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## **TRIAL BY MEDIA: DNA AND BEAUTY-PAGEANT EVIDENCE IN THE RAMSEY MURDER CASE**

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TRIAL BY MEDIA:  
DNA AND BEAUTY-PAGEANT EVIDENCE  
IN THE  
RAMSEY MURDER CASE

ANN KIBBEY

The Ramsey murder case of December, 1996, is noted for succumbing to “trial by media.” This is all the more surprising in light of the fact that DNA evidence played a crucial role in the media coverage of the murder case. We associate scientific evidence, and especially DNA evidence, with the capacity to stop the effects of irrational suspicions and rampant speculation. DNA, it is believed, provides a rational and stable basis for finding the truth of the matter. However, the Ramsey murder case shows no such island of rational calm in the troubled waters of media coverage. Like other elements of evidence, DNA was readily incorporated into the media’s murder script. As I will show, it served several purposes in the collective cultural mind. First, it indirectly validated as significant evidence what was most prominent in the minds of the public, the infamous beauty-pageant videos of the murdered child beauty queen. Second, it provided a method for avoiding issues involving the social sources of disorder. Third, it allowed for the elaboration of private prejudices, fueling speculation, surveillance, and questionable legal actions in a manner directly contradictory to the supposed virtues of DNA evidence.

BEAUTY PAGEANTS AND DNA

There were two lines of interpretation that developed quite early in the media coverage of the Ramsey murder, setting the parameters of interpretation for the next two and one-half years. The first interpretation was based on beauty-pageant evidence. The second was based on scientific evidence, specifically DNA. Taken together, these interpretations defined the terms of the public imagination, determining what was meaningful about this crime and what would have credibility as fact. They set the parameters of a jury trial by asserting what the significant evidence was. Prosecutors would have to account for both to achieve credibility with a jury.

The first to emerge on the media stage was the beauty-pageant evi-

dence. This might not seem like evidence at all in a legal sense, but it was the videos of JonBenet Ramsey performing at child beauty pageants that gave the public its first and strongest impression of the Ramsey case. No one could avoid noticing the sexual innuendo surrounding the six-year-old beauty queen dressed as a Las Vegas showgirl, shyly vamping her way across the television screen in beauty contests that seemed remarkably evocative of child pornography.<sup>1</sup> First aired within a few days of the murder, the videos played nightly on the national news. Photos taken from them and from calendar photo shoots appeared in weekly magazines like *Newsweek* and *People* as well as in major tabloids in the United States.<sup>2</sup> *The Globe* was the first to exploit the sexual implications of the videos to compose a narrative of the murder as a sex game gone wrong, committed by a child molester who was overwhelmed by passion and perversity, who strangled the little girl by accident.<sup>3</sup> They left implicit who the murderer might be, but the numerous family photos that also accompanied the story implied that JonBenet's father had committed the crime.

The videos were crucial to this narrative of the crime because they linked the sex-murder story to the parents, who had entered their child in the contests where the videos were taken and claimed she was enthusiastic about giving these performances.<sup>4</sup> They even buried their daughter in one of her beauty-pageant dresses.<sup>5</sup> Sexual motives and the possible guilt of the parents had already emerged in detectives' notes made at the time the murder was discovered in the family's home.<sup>6</sup> What the videos provided was a bridge of credibility between the story of a sordid, pornographically tinged sex-murder and the highly respectable social status of

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1. See Elliot Zaret, *Tabloids Get Criticism, Attention*, DAILY CAMERA, Mar. 14, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/03/14-2.html>.

2. See e.g., Ann Louise Bardach, *Missing Innocence*, VANITY FAIR, Oct. 1997, at 322; Jerry Adler, *The Strange World of JonBenet, Her Life in the Spotlight*, NEWSWEEK, Jan. 20, 1997, at cover; Bill Hewitt & Vickie Bane, *Heartbreak in Colorado, Murder of a Little Beauty*, PEOPLE, Jan. 20, 1997, at cover.

3. See *Little Beauty Tortured to Death*, THE GLOBE, Jan. 21, 1997, at 6.

4. See, e.g., Bill Briggs, *Talk Swirls About Merits of Beauty Pageants*, THE DENVER POST, Jan. 12, 1997, at A4.

5. See Vickie Bane, *Heartbreak in Colorado, Murder of a Little Beauty*, PEOPLE, Jan. 20, 1997, at 44.

6. See Kevin Kaufman, *Boulder Police Release Ramsey Search Warrants*, DAILY CAMERA, Sept. 30, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/09/30-1.html>.

the parents. The reasoning behind the beauty-pageant evidence remained implicit, but no less cogent, for that: Parents who would do this to their daughter would do anything to her, including sexually molesting her and then murdering her to cover up their incestuous abuse. The prominent social status and wealth of the parents<sup>7</sup>, which seemed on the face of it to contradict the speculations of the tabloids, was reconciled in the public mind by the parents' encouragement of their daughter's beauty-pageant performances. Attempts to suppress the parental sex-murder interpretation of the crime by censoring the tabloids only rebounded with increased sales.<sup>8</sup> In the escalating battle of purity versus trash, the six-year-old beauty queen posthumously danced and sang her way through it all with a seemingly infinite suggestiveness.

Enter the scientific evidence. On a stage one would have thought too crowded already, District Attorney Alex Hunter and the Police Chief of Boulder stepped into the media spotlight to give their only full-fledged press conference, two months after the murder.<sup>9</sup> This press conference brought into focus and gave legitimacy to another approach to the crime: scientific analysis. Although different kinds of scientific analysis were planned, Hunter indirectly assigned great importance to DNA as the means of irrefutably identifying the killer when he announced that Barry Scheck and Henry Lee had been attached as investigators.<sup>10</sup> I say "attached" with the meaning it is given in the film industry, in which one attaches actors, a director, and a producer in a concerted effort to get a script financed and into production. The script was built around the timetable of lab tests, which were eagerly awaited by the mainstream newspapers. Hunter kept the attention of the media in succeeding days with phrases like "if we have an arrest within 60 days"<sup>11</sup> and "my expectation is that it will be prosecuted, but there are some days to go."<sup>12</sup> Mainstream newspapers in the Denver area paid close attention to what

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7. See, e.g., Ann Louise Bardach, *Missing Innocence*, VANITY FAIR, Oct. 1997, at 324.

8. See Elliot Zaret, *Tabloids Get Criticism, Attention*, BOULDER DAILY CAMERA, March 14, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/03/14-2.html>.

9. See Howard Pankratz, *DA Says Killer Will Be Found*, THE DENVER POST, Feb. 14, 1997, at 1A.

10. See *id.*

11. Jim Carrier, *O.J. Casts Shadow in Boulder*, THE DENVER POST, Feb. 16, 1997.

12. Howard Pankratz, *Killer "Wiped" Body of Girl*, 6, THE DENVER POST, Feb. 4, 1997, at 1B.

evidence had been sent where, and how long it would take to get lab results.<sup>13</sup>

Like the sex-murder story, the promise of scientific evidence had been present from the earliest days—notably in the ten-day investigation of the crime scene, in which enormous amounts of material evidence were removed from the house. Its efficacy was symbolized by the ostentatious yellow police tape that surrounded the house, and provided the backdrop for daily newscasts and print journalists' reports on the investigation. After the tape was taken down, file photos of the Ramsey house surrounded by yellow tape continued to be used frequently as an image of the case, a talismanic reminder of the scientific investigation.<sup>14</sup>

The beauty-pageant evidence was emphasized by the tabloids, both "glossy" and "trashy." Scientific investigation became the obsession of the mainstream newspapers. These were the interpretations that dominated in succeeding months, laying out the two basic patterns for understanding the crime. Superficially, they seemed diametrically opposed—the respectability and rationality of scientific evidence on the one hand, and the gossip and speculation about child beauty pageants on the other. There was, however, a notable point of conjunction for these two interpretations: the reputed drop of semen on the little victim's body.<sup>15</sup> It was evidence for the sex story, and it was also subject to scientific analysis. This kind of evidence would have satisfied everyone—tabloid readers, science advocates, police, prosecuting attorneys, reporters. It was even a meeting ground for Ramsey sympathizers, who were sure it came from

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13. See generally, DAILY CAMERA; THE DENVER POST; ROCKY MOUNTAIN NEWS; Feb.-June 1997, June 1998. The newspapers generally reported the same stories, and all gave the same weight to DNA evidence. The coverage was intense from February through June 1997, then dropped off significantly after it seemed there would be no incriminating DNA evidence. The topic of scientific analysis re-emerged in June 1998, when Police Chief Beckner organized a two day meeting of all investigators and consultants, at which the evidence was presented.

14. Personal observation. I live in the neighborhood, less than a block from the Ramsey home. For an example of a yellow tape file photo, see PEOPLE, Jan. 20, 1997. Crime-scene tape both materially bounds a crime scene to prevent "contamination," and symbolizes the beginning of the restoration of cultural boundaries through police investigation.

15. On the drop of semen on her body, and the discovery of its nonexistence, so to speak, see Marilyn Robinson, *No Semen Found at Ramsey Slay Scene*, THE DENVER POST, Mar. 15, 1997, at 1A. It continued to be a topic and a reminder of the creation of "evidence" through faulty media coverage. See, e.g., Mary George & Marilyn Robinson, *Ramsey Documents Released*, THE DENVER POST, Sept. 30, 1997, at 1A.

an “outsider,” and Ramsey opponents, who were equally sure this evidence would convict the father or some other relative. It is still not possible to know for sure whether such a drop existed, or whether there was not enough to provide a scientific analysis with certainty, or whether it was not properly collected. Whatever the problem, this culturally crucial piece of evidence never materialized as the definitive solution it had the capacity to be. The two main paths of media interpretation, beauty pageants and DNA, both led to its doorstep, but the actual investigation was unable to cross this threshold of unifying credibility without the actual evidence.

The speculative focus of the media on this hypothetical evidence illustrates how strongly the media can determine what constitutes credible evidence for conviction. In the Ramsey case, within a few months of the murder it came down to a narrow range: some physical element that was a telltale sign of sex or struggle, preferably both, that could also be subjected to DNA analysis to identify the killer. Unlike the beauty-pageant evidence, the prominence of DNA evidence had its ups and downs over the next two years, but ultimately it prevailed as the definitive scientific evidence. After the media reported the absence of the hoped-for semen evidence in March, 1997,<sup>16</sup> the media turned its primary attention to other forms of analysis being done at the Colorado Bureau of Investigation, especially the handwriting analysis of the so-called ransom note.<sup>17</sup> The evidence of handwriting, of fibers, of pens and paper tablets provided little gratification, since none of these kinds of analysis could be used to project a sex story or definitively identify the killer. Mention of DNA persisted in the media, often at a subdued level, then re-emerged as a major focus in June, 1998, when the new Police Chief spoke optimistically of “exciting” DNA evidence that could move the case forward.<sup>18</sup> DNA continued to play a prominent role as key evidence. Now, in June, 1999, its unifying role has been fully restored as it has become simultaneously the focus of the grand jury sessions,<sup>19</sup> the Police Chief’s renewed

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16. See Marilyn Robinson, *No Semen Found at Ramsey Slay Scene*, THE DENVER POST, Mar. 15, 1997, at 1A.

17. See Marilyn Robinson, *Ramsey Writing Sample Taken*, THE DENVER POST, Apr. 15, 1997, at 2B.

18. See Marilyn Robinson, *Ramsey Evidence “Exciting,”* THE DENVER POST, June 4, 1998, at 1B.

19. See Matt Sebastian, *Chief: Ramsey Inquest Rolls On*, DAILY CAMERA, May 7, 1999, available at <http://www.bouldernews.com/extra/ramsey/1999/050799rams.html>.

investigation,<sup>20</sup> and the Ramseys' own investigation. Just as in the first months of the case, it has taken center stage.<sup>21</sup>

#### THE UNDERLYING CULTURAL PHILOSOPHY

While beauty pageants and DNA seem on the surface to be widely different kinds of evidence, in fact these two kinds of evidence were easily brought into conjunction by the media because they were never very far apart. They shared an underlying cultural philosophy, depending on the same interpretation of the materiality of the body. At a certain level, they were interchangeable types of evidence. To understand this underlying conceptual similarity, we need to turn to Mary Douglas's innovative anthropological study of pollution beliefs and purification rituals.<sup>22</sup>

As Douglas explains, pollution is about the violation of boundaries, "a symbolic breaking of that which should be joined, or joining of that which should be separate."<sup>23</sup> In relation to the speculations surrounding the Ramsey case, pollution beliefs were a major source of the abhorrence accompanying the prospect that the Ramsey's had sexually molested and murdered their daughter. The incest was an example of joining what should be kept separate, the sexuality of parents and children. Murder of one family member by another breaks what should be joined, the unity of members of a family. The most dangerous kind of pollution, Douglas explains, is an internal crisis "when some of the basic postulates [of a culture] are denied by other basic postulates, so that at certain points the system seems to be at war with itself."<sup>24</sup> The Ramsey case was just such an internal crisis. That her parents were likely the perpetrators violated the community's strongest beliefs about itself as an idyllic place to live and raise children. The community heaved with the sensation of massive internal contradiction, with the fleeting realization that at its core their social purity might be a sham. That the society's most basic postulates were at issue was also the cause of the intense media coverage of the

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20. *See id.*

21. *See* Lisa Levitt Ryckman & Charlie Brennan, *John Ramsey Team to Investigate Killing*, DAILY CAMERA, Apr. 11, 1999, available at <http://www.bouldernews.com/extra/ramsey/1999/11crams.html>.

22. MARY DOUGLAS, *PURITY AND DANGER: AN ANALYSIS OF CONCEPTS OF POLLUTION AND TABOO* (1995).

23. *Id.* at 114.

24. *Id.* at 124.

case, over so long a period of time with so little news to report. The media coverage was about the cultural crisis, the story of crucial boundaries suddenly disrupted, an ideology collapsing on itself. Whether the boundaries of a society are geographical or social, the pollution beliefs and purification rituals that guard these boundaries, prohibiting and punishing forbidden contact, are very much an ideology, having to do with ideas and symbols. The level of danger that is believed to be present depends on the degree of threat to the structure of ideas rather than the level of physical harm. A tornado can cause great material harm and many deaths, but it has little resonance in pollution beliefs. By contrast, the murder of JonBenet Ramsey was a major pollution crisis: a blue-eyed, blonde-haired, six-year-old daughter of wealthy, socially prominent parents, who was bludgeoned and strangled to death, and probably sexually assaulted as well, in her own home on Christmas night. The suspicion that the parents had done it was what threatened the community's perception of itself. From the perspective of pollution beliefs, major internal boundaries had been crossed. That the Ramsey case was first and foremost a pollution crisis is reflected in the nature of the disruption caused by it. The felt danger in the murder of JonBenet did not lie in the fear that the Ramsey's would murder other people's children. The danger was at the symbolic and ideational level, the fearful consequences of the structure of ideas that generally informed and guided family behavior in the suburbs, ideas that were supposed to provide social cohesion, not chaos. For Ramsey sympathizers, the prospect that the parents had committed the crime was an intolerable thought. They took the suspicions about the Ramseys as an affront to themselves, as a scurrilous attack on the purity of their own society, which, they believed, was still firmly intact.<sup>25</sup>

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25. The time of the murder is uncertain. The body was found the afternoon of Dec. 26, 1996, in the basement of the home. The murder was first reported in the DAILY CAMERA on Dec. 27, 1996, and in THE DENVER POST on Dec. 28, 1996. Comments about Ramsey supporters and those who thought the Ramseys were guilty are based both on newspaper accounts, such as THE DENVER POST, Jan. 12, 1997, which describes the reasoning of those who blocked the sale of THE GLOBE and also, more extensively, on my log of informal communications (Jan.-June 1997) with neighbors, friends, and others who lived in Boulder or Denver (on file with author) [hereinafter *Informal Communications*]. Ramsey supporters tended to be people included in the Ramsey social circle in some way, people who believed they shared a similar social status or wished to share it, and/or people who knew Mrs. Ramsey from elementary school charity activities. I have not cited anyone by name for two reasons: 1) police asked people who were interviewed in the investigation not to speak about their interview, but I spoke to someone interviewed be-



Purification ritual seeks to restore an equilibrium of ideas and values when that equilibrium has been disrupted by an act of pollution. Its cogency exists at the cognitive, symbolic level, in the structure of ideas. This is the territory of media coverage, and this is where Ramsey sympathizers directed their hatred. They perceived journalists as the agents of disruption and the purveyors of misinformation, not the Ramsey's or the culture itself. The media were scoundrels, creating a "frenzy" of disorder themselves in an otherwise peaceful and harmonious culture. By adopting the theory of a botched kidnapping by an outsider, Ramsey sympathizers greatly reduced their sense of threat. There was no internal crisis, only a failure to properly maintain boundaries against outsiders—journalists no less than kidnappers.<sup>26</sup>

It is against this backdrop of pollution beliefs, and in the midst of the struggle to restore equilibrium, that the appeal to DNA evidence emerged. It emerged because it was about boundaries. Douglas argues that the margins of the body mirror in some way the margins of the society and the margins of its structure of ideas.<sup>27</sup> In other words, the margins of the body are especially informative about the boundaries of a society. More than that, they symbolize the fears and anxieties about boundaries, the vulnerability of existing demarcations. As Douglas describes the body and, by extension, society:

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fore this request was made and she has since asked me not to use her name; 2) tensions are still present in Boulder and some people fear they will be ostracized if they are known to have made negative comments about the Ramseys. For a more extensive discussion of the Ramsey social status and how it functioned in the community, and for a more detailed description of *Informal Communications* (both the range of people represented and what they said), see Ann Kibbey, *Who Incidentally that Little Girl? Stories as Pollution Rites in the Ramsey Murder Case*, CONTEMPORARY LEGEND: THE JOURNAL OF THE INTERNATIONAL SOCIETY FOR CONTEMPORARY LEGEND RESEARCH, new series, no. 2 (forthcoming, Fall 2000).

26. The media were a continual problem to people in the neighborhood who parked their cars on the street, particularly parents with small children. Reporters tried to get them to comment on the case and also approached children playing in front yards. Ramsey sympathizers were also afraid that the large number of journalists in the neighborhood provided a cover for would-be kidnappers. Some thought that journalists were kidnappers. See *Informal Communications*, *supra* note 25, and neighborhood meeting, June, 1997. On an anti-media rally in Boulder, see Steven Graham, *Ramsey Coverage Assailed: "Media Frenzy" Decried at Rally*, THE DENVER POST, Mar. 24, 1997, at 2B; Jason Gewirtz, *Media Watchdog Group Attacks Frenzy Around Ramsey Case*, DAILY CAMERA, Mar. 24, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/03/24-1.html>.

27. See DOUGLAS, *supra* note 22, at 122-123.

We should expect the orifices of the body to symbolize its specially vulnerable points. Matter issuing from them is marginal stuff of the most obvious kind. Spittle, blood, milk, urine, feces or tears by simply issuing forth have traversed the boundary of the body. So also have bodily parings, skin, nail, hair clippings, and sweat.<sup>28</sup>

This marginal stuff symbolizes the vulnerability of the boundaries of the body and the transgression of social boundaries. As such it carries symbolic weight, means something more than its physical identity in a simple material sense. Douglas points out that, in the paradigms of pollution ideologies, “all margins are dangerous” and the marginal stuff they emit is both dangerous and uniquely symbolic of transgression.<sup>29</sup> The marginal stuff of Douglas’s description is also the stuff of scientific analysis, especially DNA analysis. The margins and openings of the body leave the telltale information about what boundaries have been transgressed, what forbidden contact has occurred.

What I want to emphasize here is that a culture may give great weight to DNA evidence completely apart from the scientific and mathematical thinking that underlies its analysis. The media interest in DNA evidence was not particularly based on a knowledge of science but on the symbolic logic of pollution beliefs. By symbolic logic, if not scientific logic, a highly dangerous act of pollution—such as parents sexually assaulting and murdering their child—would have to leave an ample residue of physical evidence. With so many symbolic boundaries violated, there would have to be a plethora of symbolic evidence from the margins of the bodies involved. This is why the media were so easily led down the path of scientific investigation by a press conference that had nothing to do with the evidence. The media’s coverage sustained itself primarily by pollution beliefs that warranted its focus on the margins of the body as the source of truth about transgressed boundaries. District Attorney Alex Hunter’s appearance before the press was far more like a campaign speech than a discussion of the crime and the evidence, intended to rally support for the lab work of scientific investigation. Hunter made much of his connection to Henry Lee in ensuing months as the newspapers waited patiently, with blind faith, for scientific analysis to solve the case and thereby solve the boundary crisis. No matter that

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28. *Id.* at 122.

29. *Id.*

Scheck, the DNA expert, was nowhere to be seen. The media easily focussed their beliefs on the more visible Henry Lee, a crime-scene analyst whom Hunter had lauded for "the magic he has brought to other cases."<sup>30</sup> In this context, scientific analysis was isolated from the social and moral dimensions of the case, detached from the more traditional aspects of criminal investigation. Lab work was treated as a magical rite, a pollution ritual that would solve the case by itself.

While beauty pageants had no direct relation to the investigation of the crime itself, they, too are about the margins and surfaces of the body, and emphasize the problem of forbidden contact. The practices and values of beauty pageants involve an emphasis on the margins of the body and the body as surface. Hair, eyes, ears, mouth, skin, fingernails, and fibers are the stuff of beauty as well as the stuff of crime analysis. In beauty pageants, these bodily margins are evoked to demonstrate their containment at the symbolic level through the rituals of make-up and styling, and the isolated walk down the runway. Pageant beauty promises both the excitement of sexuality as paradigmatic physical contact, and control of the contaminating dangers of sexuality. Contests like the Miss America pageant, in which Patsy Ramsey participated and for which JonBenet was being groomed, are contests that are simultaneously exhibitionist and sexless.<sup>31</sup> They are about containing the danger of sexuality, affirming the need for boundaries by emphasizing the boundaries in provocative ways and, at the same time, exhibiting control of the margins of the body. In child beauty pageants the contradictions are even more intense, creating a higher level of danger, because the semiotics of adult pageants impute adult sexual knowledge to children. JonBenet's identity as a child beauty-pageant contestant announced again and again the importance of margins to understanding the crime that had taken her life.

In the Ramsey media murder script, scientific analysis and beauty pageants were attached to each other more than they were connected to the actual crime itself. News coverage that focussed on scientific analysis was about the timetable of the investigation, not about the crime. It co-existed in print media and visual media with the endless video and photo illustrations of the child beauty queen. The crime itself remained an elusive third term, not directly perceptible in either narrative. The emphasis

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30. Televised press conference (Feb. 13, 1997).

31. Mrs. Ramsey's Miss America participation as Miss West Virginia was mentioned in most media stories about her, *see, e.g., JonBenet: Eerie Photos Bares Mom's Sick Obsession*, THE GLOBE, Sep. 30, 1997, at 4.

on beauty pageants and the emphasis on scientific analysis validated each other, mutually affirming the underlying epistemology of margins that gave credence to both simultaneously. The thematic resonance of beauty pageants and scientific crime scene analysis came from their shared symbolic interpretation of the physical body as primarily inhabited by its margins. Beauty may emphasize different qualities of marginality than scientific crime analysis does—moist-looking lips instead of saliva or blood—but ultimately both paradigms of evidence depend on attributing primary significance to the margins of the body. This is where truth lies. This is what we can know.

### THE CONCEPT OF THE INDIVIDUAL

By focussing on the determination of physical agency in the crime, the media's concept of DNA evidence (ironically supported by the District Attorney) implied an interpretation of the crime itself that was fundamentally at odds with traditional legal concepts of murder as a criminal act. Douglas carefully distinguishes between morality on the one hand and pollution beliefs on the other. They are separate phenomena, with no necessary link between them. Pollution beliefs do not depend on moral reasoning or a concept of individual responsibility, particularly the kind associated with the traditional legal idea of first degree murder as an intentional crime. The idea of intentional acts is much diminished in the cultural system of pollution beliefs. Intentions, even if they are present, count for little or nothing. Douglas explains, "Pollution can be committed intentionally, but intention is irrelevant to its effect—it is more likely to happen inadvertently."<sup>32</sup> This is because acts of pollution are "a particular class of dangers which are not powers vested in humans, but which can be released by human action."<sup>33</sup> It is not so much that a person commits an act of pollution. Rather, the individual act releases certain forces or powers of contamination that are believed to be dangerous because they generate social disorder in the community. A person may be the agent of these forces, but pollution beliefs do not support a concept of individual responsibility, intent, or conscious motivation. They focus instead on a narrow concept of agency in a material, physical sense. The individual's act is inadvertent, not consciously willed or intended, not undertaken with any ability to foresee its effects or any power to control

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32. See DOUGLAS, *supra* note 22, at 114.

33. *Id.*

them.<sup>34</sup>

In the framework of pollution beliefs, the perpetrator is seen in a different light. Unlike traditional criminology, pollution beliefs do not necessarily focus on individual identity or motive because the “why” of criminology—the motives or social identity of individuals—is not a compelling source of incrimination. Individuals are not seen as having committed a crime through their own conscious acts or moral failing, nor are they perceived as being responsible for the consequences of those acts or failings. They are instead viewed as having accidentally tripped the wires of cultural forces. A criminal has agency, but only in the most minimal sense of having materially, physically done something.

This frame of mind characterizes many aspects of the way the Ramsey murder was perceived. Attempts at speculative scenarios of what happened, partial though they are, reflect the concept of agency that characterizes pollution beliefs. Both of the Ramsey parents were portrayed as persons out of control, overwhelmed by forces greater than themselves. The crime was a sadistic sex game that got out of hand. Overwhelmed by sexual passion, the killer inadvertently twisted the garrote around her neck too tight for too long, strangling her without intending to. Both tabloids and the police sought to prove that John Ramsey was obsessed with pornography and acted out his pornographic urges on his daughter in this way.<sup>35</sup> When attention shifted to Patsy Ramsey, the scenario focused on her rage over her daughter’s chronic bed-wetting as the explanation for the vicious blow to the child’s head.<sup>36</sup>

The way in which pollution beliefs render individual responsibility ambiguous, and possibly absent altogether, was reflected in the unusual care taken to describe what the Ramseys did not do even as they were suspected of having done it. In his February 13, 1997 press conference focusing on the virtues of DNA, District Attorney Hunter emphasized the limits of guilt, expressing sympathy for the perpetrator. He announced he would not seek the death penalty, defusing any concept of the crime as a

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34. *See id.*

35. On John Ramsey and pornography, see Marilyn Robinson, *News of Child-Porn Probe Angers Ramsey Attorneys*, THE DENVER POST, July 4, 1997, at 1B; THE DENVER POST, Sept. 30, 1997. *See also* Richard Gooding, *JonBenet Dad Linked to Kiddie Porn Scandal*, STAR, Apr. 29, 1997, at 6.

36. On Patsy Ramsey and bed-wetting rages, a story that was developed almost exclusively by the tabloids, see Craig Lewis, *JonBenet Mom Killed Tyke for Wetting Bed*, THE GLOBE, Oct. 21, 1997, at 32; Diana Johnson, *JonBenet Killed-Because She Wet the Bed*, THE NATIONAL EXAMINER, Apr. 29, 1997, at 15.

premeditated murder. The official language adopted by legal authorities referred to the crime as an “incident,” not a “murder,” implying it wasn’t a murder but something else—they weren’t sure what.<sup>37</sup> An “incident” rather than a murder, without intention, the inadvertent result of actions taken in a rage, by individuals overwhelmed by powers greater than themselves—through such a lens, the motives and intentions of a murderer become largely irrelevant. The individual inscribed in the system of pollution beliefs is without a subjective interior, dangerous in the overflow of its own subjectively uncontrolled boundaries, and exceedingly vulnerable to the danger around it because it has no subjective consciousness.

It is not surprising that District Attorney Hunter chose the format of television news and the style of a political campaigner to put forward this interpretation of the Ramsey murder case. The concept of the individual underlying it was ideal for superficial media coverage. Because there is no subjective interior that matters in the perpetrator who has accidentally committed a crime, because that interior is suppressed and not recognized, the most superficial aspects of media coverage can easily convey the story of margins implied by this cultural philosophy. It can photograph them, analyze them, capture the movements of the mouth in sound bytes because what is said isn’t that important. To see the surface and affirm the physicality of the person are all that is needed. The media is not inherently constrained to this kind of practice either by its technology or its capabilities. It can, however, produce a powerful version of the marginalized body—marginalized in the sense that the margins come to constitute the body’s meaning and identity, and a person’s meaning and identity.

The effacement of individual consciousness and responsibility that characterizes pollution beliefs also detracts from the credibility of witness testimony. The scientific margins of the body, and the overflowing fluids that betray where its uncontrolled boundaries have been, is more compelling evidence than any individual can offer. In the Clinton-Lewinsky scandal, the semen on Monica Lewinsky’s dress was identified through DNA analysis.<sup>38</sup> Once identified in this manner, it no longer

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37. See, e.g., Patricia Calhoun, Editorial, *Where the Bodies Are Buried in Boulder*, WESTWORD, Jan. 23, 1997; Ed Quillen, Editorial, *Good Thing Boulder Has Its Priority Straight, Isn’t It?*, THE DENVER POST, Jan. 1, 1997.

38. See, e.g., Michael Isikoff & Evan Thomas, *How Strong Is Starr’s Case*, NEWSWEEK, Sept. 21, 1998, at 38.

mattered whether Monica herself was a credible witness. Her dress was far more persuasive than she could ever be. "If the dress won't bleach, you must impeach!" joked a cartoonist, ridiculing the prosecutor Kenneth Starr and his conservative Republican supporters.<sup>39</sup> Their moral indictment of Clinton was undercut by their appeal to scientific evidence for the truth of the matter. Their moral crusade against the pollution of adulterous sex became a joke because their appeal to scientific evidence adduced guilt without ever entering into the social territory of morality. What was critical was the scientific, physical identity of the bodies involved, not the moral or social identity of the people involved. Again, the underlying concept of the individual that accompanies appeals to DNA in the context of pollution beliefs will itself diminish the credibility of the testimony of any individual.

#### PURIFYING THE SOCIAL ENVIRONMENT

Purification rituals seek to restore order, not so much at the level of crime and punishment in the traditional sense, but at the psychological and social level, where the larger cultural damage is believed to have occurred. The legal process can shape ritual purification through the prosecution of a crime, especially through a conviction at trial. However, the legal process and ritual purification need not come together in this way. The Ramsey case took a different turn, away from prosecution and its accompanying narrative of the crime and assignment of responsibility. In the Ramsey case, DNA analysis became the cornerstone of the community's purification ritual. Its main attraction: it created the greatest conceptual distance possible from the social facts of the crime, a distance that had great appeal to a community that felt uniquely contaminated and embarrassed by the child murder in its midst. Shunning the spotlights of a celebrity trial as a spectacle of unbearable communal shame, they sought the smoke and mirrors of science to restore their communal privacy.

The depth of discomfort was apparent from the outset. Immediately after the murder, residents in the community were both obsessed with the details of the crime and loathe to inquire further about the social conditions that produced it. In the first weeks, the most vocal members of the community proclaimed the Ramseys' innocence, perceiving them as victims of an outsider's actions, and doubly victimized by those who con-

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39. DAILY CAMERA, Dec. 17, 1998.

sidered them suspects. Waving off suspicions that the ransom note was fake, this group fastened early and tenaciously on the kidnapping scenario. For them, the pathway to purification was clear and obvious. They advocated total suppression of the disturbing details of the crime, just as the Police Chief did—in effect, total silence because all the details were disturbing reminders of the murder. They condemned journalists and their loose-tongued sources, equating speech with contamination. Pictures were an even worse offense. It was this faction that successfully prevented the sale of *The Globe* throughout the region—for publishing photographs of the crime scene.<sup>40</sup>

Among residents who thought the Ramseys might be guilty, probably the majority of the community, there was a different kind of silence. To be sure, there were numerous informal conversations revolving around who in the family might have done it, but those speculations did not develop into stories that accounted for the motives, intentions, or sequence of events that led up to the murder. In this regard, there was a collective failure of imagination. Social and psychological elements that would explain or account for a crime committed by the parents remained literally inconceivable, even to residents who believed the parents were likely to be guilty. As one plainly put it, “It doesn’t make any sense.”<sup>41</sup>

Wrapped in the silence of outright refusal and the less audible silence of incomprehension, the social significance of the murder reverberated throughout the community without arriving at coherent articulation. An increasing polarization between Ramsey supporters and those who suspected the Ramseys created social tensions that resulted in bitter recrimination rather than dialogue. Deeper questions never reached the surface. Were there any inherent limits to parental rage against offspring? Might other respectable middle class parents do these things, too, in an impulsive moment? These were questions the Ramsey case might have raised, but these questions were not asked, not discussed, not broached either

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40. See Neighborhood meeting and *Informal Communications*, *supra* note 25. The campaign against the tabloid was based on the claim that it showed autopsy photos. There was a picture of the girl’s wrist with a cord around it, and picture of the cord after it had been removed. There was a crime scene photo of the body fully concealed under a blanket. People supported the boycott of the tabloid based on what they were told about the issue, believing the pictures were much more gruesome than they actually were. They were surprised at the innocuousness of the pictures when they saw them several months later. I brought the infamous issue to the neighborhood meeting. No one had seen it. Everyone wanted to see it.

41. Personal observation and *Informal Communications*, *supra* note 25.



publicly or privately. They were, in a word, taboo.

It was in this context that citizens believed it was important to “get the lab work done.”<sup>42</sup> The fact that lab work was thought to have begun introduced a moratorium on speculation as the collective fantasy of a case solved by DNA became increasingly attractive. DNA would provide the definitive answer to the question of “who done it” in the absence of any compelling scenario of why they had done it or even how they had done it. Lab work would solve the case in a manner that provided a way out of the complicated matter of individual responsibility, a way of determining fault without having to advance a motive, conscious intent, or even an explanation of the sequence of events that led up to the murder. If the Ramseys had done it, scientific evidence would prove it without having to describe it or explain it. What is quite striking about the Ramsey case is the way in which it has continued to elude a unified story of what happened, even at the speculative level. Storytelling became elaborate around the crime, while leaving a vacuum at the center of the narrative—the story of how and why the murder had been committed.

The shift in focus away from the social fact of the crime led to the cultural territory surrounding the crime, where the culture believed it had suffered the most debilitating effects. The material fact that a little girl was killed became secondary to the crisis of symbolism, the disruption of conceptual boundaries that were central to the culture’s identity. As the investigation floundered in the summer of 1997, the legal process and the authority of police were divested of any power they might have had to cure the cultural malaise through prosecution. What took its place was a succession of events that flailed away at who, culturally, was to blame for this disruption. The elaboration frequently took place through rituals of purification enacted against people associated with the criminal investigation. The police chief resigned.<sup>43</sup> The city manager who had ap-

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42. *Informal Communications*, *supra* note 25. The quotation comes from the end of one person’s interview with police. According to her, the last question police asked her was, “How would you solve the case?” She answered, “Get the lab work done.” Both she and I were surprised that the police were asking her how to solve the case. We surmised that they may have been trying to find out what prospective jurors would find credible. The police interview was held about a week after the crime. My conversation with her occurred about one week later, approximately January 14, 1997. Shortly afterwards, she was told not to speak about the interview. She was also asked to give handwriting samples during the interview.

43. See Mary George, *Boulder Cops to Vote on Chief*, THE DENVER POST, May 23, 1997, at B1; Carol Sandler, Editorial, *Boulder Should Fire Tom Koby*, DAILY CAMERA, May 26, 1997; Alli Krupksi, *Cops Vote No on Koby*, DAILY CAMERA, May 29, 1997, at

pointed the police chief resigned.<sup>44</sup> Four of the first detectives on the case resigned and two sued the city and the police department for defamation.<sup>45</sup> The private investigator who obtained the crime-scene photos for the tabloid press was arrested and convicted.<sup>46</sup> The photo lab technician who gave the photos to the investigator was arrested and convicted, and

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A1; Cindy Brovsky, *Koby Snub Won't Affect Ramsey Case, DA Says*, DENVER POST, May 30, 1997, at B1; Mike McPhee & Mary George, *Honey Likely to Quit*, THE DENVER POST, May 31, 1997, at A1 [hereinafter McPhee & George].

44. See Lisa Marshall & Julie Poppen, *Honey Fights for His Job*, DAILY CAMERA, May 29, 1997, at A1; Mike McPhee, "Decision" Time for City Manager, THE DENVER POST, May 30, 1997, at A1; McPhee and George, *supra* note 43, at A1; Mary George and Marilyn Robinson, *Ramsey Lead Detective to Leave*, THE DENVER POST, June 4, 1997, at B1.

45. See R.E. Baird, *Cop Clash in a Policy Dispute*, COLORADO DAILY, Mar. 14, 1997; Alli Krupski, *Two Detectives Dropped from Ramsey Murder Case*, DAILY CAMERA, May 14, 1997; Alli Krupski, *Police Errors Eyed in Case*, DAILY CAMERA, June 5, 1997; Alli Krupski, *Boulder Cop Files Internal Complaint*, DAILY CAMERA, June 10, 1997; Alli Krupski, *Ramsey Case Chief Replaced*, DAILY CAMERA, Oct. 10, 1997; Alli Krupski, *Chief Koby, DA at Odds Over Case*, DAILY CAMERA, Oct. 11, 1997; all articles available at <http://www.bouldernews.com/extra/ramsey/> [hereinafter Krupski Articles]; see also Sergeant, *City Reach Agreement*, DAILY CAMERA, Nov. 26, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/11/26-1.html>; R.E. Baird, *Cop Suit Nears Settlement*, COLORADO DAILY, Dec. 8, 1997; Matt Sebastian, *Ex-Ramsey Detective Suing Koby, City*, DAILY CAMERA, May 21, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/21ramsey1.html>; Matt Sebastian and Christopher Anderson, *Detective Blasts DA's Office*, DAILY CAMERA, Aug. 7, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/80798rams.html>; Christopher Anderson, *DA Sleuth Quits Ramsey Case*, DAILY CAMERA, Sept. 25, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/25smit.html>; Matt Sebastian, *Ramsey Grand Jury Hears What Cops Saw*, DAILY CAMERA, Sept. 27, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/27ramsgl.html>; Matt Sebastian, *Ramsey Rips Police, Lauds Smit*, DAILY CAMERA, Sept. 29, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/29rams.html>; Matt Sebastian, *Arndt Back Before Grand Jury*, DAILY CAMERA, Sept. 30, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/30grand.html>; Marilyn Robinson & Mary George, *Ramsey Probe Due for Shakeup*, THE DENVER POST, Oct. 9, 1997, at A1; Karen Augé, *Ramsey Detective Resigns in Anger*, THE DENVER POST, Aug. 7, 1998, at A1; Karen Augé & Mary George, *Special Prosecutor Possible in Ramsey Case*, THE DENVER POST, Aug. 8, 1998, at A1; Karen Augé, *JonBenét Probe Will Get Help*, DENVER POST, Aug. 13, 1998, at A1.

46. See Alli Krupski, *Two Ordered to Write Apologies for Ramsey Autopsy Photo Sale*, DAILY CAMERA, Feb. 21, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/02/21-1.html>; Dick Kelsey, *Photo Sellers Given Solitary*, DENVER POST, Feb. 25, 1997, at B2; Ed Quillen, Editorial, *Just How Were Government Operations Obstructed in Boulder*, THE DENVER POST, Mar. 2, 1997, at E3.

later arrested again for "indecent exposure."<sup>47</sup> The police detective in charge of the investigation resigned.<sup>48</sup> Others were only tenuously connected to the case. A friend of the Ramseys who became too aggressive in his hostility to journalists was arrested.<sup>49</sup> A woman who reported on the case for the Boulder newspaper resigned and sued the newspaper.<sup>50</sup> Additionally, a man was arrested for stealing a log page at the morgue and attempting to set the Ramsey house on fire.<sup>51</sup> The photographer who had taken the pictures that appeared on the cover of *Newsweek* and other magazines was arrested "on suspicion of indecent exposure."<sup>52</sup> John Ramsey lost his job and his company.<sup>53</sup> Many people besides the Ramseys were subjected to media stakeouts. Employees of the Ramseys who

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47. See Christopher Anderson, *Photo Technician is Arrested Again*, DAILY CAMERA, Feb. 21, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07/20-1.html>.

48. See Krupski Articles, *supra* note 45; R.E. Baird, *Cop Bumped Off Ramsey Case*, COLORADO DAILY, Oct. 10-12, 1997; *Florida Agency Tells Eller "No,"* DAILY CAMERA, Nov. 5, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/11/05-1.html>; Mary George and Marilyn Robinson, *Koby Pulls Cops from "War Room,"* THE DENVER POST, Oct. 11, 1997, at 1A; see also Mary George and Marilyn Robinson, *Veteran Cop Resigns from Ramsey Case*, THE DENVER POST, Sep. 24, 1998, at 1B; Evan Dreyer, *"Killer Still Out There,"* THE DENVER POST, Sep. 27, 1998, at 1A; Karen Augé and Marilyn Robinson, *Ramsey Letter Rips Police: Dad Laments Detectives Resignation*, THE DENVER POST, Sep. 29, 1998, at 1A; Evan Dreyer & Matt Sebastian, *Smit Won't Release Letter*, DAILY CAMERA, Sep. 25, 1998, at 1C.

49. Staff, *Ramsey Pal's Hearing Reset*, THE DENVER POST, Feb. 26, 1997, at 2B; Chuck Green, *Boulder's Justice in Full View*, THE DENVER POST, Mar. 28, 1997, at 1B; Jeff Mayo, *Elowsky Guilty of Menacing*, DAILY CAMERA, July 2, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07/02-1.html>.

50. See Matt Sebastian, *Judge Issues Restraint Order on Ex-Reporter*, DAILY CAMERA, Dec 18, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/12/18-2.html>; Matt Sebastian, *Camera Continues Bid to Drop Suit Over Files*, DAILY CAMERA, Mar. 20, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/03/20-1.html>; Matt Sebastian, *Former Reporter Files Countersuit*, DAILY CAMERA, Apr. 11, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/04/11-1.html>.

51. See Mary George & Marilyn Robinson, *Morgue-Log Thief Accused of Arson Try*, THE DENVER POST, June 20, 1997, at 1B; Alli Krupski, *Man Tries to Burn Ramsey House*, DAILY CAMERA, June 20, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/06/20-1.html>.

52. *JonBenet Photographer Arrested*, DAILY CAMERA, Oct. 18, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/18jonb.html>. See also Erika Davila, *JonBenet Glamour Photographer Jailed*, THE DENVER POST, Oct. 17, 1998.

53. See Tom Locke, *Ramsey Exit to Follow Trade of Boulder Firm*, DAILY CAMERA, Nov. 4, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/11/04-1.html>.

became suspects were subjected to media scrutiny and severe ostracism, even though they were soon cleared. One of them, the Ramseys' former housekeeper, recently spoke out about her life as a stigmatized person over the last two years: "Someone wrote her husband was a child abuser and her daughter was involved in child pornography. . . . [Her daughter] Ariana doesn't attend school in Fort Lupton anymore and is being home-schooled. The Pughs have received anonymous telephone calls accusing them of all kinds of crimes."<sup>54</sup> As the fear of contamination continually regenerated itself, the legal authorities fully participated by interrogating, arresting, fining, and incarcerating the various suspicious persons, using the law as a mechanism to validate narratives of contamination and to enact purification against scapegoats. In this regard, there was no tension between legal authorities, the media, and the community.<sup>55</sup>

Because the meaning of individual responsibility is ambiguous and compromised within the system of pollution beliefs, because no individual is responsible for the consequences of an act of contamination, it is also true that no individual is fully *not* responsible. Associative thinking potentially links an indefinitely large number of people to the cultural contamination set off by the crime. Moreover, although both criminal law and purification ritual claim to restore social order, they can radically diverge in their concepts of what constitutes an offending act. A contaminating act is not necessarily a crime in the legal sense, and this is what opens a wide door to prejudice. Skin color, bodily fluids, hair type—these are the markers that constitute the identity of suspects who leave their trace at the scene of a crime. But these are also the markers of prejudicial stereotypes. Once engulfed in them, the target is also subject to the discrediting of individual consciousness that characterizes acts of contamination in the system of pollution beliefs, thus undercutting anything a target might say in self-defense. Pollution beliefs direct their punitive wrath against anyone who is perceived to threaten the ideological assumptions of the culture.

In the Ramsey case, the cultural malaise was split off from the crime itself, which ironically became the innocent, accidental instigator of a cultural investigation that acquired the atmosphere of a pogrom. This

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54. *Housekeeper Says Lies Have Hurt Her Family*, DAILY CAMERA, Feb. 22, 1999, at 3C.

55. Many of these events, and the infighting that accompanied them, are discussed in more detail in LAWRENCE SCHILLER, *PERFECT MURDER, PERFECT TOWN: JONBENET AND THE CITY OF BOULDER* (1999).

splitting off was exemplified by the Ramseys themselves, who made a concerted attempt to cultivate prejudices and organize hatred by exploiting the general climate of ritual punishment that ideological fear of the crime had created. This occurred about six months after the crime, after the parameters of pollution beliefs had established the terms of public discourse through the narratives of beauty pageants and DNA analysis, and at a time when it appeared that DNA analysis had failed. The Ramseys' team of private investigators circulated flyers inviting residents in the Ramsey neighborhood to turn in any neighbors of whom they were suspicious. The flyers greatly expanded the criteria for culpability. The first and most harmful of the flyers was delivered door to door, rubber-banded to front door knobs like ads for pizza specials. The rest came by direct mail, also a standard advertising method. The flyers purported to offer a criminal profile, a list of characteristics of the supposed killer, but these characteristics turned out to be very vague—adult male with marital problems, recent job loss, depression, anxiety, obsessive interest in the case, anger at one of the Ramseys—things that might characterize many people in this neighborhood, or any other. This created an opportunity to exploit personal hatreds and suspicions that might exist among neighbors, inviting surveillance from one house to another. Playing on the belief that the killer was both an insider and outsider, the flyer generated an indefinitely inclusive sense of suspicion. This wider territory for pollution fears had no direct relation to the crime—a tactic whose credibility was enhanced by the fact that the public had no clear perception of how or why the crime had occurred. The second flyer invited people to analyze the handwriting of people they knew—to match it to characteristic writing in the ransom note, examples of which appeared on the flyer. The third flyer asked for help in identifying film-goers, linking the murderer with lines of dialogue in mass-culture films. Each of the flyers was repeated in full-page ads in the local newspaper, giving them public sanction and drawing in the full participation of the local media.<sup>56</sup>

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56. I received all three flyers at my home. The first flyer, "Do You Know This Man?" was delivered July 24, 1997. I received the second and third by mail, "Do You Recognize This Handwriting?" on Aug. 2, 1997, and "Will You Help Us?" on Aug. 19, 1997. The DAILY CAMERA published versions of the flyers in full page ads. See Alli Krupski, *Ramsey Lashes Out at Police*, DAILY CAMERA, July 24, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07/24-2.html>; *An Open Letter from John and Patsy Ramsey*, DAILY CAMERA, July 27, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07-/27-1.html>; *Ramseys Again Appeal for Help*, DAILY CAMERA, Aug. 10, 1997, available at <http://www.bouldernews.com/extra/>

The Ramseys and their supporters justified their tactics by saying the legal authorities in Boulder were incompetent and the Ramseys had a “right” to find their daughter’s killer by any means possible. Operating like a private police force, the Ramsey investigators adopted methods reminiscent of Nazi tactics for finding and arresting Jews. As a context for their actions, the Ramseys used the communication methods of capitalist advertising and mass culture to normalize what they were doing. The presumption behind the flyers was not only that the Ramseys were innocent, but that respondents to these flyers and ads were innocent, too. It was the person next door, or possibly the person in the next room, who was guilty, who was the secretly contaminating presence in the community. The local newspaper shared this sense of innocence. It ran the ads and reported on the Ramsey investigators’ activities and progress, reproducing and implicitly supporting the Ramseys’ private policing of the community.<sup>57</sup> As the newspaper reported, some people did call the private investigators to turn in their neighbors, and soon after, a “suspect” emerged in the media: a homosexual man living about six blocks from the Ramsey house.<sup>58</sup> Despite the obvious appeal to prejudicial stereotypes, and despite the fact that he was cleared of suspicion by police, the accusation resulted in extensive inquiries by the tabloid press. The man

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ramsey/1997/08/10-1.html; Sandra Fish, *Ramsey Ad Hints Killer Likes Crime Movies*, DAILY CAMERA, Aug. 17, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/08/17-1.html>. After the ransom note was published in full in VANITY FAIR, the investigators sent a letter Sept. 10, 1997, accompanied by a photocopy of the ransom note, with certain passages highlighted. We were asked, “Who talks like this? Who writes like this?” See *Vanity Fair Publishing Full JonBenet Ransom Note*, DAILY CAMERA, Sept. 3, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/09/03-1.html>.

57. See *supra* note 56; see also Alli Krupski, *Killer Might Have Left City, Ad Says*, DAILY CAMERA, July 25, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07/25-1.html>; Alli Krupski, *Next Ramsey Ad to Include Letters from Ransom Note*, DAILY CAMERA, July 30, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/07/30-1.html>; Alli Krupski, *Ramseys to Send 1,000 Letters*, DAILY CAMERA, Aug 1, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/08/01-1.html>; Sandra Fish, *Ramseys Link Killer to Films*, DAILY CAMERA, Aug. 15, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/08/15-1.html>; Associated Press, *Next Ramsey Ad Has Film Plots*, DAILY CAMERA, Aug. 22, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/08/22-1.html>.

58. See Marilyn Robinson, *Ramsey Neighbor Tracked*, THE DENVER POST, Oct. 16, 1997, at 1A; *Police Look for Possible Suspect*, DAILY CAMERA, Oct. 16, 1997, available at <http://www.bouldernews.com/extra/ramsey/1997/10/16-1.html>; John South & David Wright, *Mommy & Daddy: We Know Who Did It!*, THE NATIONAL ENQUIRER, Oct. 21, 1997, at 16.

sued for libel.<sup>59</sup>

The flyers and ads of the summer of 1997 resituated the media and the public in relation to the Ramseys, inviting people to directly participate in the private enforcement of suspicions. And participate they did. The Ramsey "private" investigation achieved public scope, had public support and little opposition. It says something about how authoritarian governments begin, with what credence they take the first steps, and how they come to tolerate and support widespread scapegoating and a culture of surveillance, while at the same time obvious murder goes unrecognized and unpunished.

The social disorder that followed in the wake of the Ramsey murder shows that the failure of the law was much more extensive than its failure to make an arrest and have a trial in the murder case itself. In these conditions, the legal reasoning about the social causes of a crime can become immaterial, essentially nullified by the loose associations of pollution beliefs, associations based on reading the margins of the body. It is precisely because DNA analysis shares this epistemology that it can enter into this territory of suspicion and, using scientific and statistical analysis, read these same margins of the body in a very different way. This is why DNA can be socially liberating evidence for a defendant who is wrongfully accused or convicted. DNA has been rightly recognized as a powerful method of overturning social injustice, as leverage for a social critique of shoddy police work, unacknowledged prejudices, and the irrational effects of pollution fears seeking scapegoats for purification ritu-

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59. The man sued both the tabloid and John Ramsey for libel. See Matt Sebastian & Christopher Anderson, *Ramsey May Face Civil Action*, DAILY CAMERA, Oct. 1, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/01rams.html>; Christopher Anderson, *Ramsey Told to Testify*, DAILY CAMERA, Oct. 9, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/09rams.html>; Christopher Anderson, *John Ramsey Deposed in Defamation Lawsuit*, DAILY CAMERA, Oct. 21, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/21rams.html>; Christopher Anderson, *Cops to Testify in Ramsey Suit*, DAILY CAMERA, Oct. 26, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/102698rams.html>; Matt Sebastian, *Criminal-Case Lawyers Prevented Dad from Responding, Hill Charges*, DAILY CAMERA, Nov. 3, 1998, available at <http://www.bouldernews.com/extra/ramsey/1998/03ramssi.html>; *Ramsey to Testify*, THE DENVER POST, Oct. 11, 1998, at 2B; Karen Augé, *Ramsey Testifies Under Oath in Defamation Suit Against Him*, THE DENVER POST, Oct. 21, 1998, at 2B; Karen Augé, *Mental Test Ordered for Plaintiff*, THE DENVER POST, Nov. 21, 1998, at 2B; Christopher Anderson, *Cops Must Talk in Ramsey Suit*, DAILY CAMERA, Nov. 21, 1998, at 1C; Christopher Anderson, *Ramsey Dropped from Civil Suit*, DAILY CAMERA, Dec. 18, 1998, at 1C; Christopher Anderson, *Enquirer Again Seeks Dismissal of Lawsuit*, DAILY CAMERA, Jan. 15, 1999, at 4C.

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However, as the Ramsey case shows, DNA can also be a method of protecting the middle class from perceiving its own actions, its own contradictions. Appropriating the cultural reputation of DNA analysis, the Ramsey investigation wrapped itself in the cloak of social justice to *prevent* social understanding, to *avoid* the very issues that DNA evidence had previously been used to expose. Because DNA evidence itself mingles so easily with the concept of the individual at the center of pollution beliefs, in and of itself, it is no guarantee of a more sound approach to criminology.

As I finish this essay in June, 1999, the grand jury that was long resisted by District Attorney Hunter has now been in session for over six months (since Sept. 15, 1998) and appears to have reached an impasse. According to the media, which does not clearly identify its source, there was physical evidence collected from "underneath the girl's fingernails and on her underpants." Is this the evidence of sex and struggle that trial by media predetermined to be crucial evidence? Unlike the hypothetical semen on the girl's body, it has been possible to do a DNA analysis of this evidence. Ironically, the evidence has not yielded the long-sought answers that DNA would supposedly disclose. According to the media, the investigators have not been able to correlate the results of the DNA analysis with any of the numerous physical samples that were taken.<sup>60</sup> Perhaps this impasse will re-open the case at a level that has been closed off since the first weeks following the murder, when the beauty-pageant

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60. The most recent report on the focus of the grand jury's sessions is in the DAILY CAMERA, May 7, 1999. See Matt Sebastian, *Chief: Ramsey Inquest Rolls On*, DAILY CAMERA, May 7, 1999, available at <http://www.bouldernews.com/extra/ramsey/1999/050799rams.html>. The unmatched DNA evidence, it says, "has long stumped detectives" and appears to be the reason for the holdup in the grand jury. *Id.* References to analysis of fingernail scrapings go back to March, 20, 1997, in THE DENVER POST, but its significance and the results of the analysis were not explained prior to May 1999. See *id.*; Marilyn Robinson, *Family Can Monitor DNA Testing*, THE DENVER POST, Mar. 20, 1997, available at <http://www.denverpost.com/news/jon49.htm>. According to the BOULDER DAILY CAMERA, Apr. 11, 1999, the Ramsey investigators are also working on DNA evidence. See Lisa Levitt Ruckman and Charlie Brennan, *John Ramsey Team to Investigate Killing*, DAILY CAMERA, Apr. 11, 1999, available at <http://www.bouldernews.com/extra/ramsey/1999/11crams.html>. The grand jury has met infrequently in the last two months, and not at all since May 25, 1999. See Karen Augé, *Boulder Prepares for Grand Jury's End*, THE DENVER POST, June 23, 1999, available at <http://www.denverpost.com/news/jon06239.htm>; Marilyn Robinson, *Ramsey Circle's DNA Analyzed*, THE DENVER POST, June 29, 1999, available at <http://www.denverpost.com/news/jon06299.htm>.



videos and the speculations about the miracles of laboratory science created a path of exclusion that closed off social analysis and privileged the margins of the body as the source of social understanding.