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Random Violence and the Transformation of the Juvenile Justice Debate (Book review)

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BOOK REVIEW

RANDOM VIOLENCE AND THE TRANSFORMATION OF THE JUVENILE JUSTICE DEBATE

Random Violence: How We Talk About New Crimes and New Victims. By Joel Best, University of California Press, 1999.

*Reviewed by Daniel M. Filler**

IN the hours before Eric Harris and Dylan Klebold began their fatal mission at Columbine High School, they self-consciously observed the power of their soon-to-unfold narrative. "Directors will be fighting over this story," Klebold predicted.¹ What Harris and Klebold could not have predicted, however, was the remarkable political transformation their assault would engender. One month after the Littleton, Colorado, shootings, with memories still fresh, the United States Senate adopted juvenile justice legislation containing significant new gun control provisions. These gun regulations included a controversial requirement that gun show dealers conduct background checks on prospective purchasers. The decision of a Republican-controlled Senate to back these provisions was a stunning political shift; only a month earlier, the prospects for new gun controls were virtually nil. Equally remarkable was the fact that these new laws were approved in the name of juvenile justice reform.

Given that the Senate's action followed quickly on the heels of the shooting, one could conclude that new gun controls were a direct result of the Columbine massacre. Using powerful rhetoric, the media, gun control advocates inside and outside the Senate, and academic experts had successfully portrayed Columbine as evi-

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¹ Nancy Gibbs & Timothy Roche, *The Columbine Tapes*, *Time*, Dec. 20, 1999, at 40, 42.

dence of the need for gun control. Yet many Senators receive bountiful support from anti-gun control interests. In addition, during the prior two years, the Senate studiously avoided adopting gun control, or any new social policies addressing school shootings, notwithstanding highly publicized school shooting incidents in Mississippi, Arkansas, Oregon, and elsewhere. Why did Columbine spur Senate action on school shootings? Why did the Senate choose gun control as its preferred policy approach?

One way to understand the Senate's surprising action is to examine the rhetoric that preceded it. For instance, one can look at how school shootings became seen as a national crisis, and how this crisis—and the Columbine massacre in particular—was then interpreted as a problem of lax gun control. In *Random Violence*,² Joel Best studies this very process; he explores the ways we talk about, interpret, and ultimately address crime. Focusing on examples of what he terms “new crimes,” such as wilding,³ freeway violence, and stalking, he describes the development of these offenses in the public consciousness. Best studies how our culture constructs crimes. He explores the question of why some new crimes become permanent, and are codified in the criminal law, while others fade from view. With a particular focus on what he describes as four “social sectors”—media, activists, government, and experts—that make up an “‘iron quadrangle’ of institutionalization,”⁴ he explores

² Joel Best, *Random Violence: How We Talk About New Crimes and New Victims* (1999) [hereinafter Best, *Random Violence*].

³ The term “wilding” relates to the supposed act of children gathering in groups to victimize innocent people. Its genesis dates to a 1989 rape in New York's Central Park. See *infra* text accompanying notes 78–82. The term was revived to describe recent Central Park violence during the 2000 Puerto Rican National Day Parade. See, e.g., *The Enemy in the Park*, N.Y. Post, June 15, 2000, at 40 (describing “predatory wilding” during the Puerto Rican Day Parade); Editorial, *Political Correctness Goes Wilding*, Wash. Times, June 20, 2000, at A20 (noting how recent violence re-activated term first used in 1989).

⁴ Best, *Random Violence*, *supra* note 2, at 63–69. Best is presumably making reference to the term “iron triangle,” typically used within the political science literature to refer to sub-governmental alliances between legislative committees, government agencies, and interest groups. See Cathy Marie Johnson, *Dynamics of Conflict Between Bureaucrats and Legislators* 7 (1992). President Ronald Reagan used the term “iron triangle” in a vein more similar to Best, defining it as “[a] triangle of institutions—parts of Congress, the media and special interest groups.” Paul E. Peterson, *The Rise and Fall of Special Interest Politics*, 105 Pol. Sci. Q. 539, 539 (1990–91) (quoting Ronald Reagan, Remarks to Administration Officials on

how these sectors use rhetoric to shape public perceptions about crime and generate support for new criminal laws.

As the media has publicized a run of dramatic school shootings,⁵ America has grown increasingly anxious about the new crime of school shootings. Best's book is thus especially timely. In October 1997, a sixteen-year-old boy shot nine students at a high school in Pearl, Mississippi.⁶ The following March, an eleven-year-old and a thirteen-year-old killed five and wounded eleven others in a sniper attack at Westside Middle School in Jonesboro, Arkansas.⁷ School shootings in Edinboro, Pennsylvania; Springfield, Oregon; and West Paducah, Kentucky, also received a blitz of media attention.⁸ Not surprisingly, in light of this media spotlight, the public now perceives these incidents as evidence of a growing new crime: school shootings.⁹ The Senate's action reflects its acceptance of the

Domestic Policy, 13 December 1988, *The Public Papers of the Presidents, Ronald Reagan* 1988, Pg. 1619 (December 13, 1988)).

⁵ Most accounts of this recent run of school shootings mark the inception of this new crime as the Pearl, Mississippi, incident in 1997. See, e.g., James Barron & Mindy Sink, *In a Violent Instant, Routine Gives Way to Panic*, N.Y. Times, Apr. 21, 1999, at A1. But see *Violence in U.S. Schools* (last modified June 15, 1999) <<http://abcnews.go.com/sections/us/DailyNews/shootingslist980521.html>> (listing the first case in the trend as a February 2, 1996 junior high school shooting in Moses Lake, Washington). In fact, school shootings predate 1996. While the media focus on school shootings is new, the National School Safety Center estimates that between the fall of 1992 and the spring of 1997, 141 school-related shootings occurred in the United States. See National Sch. Safety Ctr., *National School Safety Center's Report on School Associated Violent Deaths* (last modified June 11, 1999) <<http://www.nsscl.org/savd/School%20Associated%20Deaths/savd.pdf>>. In fact, school crime—including school violence—appears to be on the decline. See Ira M. Schwartz, et al., *School Bells, Death Knells, and Body Counts: No Apocalypse Now*, 37 Hous. L. Rev. 1, 7–8 (2000).

⁶ See Rick Bragg, *5 Are Killed at School; Boys, 11 and 13, Are Held*, N.Y. Times, March 25, 1998, at A1.

⁷ See *id.*

⁸ See, e.g., *Gunfire Inside a School Kills 3 and Wounds 5*, N.Y. Times, Dec. 2, 1997, at A18 (AP wire report on West Paducah, Kentucky, shooting); *Oregon School Rampage Leaves 1 Dead, 19 Wounded*, Houston Chron., May 22, 1998, at A1 (Houston Chronicle wire service report on Springfield, Oregon, shooting); *Teacher Slain at School Dance; Boy, 14, Held*, Chi. Trib., Apr. 26, 1998, at 10 (Tribune wire service report on Edinboro, Pennsylvania, shooting); *Nightline: The Springfield Oregon Shootings* (ABC television broadcast, May 21, 1998), available in LEXIS News-Transcripts file 98052101-j07 (discussing Springfield shootings and several similar shootings at schools around the country in the previous few months).

⁹ See, e.g., Jillian Lloyd, *Home Schooling's Latest Appeal: Safety*, Christian Sci. Monitor, June 4, 1999, at 3 (noting that interest in home schooling soared after Columbine as parents became increasingly afraid of a perceived school shooting trend).

existence of this new crime, and of the widespread view both that this new crime is a result of a "gun problem" and that new gun regulations are essential to solving this problem.

Joel Best suggests that we critically examine the rhetoric behind such new crimes and criminal laws. Before we accept the notion that there is a new crime afoot in our schools, or that we need a new batch of criminal laws, we must understand how the public came to see school shootings as a new, growing concern and why gun control came to be seen as an appropriate solution. Best argues that we must "better understand how our society identifies—and then responds to—crime and other social problems."¹⁰ Best's goal is more than noble; it is essential. Our society battles serious social difficulties that are never formally acknowledged as problems. At the same time, we dramatize other occurrences in ways that grossly overstate their extent or danger. As we decide how to spend limited resources—time, money, and personal freedom—it becomes necessary to explore how society constructs its concerns and fears. If the claims of the media, activists, and legislators "distort the nature of a problem, then—no matter how well-intended the distortion—they lay a poor foundation for social policy, and they deserve exposure and critique."¹¹

Best's argument assumes that rhetoric has a decisive impact on public opinion and, as a consequence, on legislators' decisions to adopt new laws. Given the multiplicity of influences affecting how we identify and respond to crimes (to say nothing of the varied forces that influence legislative voting), Best takes a risk ascribing such power to rhetoric. If Best is correct, language is as central to the construction of new crimes as social structures like race, sex, and class; even the gruesome facts of a particular criminal incident may be less important than the power of the words describing that incident. Is the rhetoric produced by Best's iron quadrangle really responsible for shifts in public opinion and social policy? The Senate's action after Columbine, which occurred shortly after the book's publication, provides an excellent laboratory in which to apply and evaluate Best's model of social construction.

¹⁰ Best, *Random Violence*, *supra* note 2, at xiii.

¹¹ *Id.*

In Part I of this review, I will set out Best's theories of how we come to perceive new crimes, and how we interpret the meaning of these new crimes. Exploring both *Random Violence* and Best's earlier work, *Threatened Children*,¹² I will describe and criticize Best's explanation of how society constructs and addresses social problems. In Part II, I will set out the transformation of the juvenile crime debate in the aftermath of Columbine. First, I will describe the nature of the debate before this recent run of school shootings. I will then describe how the debate in the Senate shifted to feature gun control as a central element of new juvenile crime policy. Finally, in Part III, I will attempt to explain why gun controls passed the Senate in the month following Columbine. I will evaluate the role of rhetoric, applying Best's analysis to dissect the rhetoric behind this gun control push. I will also consider a series of other explanations for why school shootings, and particularly the Columbine shootings, might have pushed Senators to dramatically change course and adopt previously unimaginable gun controls. Finally, I will conclude that rhetoric played an important role in the Senate's action, noting, however, that many other factors influenced the fate of gun control in the Senate.

Since we live in a rule-bound society, we must be careful and reflective before adopting new regulations. Joel Best calls attention to the strange process by which we construct new crimes and, as a result, new criminal laws. If his conclusions do not provide definitive explanations for this complicated process, they nonetheless provide an excellent starting point for a very important analytical task.

I. THE RHETORIC OF RANDOM VIOLENCE

At the core of *Random Violence* lies one simple (yet widely contested) thesis: Words matter.¹³ Best, a social constructionist, is principally concerned with the sociology of knowledge. He does not assume that violent crime is, objectively speaking, a social problem. Rather, he argues that "social problems should be understood as concerns, rather than conditions. That is, instead of trying to study

¹² Joel Best, *Threatened Children: Rhetoric and Concern About Child-Victims* (1990) [hereinafter Best, *Threatened Children*].

¹³ See *id.* at 26–27.

the causes and consequences of the social condition . . . we should examine the causes and consequences of the concern [about the social condition].”¹⁴ Best would therefore look at school shootings and ask why we view this particular concern, of all available social concerns, as a crime crisis.¹⁵ His answer is that rhetoric determines which concerns society perceives as problems. We see things as problems because the media, activists, experts, and people in government talk about concerns in particular persuasive ways, using particular rhetorical techniques. Our interpretation of these new-found problems—for instance, the public’s apparent interpretation of school shootings as a problem of inadequate gun controls—is the product of these effective rhetorical tropes.

Increasingly, scholars concede the central importance of language. Walter Truett Anderson pointed out that there exists a growing consensus that “ideas cannot be understood apart from the language systems that produced them.”¹⁶ Thus, if we describe violence as random rather than as predictable, this inevitably “has implications for how we think about crime, about criminals, and about prospective criminal justice policies.”¹⁷ Best argues that rhetoric frames how people see social problems and that, in turn, when people change their perceptions of social problems, this af-

¹⁴ Joel Best, *Threatened Children*, *supra* note 12, at 10.

¹⁵ Best would not deny that school shootings actually exist, nor would he deny that they are undesirable. See Best, *Random Violence*, *supra* note 2, at xii. Rather, he would note that such incidents existed long before the newly found public concern about them. See *id.* at 34 (stating that criminologists believe “crime waves really are just waves of crime news”). The constructionist approach does not suggest that there is no such thing as a social “bad.” As Philip Jenkins points out, a scholar may question factual claims in support of an argument without denying that the problem described actually exists. Thus, he argues that one may question how child molestation came to be viewed as a social problem, without denying that children are actually molested or that such molestation causes harm. See Phillip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* 5 (1998).

¹⁶ Walter Truett Anderson, Introduction: What’s Going on Here?, in *The Truth About the Truth: De-Confusing and Re-Constructing the Postmodern World* 1, 8 (Walter Truett Anderson ed., 1995); see also Gerald Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 76 Va. L. Rev. 1545, 1548 (1990) (“[T]hrough our particular rhetorical conventions and commitments, we constitute ourselves, our communities, and, perhaps, our world . . . [Rhetorical conventions] bear not just upon how we say the things we say but also upon *what* we say, on what we are able to see, on what we are able to think, on what we are able to know and believe, and on who we are able to be.”).

¹⁷ Best, *Random Violence*, *supra* note 2, at 27.

fects legislation and social policy. Best thus builds two major assumptions into his underlying claims. First, he assumes that language is a dominant force in shaping opinions, as significant as race, class, or sex. Second, he assumes that by changing public opinion, one can then effect changes in social policy.

Best first addressed the power of rhetoric (and the power of shifting public opinion) in his 1990 book, *Threatened Children: Rhetoric and Concern About Child Victims*.¹⁸ There, he analyzed the ways in which advocates concerned about child victimization and abuse used rhetoric to convince the public and policymakers that it was a serious and growing problem. One technique was manipulation of statistics: Best showed how these activists used broad definitions of stranger abduction, for instance, and sometimes even resorted to numerical fabrication, in order to establish that such kidnappings were pervasive.¹⁹ A second rhetorical technique, which Best called typification, involved the selection of particularly gruesome cases to typify a broader child abuse problem, despite the fact that these horrific crimes were not at all representative of the most common abuse situations.²⁰ Finally, Best described how advocates used "domain expansion" to bolster their claims.²¹ In this process, advocates presented the new problem as the functional or moral equivalent of an existing problem, with an existing constituency.²² For instance, one Congressman supporting tougher sanctions against fathers who failed to pay child support argued that such nonpayment "continues . . . or exacerbates a form of abuse which is just as heinous as physical abuse."²³

Best then demonstrated that these rhetorical devices helped frame public perception of child abductions. Though studies suggested that stranger child abduction was rare, public opinion surveys indicated that people perceived such abductions, and child abuse generally, to be pervasive and on the rise.²⁴ Indeed, children identified abduction as society's single biggest threat—greater than

¹⁸ Best, *Threatened Children*, supra note 12.

¹⁹ See id. at 45–48.

²⁰ See id. at 97–98.

²¹ See id. at 80–81.

²² See id.

²³ Id. at 75.

²⁴ See id. at 151–65.

AIDS or nuclear war.²⁵ In the face of broad support for new laws targeting child abuse, legislators followed suit with social policy addressing this alleged crisis.²⁶

Random Violence focuses principally on the ways in which a single criminal incident, or small number of incidents, are used as evidence of a broader social crisis,²⁷ which in turn results in the adoption of new laws. Best neatly describes this process as the transformation of "incidents" to "instances."²⁸ He identifies several rhetorical techniques that are particularly effective in promoting this transformation and in increasing public concern about new crimes.

First, advocates emphasize the random nature of a particular incident.²⁹ By claiming that individual criminal acts reflect random violence, advocates (and the media) democratize the dangers of the particular crime. "Typifying a problem with frightening examples, and then . . . defining the threat as universal . . . is a recipe for mobilizing maximum social concern."³⁰ Despite the fact that most crime is not random in a statistical sense, advocates use this rhetoric because random acts are more terrifying. If a crime could happen to anyone, everyone is at risk. And if everyone is at risk, everyone must take seriously the underlying problem.³¹ What might otherwise be viewed as a crime that affects other people in other neighborhoods becomes a threat to every citizen, man or woman, rich or poor, white or African-American.³² Advocates and legisla-

²⁵ See *id.* at 152.

²⁶ Best does not squarely address the complicated process that sometimes, but not always, transforms strong public opinion into legislative action.

²⁷ Social reactions to crimes that seem dramatically out of proportion to the actual threat are sometimes called moral panics. See Jenkins, *supra* note 15, at 6.

²⁸ Best, *Random Violence*, *supra* note 2, at 29.

²⁹ See *id.* at 1-7.

³⁰ *Id.* at 22. Best argues that fears about random, senseless violence have become a leitmotif in modern culture. He notes that people from all walks of life worry about gang initiation rites, serial murders, carjackings, stalking, and other unpredictable dangers. See *id.* at 2.

³¹ See *id.* at 22.

³² See *id.* at 22-25. While *Random Violence* focuses on the impact that this misrepresentation has on social policy, it does not focus on other potentially dangerous collateral costs of this rhetoric. For instance, citizens in safe, affluent neighborhoods respond to a generalized perception of rising crime by carrying weapons unnecessarily. See, e.g., Judy Nichols & Charles Kelly, Gun-Permit Holder: 'Things Are Crazy Out There. I Just Want To Have Options'; Valley Suburbs Packing

tors can organize a broader constituency for social change if a large segment of the public shares a concern.

Suspicious of the very notion of random crime, Best argues that most crime is not unpredictable.³³ He notes, for instance, that "African-Americans are far more likely to both commit violent offenses and be victimized by violence than are whites. These racial differences, of course, reflect class differences: rates of violence are highest among the poor, and blacks constitute a disproportionate percentage of the poor."³⁴ Best argues that for political reasons, neither liberals nor conservatives have any particular desire to point out such predictability. He contends that liberals are uncomfortable with the racial patterns of crime, while conservatives feel awkward about the class patterns of violence.³⁵ Thus, Best sees the claim of randomness as a gimmick, an easy way to deceive the public.

Best argues that melodramatic language and imagery also help promote recognition of new crimes. Melodramatic rhetoric emphasizes stories that pit the forces of good (e.g., children) versus the forces of evil (e.g., street gangs).³⁶ The contrast is rarely clear-cut in real life; gangs, for instance, result from a complicated confluence of social forces. Gangs do bad things, but also may provide tangible benefits to both members and their local communities.³⁷ Victims' advocates are most effective, however, when they are able to characterize the opposing alternatives as simply good versus bad. While

Concealed Weapons, Ariz. Republic, Mar. 17, 1996, at A1. Naturally, as more citizens carry weapons unnecessarily, the risk of dangerous misuse increases. Thus, misperceptions about crime can themselves generate new dangers.

³³ See Best, *Random Violence*, *supra* note 2, at 22–23. Best argues that most crime is not random because it occurs in predictable demographic and geographic patterns. See *id.* Best does not confront the question of whether some crime is random in the sense that any individual victim may have no basis to expect that she, rather than any other person in a similar geographic or demographic segment, would be victimized.

³⁴ *Id.* at 23. Best is surprisingly uncritical of the statistics supporting this analysis. He does not question, for instance, whether rates of reporting, arrest, or conviction might be higher within African-American communities compared with other communities.

³⁵ See *id.* at 22–24.

³⁶ See *id.* at 157–61. As evidence, Best points to the rhetoric of William Bennett. Bennett "blame[s] 'moral poverty' for 'America's violent crime plague' warning that 'thickening ranks of juvenile "super-predators"' mean that 'America is a ticking crime bomb.'" *Id.* at 159–60.

³⁷ See, e.g., Martín Sánchez Jankowski, *Islands in the Street: Gangs and American Urban Society* 183–90 (1991) (noting that gangs provide protection for neighborhood residents).

social policy tends to be dull, “[b]y defining social issues as straightforward struggles between good and evil, melodrama compels our attention and enlists our emotions.”³⁸

The language of victimization is a third rhetorical approach used to create awareness of new crimes.³⁹ Victims are “good” while victimizers are “bad.” Best shows that, in addition, most claims of new victimization share seven themes: (1) Victimization is widespread; (2) it is consequential; (3) it is relatively straightforward and unambiguous; (4) it often goes unrecognized; (5) individuals must be taught to recognize others’ and their own victimization; (6) claims of victimhood must be respected; and (7) the term “victim” has undesirable connotations.⁴⁰ “[C]laims about particular types of new victims inspire specific reforms intended to sensitize, accommodate, and produce change within different social institutions.”⁴¹ By focusing on victims and their victimization, advocates for new policy inoculate themselves from criticism because their work is fundamentally altruistic, and because to deny the new policy is, in a sense, to deny both the existence of victims and the consequences of their victimhood.⁴² The rhetoric of victimization has almost the opposite effect of the rhetoric of randomness. Instead of generalizing the dangers of a problem, this technique terrifies, and thus energizes, discrete sections of society.

Best looks at other rhetorical techniques as well. Incorporating his work in *Threatened Children*, he argues that the proponents of new crimes often rely on statistical manipulation and domain expansion. Because new crimes have not been previously identified, they typically have not been the subject of statistical study.⁴³ In the absence of any established data, proponents of new crimes often

³⁸ Best, *Random Violence*, *supra* note 2, at 159.

³⁹ See *id.* at 96–102. Best discusses the concept of victimization both as a rhetorical technique and as an ideology. See *id.* at 96–118. I do not focus as much on the latter discussion, but the thrust of his claim is that by creating a culture emphasizing victimhood, those who benefit from treating victims—such as therapists—achieve greater success and power. See *id.* at 133–38. Best sees this ideology as particularly oppressive because it presumes that since those who help victims are unambiguously “good,” their work—and the very use of the label “victim”—may not be challenged. See *id.* at 114–16.

⁴⁰ See *id.* at 103–17.

⁴¹ *Id.* at 121.

⁴² See *id.* at 114–15.

⁴³ See Best, *Threatened Children*, *supra* note 12, at 45.

extrapolate or fabricate statistics, or radically expand the domain of the new crime, to support their claims.⁴⁴

⁴⁴ See *id.* at 46. This sleight of hand was demonstrated recently in a story about road rage in the *Birmingham News*. Since Best dedicates a significant portion of *Random Violence* to examining the production of the crime of freeway shootings, this recent article—which incorporates the rhetorical techniques of statistical manipulation, domain expansion, and typification—is apropos. The article, entitled, “Road-rage Death Part of Unhappy Nationwide Trend,” read:

The road-rage killing along Interstate 65 in Shelby County on Monday reflects a national trend of roadway deaths involving aggressive driving and guns.

A survey by the AAA Foundation for Traffic Safety found incidents of road rage nationwide increased 59 percent from 1990 to 1996. There were 1,129 road rage incidents in 1990. There were 1,800 in 1996.

One-fourth of the nation’s 180 million drivers admitted to driving aggressively, according to the AAA survey. No statistics apparently exist for Alabama. “There’s no crime of road rage, so we don’t keep up with it,” said Sgt. Greg Jones of the Department of Public Safety.

But there have been several roadway shootings in the Birmingham area during the past three years, including ones on U.S. 280, Lakeshore Parkway and Interstate 59.

Nationwide, guns are a common ingredient in road-rage confrontations. More than 10,000 road-rage incidents were reported during the six-year period. In those incidents from 1990–1996, guns were involved in 37 percent of the cases, according to the AAA survey. The incidents killed 218 people and injured 12,610. In 2,300 cases, drivers used their cars as a weapon.

“There’s no way of knowing how many pistols are kept in cars,” said John Ward, president of the Alabama chapter of the National Safety Council. “But the more permits that are issued, the more people are carrying them in their cars.”

Sheriff’s departments estimate that 23,000 pistol permits have been issued in the Birmingham area: 4,800 in Jefferson County; 7,500 in Shelby County; 5,000 in Walker County; and 5,300 in St. Clair County.

Across the nation, the No. 1 cause of road-rage incidents is drivers cutting off other drivers.

So why is road rage so prevalent? Authorities suggest these reasons:

The stress of stop-and-go driving and traffic jams. The number of drivers has increased by 35 percent since 1987, with only a 1 percent increase in new road construction.

Psychologists say drivers express anger more easily from their cars because they feel anonymous.

The “suburban assault vehicle theory” is that sport-utility vehicles and large pickups fuel feelings of power in their drivers and draw out primal instincts, according to the Insurance Institute of Highway Safety.

Ginny MacDonald, Road Rage Death Part of Unhappy Nationwide Trend, *Birmingham News*, Nov. 10, 1999, at 2A.

Note the use of unsupported statistics about the undefined act of “road rage,” and the subsequent extrapolation using other statistics. The article describes a very particular sort of act—one motorist shooting a fellow motorist on the road. It then describes this

Random Violence does more than identify rhetorical tools used to generate concern about crime. It also studies the way institutions employ rhetoric to create new crimes. Best isolates four social sectors—the media, activists, experts, and government—that use this rhetoric to shape public concern about new crimes.⁴⁵ He argues that sectors of this iron quadrangle work together to produce new social concerns, and that the sectors also depend on one another for their own institutional strength.⁴⁶

Each sector plays a role in the production of new crimes. The media reports an initial dramatic incident as an example of a new crime, describes the new crime as widespread and growing, explains causes of the crime, and interprets its meaning and significance.⁴⁷ When freeway shootings first gained widespread attention, for instance, the media reported a few incidents as typical of a broad problem, explained that the incidents were the result of stressful, dense traffic, and interpreted the shootings as, among other things, a crime problem, a gun problem, a traffic problem, and even a courtesy problem.⁴⁸

In some cases, activists will then assume ownership of a problem. These activists apply their “ideology to establish an authoritative interpretation, reducing the cacophony of competing interpretations in favor of one dominant view.”⁴⁹ That is, an existing policy advocacy group will adopt a crime, using the fresh issue to reenergize membership while employing pre-existing contacts and publicity skills to promote this newly minted problem.⁵⁰ Best establishes that some highly publicized crimes are never adopted by activists. In the case of freeway shootings, for example, Best shows that because no activists adopted the crime, its profile as a new crime was short-lived.⁵¹

particular act as a part of a growing, new crime problem. It attempts to prove the existence of the problem. It then seeks to explain and interpret the problem. This is precisely the process Best describes in *Random Violence* and *Threatened Children*. See *supra* text accompanying note 27.

⁴⁵ See Best, *Random Violence*, *supra* note 2, at 63.

⁴⁶ See *id.* at 68.

⁴⁷ See *id.* at 63.

⁴⁸ See *id.* at 40–42.

⁴⁹ *Id.* at 64.

⁵⁰ See, e.g., *id.* at 56 (stating that adopting the stalking issue gave the battered women’s movement a “fresh look”).

⁵¹ See *id.* at 46. Best concedes that even new crimes that fade from center stage

Legislators also participate in the production of new crimes. Legislators love to speak out against social ills, and new crimes make ideal opportunities for media attention casting activist legislators in a positive light.⁵² Finally, experts and professionals—psychologists, law enforcement personnel, lawyers, and others—help propagate new crimes by offering sources for new stories and authoritative support for the activists' and legislators' claims and proposals.⁵³ New crimes provide experts with jobs, as well as opportunities for public exposure and professional recognition.⁵⁴

Best lays out several examples of new crimes. For instance, the crime of stalking was born in 1989 when a Los Angeles actress named Rebecca Schaeffer was murdered by an obsessed fan.⁵⁵ The incident was labeled "star-stalking" by both news media and talk show television.⁵⁶ Though star-stalking itself was rare, advocates linked this incident to several prior assaults.⁵⁷ Using the trick of domain expansion, advocates "reframed stalking as a women's issue, a widespread precursor to serious violence, typically committed by men against former spouses or lovers."⁵⁸ Advocates then used statistics documenting widespread domestic abuse to support anti-stalking legislation.⁵⁹ In 1992, advocates suggested there were 200,000 stalkers in America.⁶⁰ Representative Joseph Kennedy claimed that "nine women a day are killed by stalkers."⁶¹ Experts chimed in as well. One law review article argued that "[a]pproximately ~~one in ten~~ ^{one in ten} husbands for reasons of ~~stalking~~ ^{stalking} ~~are~~ ^{are} ~~murdered~~ ^{murdered} ~~or~~ ^{or} ~~further~~ ^{further} ~~attacked~~ ^{attacked} ~~by~~ ^{by} ~~their~~ ^{their} ~~wives~~ ^{wives} ~~on~~ ^{on} is known as 'separation as-

46–47. As the recent *Birmingham News* te 44, these new crimes may remain alive les that can renew, however briefly, their

incidents of star-stalking, though widely f stalking. He does not address why the me. See id. at 202 n.2.

sault.' . . . The broader concept is called 'stalking.'"⁶² This rhetoric was effective: Americans (or at least American lawmakers) concluded that stalkers were a ubiquitous threat to women. Within four years, stalking—a crime that did not even exist in 1989—had been explicitly prohibited in 48 states and the District of Columbia.⁶³

Best also discusses the rising fear of gangs and, in particular, gang initiation rites.⁶⁴ He suggests that the rhetoric of randomness and melodrama were especially effective in promoting the new crime of gang initiation. While the reality of most gang initiation rites appears to involve newcomers fighting other members,⁶⁵ Best shows that media, experts, and contemporary legend promoted the notion that gang initiations can involve "random, often lethal violence against strangers."⁶⁶ Best notes two particularly potent stories about gang initiation that spread during the early 1990s. In one story, gang members were said to drive around the city, killing any person who flashed headlights at them. In a second tale, gang members allegedly crawled beneath parked cars at a mall, grabbing victims' ankles and knifing them.⁶⁷ "Innocent people are injured because initiation rites require gang members to injure the innocent. That's just the kind of thing they do."⁶⁸ Although very compelling, these melodramatic tales were unsubstantiated.⁶⁹

While he largely avoids the question of why the media promotes certain new crimes while ignoring others, Best does offer a brief comment on this important issue. He argues that the modern popular perception of Los Angeles as America's gang capital resulted

⁶² Id. at 53 (citing Wayne E. Bradburn, Jr., Comment, *Stalking Statutes: An Ineffective Legislative Remedy for Rectifying Perceived Problems with Today's Injunction System*, 19 Ohio N.U. L. Rev. 271, 271 (1992)).

⁶³ See Best, *Random Violence*, *supra* note 2, at 49.

⁶⁴ See id. at 72–92. Best suggests that the recent perception of gangs expanding nationally, and their dangerous initiation rites, are a version of "new crime." See id. at 91. Gangs are not new, of course, although Best suggests that the public's association of gangs with Los Angeles is a relatively new phenomenon. See id. at 74. Gangs are now seen as expanding, almost like chain grocery stores. See id. at 75–76.

⁶⁵ See id. at 83.

⁶⁶ Id.

⁶⁷ See id. at 1–2.

⁶⁸ Id. at 84.

⁶⁹ See id. at 2.

from the city's extensive media presence.⁷⁰ He claims that most new crimes are first identified in major media markets, including Los Angeles, New York, and Washington. The transformation of a single incident into an instance of a widespread problem occurs only if the incident receives extensive media attention. "[I]t is . . . relatively difficult to gain—and much more difficult to maintain—attention for social problems that emerge outside the major media centers."⁷¹ By and large, however, Best sidesteps the question of what motivates the media and other purveyors of rhetoric.

Rhetoric is a powerful tool, but *Random Violence* does not tell us much about when the technicians will choose to use this tool. We are left wondering how Best's analysis will play out with respect to the construction of other new crimes and criminal laws. For this reason, in Part II, I study the transformation in the juvenile justice debate that occurred after the school shooting at Columbine.

II. THE TRANSFORMATION OF THE JUVENILE JUSTICE DEBATE

For a generation, juvenile crime has been the subject of intense concern and discussion. In large part, this has resulted from the fact that children charged with crimes are typically treated differently than similarly situated adults. Since the turn of the century, children have been prosecuted⁷² in specialized juvenile justice systems built on the fundamental premise that children who commit crimes can, and should, be treated rather than punished.⁷³ Most of the recent debate has focused on adjusting the procedures, punishments, and treatments applicable to delinquent children. After Columbine, however, the juvenile justice debate expanded to encompass the supposed underlying social causes of teen crime. Advocates for gun control, in particular, succeeded in defining their issue as central to juvenile justice reform.

⁷⁰ See *id.* at 79.

⁷¹ *Id.*

⁷² I use the word "prosecute" because I believe it properly describes the state's role in juvenile proceedings. Formally, however, most juvenile justice systems are civil, not criminal, proceedings.

⁷³ See Julian W. Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104 (1910). Mack's article is the seminal scholarly work arguing for the rehabilitative approach to juvenile justice.

Until very recently, much of the discussion about youth crime centered on the penal objectives of juvenile justice. Although rehabilitation was once viewed as an important purpose of adult criminal punishment, modern criminal justice policy has focused increasingly on retribution.⁷⁴ Despite this shift, most American juvenile justice systems continue to emphasize rehabilitation as their primary mission.⁷⁵ As this approach grows increasingly anachronistic within the broader field of criminal justice, juvenile courts have come under heightened attack.⁷⁶ In part, these new challenges resulted from highly publicized juvenile violence.⁷⁷ On April 19, 1989, for instance, a group of teens apparently wandering in search of victims beat and gang-raped a female jogger in New York's Central Park.⁷⁸ Local newspapers promptly reported that the children had a name for these roving acts of violence: "wilding."⁷⁹ Though it re-

⁷⁴ See Andrew von Hirsch, Penal Theories, in *The Handbook of Crime and Punishment* 659, 660-63 (Michael Tonry ed., 1998).

⁷⁵ In the main, juvenile courts transfer children to adult court for punishment while juvenile justice systems maintain a primary focus on rehabilitation. In my own experience as a public defender in Philadelphia, as well as in my observations of the juvenile justice system in Alabama, this focus is reflected principally in the attitude and language of the systems' various participants—most importantly, the judges and probation officers. See, e.g., Edward Humes, *No Matter How Loud I Shout: A Year in the Life of Juvenile Court* 176-78 (1996) (describing juvenile probation officers with the view that prevention and rehabilitation, rather than punishment, is the proper approach to juvenile justice). Some critics, however, argue that juvenile justice systems have largely abdicated the rehabilitative goal, and now maintain it in name only. See, e.g., Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 Minn. L. Rev. 327, 328 (1999); Irene Merker Rosenberg, *Teen Violence and the Juvenile Courts: A Plea for Reflection and Restraint*, 37 Hous. L. Rev. 75, 85 (2000) (arguing that structural changes like altered "purpose" provisions in juvenile codes and adoption of determinate sentencing have diminished rehabilitative nature of juvenile court). Some states have explicitly expanded the legislative purpose of juvenile justice statutes to include accountability and public protection. See Marygold S. Melli, *Juvenile Justice Reform in Context*, 1996 Wis. L. Rev. 375, 391.

⁷⁶ See Donald L. Beschle, *The Juvenile Justice Counterrevolution: Responding to Cognitive Dissonance in the Law's View of the Decision-Making Capacity of Minors*, 48 Emory L.J. 65, 65-66 (1999).

⁷⁷ See Richard E. Redding, *Juveniles Transferred to Criminal Court: Legal Reform Proposals Based on Social Science Research*, 1997 Utah L. Rev. 709, 710-13.

⁷⁸ See Craig Wolff, *Youths Rape and Beat Central Park Jogger*, N.Y. Times, Apr. 21, 1989, at B1.

⁷⁹ E.g., Michael T. Kaufman, *Park Suspects: Children of Discipline*, N.Y. Times, Apr. 26, 1999, at A1.

mains debatable whether the children ever really used this term,⁸⁰ it captured the media's imagination and soon became part of the standard vocabulary of juvenile crime.⁸¹ Indeed, the term aptly captures popular fears about today's teens: They are wild and out of control.⁸²

As a consequence of stories like this, as well as the apparent rise in juvenile crime rates,⁸³ many states have restricted access to their juvenile justice systems⁸⁴ by reducing the maximum eligible age and by adopting transfer provisions that permit—or actively encourage—prosecution of children in the adult criminal system.⁸⁵ Moreover, these systems' traditional emphasis on confidentiality has been whittled away.⁸⁶ In some states, juvenile hearings that were previously closed to the public are now open and subject to full press scrutiny.⁸⁷ In addition, juvenile justice records that were once

⁸⁰ The term wilding may have simply been a reporter's misunderstanding. Various reporters debated the term's etymology, even as children on the street denied its very existence. See Best, *Random Violence*, *supra* note 2, at 29–30.

⁸¹ See *id.* at 29; see also, e.g., Michael A. Barber, *Roving Teens Beat Up Three Men in Downtown Spree*, *Seattle Post-Intelligencer*, Apr. 27, 1993, at B1; (using the term "wilding" to describe an assault by a gang of teens), available on Lexis; Marvin Greene, *2 Questioned in Menacing of Black Youths*, *The Courier-Journal* (Louisville, Ky.), Sept. 5, 1991, at 1B, (using the term "wilding" to describe a series of racially motivated attacks), available on Lexis.

⁸² Americans' fears about juvenile crime are reflected in other aspects of language as well. The term "superpredator," popularly used to describe certain juvenile offenders, maximizes the apparent danger of delinquents while simultaneously dehumanizing them, making them more comfortable targets of retribution. See Peter Elikann, *Superpredators: The Demonization of Our Children by the Law* 4, 10 (1999).

⁸³ Politicians emphasized statistics indicating a rise in juvenile crime. See, e.g., *Violent and Repeat Juvenile Offender Act of 1997*, S. 10, 105th Cong. § 2(a)(3)–(5) (1997) (stating that juvenile arrest rates for violent crime increased both from 1985 to 1996 and from 1993 to 1994, and asserting that "the number of juvenile offenders is expected to undergo a massive increase during the first 2 decades of the twenty-first century"). More recent analyses suggest that these statistics were misleading and that juvenile crime did not substantially increase over this period. See, e.g., Franklin E. Zimring, *American Youth Violence* 31–47 (1998).

⁸⁴ The Office of Juvenile Justice and Delinquency Prevention ("OJJDP") of the United States Department of Justice reports that "[t]he widespread enactment of legislation enhancing juvenile exposure to criminal prosecution is a direct response to reported escalations of juvenile violent crime." OJJDP, *Juvenile Justice Reform Initiatives in the States: 1994–1996* at 42 (1997) [hereinafter OJJDP].

⁸⁵ See Beschle, *supra* note 76, at 76; Melli, *supra* note 75, at 391–92; OJJDP, *supra* note 84, at 41–45.

⁸⁶ See OJJDP, *supra* note 84, at 38–40.

⁸⁷ See Joshua M. Dalton, *At the Crossroads of Richmond and Gault: Addressing*

unavailable to anyone outside of the juvenile justice system are now increasingly available to other interested parties.⁸⁸

One constant assumption among most juvenile justice reformers has been that the best way to reduce youth crime is to address individual conduct, rather than the ambient social conditions that might contribute to the misbehavior.⁸⁹ Conservatives have focused on deterrence, punishment, and immobilization.⁹⁰ With campaign themes like "adult time for adult crime," these policymakers claim that juvenile crime is the result of soft punishment for children.⁹¹ Liberals, on the other hand, have approached teen crime with a social work mentality. This approach has focused on providing programs for at-risk youth, and addressing criminal acts as cries for help or evidence of poor parenting.⁹²

The limited parameters of the traditional juvenile justice debate were neatly captured within Senate Bill S. 10, introduced by Republican Senators Orrin Hatch and Jeff Sessions on January 21, 1997.⁹³ The bill, principally an effort to insure tougher sanctions for children who commit crimes, was leavened with a few intervention programs designed to satisfy political moderates. It expanded the class of children that might be prosecuted as adults in federal courts, encouraged states to tighten access to their juvenile justice systems, and provided other "get tough" strategies for delinquents.

Media Access to Juvenile Delinquency Proceedings Through a Functional Analysis, 28 Seton Hall L. Rev. 1155, 1204-05 (1998).

⁸⁸ See OJJDP, *supra* note 84, at 38-40.

⁸⁹ I am referring here to broad, society-wide issues like gun proliferation and poverty, rather than more narrowly defined conditions such as the lack of adequate after-school programs in a given district.

⁹⁰ See, e.g., Ellen Yan, *A Get-Tough Trend as Juvenile Crime Falls/Legislators Put New Focus on Punishment*, *Newsday*, Mar. 30, 1998, at A4, available on Lexis (noting that prosecutors and Republican lawmakers argue for harsher juvenile punishments).

⁹¹ See generally Joseph Neff, *Mixed Messages*, *Raleigh News & Observer*, Jan. 18, 1998, at A22 (discussing the appropriate age at which to hold juveniles responsible for criminal behavior). A Florida State Attorney recently chose to prosecute a 13-year-old boy, charged with shooting and killing a teacher, as an adult. See Nicole Sterghos Brochu, *Boy Will Be Tried As Adult in Slaying*, *Ft. Lauderdale Sun-Sentinel*, June 13, 2000, at 1A, available on Lexis. The prosecutor explained his decision as "adult time for adult crime." *Id.*

⁹² See, e.g., S. Rep. No. 105-108, at 168-75 (1997) (arguing that the proposed Republican juvenile crime bill would not reduce crime because it lacked prevention and support programs).

⁹³ Violent and Repeat Juvenile Offender Act of 1997, S. 10, 105th Cong. (1997). The bill never came to the Senate floor and died without a vote.

Opponents of the bill argued that “[i]n its apparent zeal to ‘get tough’ on violent youth, it fails to take the steps necessary to improve the juvenile justice system in ways that will turn young people in trouble away from a life of crime, drugs and violence.”⁹⁴ These Senators argued that most children charged with crimes belonged in the juvenile justice system and that the bill invested too little in after-school prevention programs.⁹⁵

In the aftermath of Columbine, however, the juvenile justice debate changed significantly. Suddenly, systemic change for the juvenile justice system took a back seat to wider social policy proposals. Shortly after the shootings, Senate Majority Leader Trent Lott agreed to allow a new version of Senate Bill S. 10 to come up for debate.⁹⁶ Lott presumably hoped that in the immediate aftermath of Columbine, the public would be hungry for the tough prosecution and punishment reforms offered by the proposal. The public was less interested in these conventional answers to school shootings, however. Instead, voters (and many Senators) concluded that in order to conquer juvenile crime—now cast centrally as school shootings⁹⁷—Congress needed to address the social conditions contributing to it. With the media and gun control advocates interpreting the Columbine incident as a gun problem, Senators felt tremendous pressure to stop schoolhouse violence by limiting the proliferation of guns.⁹⁸

⁹⁴ S. Rep. No. 105-108, at 145 (1997).

⁹⁵ See *id.* at 146–47. Six Senators sought unsuccessfully to append gun controls to the bill. These provisions included a requirement of child safety locks on handguns, a ban on the sale of firearms to any person previously adjudicated delinquent of certain juvenile offenses, criminalization of transfer of firearms where the transferor had reason to believe the gun would be used in a crime, and a sentencing enhancement for gun criminals who used laser sighting devices. See *id.* at 200–05.

⁹⁶ Although S. 10 died with the end of the 105th Congress, Senator Hatch introduced a reprocessed version of the same bill, now numbered S. 254, in January 1999. See Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, S. 254, 106th Cong. (1999).

⁹⁷ As one commentator recently explained, “[n]owadays, it is impossible to talk about juvenile crime and not discuss school shootings.” Vincent Schiraldi, *Juvenile Crime is Decreasing—It’s Media Coverage That’s Soaring*, L.A. Times, Nov. 22, 1999, at B7.

⁹⁸ See 145 Cong. Rec. S4992 (daily ed. May 11, 1999) (statement of Senator Jeff Sessions that “[t]here is . . . a strong feeling that after we have a tragic shooting, as we did in Littleton, CO, we ought to do something about guns; we ought to do more about guns”).

On May 12, 1999, in an effort to stave off extensive gun control regulations, the Senate approved a modest gun control amendment offered by Republican Senator Larry Craig that would have authorized voluntary background checks of gun buyers at gun shows.⁹⁹ Ironically, it also would have loosened gun restrictions by permitting "licensed dealers to sell [their goods] at any gun-show in any state."¹⁰⁰ Gun control opponents enjoyed their strategic victory for only a day. "All hell broke loose," explained a Republican staffer, describing the angry public response to this initial vote.¹⁰¹ Stung by a popular and political backlash against their efforts to minimize new gun laws, Republicans promptly backtracked, reopening debate over more aggressive gun control proposals.¹⁰²

During the next eight days, the Senate reversed course entirely. On May 20, by a 51-50 vote, the Senate adopted a juvenile justice bill requiring gun show dealers to conduct background checks of gun buyers, gun show organizers to register with the federal government, and unlicensed gun sellers to route all sales through licensed dealers who would conduct a background check.¹⁰³ The bill retained its central core of prevention and intervention bromides. But gun control legislation that had been unimaginable eight days earlier,¹⁰⁴ even in the wake of all the other school shootings, had suddenly passed the Senate. Most importantly, it had not passed under the rubric of "good social policy," or even "good crime policy," but rather as "good juvenile justice policy."

The gun control advocates' victory was also short-lived. After the surprising Senate action, the nation's chief opponent of gun

⁹⁹ See Helen Dewar, *Senate Turns Down Rules To Tighten Gun Show Sales: Expanded Background Checks Rejected*, Wash. Post, May 13, 1999, at A1.

¹⁰⁰ *Republicans Backtrack on Gun Shows But Leave Gaping Loopholes*, U.S. Newswire, May 14, 1999, available in LEXIS, Curnews Library.

¹⁰¹ David Hess, *Senators Heed Outcry, Rethink Gun-Show Vote*, Denv. Post, May 14, 1999, at A1.

¹⁰² See Helen Dewar & Roberto Suro, *Senate GOP Shifting on Gun Control: After Uproar, Leaders Endorse Background Checks at Shows*, Wash. Post, May 14, 1999, at A1.

¹⁰³ See Helen Dewar & Juliet Eilperin, *Senate Backs New Gun Control, 51-50*, Wash. Post, May 21, 1999, at A1.

¹⁰⁴ Although a Democratic-controlled Congress adopted the Brady Bill, which required background checks on many firearm sales, and an assault weapon ban in 1994, the Republican-controlled Congress had taken no action on any proposed gun legislation from 1995 until 1999.

control, the National Rifle Association ("NRA"), geared up its own political forces. As a tactical maneuver, House leaders detached their gun control provisions—which were already weaker than the Senate version—from the juvenile justice bill.¹⁰⁵ Plainly, House leaders recognized the rhetorical power of a juvenile justice and gun control bundle; by calling gun control a form of juvenile justice reform, legislators could easily claim that gun control addressed the new crime of school shootings. Once gun controls were detached from juvenile justice legislation, the rhetorical connection between gun control and Columbine was seriously weakened. At least partly because of the NRA's political pressure and the House leadership's savvy political maneuvers, the House rejected new gun regulations.¹⁰⁶

Even though gun controls were not adopted into law, for at least a moment—and perhaps well into the future—the juvenile justice debate was transformed into a debate about gun control. For the first time, advocates, experts, and legislators effectively argued that broad social policy change like gun control, and to a lesser extent other reforms such as media censorship, was essential to combat juvenile crime and, in particular, school shootings. Traditional demands for changes in procedure and punishment did not disappear, but gun control was now a key policy component in the juvenile justice debate.

This transformation remains an important blueprint for supporters of gun control. In the future, we can expect legislators and activists to target gun control as an essential part of any juvenile justice reform. Gun control activists are actively pressing the link between school shootings and gun control in their direct mail materials.¹⁰⁷ Perhaps more significantly, the upcoming national elec-

¹⁰⁵ See Frank Bruni, G.O.P. to Separate Gun-Control Measures from Juvenile-Crime Bill, *N.Y. Times*, June 15, 1999, at A24.

¹⁰⁶ Gun controls were rejected by an unlikely consortium consisting of gun control opponents, who opposed even the watered-down regulations proposed by House leadership, and strong gun control supporters, who viewed the limited regulations as utterly inadequate. See Eric Pianin & Juliet Eilperin, House Defeats Gun Control Bill: Angry Democrats, Republicans Blame Each Other for Stalemate, *Wash. Post*, June 19, 1999, at A1; Edward Walsh & Roberto Suro, NRA Achieves Its Goal: Nothing; Intense Lobbying Effort Aimed 'to Be Ready for Anything,' *Wash. Post*, June 19, 1999, at A1.

¹⁰⁷ As I was editing this review, I received an interesting and telling piece of mail. On

tion cycle promises to feature a spirited debate on gun control, fueled by fears of this ongoing spate of school shootings.¹⁰⁸ Given the urgency with which the public has embraced juvenile justice reform, this retooling of the debate to include gun control has potentially powerful political and legal consequences.

III. RANDOM VIOLENCE AND THE TRANSFORMATION OF THE DEBATE

How can we explain the transformation of the juvenile justice debate? First, we must admit what we cannot do: provide an objectively "true" explanation. We cannot be absolutely sure, for instance, that even without Columbine, the Senate would not have passed gun control as a component of a juvenile justice bill. We cannot be sure, but we can be *pretty* sure. Once Republicans took control of the Congress in 1994, all federal gun control proposals stalled. Gun control advocates were not even able to push new gun regulations to the floor for debate. Soon after Columbine, however, gun control, dressed up as juvenile justice reform, came up for a successful vote. Clearly something propelled this shift, and the Columbine incident seems the likeliest suspect.

We cannot be sure of the precise causes for the transformation of the debate, and the Senate's turnaround, but we can posit a number of reasonable explanations. These theories can be classified into three categories. First, Columbine was different from prior incidents. Second, media, advocates, and legislators framed an interpretation of the incident that explained it as a "gun problem." And third, the timing of the Senate vote was well suited to adoption of the gun control laws.

the outside of the envelope, there was a list: "Pearl, Mississippi; West Paducah, Kentucky; Jonesboro, Arkansas; Edinboro, Pennsylvania; Springfield, Oregon; Littleton, Colorado; Could Tuscaloosa be next?" Inside I found a fund raising appeal from Handgun Control Inc., focused entirely on the links between loose gun controls and juvenile violence.

¹⁰⁸ See, e.g., *Breaking a Gun Control Barrier*, N.Y. Times, July 17, 1999, at A12 (arguing that Vice President Gore and Bradley now endorse gun control as response to school shootings); Matea Gold & T. Christian Miller, *Gore, Bush Speak Out About School Violence*, L.A. Times, Apr. 21, 2000, at A14 (describing speeches by both Gore and Texas Governor George W. Bush addressing gun regulation in the context of Columbine); Rob Richie & Steven Hill, *Controlling Guns Hard to Do Politically*, Balt. Sun, June 7, 2000, at 17A (discussing Gore's highlighting of gun control after school shootings).

A. Columbine Was Different

Columbine was different in at least five respects from prior schoolhouse shootings. First, the incident itself was the most horrific school shooting in recorded history. Though prior school shootings had been serious, the Columbine tragedy was the biggest of all.¹⁰⁹ The extent of the carnage was important both because it merited more media attention and because, once they focused on the widely publicized event, Americans perceived the incident as uniquely disturbing.

In addition, the extended length of the incident allowed for more current and extensive media coverage. Columbine High School appeared to be under siege for hours¹¹⁰ and America stopped and watched the nightmare unfold.¹¹¹ With the extended coverage, of course, came more camera footage that could be replayed again and again.¹¹² America is a culture of spectacle; we are drawn to

¹⁰⁹ In an editorial, the San Francisco Chronicle noted that the Littleton incident lived on in the public imagination in part, at least, because of the "the big headlines with the big numbers ('Up to 25 Dead')." Editorial, S.F. Chron., May 2, 1999, Zone 1, at 6.

¹¹⁰ A report on the Columbine incident, prepared by the Jefferson County Sheriff's Office and released May 15, 2000, indicated that Harris and Klebold killed all their victims in a 16-minute span, and killed themselves less than 50 minutes after the siege began. It took police officers almost three and a half hours before they found the first shooting victim, however. See Michael Janofsky, *Columbine Victims Were Killed Minutes Into Siege at Colorado School, Report Reveals*, N.Y. Times, May 16, 2000, at A14.

¹¹¹ For instance, Phil Kloer of the Atlanta Constitution wrote:

Everything stopped for a time Tuesday as the nation was transfixed by the horrific images being broadcast from the suburban Denver high school. Parents returning from work in Atlanta and around the country, high school students shouldering their bookbags into the house, if they turned on any of the major networks, they saw and heard the news unfold.

For a few hours at least, there was no war in Yugoslavia, no soap operas, no Atlanta traffic reports, only the Columbine saga. Parents everywhere watched as Littleton parents waited, desperately, to see their children as they were evacuated from the school. Teenagers watched their Columbine peers, looking so completely teenage: untucked polo shirts, backward baseball caps, T-shirts, sprinklings of acne. A girl with a pierced eyebrow wiped away her tears, and the TV reporter interviewing her noted the blood on her hand. "It seemed like it was out of a movie," said one girl.

Phil Kloer, *Horried Nation Suffers Endless School Day*, Atlanta Const., Apr. 21, 1999, at A1. This quote is itself notable as potent rhetoric because, in its evocative detail, it glamorizes the very process of watching the massacre unfold.

¹¹² See, e.g., Steve Johnson, *Despite Errors of Judgment, TV Fulfills Its Mission*, Chi. Trib., Apr. 22, 1999, § 1, at 16 (describing the "numbing repetition of footage of the

graphic images of violence and suffering. Columbine was a made-for-TV massacre.¹¹³

A third distinction between Columbine and prior shootings was that the Columbine incident triggered particular class, race, and religious concerns. While all the publicized school shootings since Pearl occurred in predominately white areas, Littleton, a predominately white suburb of Denver, was uniquely affluent.¹¹⁴ It is a model of one hotly contested political battleground: the affluent suburban community that traditionally supports Republicans but that maintains more moderate views on social issues.¹¹⁵ Because Littleton looked like suburbs everywhere, the risk of school shootings was particularly easy to democratize.¹¹⁶ If school shootings could happen at Columbine, they could happen in suburban Dallas, Chicago, or New York.¹¹⁷ Other characteristics of the Columbine

bloody shooting victim hurling himself headfirst out a window"). One commentator notes that the rise of cable television, with the attending increase in the number of stations, has expanded both the capacity and need for crime coverage. See Vincent F. Sacco, *Media Constructions of Crime in Constructing Crime: Perspectives on Making News and Social Problems* 39–40 (Gary W. Potter & Victor E. Kappeler eds., 1998).

¹¹³ It was, to quote one gun control advocate, "a massacre in our living room that unfolded slowly and painfully." Telephone interview with Naomi Paiss, Communications Director of Handgun Control Inc. (Oct. 4, 1999).

¹¹⁴ See Traci Watson, *Numbers Tell the Story of a "Quiet, Decent Place,"* USA Today, Apr. 21, 1999, at 2A (showing that Littleton's median income is 25% above the national average, its residents are 93% white, and it produces students with above average test scores).

¹¹⁵ See Bennett Roth, *Gun Control Becomes a Political Bull's-Eye: School Shootings Prod Both Parties to Act*, Houston Chron., May 23, 1999, at A14 (discussing gun control as a social issue that might alienate otherwise pro-Republican suburban voters).

¹¹⁶ While it maintains a Littleton address, Columbine High School is actually a Jefferson County school. The town of Littleton is located in Arapahoe County. See Bill Duryea, *This Time, the Blame Is Being Shared*, Series: Massacre at School, St. Petersburg Times, Apr. 23, 1999, at 1A. This distinction is not of great consequence because media accounts constantly portrayed Columbine in terms of the Littleton demographic. See, e.g., Watson, *supra* note 114.

¹¹⁷ See, e.g., Jayne Suhler, *Dallas-FW Students Mourn for Victims: Educators Talk About Improving Safety in Schools*, Dallas Morning News, Apr. 22, 1999, at 25A (quoting suburban Dallas principal suggesting that the incident could happen there); Lauren Terrazzano, *The Colorado Tragedy: Shooting Upsets Notion of Suburban Sanctuary: Local Anxiety in Wake of Colorado Massacre*, Newsday, Apr. 22, 1999, at A23 ("Across Long Island, from bars to Baptist churches, from college campuses to town halls, news of the Littleton, Colo., shooting has spread a numb fear over an area that is like the Denver suburb that was the scene of the massacre. The incident rattled any notion about the very existence of sanctuary in suburbia."); Jeff Flock, *How Littleton Leaves a Parent Wondering*, Cnn.com (last modified Apr. 29, 1999).

shooting made it uniquely compelling. News reports immediately after the incident emphasized that Harris and Klebold targeted African-American students.¹¹⁸ Thus, the shooting evidenced racial hatred repellent to these same suburbanites who, regardless of their views on controversial issues like affirmative action, share a common revulsion against overtly racial violence. Press accounts also featured the story of a girl allegedly killed because she believed in God¹¹⁹; these self-consciously tolerant, and in many cases religious, voters would have been appalled at the religious hatred displayed by Klebold and Harris. Columbine was special because, for the first time, a school shooting touched the lives of the average suburbanite, the much-touted soccer mom, and both terrified and repelled these key voters.

A fourth distinction between Columbine and previous shootings is that Littleton is located in the heart of a developed media market. Best argues that incidents receiving extensive attention as new crimes typically occur in the largest media markets. Denver, though lacking New York's massive media contingent, is home to all major television networks, two major daily newspapers, and several national news bureaus.¹²⁰ In addition, because the city was

<<http://www.cnn.com/SPECIALS/views/y/1999/04/flock.schools.apr29/>> (suburban Chicago parent comparing local high school to Columbine).

¹¹⁸ See, e.g., Mark Obmascik, *High School Massacre: Columbine Bloodbath Leaves up to 25 Dead*, *Denv. Post*, Apr. 21, 1999, at A1 (quoting a witness who said that one victim was killed because he was African-American).

¹¹⁹ See, e.g., *id.* (quoting a witness who said that one victim was killed because "she was praying to God"). Indeed, the story of this girl, Cassie Bernall, was the basis of a best-selling book. See generally, Misty Bernall and Madeleine L'Engle, *She Said Yes: The Unlikely Martyrdom of Cassie Bernall* (1999). Although the media publicized this account of Bernall's final moments, it was probably false. Eyewitnesses reported that Harris and Klebold did not ask her anything before shooting her. Indeed, these witnesses stated that Harris and Klebold did not shoot a second girl who was praying to God for help. See Jon Carroll, *She Didn't Say Anything*, *S.F. Chron.*, Oct. 4, 1999, at D8.

¹²⁰ See Paul Talmey, *Bad Press: Return to Realm of Ideas*, *Denv. Post*, Sept. 14, 1997, at G1. Indeed, Denver is home to three local stations owned and operated by national news powerhouses CBS, FOX, and Tribune Broadcasting (owner of superstation WGN and the Chicago Tribune, among other properties). See *id.* Overall, Denver is the nation's eighteenth largest television market, see Elizabeth A. Rathbun, *Special Report: Top 25 Television Groups, Broadcasting & Cable*, Apr. 19, 1999, at 38, reaching over 1.3 million households, see Eileen Davis Hudson, *Denver, Mediaweek*, May 1, 2000, at 30. It is the ninth largest Sunday newspaper market. See *Newspaper Readership Remains Competitive in Top 50 Markets*, P.R. Newswire, Oct. 26, 1999, available in LEXIS, Allnews Library.

due to host the annual NRA convention only days later, the national media was presumably prepared to focus on Denver. The city's strong television presence generated bountiful live footage of the shootings, and local news reporters provided thorough print coverage. Other school shootings occurred in less developed media markets. Pearl, Mississippi, for example, is a suburb of Jackson, a small city with a small media presence.¹²¹ Not surprisingly, the Jackson media establishment was less effective in publicizing the Pearl High School shooting.

One final, critical distinction between Columbine and all prior school shootings was the fate of the perpetrators. Both Harris and Klebold died in the incident. Normally, after a horrible crime, the public clamors for the perpetrators to be punished. Indeed, as discussed above, the desire for punishment of criminals has been a central motivating force for criminal justice reform in recent decades.¹²² When Harris and Klebold died, they robbed the public of the important cathartic benefit of a public prosecution. Lacking an opportunity to punish the criminals who tore the social fabric, the public, the media, and legislators sought catharsis elsewhere. This introspection created an opportune moment for an advocacy group to interpret the incident. Because the local prosecutor could not "solve" the problem through the criminal justice system, the public was uniquely ready to be convinced that ambient social problems—

¹²¹ The Jackson, Mississippi, television media market is the nation's 89th largest, reaching slightly over 300,000 people. See Rathbun, *supra* note 120. The city supports four television stations and one major daily newspaper. See Laura Rich, Jackson: Retail Fanfare and Festival Fun: Jackson, Mississippi; Market Profile, *Inside Media*, Sept. 21, 1994, at 28.

¹²² Admittedly, in the immediate aftermath of the shootings some argued that Harris's and Klebold's parents should be prosecuted for their failure to prevent the shootings. See William Glaberson, *Case Against Parents Would Be Hard to Prove*, *N.Y. Times*, Apr. 27, 1999, at A20 (discussing suggestions of Attorney General Janet Reno and Colorado Governor Bill Owens regarding the potential criminal culpability of parents). Those advocating prosecution asked how any responsible parent could have missed the bad attitudes, to say nothing of the munitions stockpile, that certainly preceded the incident. Yet, over time, it became clear that prosecutors and the public had no stomach for retribution against the parents. They had been punished by the death of their children and, perhaps more importantly, other parents feared that they too would be subject to prosecution. Predicting and preventing a child's behavior is notoriously dicey work. See Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 *Wis. L. Rev.* 399, 415–17.

like gun proliferation—demanded new attention. The public's anger was channeled into a war on guns.

It was not enough that Columbine was different than other school shootings, however. Those differences, if meaningful, only suggest that Columbine presented an opportunity for advocates to use effective rhetoric to sway the public. Why did gun control advocates succeed in transforming the juvenile crime debate after Columbine when they had not before? One powerful reason was that gun control advocates used rhetoric effectively.

B. Gun Control Rhetoric Worked

Even as the NRA remained “largely silent” in the immediate aftermath of Columbine,¹²³ gun control advocates began an aggressive public relations campaign. On April 27, 1999, in tandem with Handgun Control Inc., Sarah Brady¹²⁴ issued a press release stating the nature of the gun problem and linking it to juveniles:

The current patchwork of federal and state gun laws allows minors or young people aged 18–20 in most states to privately purchase or possess a veritable arsenal of modern firearms, from small, concealable Saturday Night Specials to pre-ban assault weapons with military-style magazines and accessories. Additionally, gun trace data collected by the ATF indicate that a large number of guns that are purchased legally by adults find their way to the criminal and/or juvenile market very quickly. Both issues, the accessibility of guns by minors and the criminal trafficking of guns to juveniles, are addressed by President Clinton's new legislation¹²⁵

Newspapers amplified this view; one editorial suggested that “citizens must demand that elected officials take dead aim at the loopholes in existing gun laws.”¹²⁶

¹²³ Richard Wolf & Haya El Nasser, *Anti-Gun Sentiment Gathers Momentum After Killings*, USA Today, Apr. 27, 1999, at 4A.

¹²⁴ Sarah Brady is the wife of James Brady, an aide to President Ronald Reagan who was shot during the Reagan assassination attempt in 1981.

¹²⁵ Sarah Brady Issues Challenge to Congress: Break the Gridlock; Protect Children from Guns, U.S. Newswire, April 27, 1999, available in LEXIS Curnews library.

¹²⁶ Editorial, *First, Lawmakers Must Get Guns Under Control*, Seattle Post-Intelligencer, May 9, 1999, at E2.

Gun control advocates did more than simply link school violence to guns; they democratized school violence by suggesting that school shootings were random and that any child might be next. Bob Walker, president of Handgun Control Inc., commented that “[w]hen students who come from what appear to be affluent, normal families suddenly go berserk . . . people begin to recognize that it could happen anywhere.”¹²⁷

While media and activists emphasized the randomness of shootings—that is, that they could happen at any high school in the country—they also showed that the victims were not necessarily randomly selected. Media reports suggesting that the shootings were targeted at minorities, religious children, and athletes¹²⁸ all helped create the sense that these target groups were victims. The rhetoric of Columbine simultaneously showed not only that everyone was at risk, but that particular subgroups that made up a large piece of the high school community were in particular danger.

Another rhetorical technique evident in the gun control campaign was a variant of domain expansion. In this case, the technique identified school shootings as evidence of a grander problem—shootings, generally. The gun control provisions in the juvenile crime bill focused, primarily, on regulating sales of guns at gun shows. Gun control advocates argued that this would help prevent improper buyers from acquiring guns. Advocates, however, provided no evidence that this particular proposal would have any impact on juvenile gun possession or the new crime of school shootings. The Columbine incident was used to motivate legislators to regulate guns; the regulations themselves had little to do with the underlying motivating incident.

Columbine was different from prior incidents, and the media and gun control advocates were now more effective at interpreting it as a gun issue. But one serendipitous factor was significant in the Senate’s passage of gun controls: timing.

¹²⁷ Frank Bruni, *After All, Why Now? The New Politics of Gun Control*, N.Y. Times, May 30, 1999, § 4, at 3.

¹²⁸ See, e.g., Tom Kenworthy, *Up to 25 Die in Colorado School Shooting: Two Student Gunmen Are Found Dead*, Wash. Post, Apr. 21, 1999, at A1 (stating that witnesses said the gunmen seemed to target athletes).

C. The Timing Was Right

Senator Lott's decision to permit debate on the juvenile justice bill and gun control so soon after Columbine proved crucial. This allowed pro-gun control advocates and legislators to present their case before a national audience at a critical moment: before Americans had settled on a definitive interpretation of Columbine. That is, in the month after the shooting—the all-important window when advocates must adopt a cause, or have it disappear from view¹²⁹—the public was exposed to the powerful claims of the gun control lobby. Had the Senate waited for America's anxiety to settle, and had it not offered such a fine opportunity for policy advocates to publicize their interpretations of the incident, emotions might have dissipated. The traditional juvenile justice activists—those focused on punishment of, or intervention with, individuals—might have appropriated Columbine as further evidence of the need to get tough, or intervene earlier. Instead, gun control advocates convinced an agitated public that Columbine resulted from lax gun controls.

One last timing factor contributed to passage of gun controls in the Senate. On May 20, 1999, the day of the final Senate vote, a fifteen-year-old opened fire at Heritage High School in Conyers, Georgia.¹³⁰ As a result of this incident, a previously undecided Senator, Max Cleland from Georgia, cast the decisive vote for the legislation.¹³¹ Without Cleland's support, gun control would have failed. The Heritage High School shooting thus played an essential part in the Senate's surprising decision.

In a sense, the role of timing in the Senate's adoption of gun control reflects the importance of happenstance in the creation of new laws. But for the shooting at Heritage High School, full attendance in the Senate, or any number of serendipitous events, the bill

¹²⁹ Best argues that media will continue to cover a new crime as long as the problem can be shown to be getting worse or until an advocacy group takes ownership of it. Best, *Random Violence*, *supra* note 2, at 45–46. Presumably, this leaves a limited window of time for activists to take ownership of a problem before it fades from view.

¹³⁰ See Sue Anne Pressley, *6 Wounded in Shooting at Georgia High School: Student Was Apparently Upset Over Breakup*, *Wash. Post*, May 21, 1999, at A1.

¹³¹ See Audrey Hudson, *Gore Breaks Tie to Tighten Sales of Guns at Shows: Shootings in Georgia a Factor*, *Wash. Times*, May 21, 1999, at A1 (claiming that Cleland changed his vote in light of the Georgia shootings).

would not have passed. In addition, the timing and location of the NRA's annual meeting made a significant difference, if only by forcing the NRA to limit its opposition to the Senate gun proposals. Many factors play into the success or failure of a bill. Predicting precisely what factors will lead to new legislation is impossible. Nonetheless, the rhetoric of gun control advocates was a key factor in making the passage of the legislation possible; without the existing support of forty-nine other Senators, the Heritage High School shooting—and Cleland's vote shift—would have been meaningless. As Best would have predicted, effective rhetoric proved an essential component of this drive for new criminal law.

D. The Missing Pieces

The power of rhetoric is subject to debate. Best's thesis is that language is powerful and transforms how people view the world. As discussed earlier Best effectively shows that rhetoric does shape perception.¹³² Language does not function in a vacuum, however. Race, class, and sex, to name only a few social structures, have a profound impact on how we see the world. Perceptions of the media, legislators, and the general public are powerfully influenced on both conscious and unconscious levels, by each individual's feelings about these social issues. As we have seen, Best does not ignore these structural concerns. To the contrary, he notes that the rhetoric of randomness is often employed specifically to avoid conversations about race and class. Similarly, he identifies the power of identity group politics in promoting hate crime and stalking legislation. Yet Best addresses the impact of these structures glancingly, and declines to consider fully the extent to which effective rhetoric depends on the presence (or absence) of these other social forces. For example, his analysis would not consider whether the racial and economic makeup of Littleton were crucial to the efficacy of gun control rhetoric in the similarly white, affluent Senate. Indeed, Best concedes the limits of his analysis when he notes that "the success of claims-making may well depend in part on the constellation of interests and resources held by various constituencies in the process."¹³³

¹³² See *supra* text accompanying notes 27–42.

¹³³ Best, *Threatened Children*, *supra* note 12, at 24.

Best's assumption that changing public perception of a problem will effect changes in social policy is more troubling. We know that public opinion affects how politicians behave; today's politics reflect a particularly high sensitivity to opinion polls. Public concern does not always translate into legislative change, however. Some surveys show that up to seventy-five percent of Americans support campaign finance reform, for instance, yet such reforms are routinely rejected.¹³⁴ Best does not fully confront the question of how, or when, public opinion is converted into new law, or the ways other structural pressures on Congress such as strategic campaign-giving¹³⁵ cause legislators to ignore the public will.

CONCLUSION

Americans' infatuation with crime is evident from the content of newscasts, movies, and politicians' speeches. But criminal law is more than just a source of entertainment; it affects the way we live, how we allocate society's resources, and whether people will live in freedom. We must pay attention to how society comes to see new crimes, both to understand the process and to protect against deception. Joel Best does not try to explain our culture's obsession with crime; no doubt this passion is the result of many cultural and historical factors. Similarly, legislation is the product of a complicated mix of ingredients, ranging from beliefs about race and class to compelling factual scenarios to simple good timing. Best does show us, however, that rhetoric plays a central role in how we view the world. We must discover why society worries about one problem, and not another. If we are to truly understand and improve our system of criminal laws, we must learn why people wanted these laws in the first place.

¹³⁴ See, e.g., Editorial, *Self-Serving Minority Blocks Push to Clean Up Politics*, USA Today, Sept. 8, 1998, at 20A.

¹³⁵ See, e.g., Editorial, *New Pressure on Gun Makers*, N.Y. Times, Dec. 8, 1999, at A22 ("Republican leaders, unwilling to buck the National Rifle Association and its sizable political donations, made sure that Congress adjourned without doing anything on gun control . . .").

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