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

Paul H. Robinson
University of Pennsylvania Law School

Sarah M. Robinson
Independent

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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 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.

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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 at Trinity College, Hartford. The essay and the lecture are drawn from the authors’ book, Robinson & Robinson, Tragedy, Outrage & Reform: Crimes That Changed Our World (forthcoming Rowman & Littlefield 2018) [hereinafter T.O.R.].
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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, but for the purpose of this essay we focus on four examples.

A. 1911 Triangle Factory Fire – Building Safety Codes

*Tragedy.* It is March 25, 1911, the end of the work day at the Triangle Shirtwaist Company is getting close, and it’s Saturday. The factory, housed on the top three floors of the

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2 We examine all of these trigger crimes in T.O.R., supra note 1.
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].
Asch Building on the corner of Green Street and Washington Place in New York City, has about 600 employees, the vast majority of whom are young immigrant women. A fire breaks out on the factory floor. In case of fire, there are twenty-seven buckets of water distributed throughout the thirty-thousand square foot factory. With cloth, paper patterns, and machine oil all around, fuel for the fire is abundant. The fire is quickly beyond control. The possible escape routes are two staircases, a fire escape, and a pair of service elevators. One staircase is narrow, with space for only a single person to pass, and the other staircase is locked. Management always locks the door to prevent employees from taking breaks without permission or stealing company property. The service elevators carry ten people each. A hundred or so people escape via the unlocked staircase before the fire spreads from the eighth floor into the stairwell, cutting off that means of escape. Workers head for the narrow fire escape but under the weight of all those who are fleeing the whole structure tears away from the buildings, tumbling into the courtyard below. Some people trapped on upper floors jump down the elevator shafts. Soon the elevators can no longer overcome the accumulated weight from above. Dozens of women are hanging from ledges around the building. Dresses ablaze, dozens jump out the windows. The only other choice is being eaten by the flames.

Men on the ground bring over blankets hoping to catch the falling women. The bodies landed on the blankets with such force that they ripped the cloth out of the hands of the would-be saviors, crashing into the sidewalk, even smashing through iron grates on the sidewalk. People are jumping in ones, twos, and threes, falling, falling. Each body hits with a distinct bone crushing sound. At 4:57, no more than twenty minutes after the fire began, the last body, a young girl wraithed in burning clothes, jumps from a ledge on the ninth floor. Her falling body catches on an iron hook sticking out at the sixth floor. People on the ground can do nothing but watch. Suspended above the sidewalk, she hangs there burning. Finally, something gives, her remains fall to the sidewalk. The dead number one hundred and forty-six, mostly women, many very young.

Outrage. The fire occurs in daylight in a city filled with witnesses. Thousands of ordinary people see the flaming women jump to their death. The story is big news, which all the papers cover in detail. But the story does not fade with the next day’s news. Instead it seems to bring many disparate voices together: women’s rights activists, immigrants who are working for a better life in America, advocates of worker safety, fire fighters, parents who imagine their own daughters falling to horrible deaths. The locked stairwell clearly cost lives and it becomes a focus of outrage. The victims died, it is felt, because greedy men put money ahead of safety. This tragedy clearly could have been avoided. Innocent girls versus greedy men – a line has been crossed.

Dr. Anna Shaw, a women’s right activist gives a public lecture shortly after the fire: “As I read the terrible story of the fire, I asked, ‘am I my sister’s keeper?’ For the Lord said to me, ‘where is thy sister?’ And I bowed my head and said, ‘I am responsible.’ Yes, every man and woman in this city is responsible. Don’t try and lay it on someone else... You men – forget not that you are responsible! As voters it was your business and you should have made it your business.”

Towards Reform. The Association for American Labor Legislation, the National Women’s Trade Union League, and The National Consumers’ League are just a few of the national

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4 Triangle Fire, supra note 3, at 139.
organizations that take up the cause of the well-being of workers. They lobby for protective labor legislation, draft bills, and relentlessly campaign to promote pro-worker legislation. But they were just voices in the crowd. The charred bodies pictured in the news make the problem clear to many.

The fire came at an interesting time. Francis Perkins, secretary of the New York City Committee on Public Safety and future Secretary of Labor under Franklin D. Roosevelt, has been pushing for reform. New York is a government run by machine politics. In this case Tammany Hall is pinched by the competing interests – business wants to be free to do as they please – but even the machine could not stand against this level of outrage. Perkins sees the opening. She goes to the governor to demand state wide reform. He in turn goes to Tammany Hall to get an understanding. It is agreed that an investigation into garment factories will be undertaken. Perkins generally ignores the understanding that the investigation should be undertaken in order to look like something is being done and instead vigorously pursues reforms. Her commission hears 222 witnesses including civic and union leaders, factory workers, and public officials, examines conditions in 1,836 factories across twenty industries, and produces 3,000 pages of witness testimony. Following her report, New York amends its building safety close code to require sprinkler systems in all New York City factories, fire alarms and extinguishers, doors that open outwards, hoses, and the use of fireproof materials. Smoking is prohibited inside the highly flammable factories. Enforcement in New York lags but the safety reforms serve as a model that spreads around the country very quickly.

Each new variant of the tragedy seems to require its own legislation. While the Triangle Factory fire produces building safety reforms for factories, it takes a fire that kills 61 people in the La Salle Hotel to prompt building safety reform for hotels, and a fire at Our Lady of Angels School that kills 95 people occurs before fire safety standards for schools are mandated.

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

Tragedy. It is the early morning of Friday, March 13, 1964, and Winston Mosely is cruising for a victim. He is now about an hour into his search. Catherine “Kitty” Genovese, a twenty-eight year old bar manager at Ev’s 11th Hour in Hollis Queens finishes work at the tavern around 3 AM and slips into her red Fiat. Kitty lives in an apartment with her partner Mary Ann Zielonko in the comfortable, middle class neighborhood of Kew Garden. As she nears her home, while stopped at a traffic light, Mosely sees her. His patient searching has brought him just what he is seeking. Once she arrives home and is out of her car Kitty, notices the menacing figure and begins to run up the street. He has a hunting knife drawn. Mosely quickly catches up and grabs her. Kitty is stabbed under a street lamp outside a bookstore as she makes her way up the street. She screams in pain and desperation, “Oh, my God, he stabbed me! Please help me! Please help me!” A man in the apartment across the street opens his window and yells “Let that girl alone!” Mosely, fearing that the police will come, leaves. The neighboring

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6 37 Who Saw Murder, supra note 5.
apartments again go dark and Mosely returns. The desperate Kitty calls into the night: “I’m dying! I’m dying!” Again the neighbor’s lights turn on. Mosely hesitates while Kitty struggles toward her apartment and after a moment he leaves. At 3:35 a.m. Kitty collapses in the foyer of her apartment. At 3:50 one neighbor calls another neighbor, Sophie Farrar. He tells her about the attack which he had been watching through a crack in his door. Farrar, hangs-up, calls the police, and then the young mother leaves her apartment and goes to the dying Kitty. She cradles Kitty in her arms and comforts her until the police arrive. No one else makes any move to help. Kitty dies before the ambulance can get her to the hospital. There are plenty of witnesses to the killing. The police get a solid description of Mosely and the car he is driving.

**Outrage.** Ten days after Kitty is killed, A.M. Rosenthal, the metropolitan editor of The New York Times, has lunch with Michael J. Murphy, New York City’s Police Commissioner. The commissioner tells him about the Genovese murder. He talks about all the people who could have helped the woman, probably even have saved her, but instead did nothing. Martin Gansberg is tasked to write a full account of the episode for the paper. On March 27, 1964, The New York Times publishes the story on the front page under the headline: “37 Who Saw Murder Didn’t Call the Police: Apathy at Stabbing of Queens Woman Shocks Inspector.” The article opens provocatively: “For more than half an hour 37 respectable, law-abiding citizens in Queens watched a killer stalk and stab a woman in three separate attacks in Kew Gardens.” Pursuing the angle of an uncaring and alienated urban population, Gansberg’s story portrays something far different than just one more of the other six hundred plus murders that are committed in New York City that year. While the article has some inaccuracies, the horror of it strikes many New Yorkers as all too real. Kitty Genovese becomes a symbol of urban fear. The story stays with regular people such that in October, Mayoral candidate John Lindsay addresses a crowd on the spot where Mosely attacked Kitty. To the chagrin of Kitty’s neighbors, Lindsay declares that “What the Kitty Genovese story tells us is that something has gone out of the heart and soul of New York.” He gestures to the streetlamp nearby the spot of the crime. “We will light this street,” he announces. “Yes, New Yorkers will stand tall and proud again. But only if every citizen is willing to be his brother’s keeper. And then the padlock on the front door will no longer be the symbol of New York City!”

**Towards Reform.** When Genovese is killed in 1964, no universal phone number to summon help exists. At the time, if someone needs the police, an ambulance, or the fire department, they have to know the number for each department in each town. Someone who is away from home will be unlikely to know the number for emergency services and will have to go through the additional step of contacting an operator, who in turn contacts the emergency personnel. In addition, cities often have several police stations that cover different parts of the region. The same is true for fire departments and ambulance service. Larger cities often have dozens of departments and stations, each with unique numbers and areas of coverage. The system is unworkable in emergency situations. Even if someone calls the correct number, they can be left on hold or have to deal with delays if the clerk is on the phone with a previous caller. A universal emergency number had been suggested a few years earlier, when the National Association of Fire Chiefs recommended it as a more efficient way to report fires, but there was little political will to implement it. The death of Genovese forces people to understand that

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7 The Murder, supra note 5, at 158.
something must be done to remove the barriers that prevent those in need from getting help and ultimately spawns the creation of a national 9-1-1 emergency call system.

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

**Tragedy - Santa Barbra.** Early in 1969, a drilling pipe is being extracted from a newly tapped ocean floor oil well. The well is 3,500 feet deep, which means that there are serious pressure differentials that need to be compensated for. To protect the well from the pressure issues, as the pipe is withdrawn mud is pumped in. Something goes wrong. The efforts to correct the pressure problem are inadequate - at the base of the well the seafloor cracks under the force of an explosion. Ignition of natural gas in the well sends the injected mud out and a river of crude oil begins to flow into the ocean. The ruptured well is five miles off the coast of Santa Barbara, California, in the Dos Cuadros Offshore Oil Fields, which becomes the source for a river of crude oil. A massive effort is made to clog up the newly formed fissures. On the eleventh day, an injected chemical mud seals the cracks. Between the tearing and the sealing of the sea floor, three million gallons of oil escape. Sea birds die by the thousands, dolphins suffocate, the sand becomes tar like and the waves are silenced.

Santa Barbara residents live in a veritable paradise. To the west, the city is hugged by the Pacific Ocean, and to the east rise the Santa Ynez Mountains, green with sage scrub and coastal woodlands. The area is rich in biodiversity: birds, reptiles, deer, coyotes, and the like call the mountains home, and the coastal waters – rich with nutrients from cold, northern currents – teem with marine life and seabirds. The blue sky and sea make it an idyllic resort town, and the city’s beauty is as important for its tourist industry as it is for residents. Home prices are high and the town is a favorite of upper-income families.

For more than fifteen years, Santa Barbara’s citizens speaking through their political leaders have been fighting to prevent drilling in their coastal waters. In February of 1968, they officially lose the fight when the federal government gives the go-ahead for oil leasing in the federal waters. California state waters – that is, waters within three miles of its coast – remain free of oil rigs and drilling. Though the rigs established on the Dos Cuadros Offshore Oil Fields are inside federal waters they are visible from the coast. By January 1969, the newly established rigs are busy. On platform A, four wells have already been drilled by Union Oil Company of California (Unocal), and workers are building the fifth. The U. S. Geological Survey has waived the company’s requirements for standard well-casing, used in oil drilling to prevent oil and gas from escaping from the surrounding seabed. Unocal is thus not breaking the law by using a smaller protective casing around the drilling hole than is federally mandated – sixty-one feet shorter. It is this legal compromise that causes the subsequent failure.

**Tragedy - Cuyahoga River.** Around midday on June 22nd, 1969, a spark from a passing train flies into the river. The water immediately catches fire. However, nearby fireboats are

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8 The narrative is drawn from the following sources: Santa Barbra 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 Hawaii Press 157 (2002) [hereinafter A Retrospective].

9 The narrative is drawn from the following sources: Michael Scott, After the flames: The Story Behind the 1969 Cuyahoga River Fire and its Recovery, The Plain Dealer (January 04, 2009) [hereinafter After the Flames]; America’s Sewage System and the Price of Optimism, Time Magazine (August 1, 1969) [hereinafter Price of Optimism];
able to put out the fire in under half an hour, before the press arrives. The fire chief isn’t even called, and the event doesn’t make the front page of Cleveland’s newspapers.

Outrage. National news outlets, suddenly sensitive to environmental disasters because of the Santa Barbara oil spill only six months previously, conclude that a river catching fire is the story their readers would be interested in. Time Magazine publishes a story about the fire. Without good photographs from the June 22nd fire, the magazine uses a photo from a 1952 fire on the river instead. Time writes, “Some River! Chocolate-brown, oily, bubbling with subsurface gases, it oozes rather than flows. ‘Anyone who falls into the Cuyahoga does not drown,’ Cleveland’s citizens joke grimly. ‘He decays’ . . .”

In the wake of the oil spill, Santa Barbara’s seventy thousand residents begin to act. Editorials in the Santa Barbara News-Press are scathing, and before long, a pair of local residents, an ex-state senator and a corporate executive, found a group called Get Oil Out (GOO). The pair, like many Santa Barbara residents, are sophisticated people with experience in working the system. As a start, a petition is drawn up. The petition reads: “We the undersigned do call upon the state of California and the Federal Government to promote conservation by: 1. Taking immediate action to have present offshore oil operations cease and desist at once; 2. Issuing no further leases in the Santa Barbara Channel; and 3. Having all oil platforms and rigs removed from this area at the earliest possible date.” GOO circulates their petition – which garners 110,000 signatures – and get it all the way to the White House. Support goes far beyond the boundaries of Santa Barbara, as the petition receives immense support.

Towards Reform. Congress seems to hear the uproar and they act in meaningful ways. The Clean Air Act of 1970 (CAA) becomes law, adding comprehensive amendments to previous, weaker anti-pollution laws. The CAA develops federal and state programs that strictly regulate air pollution and emission, both industrial and otherwise. For example, Section 113(c) mandates a fine and/or imprisonment for up to five years for “knowingly” violating air pollution requirements under federally assumed SIPs, or State Implementation Programs. Congress follows with the Clean Water Act of 1972 (CWA), which amends the Federal Water Pollution Control Act. Among other things, the Act criminalizes the willful or negligent violation of rules regarding waste or runoff, as articulated by the Act or the National Pollutant Discharge Elimination System (NPDES). The Act is further amended in 1987 when Congress draws a distinct line between “negligent” and “knowing” violations. Many offenses are made into felonies, with hefty fines and imprisonment at stake. In 1976, Congress passes the Resource Conservation and Recovery Act (RCRA) and the Toxic Substance Control Act (TSCA). The RCRA – which prohibits the storage, disposal, transportation, and the like of any hazardous waste – is a vital tool in prosecuting many environmental crimes. The TSCA, meanwhile, regulates chemicals that present an unreasonable risk to public health or the environment. The Act fills a statutory void by addressing the hazards of dangerous chemicals.

10 Price of Optimism, supra note 9.
13 42 U.S.C. § 7413(c)(1).
D. 1980 Lightner Crash – Drunk Driving

Tragedy. On a clear spring morning, May 3rd 1980, Cari Lightner and her sister have just had their softball team pictures taken.14 Now the pair of 13 year-olds split up. Cari joins a friend and they head for the church carnival. Cari is dressed in bright orange. The neighborhood is quiet, and the girls’ laughter fills the street. Without warning a car veers off the road, smashes into Cari who is thrown 125 feet. The car continues down the road. Clarence Busch is driving. Busch works locally as a quality control technician and as a machinist. His life is defined by his drinking. He has at least eight previous convictions for alcohol-related behavior, including four incidents of driving while intoxicated. On May 1st, 1980, two days before Cari’s death, Busch had again driven drunk, hit someone’s car, and sped off. Busch is apprehended and arrested, his car is impounded. After less than 48 hours in jail, he is released on bail. While the incident is his fourth drunk-driving conviction, he retains a valid driver’s license. Once out of jail, he spends the remainder of his next day drinking. As his car is damaged, he uses his wife’s car when he goes to a bar on May 2nd. Mid-morning on the 3rd, the drunken Busch heads home. He turns down a small, tree-lined street in Fair Oaks. In a roadside bike lane, two girls are walking with their backs to Busch’s approaching car as Bush strikes Cari, who lands in the middle of the road. Cari’s friend stands in shock. A nearby postman tries to revive Cari, but her internal injuries are catastrophic. Within an hour, she is dead. All of her organs are damaged; nothing can be passed on for donation.

Outrage. Busch is convicted of vehicular manslaughter. Though he could have received three years in jail, the judge believes that Busch’s alcoholism impaired his decision-making and gives him a two-year sentence. For Cari’s mother, Candace, two years isn’t long enough. In a heartbeat, her sadness turns to fury. She complains, “Death caused by drunk drivers is the only socially acceptable form of homicide." Something must change, and Candace decides to become a path towards change. Candace quits her job and using her savings and insurance money from Cari’s death founds an organization called Mothers Against Drunk Drivers, or MADD, to crack down on drunk-driving. Cari’s bedroom serves as MADD’s first office. While her organization offers counseling to victims and victims’ families, the larger goal is to spur legislative change that will sharpen penalties for drunk driving. The organization struggles at first; when MADD starts lobbying for bills with mandatory sentences and stricter drunk-driving laws, they’re largely ignored, and Candace is even thrown out of a legislator’s office. She remains vocal, and eventually people start paying attention. Across the nation, the story of Cari Lightner’s death becomes a story about a national problem – a problem that’s very real.

Towards Reform. On the morning of November 10, 1979, Maryland resident Cindi Lamb is headed to the grocery store with her six-month-old daughter, Laura, in the backseat. As she crests a hill, an oncoming car swerves into her lane, and the cars collide. The other car is going 125 miles per hour. Cindi suffers a crushed sternum, fourteen broken bones, a cracked hip, and

a four-inch head wound, but Laura fares worse. Her car seat is snapped in two and Laura is thrown from the vehicle. The baby survives but three vertebrae are broken and she is paralyzed from the neck down, becoming the nation’s youngest quadriplegic. The driver who hits their car is passed out drunk. It is his fifth drunk-driving offense.

A local newspaper runs a detailed account of the crash and the struggle to keep the baby alive. A television station picks up the story and produces a five-part series on the issues of drunk-driving. The Lamb family starts The Laura Lamb Crusade. Candace Lightner hears of Lamb’s effort. Lamb has something that Candace does not, a legislator who is listening. Congressman Michael Barnes, Lamb’s congressman, has become involved. After meeting they agree to become a single organization. In October, not quite a year after Laura’s injury, the two women host MADD’s first national press conference on Capitol Hill in Washington, D.C. For those present, the event is momentous. “You could literally feel things change at that moment,” says Chuck Hurley, a MADD chief executive officer.

In 1981, MADD sees their first legislative victory. California passes a law imposing a minimum fine of $375 and a mandatory prison term of up to four years for repeat offenders of drunk-driving. It’s the toughest drunk-driving law in any state. The reform effort spreads nationally. When the federal government links highway funding to minimum standards of drunk driving reform, all states sign-on.

As with building safety reform, the scope of drunk driving legislation expands with experience. The law now looks to many types of impaired driving rather than limiting the offense to alcohol intoxication.

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 two particularly 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?

Our investigation of these questions and others involving “trigger crimes” suggest that there is value in distinguishing among three kinds of trigger 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. The factories are housed in the new electrically run steel buildings that are quickly built to house

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15 25 Years, supra note 14, at 10.
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. 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 Haggeman 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. President Nixon, a California native, 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,” he announces. “What is involved is the use of our resources of the sea and of the land in a more effective way and with more concern for

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preserving the beauty and the natural resources that are so important to any kind of society that we want for the future. The Santa Barbara incident has frankly touched the conscience of the American people.”¹⁸

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, of a sudden, a woman named Candy Lightner [Cari’s mother] came along, kicking and screaming about her daughter who had been killed.”¹⁹ 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.²⁰ 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.”²¹

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

¹⁸ A Retrospective, supra note 8.
¹⁹ James C. Fell and Robert B. Voas, Mothers Against Drunk Driving (MADD): The First 25 Years, Pacific Institute for Research and Evaluation (March 2006).
²¹ Waging the Battle, supra note 20, at 9.
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 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.22 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.23 A 1975 National Family Violence Survey found that serious domestic abuse occurred in 16 percent of American families every year.24

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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, 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 far25). 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

25 There is a limit to the tightness of the categories. A single case may have bits of more than one category, for example.
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 can be seen in the trigger case studies that can help one outrage win the competition against all other current outrages.

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. (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.

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 find.

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.²⁶

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 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.

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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.27

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 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.28

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.29

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.30

There are seventy-seven departments within the EPA that operate largely free of congressional restraint.31 Congressman Steve Scalise, for example, complains that the “EPA’s attempt to redefine ‘navigable waterways’ to include every drainage ditch, backyard pond and 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.”32 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.”33

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

32 Gone Too Far?, supra note 31.
33 Gone Too Far?, supra note 31.
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. The county relaxed their fire codes.

For another example, the federalization of federal 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.

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 phones. 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

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34 Ryan Maye Handy, El Paso County Weakened some Fire Codes after Destructive Black Forest Fire, The Gazette (October 30, 2015).
36 Origins and History, supra note 17.
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.37

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 unpredictably 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.

37 Some people have expressed concern about the creation of DNA databases, as raising potential privacy problems.
Appendix: Trigger Crimes


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