two, she experimented with calling us by our first names, as children often do. Ann didn't like that and, when Laura persisted in calling her Ann, said, "I think people ought to be called what they want to be called"; Laura said that, in that case, she would like to be called Megan. I, by contrast, enjoyed hearing a toddler use my first name and never discouraged her, and ever since then, to both our children, Ann and I have usually been Mom and Dave. When our son, John, was in high school, he had a classmate who thought that calling me Dave was dangerously strange, and always paused before saying it, and then pronounced it as though he were reading it from a page on which it had been printed in italics and enclosed in quotation marks.

Nobody calls me Loyd anymore, except for Hinkley, Dick, Pajamas, and a few other high school classmates I seldom see. My mother usually calls me Dave. My sister, Anne, sometimes calls me P-r-e-c-i-o-u-s, drawing the word out and sort of half-bleating it, as

though she were a cartoon sheep. When we were in college, she made me laugh the hardest I've ever laughed, late one night when we were watching a *Perry Mason* rerun on the tiny black-and-white TV in our parents' kitchen, by suggesting that we pretend a man Perry was cross-examining, a Mr. Rawson, was actually named Mr. Lawson. Surprisingly many of my golf buddies, but none of my other friends, call me Davy; two or three call me Dave-o; one calls me D. O. I have no particular preference, although, out of habit, I almost always introduce myself as David. Recently, I had to leave a telephone message for a man who goes by Dave and, without thinking about it, I said, "Hi, Dave, this is David"—then worried that he would think I had made what I felt to be a significant distinction. Yet if I had called myself Dave, too—"Hi, Dave, this is Dave"—might I not have seemed condescending, given that in our first conversation I had introduced myself as David? Or, conversely, if I had called both of us David mightn't I have come off as insensitive, or disapproving?

Ann and I don't have grandchildren yet, but we've talked a little about what we hope they will call us. One seldom discussed fact of life is that, if you live long enough, the name your grandchildren use for you will probably be the name you die with. During the last years of my father's life, he was no longer really Loyd or Loyd-o or Dad but mainly Pa—and not just to my children and their cousins but also to me and Ann, to my siblings and their spouses, and even, often, to my mother. The nickname that your grandchildren use for you, therefore, had better be something you don't mind hearing. For a brief time, my eldest nephew called my mother Ninnie, a name she didn't care for (although we all liked and adopted "Great Ninnie," the name he devised for my grandmother), but my mother, with some effort, was able to regain control of her identity and to establish herself as Grammie, which is what even I now call her much of the time. When Laura was learning to talk, she first addressed Ann's parents as Man and That, but later adopted Grandpa and Grandma, and that's now what I usually call them, too. Ann is leaning, for herself, toward

Nannie, Nonnie, or, perhaps, Nonie. I hope to continue all the way to the grave as Dave. "For Christmas, we're going to see Nannie and Dave" is what I imagine our grandchildren saying, as though they were speaking of an elderly woman and her gigolo.

Not long before my father died, I had a dream in which he asked me, somewhat plaintively, "Why does everybody call me Loyd-o?" I don't know what that dream could have signified, since he liked being called Loyd-o, and since the name Loyd was something interesting and unusual that the two of us had got a kick out of sharing for a little while. Maybe my subconscious was trying to come to terms with the fact that he wasn't going to be around much longer; or maybe my dream's true subject was actually myself, usually a fair bet. Recently, Ann e-mailed my siblings a photograph of me intently using a lobster pick to extract bits of meat from some hickory nuts, which I had gathered on a walk and then laboriously cracked open, and my brother, John, responded that it was "always interesting to see the unexpected ways in which our inner Loyd-o expresses itself." He and I, usually on some golf course, increasingly notice and discuss such signs in ourselves: a sudden interest in recreational vehicles, a desire to own a more expensive charcoal grill, the purchase of a complicated gadget to perform a task we will never get to, a thickening around the middle. But there's nothing that he or I or anyone else can do about any of that. We all come to an end, and our names, sooner or later, end, too.

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## **SIDEBAR: MR. WHITSON †**

**David Owen**

The best teacher I ever had didn't have a nickname: we just called him Mr. Whitson. He taught sixth-grade science. On the first day of class, he held up the skull of a small, extinct mammal called a catawampus, which was wiped out during the most recent ice age. No trace of the catawampus remains, he told us, and the advancing glaciers destroyed its habitat, too. It ate mainly smaller mammals and insects, and it had large eyes, as we could tell from the size of the sockets in the skull, and those eyes enabled it to see in the dark—a necessity, since it nested in caves. We all took notes, and later he gave us a quiz.

When he handed back our papers, we were shocked to see that there was red ink all over them: he had given us all zeros. What kind of science class was this?

Very simple, Mr. Whitson said. He had made up all that stuff about the catawampus, and, therefore, everything we had written on our tests was wrong. (Shouts of disbelief.) “What's more,” he said, “you should have known.” Even as he was passing around the skull, he said, he had told us that no trace of the catawampus remained—and if that was the case how could he possibly also have known what it ate, and where it lived, and whether it could see in the dark? “I even gave it a ridiculous name,” he said. He told us that our zeros would go into his grade book—and they did.

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† Drawn from the author's address delivered at the Annual Convention of the International Society of Barristers, San Diego, California, 12 April 2016.

After we'd calmed down a little, he explained that the purpose of the exercise was to show us that we shouldn't necessarily believe something just because he or some other teacher or a textbook said that it was true: we always had to think for ourselves. And during the rest of the year he gave us lots of opportunities to do that. One morning, he told us that his Volkswagen Beetle, which he had named Herbie, was a living thing. To prove him wrong, we had to do more than recite the seven characteristics of organisms, which we had learned about the day before. We had to convince him that we truly understood that gasoline isn't "nutrition," and that an assembly line isn't "reproduction," and that what a carburetor does isn't "respiration." More important, we had to stand up to him when he tried to bully us out of our arguments by using big words and tricky explanations. He didn't let us off until we had persuaded him that we weren't just reciting some list he'd made us memorize.

Other teachers weren't necessarily prepared to be challenged in the way that Mr. Whitson expected us to challenge him. They'd say something that didn't sound right, and in the back of the room someone would mutter "catawampus." But I would bet that having us in their classes forced them to be better teachers, in the same way that being in Mr. Whitson's class forced us to be better students—as well as showing us how to be better thinkers generally, even as grownups.

Mr. Whitson went on to become the headmaster of a private school on the east coast, and when he retired the school named a building after him. One fall, long after sixth grade, a group of his former students stayed at his house while they were in the area for a big college football game. They did lots of reminiscing, and everyone had a great time. As they were leaving to go home, Mr. Whitson told them that the meat he'd served them that weekend—burgers, steaks, stew—had all been horse meat. (Shouts of disbelief.) "What's more," he said, "you should have known."