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Trigger Crimes & Social Progress: The Tragedy- Outrage-Reform Dynamic in America


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TRIGGER CRIMES & SOCIAL PROGRESS

The Tragedy-Outrage-Reform Dynamic in America

Paul H. Robinson¹ and Sarah M. Robinson

Can a crime make our world better? Crimes are the worst of humanity's wrongs but, oddly, they sometimes do more than anything else to improve our lives. It is often the outrageousness itself that does the work. Ordinary crimes are accepted as the background noise of everyday existence but some crimes make people stop and take notice – because they are so outrageous or so heart-wrenching.

This brief essay explores the dynamic of tragedy, outrage, and reform, illustrating how certain kinds of crimes can trigger real social progress. Several dozen such “trigger crimes” are identified but four in particular are used as case studies to investigate the most interesting questions: Why do some tragedies produce broad outrage while others, often of a very similar nature, do not? Why do some outrages produce reform while others, often with greater claims to outrageousness, do not?

The tragedy-outrage-reform dynamic is sometimes society responding to a new problem, sometimes society finding in new solution to an old problem, and sometimes the product of changing societal norms. As it happens, these three different contexts have some explanatory power in understanding why and when the dynamic operates as it does.

Also examined is the period following the tragedy-outrage-reform dynamic, which often reveals a serious gap between legislative reform and real-world change. On the other hand, it is also common that reforms, especially those generated by the tragedy-outrage-reform dynamic, go too far and require further revision to undo the excesses.

¹ Colin S. Diver Professor of Law, University of Pennsylvania. This essay memorializes the 2017 Wassong Memorial Lecture in European and American Art, Culture, and History that he delivered on April 24, 2017 at Trinity College, Hartford. The essay and the lecture are drawn from the authors' book, *Tragedy, Outrage & Reform: Crimes That Changed Our World* (forthcoming Rowman & Littlefield 2018) [hereinafter T.O.R.].

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Can a crime make our world better? Crimes are the worst of humanity’s wrongs but, oddly, they sometimes do more than anything else to improve our lives. It is often the outrageousness itself that does the work. Ordinary crimes are accepted as the background noise of everyday existence but some crimes make people stop and take notice – because they are so outrageous or so heart-wrenching.

This brief essay explores the dynamic of tragedy, outrage, and reform, illustrating how certain kinds of crimes can trigger real social progress. Several dozen such “trigger crimes” are identified but four in particular are used as case studies to investigate some of the most interesting questions: Why do some tragedies produce broad outrage while others, often of a similar nature, do not? Why do some outrages produce reform while others, often with greater claims to outrageousness, do not? Why do some reforms triggered by the tragedy-outrage-reform dynamic tend to go too far, requiring substantial subsequent revisions, while others do not?

We noticed this tragedy-outrage-reform dynamic in a variety of cases and sought to undertake something of a natural experiment. We collected two dozen of the strongest examples of trigger cases from the past century, then look for interesting patterns that might give insights into the dynamic. The exercise is not hypothesis-resolving but rather hypothesis-generating. As the discussion below reveals, there are some interesting patterns in the collected trigger cases and they do suggest some provocative hypotheses worth investigating.

I. TRIGGER CRIMES: FOUR EXAMPLES

There are a host of cases that might be called “trigger crimes” – crimes that end up triggering broad reform. The Appendix lists two dozen that arose between 1911 and 2001,² but for the purpose of this essay we focus on four examples. We have selected these four because, as will become apparent, they each represent a kind of trigger crime with a tragedy-outrage-reform dynamic that is importantly different from the others.

² We examine all of these trigger crimes in T.O.R., supra note 1.

A. 1911 Triangle Factory Fire – Building Safety Codes

Tragedy. March 1911, the Triangle Shirtwaist Factory with 600 workers housed on the top three floors of a nine-story New York building catches fire.³ The employees, mostly young immigrant women, have only few routes of escape: The main staircase is inaccessible as the owners of the factory keep it locked to prevent unauthorized breaks and theft. Hundreds of New Yorkers bear witness to the grizzly drama of young girls being consumed by flames as they jump to their death. Men stretch out blankets to break the fall for some but the force is too great and the bodies slam into the pavement at full force. When the fire is out, less than half an hour later, 146 people are dead.

Outrage. The death of so many young people touches New Yorkers deeply. The newspapers are filled with story after story about the causes of the fire and how easily many of the deaths could have been avoided. Randolph Hearst, the newspaper tycoon based in New York, keeps the story alive all over the country. Within the city there are many groups who see the case as representing their vision of the ills plaguing society: women's rights group, labor activists, anti-capitalist groups, and people who object to the power of Tammany Hall. With the Triangle Factory fire they are all able to speak to the same issue bringing a single new focus. With the death of so many young innocents, it was easy to cast the fire as evidence of a clear problem: the greed of a few men was more important to the city than the ordinary citizen.

Towards Reform. The combined outrage and unceasing publicity is simply too much for the government to ignore. Tammany Hall depends on broad support to stay in power and they realize that they need to demonstrate their concern. A committee is formed, run by Francis Perkins, who will one day be the Secretary of Labor under FDR. The Tammany machine intends the investigation to be mostly for show but Perkins and her committee do serious investigative work and recommend far-reaching reforms concerning building and fire safety, which become law in New York and spread throughout the country.

B. 1964 Genovese Rape Witness Scandal – 9-1-1

Tragedy. In the early hours of March 13, 1964, Kitty Genovese, just home from work parks her car and heads towards her Queens apartment.⁴ Before she has gotten far a man with a large knife begins to chase her. As Kitty runs under a street light, the man catches and stabs her. Kitty screams, "Oh my God, he stabbed me!" and lights go on in nearby apartments. The attacker slips off into the night. No one comes out to help, no one calls the police, and soon the neighbors shut off their lights. Kitty tries to reach the safety of her apartment not far away but the attacker returns to finish the job. Again she calls out: "I'm dying! I'm dying." A neighbor

³ The narrative is drawn from the following sources: Triangle Shirtwaist Fire in New York City, History.com, February 17, 2015; Leon Stein, Triangle Fire (1962) [hereinafter Triangle Fire]; How Regulation Came to Be: The Triangle Shirtwaist Fire, Daily Kos at <http://www.dailykos.com/story/2010/03/21/846135/-How-regulation-came-to-be-The-Triangle-Shirtwaist-Fire> [hereinafter How Regulation Came].

⁴ The narrative is drawn from the following sources: Kevin Cook, Kitty Genovese: The Murder, The Bystanders, The Crime that Changed America (2014) [hereinafter The Murder]; Jim Rasenberger, Kitty, 40 Years Later, New York Times (Feb 8, 2004) <http://www.nytimes.com/2004/02/08/nyregion/kitty-40-years-later.html> [hereinafter 40 Years Later]; Martin Gansberg, 37 Who Saw Murder Didn't Call the Police: Apathy at Stabbing of Queens Woman Shocks Inspector, New York Times March 27, 1964 [hereinafter 37 Who Saw Murder].

who has been watching the whole scene calls another neighbor, a young mother. He tells her what he has witnessed. She, who had not known of the attack, calls the police and goes out into the night. She cradles and soothes Kitty until the ambulance arrives. Kitty dies on the way to the hospital.

Outrage. The *New York Times* publishes a story entitled: “37 Who Saw Murder Didn’t Call the Police.” While the article is not entirely correct in its details, the greater message, that no one made any effort to help, stirs a strong reaction. People understand that Kitty could have been saved if someone had acted to prevent the second attack. They understand that everyone is at risk if people will not even bother to dial the phone to save another. There was nothing that Kitty could have done but there was a great deal that others should have done. And yet they did not. Kitty is killed only four months after President Kennedy is shot; crime rates in New York are skyrocketing; racial unrest is increasing; and ordinary people see her death as stark example of the dangers of modern life. In a city full of muggings, rapes, and killings, Kitty’s murder galvanizes the region in a powerful way.

Towards Reform. After the article appears, authorities and reporters start digging into the reasons that no one called the police. Some people believed it was a domestic dispute and therefore a private matter. Others simply lived by a notion of never involving themselves in anything they could avoid. But another truth became clear; getting help was not always easy. When Kitty was attacked it was the middle of the night, people were awoken from deep sleep, and at the time there was no universal number by which to get emergency assistance. Calling the police meant finding the phone number of the police station that had local jurisdiction, then trying to get on the line somebody at the station could deal with the current emergency. Calling the ambulance required another number. AT&T had recently introduced 4-1-1 for universal directory assistance and 6-1-1 for repairs. AT&T now added 9-1-1 as a universal number to summon emergency help. The 9-1-1 began in a few places and then spreads nationally to include the entire country.

C. 1969 Santa Barbara Oil Spill & Cuyahoga River Fire – EPA

Tragedy – Santa Barbara. Off the coast of Santa Barbara in 1969 the drill is being withdrawn from a newly tapped oil well.⁵ Something goes wrong and the sea floor ruptures and a river of oil is set free. It takes eleven days to seal the cracks and during that time hundreds of thousands of gallons of crude oil spill into the once pristine waters. Before the oil spill the area was a veritable paradise of rich bio-diversity. The unrelenting flow of oil kills sea birds by the thousands, dolphins with clogged blow holes suffocate, the fine grained white sand becomes tar like, and the waves are silenced. The residents of the community join with authorities to try and clean up the black ooze but nothing seems to work. One failed effort follows another. For example, straw used to soak up oil floating on the water is put on land, where a passing rain simply washes the oil back into the sea.

Tragedy – Cuyahoga River. Before the oil is even cleared from the beaches, half way across the country, the Cuyahoga River in Cleveland, Ohio catches fire. A spark from a passing

⁵ The narrative is drawn from the following sources: Santa Barbara Wildlife Care Center, Oil Contamination: Santa Barbara's 1969 Oil Spill, 20 August, 2002 [hereinafter Oil Contamination]; Keith Clarke and Jeffrey J. Hemphill, The Santa Barbara Oil Spill, A Retrospective, 64 Yearbook of the Association of Pacific Coast Geographers, University of Hawai'i Press 157 (2002) [hereinafter A Retrospective].

train lands on a pile of debris that was held together by oil and other industrial waste, setting it ablaze. Because the river has a history of catching fire, boats are quickly on hand with hoses that break apart the mass. *Time Magazine* runs an article about the blaze, telling the nation that there are many waters in the U.S. that are so polluted that they can catch fire.

Outrage. Seven years earlier, Rachel Carson publishes her book *Silent Spring*. The book, which describes the unintended effects of pesticides and other ways in which humans harm their environment, stays on the New York Times bestseller list for 86 weeks. Carson's message, seemingly primes the pump for the reaction that follows the Santa Barbara oil spill and the Cuyahoga River fire. Back in Santa Barbara, the city's 70,000 residents are quick to help but are also quick to demand that this never happens again. The *Santa Barbara News-Press* runs a series of scathing articles about the destruction that bring broader attention. A nation-wide petition drive garners 110,000 signatures. The well-off community harnesses the resources of the local university and others to keep the message in the papers. They work to show that this oil-spill is more than an isolated occurrence. The people of Santa Barbara want the nation to understand that the policies that allowed the beaches to be soiled are also leading to dirty air and untold additional environmental horrors. The *Time* article that follows the Cuyahoga River fire gives a long list of burning waterways and seems to prove that the message of Santa Barbara is important. Environmentalists are now talking to a nation that is ready to listen.

Towards Reform. The two back-to-back events bring people forward to demand change and Congress is quick to act. A year later, the EPA is created and the Clean Air Act comes into law. That legislation is quickly followed by the Clean Water Act and an array of additional environmental reforms. Once the process begins, it is fairly rapid. By 1976 congress passes the Resource Conservation and Recovery Act along with the Toxic Substance Control Act. The EPA is given the power to issue regulations and to enforce these laws.

D. 1980 Lightner Crash – Drunk Driving

Tragedy. It is a bright spring morning in May of 1980. Cari Lightner and her sister are walking home after having their softball team pictures taken.⁶ Cari is dressed in the bright orange uniform of her team. Without warning, a car veers off the road, smashes into Cari, throwing the 13 year-old 125 feet. She dies within the hour. Her body is so damaged that none of her organs can be donated. No one notices the car that speeds off. Clarence Busch, who had been in jail less than 24 hours ago for a different, his seventh, alcohol related incident, is the driver. When his wife hears about the dead child, she notifies the police. Busch is convicted of vehicular manslaughter. The judge feels that chronic alcoholism contributed to Busch's inability

⁶ The narrative is drawn from the following sources: Candace Lightner, Cari's Story, We Save Lives: Your Partners in Highway Safety (2016), <http://wesavelives.org/caris-story/>; Maria Wilhelm, A Grieving, Angry Mother Charges That Drunken Drivers Are Getting Away with Murder, *People Magazine* (June 29, 1981); Laurie Davies, 25 Years of Saving Lives, *Driven Fall* (2005) [hereinafter 25 Years]; Candy Lightner: Making a Difference, Blog Spot 2009 <http://candylightnermadd.blogspot.com/2009/01/death-of-cari-lightner.html>.

to make good decisions and, despite Busch's many prior offenses, mitigates his sentence to two years in prison.

Outrage. It is only by chance Cari's family finds out that Busch was drunk when hit Cari. Candace Lightner, Cari's mother, sees the sentence as a grave injustice. She complains, "Death caused by drunk drivers is the only socially acceptable form of homicide." To her, this was not an accident, like getting struck by lightning. The death of Cari came about because the system allows people such as Clarence Busch to drive knowing that he will drive drunk. When Candace looks into the laws, she comes to understand that she is not going to change anything by simply talking about her daughter. She founds Mothers Against Drunk Driving, MADD, and begins to collect the stories of the victims and families and the statistics to change the conversation. In excess of 20,000 people a year are being killed by drunk drivers. She, and those who join her movement, begin to demand that legislators act. They relentlessly campaign for law reform all over the country. By showing the massive scale of the national problem and by telling the stories of individuals, MADD gets people outraged.

Towards Reform. MADD finds an excellent partner in the Department of Transportation. The Department had been trying for years to get legislators to take drunk driving seriously but had made little progress. When Candace and MADD start to go to individual legislators, armed with DOT statistics, it is harder for the law makers to ignore the problem. MADD members make progress one step at a time. California, where Cari was killed, is the first state to act. In what seemed like a significant achievement at the time, in 1981, the state set a mandatory minimum for a repeat offense of drunk driving – a fine of \$375. By 1982 there are a hundred MADD chapters around the country. The age for legal drinking is increased to 21 in 1984. In 1998, by linking federal highway funds to adopting .08% as the legal limit for impaired driving, the entire nation adopts the federally-mandated standard.

II. THREE KINDS OF CASES: NEW PROBLEMS, NEW SOLUTIONS, AND CHANGING NORMS

Several dozen such "trigger crimes" are identified in the Appendix but we will use the above four as case studies to investigate some of the interesting questions raised above. We have selected to these sample cases because they each represent a kind of case that it turns out to be importantly different in the way the tragedy-outrage-reform dynamic seems to work. That is, our study of "trigger crimes" and the tragedy-outrage-reform dynamic suggest that there is explanatory power in distinguishing among three kinds of cases. Some offenses become trigger crimes because they focus public attention, and outrage, on a new societal problem that has only now become crystalized in the public's mind. Other tragedies reflect long-standing problems but problems that now seem to have a plausible solution within reach. A final group of cases concern an old problem where a solution has been available in the past but what has changed is shift in societal norms regarding the importance of solving the problem. The four sample cases above include an example of each.

New Problems. Prior to the late 1800's, Americans made their own garments. A rush of immigrants came to New York with the new century, bringing a large talent pool of tailors, drapers, and engineers – and cheap labor. Now there is a product demand, a talent collection, and the bodies to run the machine amassed in the same compact area. By 1910 an estimated

70 percent of the clothing worn by U.S. women originates in New York's Garment District.⁷ The factories are housed in the new electrically run steel buildings that are quickly built to house them. Even the engineering of such buildings was new. Skyscrapers, a term that was originally used in the 1880s to describe a building of 10 to 20 floors, became far more feasible when steel manufacturing became sophisticated enough to supplant iron around 1895. All this progress, supplies the new conditions that create the possibility for the horrendous Triangle Factory Fire.

Such an advent of a new sort of societal problem is a common stimulus for trigger cases. The 1937 Sulfanilamide Crisis spawns a regime of drug safety that has not been needed in a world with limited commercial development and distribution of medicines. The 1972 TWA airplane bombings triggers a new focus on airline security because hijackings has arisen as a growing problem.

New Solutions. About the time of the 1964 Genovese attack, AT&T recently implemented 6-1-1 as a universal customer service request number and 4-1-1 as a universal directory assistance number. Adding a third short number, 9-1-1, for emergency calls becomes a relatively quick, easy, and cheap solution to the problem of contacting local police.⁸ At the time, rotary telephones are used and 9-1-1 is both easy to remember and quick to dial. (AT&T's willingness to provide this service may not have been entirely altruistic. Without a universal number, people in emergencies tended to call the operator, an AT&T employee, who had to stop other business to determine the proper police station to call and its phone number. The new nationwide emergency number is funded through a small additional charge placed on nearly everyone's phone bill. The reform is thought to save the company millions of dollars.)

The availability of a new solution to an old problem is a common pattern in triggering cases. The advent of DNA as an investigative tool in the 1986 Leicestershire murder cases comes about because a researcher at a nearby university is at the time studying the uniqueness of each individual's DNA. Similarly, when Amber Haggerman is abducted from a parking lot near her home, there is no system by which the greater community can be quickly notified. But a technological solution to the problem is readily available and the Amber Alert system is established, which quickly alerts police and motorists in the area about abductions.

Changing Norms. There have been notorious environmental disasters before the 1969 Santa Barbara oil spill and Cuyahoga River fire but little social or political will to pay the price to avoid them. Rachel Carson's 1962 book, *Silent Spring*, helps prime the pump of public concern by giving Americans a frightening view into a world of environmental degradation. DDT sprayed on crops kills the target insects but also kills many other creatures. It enters the human body and is retained in fat cells, causing cancer and other serious health problems. *Silent Spring* stays on the *New York Times* best-seller list for 86 weeks, and its message is widely disseminated before the oil spill. The notion of Americans killing themselves by killing the environment becomes a palpable concern.

⁷ Lauren Benet Stephenson, *The History of the New York City Garment District*, Zady Inc. (2015).

⁸ The narrative is drawn from the following sources: Sarah Stone, *How Did "911" Become The Emergency Call Number In North America?*, *Today I Found Out* (July 7, 2014), <http://www.todayifoundout.com/index.php/2014/07/911-become-emergency-call-number-united-states/>; 9-1-1 Origins and History, National Emergency Number Association (2013) [hereinafter *Origins and History*] <https://www.nena.org/?page=911overviewfacts>; 40 Interesting Facts About . . . 911 Emergency Calls, *Random History.com* (August 7, 2014).

In the ten years before Cari Lightner's 1980 death, 250,000 people died in drunk-driving incidents and most Americans knew someone who was injured or killed. "Alcohol was involved in nearly 60 percent of fatal crashes and we were banging our heads against the wall," remembers Jim Fell, an employee for the National Traffic Safety Administration. "Then, all of a sudden, a woman named Candy Lightner [Cari's mother] came along, kicking and screaming about her daughter who had been killed."⁹ Victims and their families start using MADD as a resource, and politicians start listening. By 1982, less than two years after MADD's founding, 100 MADD chapters exist around the country, with more forming daily. Forty-one states establish task forces and commissions to assess the state's drunk-driving problem and propose solutions.¹⁰ By 1983, 129 new anti-drunk-driving laws are in place around the nation. The organization attracts federal support. MADD's very personal approach changes the political dynamics. MADD insists that legislators stop treating drunk-driving as an unfortunate reality. The community comes to reject the notion that, as Candy Lightner puts it, drunk driving "is the only socially acceptable form of homicide."¹¹

The same sort of change in social norms can be seen as the determinative factor in other cases well. Domestic violence was simply tolerated as the way of the world until the appalling events of the 1983 Tracey Thurman beating helped trigger people's appreciation that that reality must change. Tracy had become fearful for her life from her estranged husband who repeatedly attacked her and vowed he would kill her. She consistently pleaded with police to intervene but the police refused, seeing the regular beatings as a private matter. When Buck Thurman nearly kills his wife with the police on the scene doing nothing, Tracey sues the township and wins. The resulting publicity promotes a dramatic shift away from public tolerance of domestic violence, which leads to nationwide reform.

Civil rights reforms show a similar history. Open violence against African Americans had been going on for decades. When Birmingham's 16th Street Baptist Church is bombed in 1963, killing four young girls in their Sunday dresses, the brutality of the violence finally awakens a great cry for change.

III. EXPLORING THE TRAGEDY-OUTRAGE-REFORM DYNAMIC

Why do some tragedies produce broad outrage while others, often of a very similar nature, do not? Why do some outrages produce reform while others, often with greater claims to outrageousness, do not?

The Triangle Factory Fire was a horrendous event but it was hardly the only horrendous event of that nature. Eight years earlier, the Iroquois Theatre fire on December 30, 1903 in Chicago killed 600 people. When firefighters responded to the blaze, they thought the theater was in fact closed. No flames were visible and the doors seemed locked. In fact, so many bodies were stacked up against the inward opening exits that the doors were as tight as though they were locked. The only person to serve any jail time in relation to the disaster was a nearby saloon owner who had robbed the dead bodies while his establishment served as a makeshift

⁹ James C. Fell and Robert B. Voas, *Mothers Against Drunk Driving (MADD): The First 25 Years*, Pacific Institute for Research and Evaluation (March 2006).

¹⁰ Gerald D. Robin, *Waging the Battle Against Drunk Driving: Issues, Countermeasures, and Effectiveness* (1991) [hereinafter *Waging the Battle*] at 9.

¹¹ *Waging the Battle*, supra note 20, at 9.

morgue. Why is it the Triangle Factory fire that sparks such outrage and reform, rather than the Iroquois Theater fire?

One may observe the same phenomenon with regard to the 1969 Santa Barbara oil spill and Cuyahoga River fire. These were hardly the first environmental disasters. Indeed, for a century, the residents of Cleveland, Ohio have tolerated their river regularly catching fire – at least 11 different times on record. The fire of 1952 is particularly destructive, blazing for three days and causing \$1,800,000 worth of damage. The Cuyahoga isn't the only river known to catch fire. Michigan's Rouge River, the Schuylkill River of Philadelphia, the Buffalo River in Buffalo, and the Chicago River have also been known to burn, as well as both Baltimore and New York harbors. Why is it the 1969 Cuyahoga River fire that inspires outrage and reform?

The same is true of drunk driving before the 1980 Cari Lightner death. No one bothered keeping national records of drunk driving deaths before 1980 but a survey of local records shows the enormous extent of the problem. In one day in that period, just after midnight a Florida barber crosses the street and is struck by a drunk 23-year-old house painter. Three minutes later, in South Carolina, a drunk 27-year-old slams into a middle-aged woman. Less than an hour later, a drunk Texas driver going the wrong way down the highway kills another driver. And on it goes until 54 people are dead in the single day due to impaired driving.¹² Before the year ends, the death toll will be in excess of 21,000. Cari Lightner's death is just one of a continuing flood of victims. Why is it her death that triggers reform but not others?

The same point can be observed for many other trigger cases, including most of those listed in the Appendix. The 1963 Birmingham Church bombings is an appalling crime, but the period is marked by a string of appalling crimes against African-Americans. In 1956, Dr. Martin Luther King's home is bombed. On January 13, 1957, four black churches and two pastors' homes are bombed in Montgomery, Alabama. Two white men affiliated with the Ku Klux Klan, Raymond Britt and Sonny Livingston, are indicted in February 1957 after confessing to the bombings, but an all-white jury acquits them of all charges while spectators cheer. A sheriff executes two prisoners because a court suggests they had been denied a fair trial. And yet, as a nation, nothing changes. Why did the Birmingham church bombings seem to make a difference?

The 1983 Tracey Thurman beating is hardly an unusual event. Authorities didn't bother keeping statistics on domestic violence before that time but the available evidence suggests the extent of the problem. When Kansas City looked at their homicide statistics in 1971, it found that 40% were spouse killings. In nearly half of those killings, police had been previously called to the home at least five times.¹³ A 1975 National Family Violence Survey found that serious domestic abuse occurred in 16 percent of American families every year.¹⁴

Nor are the egregious facts of the Tracey Thurman case particularly unique. In a 1955 case, Sandra Baker is afraid of her husband, a New York City policeman. She gets an order of protection but despite the order he threatens and beats her again and again. When Sandra again calls the police, they refuse to take action against the husband, saying the protection order is "no good" and "only a piece of paper." When Sandra again takes the matter to court,

¹² Andrew H. Malcolm, *Drinking And Driving: New Year's Eve 1981*, New York Times (December 31, 1982).

¹³ History of Battered Women's Movement, Indiana Coalition Against Domestic Violence (March 25, 2009) <http://www.icadvinc.org/what-is-domestic-violence/history-of-battered-womens-movement/>.

¹⁴ Cathy Young, *Domestic Violence: An In-Depth Analysis*, Independent Women's Forum (September 30, 2005) <http://www.iwf.org/news/2432535/Domestic-Violence:-An-In-Depth-Analysis>.

she is told her husband is not coming because he is sick. But she sees him in the building and she asks to remain in the court office because she is afraid of him. She is told she cannot stay and when she emerges from the office he shoots her. Yet it is the Tracey Thurman case that ends up inspiring broad national reform, rather than any of the thousands of earlier egregious cases. Why should this be so?

A. Which Tragedies Will Produce Broad Public Outrage? Which Instances of Public Outrage Will Produce Reform?

Producing Public Outrage. There are lots of tragedies but not all of them generate outrage. What are the circumstances that produce outrage in one case and not in another case that may seem equally outrageous?

The three categories described in Part II can provide part of the answer to these questions (although the three-part typology ought not be pushed too far¹⁵). For example, it may be easiest to generate outrage in cases where a new problem has arisen because the danger or suffering is not something that people have come to accept as an unfortunate part of their lives. Simply because it is new and different, it gains attention and calls out for a solution.

For similar reasons, the old problem-new solution cases are less likely to produce public outrage. People have come to accept the danger or suffering as simply an unfortunate part of their reality. It is only the availability of a new solution that can shake people from their lethargy. But, of course, this assumes that the general public knows of the new solution.

The changing-norms cases are similar in that the past acceptance of the danger or suffering might minimize the outrage of some people. It is the power of the changed norm that is doing the work in these cases to generate outrage, even though a case similar to the trigger case did not generate outrage in the not-too-distant past.

Converting Outrage into Reform. There are lots of things that people get outraged about that do not produce reforms. What circumstances make some outrages produce reform while others do not?

Once there is public outrage, it may be easiest to convert that outrage into reform in cases of newly available solutions to old problems. As noted above, producing outrage in these cases is the hard part. The new availability of a solution makes the reform step easy.

The case studies suggest that one can also successfully convert outrage into reform in the new-problem cases and the changing-norms cases, but here the move to successful reform faces a complex situation: each outrage must compete with many other outrages to be the one to get the special attention of the legislature or other political powers that will produce the legal reform. The legislative leaders may make their reform selections on their own but more often they are responding to the judgment of others: newspapers and other news organizations, influential lobbying groups, celebrities and other public figures and, increasingly, social media. How can one current outrage become the outrage that wins the reform lottery?

A number of factors, such as the extent of news media coverage, are obvious in their important effect, but other factors are less obvious and some obvious factors have an outsized effect that make them specially important.

¹⁵ There is a limit to the tightness of the categories. A single case may have bits of more than one category, for example.

Dramatic Images. Perhaps it can win the lottery just by being so spectacularly and visually outrageous – like the burning women falling from the sky in the Triangle Factory fire or the Cuyahoga River burning. The pictures in the news are dramatic: oil covered birds on the beach and piles of dead dolphins washing up. After the Birmingham church bombing, the news services published a photo of a dead child’s shoe being held by her mother. These are striking images that will give that outrage special attention. The larger point is that the same rules that affect publicity campaigns – dramatic visual images – also affect public opinion in cases of specific outrages.

Influential Victims. Another factor that can give one outrage and advantage over others is who it affects. The Santa Barbara oil spill damaged a neighborhood with a good deal of money and influence. They clearly had the means and connections to get legislative attention, and to whip up broader public support, in ways that would not be available to less influential victims. Richard Nixon was the U.S. President at the time and had his unofficial White House in nearby San Clemente. President Nixon visits the site of the oil spill: “It is sad that it was necessary that Santa Barbara should be the example that had to bring it to the attention of the American people.”¹⁶ (A corollary to the advantage of influential victims is that a tragedy can be converted into reform even without broad social outrage. It is enough to influence legislative leaders through any means. The Triangle Factory fire benefitted in the reform contest by being in New York City, the home of Randolph Hearst. The Hearst papers and their syndicates around the country covered the fire for weeks.)

Devoted Publicity Manager. But compare the influential-victim path to the drunk driving reform. It was not the individual victims that created the outrage and reform. It was the relentless publicizing by Cari Lightner’s mother that did the job and compensated for her lack of political influence. The process here was slow but steady. Without singularly dramatic images or particularly influential victims, the building of outrage and the move to reform with something that would take time: societal norms had to be changed.

Pump Primers. A common pattern revealed by the trigger crimes collection is the presence of a previous tragedy, often not too long before the trigger case, that in a sense primes the pump for the trigger case’s outrage to produce the broad reform. For example, the Iroquois Theater fire eight years earlier primed the pump for the public outrage and reform triggered by the Triangle Factory fire. Similarly, the outrage and reforms that followed the 1932 Lindbergh kidnapping were made possible in part because of the public sensitivity to the problem provided five years earlier with the kidnapping of twelve-year-old Marion Parker, who was tortured to death. In early 1963, just months before the Birmingham Church bombing, Martin Luther King was in jail where he penned a widely published letter, with his iconic suggestion that “Injustice anywhere is a threat to justice everywhere.” The letter helped create the atmosphere that sparked the dramatic reaction to the Birmingham church bombing. Just one year before Polly Klaas is abducted killed in 1993, Kimber Reynolds was killed by a career criminal. There was an attempt to address the problem of offenses by repeat offenders but the effort failed. It did however seem to prime the pump rice stronger reaction commitment to reform that came with the Polly Klaas killing.¹⁷

¹⁶ A Retrospective, supra note 8.

¹⁷ Of course, in some instances two cases are so close in time and intertwined in their effect that it would be hard to see only one of them as the trigger case. This occurs, for example, with the trigger for the development of SWAT teams in the militarization of police: the 1965 riots in Watts and the case of sniper Charles Whitman who used

Luck. There are only so many reform projects that a legislature can undertake at any given time. A tragedy may have the bad luck of occurring at the same time as an even greater tragedy, which then siphons off public outrage and clogs up the channels of reform. So there is a certain amount of luck involved in the path from trigger crime to legal reform. In some cases, the path from tragedy to reform can benefit from good luck. On the day that the Triangle Factory burned, Francis Perkins, then Secretary of the New York City Committee on Public Safety and later Secretary of Labor under President Roosevelt, was in a restaurant nearby. She was drawn to the commotion and witnessed the horrifying events of the fire. It is hard to imagine that her witnessing the events did not influence her resolve to do what she could to prevent future occurrences.

Ultimately, to get from tragedy to reform requires that quite a few elements to be in place, both in prompting outrage and converting that outrage into action. So there is a certain amount of “perfect storm” quality in the process – a specific combination of conditions must exist at the same time or in a certain relation to one another to actually produce legislative reform.

B. Legislative Reform Versus Real-World Change

The tragedy, outrage, and reform process is not complete with the enactment of legislation. The legal reforms simply mark the end of the first phase. Legal change may have little or no effect on the real world.

In the case of the Triangle Factory fire, for example, the same defendants are brought to court again several years later for a similar incident and get a similar trivial punishment. In 1913, Blanck and Harris, the owners of the Triangle Shirtwaist Factory, are running a new factory where the doors are again being chained, trapping 150 women inside without means of escape in case of fire. The violation is discovered before a tragedy occurs. The result: Blanck is fined twenty-five dollars. He understands the game. Later that same year, on December 23, Blanck is again found to be violating the law and is issued a warning, but on this occasion is not fined.

In the Lightner drunk driving crash case, two weeks after being released from custody for killing Cari Lightner, Busch is again a licensed driver. While drunk, he crashes into a car stopped at a red-light, totaling both cars. In 1992, Busch is again in court, for his sixth drunk driving conviction. He is fined \$583 and his driver’s license is suspended for nine months.¹⁸

Laws on the books can have no effect unless witnesses, prosecutors, judges, juries, sentencing guideline commissions, and others take the offense more seriously and play their part in making the system work to actualize the new legal rules.

The notion of “trigger crimes” suggests a step function – a point of dramatic legal change – which is probably an accurate description of the legal reform phase of the process: the tragedy triggers a legal reform that did not previously exist. But in the subsequent phase, after the legislation is in place, the process of changing actual practice is more like a continuous curve than a step function. Requires a collective and interactive process, as in building a

superior fire power to keep police at bay. Another example, already discussed above, is the Santa Barbara oil spill which was followed only six months later by the Cuyahoga River fire.

¹⁸ Ivy Scarborough, *Winning Against DUI: A Handbook for Victims of Drunk Driving and Antidrink Driving Advocates* 33 (1996) <http://www.ivyscarborough.com/assets/WinningAgainstDUI.pdf>.

skyscraper. Steelworkers, carpenters, electricians, and plumbers must all do their work on each level before they can get to the next level. Yes, the steelworkers must come first, and the finishing teams last, but the building can't be billed without all these groups working together. In a similar fashion, getting beyond legal reform to actual change of practice on the ground requires that witnesses, prosecutors, judges, jurors, and all other participants in the criminal justice system must share the new norm if it is to be enforced.

It is a bit of a chicken and egg problem. The new norm's internalization by these people and others depends to a large extent on the criminal justice system's enforcement of it backed by community support. But that enforcement and support depends to a large extent on these people and others internalizing the new norm. Increasing enforcement of the legal rules and increasing internalization of the new norm must move ahead together, incrementally – building the building floor by floor.

C. Going Too Far

When a trigger crime's outrage is translated into legal reform, it is not uncommon for that reform to go too far. The reasons for this might be explained by several phenomena, which one might call the "reform hysteria dynamic" and the "bureaucratic momentum dynamic."

The Reform Hysteria Dynamic. It is common that in the heat of the moment, the energy and momentum that creates legislative reform ends up carrying the reforms too far. The dynamic is illustrated by what has been called the "crime du jour" problem. A particular headline criminal case leads to the creation of a new offense, such as carjacking, home invasion, and other new offense – most of which are already fully criminalized and thus unnecessary. Or the case may inspire legislators to increase the punishment grade of an existing offense – where the effect is to exaggerate the grade of the offense over what it should be in comparison to other offenses. By this exaggerated legislative response, politicians signal to their constituents that the legislator really does feel their concern and really is "doing something about the problem." (More often than not, the new unnecessary legislation is actually creating ambiguities and inconsistencies within the criminal code that complicate prosecutions rather than assist them.) Over time, the crime-du-jour process creates serious internal inconsistencies and disproportionalities in the grading among different offenses. The dynamic is made worse by the fact that it creates a continuing upward spiral: after one crime du jour exaggerates the grading for an offense, the next crime du jour uses the exaggerated grading as the new baseline from which the grading of the next crime du jour must be exaggerated.¹⁹

The same dynamic behind the crime du jour problem – the tendency of the uproar that sparks reform to go too far – is seen in new-problem cases and in changing-norm cases. The Polly Klaas abduction, by a man who had six previous convictions for violent felonies, ends up making three-strikes statutes a national phenomena. But life without parole is not necessarily

¹⁹ For a more detailed discussion of the crime du jour dynamic, see Paul H Robinson, *The Rise and Fall and Resurrection of American Criminal Codes*, 53 *University of Louisville Law Review* 173, 181 (2015); Paul H Robinson and Michael T Cahill, *The Accelerating Degradation of American Criminal Codes*, 56 *Hastings Law Journal* 633, ?? (2005); Paul H. Robinson, Thomas Gaeta, Matthew Majarian, Megan Schultz & Douglas M. Weck, *The Modern Irrationalities of American Criminal Codes: An Empirical Study of Offense Grading*, 100 *J. Crim. L. & Criminology* 709, 718–28 (2010).

an appropriate sentence for every instance of three strikes. William Rummel, for example, was given life without parole where his “third strike” – not returning to fix the air-conditioning for a bar owner who had already paid him \$120. His previous two strikes were of similar seriousness.²⁰

The Reverend Dempsey-inspired war on drugs actually made sense under the circumstances of the moment. Illicit drugs were destroying entire communities and the criminal justice system seemed unable or unwilling to slow the plague. But when legal reform was finally inspired, initially in the form of the Rockefeller drug laws in New York and later in federal reforms, the legislation went too far. In one case, student Clarence Aaron, a football player at Southern University in Baton Rouge with no criminal record, was given three life terms for introducing a buyer and seller for a cocaine deal, even though he never possessed or touched any of the drugs involved.²¹

The Bureaucratic Momentum Dynamic. Another common dynamic that tends to lead to going-to-far is found in those reforms that create governmental bureaucracies, typically to solve a new problem or a problem recently appreciated because of changed norms. The problems seem to arise, first, because government agencies, once established, tend to seek to build their empire. That is, as good bureaucrats, they tend to focus on what additional areas of our lives they can bring within their mandate. Further, because each government agency tends to focus on a particular interest – the interest they were created to promote and protect – they may tend to give that interest an exaggerated value, or even an absolute value, as against all other interests.

For example, no one can dispute that the Cuyahoga River fire and the Santa Barbara oil spill made a strong case for the creation of the federal Environmental Protection Agency, but many people argue today that the EPA has gone too far, not only in expanding its reach but also in its balance of the environment against competing interests. In 2013, Marietta Industrial Enterprises, a company in Ohio is fined \$50,000 and the president of the company, Scott Elliott, is jailed. The company, among other things, crushes medium carbon ferromanganese. Unknown to Elliot, the workers turn off the fans while the processing is going on. This was not a violation of any rule as the employees use other containment methods instead. After a time, Elliot learns that the fans are being turned off, and he instructs the workers that the fans should be left on. From then on, the fans are left on. Elliot’s crime? He did not report the non-use of the fans to the EPA. The EPA rule states that if the fans are not working properly then the company is obliged to report this fact. The fans were working properly but the company is criminally prosecuted for its failure to report.²² The EPA has come a long way from simply preventing environmental disasters like the Santa Barbara oil spill or the Cuyahoga River fire.

There are seventy-seven departments within the EPA that operate largely free of congressional restraint.²³ Congressman Steve Scalise, for example, complains that the “EPA’s attempt to redefine ‘navigable waterways’ to include every drainage ditch, backyard pond and

²⁰ See Paul H Robinson, *Criminal Law Case Studies 38-46* (5th ed., West Academic 2015).

²¹ Seth Ferranti, *The Ugly Truth of Mandatory Drug Sentencing*, *The Fix.com* (May 22, 2012) <https://www.thefix.com/content/Getting-life-selling-drugs-seth-ferranti7314?page=all>.

²² EPA, *Environmental Crimes Case Bulletin*, 3 (December 2013).

²³ *Investor’s Business Daily*, *Puddles, Potholes Under Government Control — Has EPA Gone Too Far?*, *Climate Change Dispatch*, (May 29, 2015) [hereinafter *Gone Too Far?*]. <http://climatechangedispatch.com/puddles-potholes-under-government-control-has-epa-gone-too-far/>.

puddle is a radical regulatory overreach that threatens to take away the rights of property owners and will lead to costly litigation and lost jobs.”²⁴ Some argue that the EPA’s ability to exert power over the lives of all Americans is not always exercised in the nation’s broader interests. In 1972, the Clean Water Act covers navigable waterways. By 2015, the EPA has produced a 299 page document entitled the Waters of the United States Rule that seems to expand its jurisdiction to every bit of water no matter how small that is “within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundments, or covered tributary.”²⁵

The same bureaucratic momentum dynamic may be seen in other areas as well. For example, the building safety codes inspired by the Triangle Factory fire have proved themselves to be invaluable. However, building safety is not cost free. Wider stairways and hallways mean smaller usable spaces. Specialty materials cost extra. Many people argue homelessness in cities is driven partly by codes that dramatically increase housing costs. In El Paso County, Colorado wildfires destroyed 488 homes in 2013. Federal fire codes that the region had imposed on builders and home owners seemed smart when they were adopted in 2009. But when it came time to rebuild, few could afford to do so due to the cost of compliance. The county had to choose between no homes or homes that did not meet federal standards.²⁶ The county relaxed their fire codes.

For another example, the federalization of criminal law inspired by the Lindbergh kidnapping and the Dillinger bank robberies has proved valuable in effectively fighting crimes that individual states cannot handle. Nonetheless, that federalization has also shown what some people see as excesses. In one case, Idaho’s Snake River runs through a federal park area. Tom and Scott Lindsey launch their rafts to go fishing on the river at 7 am, rather than the 9 am that the federal regulations specify. That night they camp on a gravel bank below the high water mark, where no park permit is required. They cook on a gas stove; by regulation open fires are not permitted. The following day law-enforcement agents helicopter in to arrest the brothers for two felonies: camping without a permit and building a camp fire without a permit. They are taken into custody but the federal district court judge dismisses the case saying that the federal agents did not have authority over state-lands. The government appeals and the 9th Circuit decides that the Forest Service is entitled to enforce its regulations on the river because it is necessary to protect the adjacent federal land. The prosecutor declines to retry the brothers.²⁷

Less Danger in New-Solution Cases. The going-too-far problem seems less common in the new-solution cases, perhaps because there may be less danger overreach. Frequently, we are happy to let the new solution go as far as it can go.

The creation of the 9-1-1 emergency call system, triggered by the 1964 Genovese rape witness scandal, has been wildly successful and there seems little reason to rein it in. People call 9-1-1 about 2,000,000 times a month. Seventy percent of those calls come from cell

²⁴ *Gone Too Far?*, supra note 31.

²⁵ *Gone Too Far?*, supra note 31.

²⁶ Ryan Maye Handy, *El Paso County Weakened some Fire Codes after Destructive Black Forest Fire*, *The Gazette* (October 30, 2015).

²⁷ Paul H. Robinson and Michael T. Cahill, *Law Without Justice: Why Criminal Law Doesn’t Give People What They Deserve* 187-192 (Oxford University Press 2006).

phones.²⁸ Having professional and well-trained medical examiners, triggered by the 1915 chloroform killer case, has only increased their effectiveness in solving crimes and avoiding public health threats. WITSEC, triggered by the 1967 Calabrese intimidation, has made it easier to gain the cooperation of reliable witnesses and, if anything, has not been made available enough. Criminal profiling, triggered by the 1950s New York City “mad bomber” case, has become increasingly sophisticated and can increasingly predict where a perpetrator lives as well as their personal characteristics. Again, there seems little interest in limiting the use of this investigative tool. DNA testing, pioneered in the 1986 Leicestershire murders, has become increasingly inexpensive and ever more reliable. The process has been expanded into forensic DNA typing of pet hairs, seed pods, pond slime, and a host of other biologicals that can provide compelling reliable evidence in criminal investigation and prosecution.²⁹

IV. CONCLUSION

The stories and analyses here demonstrate that, oddly, some crimes – “triggers crimes” – can make our world better. For a variety of reasons, these crimes prompt public outrage – when previous others equally bad did not – and that outrage produces legal and social reform – when previous instances of public outrage did not. Sometimes the heat or momentum of the reform energy goes too far and the tendency of government bureaucracies to expand their empire leads to overreach, but these excesses are often caught and corrected.

Particularly striking in this view of the tragedy–outrage reform dynamic is what it reveals about the nature of social progress. We may like to think that our triumphs of progress are the result of a planned, orderly, and rational process of democratic government. But in truth it is often chaotic and unpredictable, brought about by a seemingly random or at least unpredictable cast of characters and events. Who would have guessed that a single kidnapping would create the federalization of criminal law, that a particular sniper would lead to the creation of SWAT teams, or that an attack on a New York Street would inspire the national 9-1-1 system? Could anyone guess that the beating of a high-school drop-out would change our views on domestic abuse? A failed bombing attempt that hurt no one would inspire a regime of airport security? A group of deaths of some fragile old-people, that might or might not have been intentional, brought down the lucrative-patronage position for coroners. Or that a concerned pastor would change our nation’s drug policies?

As chaotic as our social progress may seem, the trigger-crime stories are comforting in the apparent inevitability of American progress. As unpredictable as our social and political life may seem, over time our democratic society does effectively identify problems and produce solutions. Our progress may be messy but it is relentless.

²⁸ Origins and History, *supra* note 17.

²⁹ Some people have expressed concern about the creation of DNA databases, as raising potential privacy problems.

Appendix: Trigger Crimes

Trigger crimes, from *Robinson & Robinson, Tragedy, Outrage & Reform: Crimes That Changed Our World* (forthcoming Rowman & Littlefield 2018):

1911 TRIANGLE FACTORY FIRE – Building Safety Codes
1915 CHLOROFORM KILLER – Medical Examiners
1932 LINDBERGH KIDNAPPING & DILLINGER ROBBERIES – Federalization of Criminal Law
1937 SULFANILAMIDE CRISIS – Drug Safety
1956 NYC MAD BOMBER – Criminal Profiling
1957 APALACHIN MEETING – RICO
1962 DEMPSEY VIGILANTES IN HARLEM HEROIN EPIDEMIC – War on Drugs
1963 BIRMINGHAM CHURCH BOMBINGS – Civil Rights
1964 GENOVESE RAPE WITNESS SCANDAL – 9-1-1
1965 WATTS RIOTS & TEXAS SNIPER – SWAT Teams
1967 CALABRESE INTIMIDATION – WITSEC
1969 SANTA BARBARA OIL SPILL & CUYAHOGA RIVER FIRE – EPA
1972 TWA BOMBING – Airport Security
1979 PATZ DISAPPEARANCE – Child Protection
1980 LIGHTNER CRASH – Drunk Driving
1981 REAGAN ASSASSINATION ATTEMPT – Insanity Defense
1983 THURMAN BEATING – Domestic Violence
1983 BEIRUT BARRACKS BOMBINGS – Internationalization of the FBI
1986 LEICESTERSHIRE MURDERERS – DNA
1989 SHRINER MURDER – Sexual Predator Civil Commitment
1993 POLLY KLAAS ABDUCTION – Three-Strikes Sentencing
2001 9/11 ATTACKS – War on Terrorism
2001 ENRON SCANDAL – Financial Crimes