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## The Myth of Perfection

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## The Myth of Perfection

Charles B. Rosenberg

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The borderland between fiction and reality is always contested territory. Novels are supposed to be made-up stories, but historical novels parade as real and the roman a clef is as almost as old as the novel itself.<sup>1</sup> Histories and biographies claim to be better, but they have recently borrowed techniques from the novel and, as only one example, regularly fill the mouths of historical characters with words they never spoke.<sup>2</sup> These techniques have rescued many histories and biographies from the dryness of dust, but at the cost of accuracy, whatever “accuracy” may mean in the art of telling the past.<sup>3</sup>

Yet, in the end, most of us think that we know where the border between fact and fiction is *supposed* to lie, particularly when the border wanders across the printed page. And that border is well-guarded. When troops of one print army cross the line, there are always warriors on the other side ready to ride and spread the alarm—witness the intellectual stink that Edmund Morris created when he placed a fictional narrator in his biography of Ronald Reagan.<sup>4</sup>

Perhaps our relative comfort in believing that we can identify the proper border between fact and fiction in print stems from our long acquaintance with the landscape of the borderland. Books and their conventions are very old, and we are used to them. Despite the advent of the Internet, and despite the ways that books have changed over the years, the act of reading a printed book in 1999 is not profoundly different than it was in 1799. If time travel could be invented, Thomas Jefferson and William Clinton, born two hundred

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1. See generally GORE VIDAL, *LINCOLN* (1993) (providing a “fictional” account of the Lincoln administration, but based loosely on the diary of Lincoln’s young secretary, John Hay); ALEXSANDR I. SOLZHENITSYN, *THE FIRST CIRCLE* (1968) (fictionalizing an account in which Solzhenitsyn purports to tell us exactly what Stalin said to Beria).

2. SOLZHENITSYN, *supra* note 1. This is a particular issue with journalistic accounts of recent history. See generally BOB WOODWARD, *SHADOW* (1999) (providing an account of the handling of corruption investigations during four presidencies).

3. For a nuanced view of the biographer’s art, see LEON EDEL ET AL., *TELLING LIVES* (Marc Pachter ed., 1979), which contains a collection of essays by eminent biographers.

4. See, e.g., Joan Didion, *The Day Was Hot and Still*, N.Y. TIMES, Nov. 4, 1999 (New York Review of Books), at 4 (reviewing EDMUND MORRIS, *DUTCH: A MEMOIR OF RONALD REAGAN* (1999)).

years apart, could easily read the same book and discuss it as members of the same book club.<sup>5</sup>

By contrast, our current level of comfort with visual imagery is much lower. Perhaps that is so because, putting painting aside, the manipulation of visual imagery is so new compared to the manipulation of letters on a page. Photography—a relatively mild manipulative visual art—is only about one hundred and fifty years old.<sup>6</sup> Movies—a much more powerful visual image generator—have only recently turned one hundred.<sup>7</sup> Television—the true mass medium—is still in its early fifties.<sup>8</sup>

The current discomfort with visual images—to the point of keening complaint in some quarters—may be driven by something other than the mere unease of something new.<sup>9</sup> There is at least an argument that the impact of widespread visual images is both quantitatively and qualitatively different from the impact of print, and that they have a potentially disruptive impact that needs to be taken seriously.<sup>10</sup>

The first of those differences is arguably quantitative and lies in ease of access.<sup>11</sup> You do not have to know how to read and write to watch a movie or a television program. This fact alone tends to make people whose status in life is based on being able to read and write “real good” rather nervous.<sup>12</sup> After all, with visual imagery, the unwashed can have access to information without first being taught to read and write—a year-long instructional exercise that is rarely content neutral.<sup>13</sup> Indeed, the recent movement by the printnescenti to “teach” people how to “read” media, however dubious and based on an outdated model that that effort may be, grows out of the fear that visual images require no teachers.<sup>14</sup>

The second difference is arguably qualitative and lies in the widespread assumption that the visual image is more powerful than print—a greater God—and in the end it is going to drive out both print and the more careful

5. They might have a great deal to discuss in addition to books.

6. HELMUT GERNSEHEIM, *A CONCISE HISTORY OF PHOTOGRAPHY* 116–19 (3d ed., 1986).

7. ROBERT SKLAR, *MOVIE-MADE AMERICA: A CULTURAL HISTORY OF AMERICAN MOVIES 3* (Vintage Books Revised ed., 1994).

8. Charles B. Rosenberg, *Foreword*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* ix (Robert Jarvis & Paul Joseph eds., 1998).

9. MITCHELL STEPHENS, *THE RISE OF THE IMAGE THE FALL OF THE WORD* 4–12 (1998).

10. *Id.*

11. *Id.*

12. *Id.*

13. See Bernard J. Hibbits, “Coming to Our Senses”: *Communication and Legal Expression in Performance Cultures*, 41 *EMORY L.J.* 873, 887 (1992). Indeed, such people have taken to putting forth the rather curious and dubious argument that reading is better for the brain than watching moving images. *Id.*

14. *Id.*

thought that print supposedly engenders.<sup>15</sup> Closely allied to this concept is the idea that visual images are a goad to imitative action—that a watcher who sees something will soon go out and do that very something, usually bad.<sup>16</sup> Books are, these days, seen by the worriers as a very weak print Baal to the new and all-powerful visual Yahweh.<sup>17</sup>

The third, and perhaps most important, difference between print and visual images lies in the subtlety with which fact and fiction can be merged in a visual medium.<sup>18</sup> If we listen to Stalin talking in *The First Circle*, we know that the dialogue is not real—that however entrancing, the words on the page never tumbled from Stalin's lips.<sup>19</sup> We know that Solzhenitsyn made it all up, and that he did it to make a dramatic point.<sup>20</sup>

If, by contrast, you go to visit the D-day museum at Arronanches and view the heroic film about the Normandy invasion, you may have some difficulty in distinguishing the real footage of the landing from the footage that is borrowed from *The Longest Day*.<sup>21</sup> The two types of footage—the real and the fake—are mixed seamlessly together. The result is an arguable seduction of the mind into not knowing or caring what is real and what is not.

The cultural impact of these perceived differences has become a matter of debate, most of it in print. Some take the view that the changes are pernicious and particularly harmful to the young.<sup>22</sup> Indeed, some seem to feel that the young need to be “educated” before they are allowed to see visual images lest they go directly to some cultural hell.<sup>23</sup> Others take a

15. Doris A. Graber, *Say It With Pictures*, 546 ANNALS AM. ACAD. POL. & SOC. SCI. 85, 89–90 (1996). Why this should be so is something of a mystery. Some of the worst goads to action in human history have been books (e.g., MEIN KAMPF which was involved in engendering the Holocaust) and in the 1950s people even worried a lot about the supposed corrupting effect of comic books. Kevin W. Saunders, *Media Violence & The Obscenity Exceptions to the First Amendment*, 3 WM. & MARY BILL RTS. J. 107, 132 (1994).

16. Emily Campbell, *Television Violence: Social Science vs. The Law*, 10 LOY. ENT. L.J. 413, 415 (1990).

17. On the other hand, when books were new, people tended to worry about their impact. According to Mitchell Stephens in *The Rise of the Image The Fall of the Word*, the ancient Greeks worried that the advent of books would allow people to have access to information without the needed intercession of wiser “teachers.” STEPHENS, *supra* note 9, at 23.

18. Richard K. Sherwin, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891, 896–97 (1996).

19. See SOLZHENITSYN, *supra* note 1.

20. *Id.*

21. Trimark (1962).

22. STEPHENS, *supra* note 9, at 36.

23. *Id.* at 230. Mitchell Stephens argues that the word being supplanted by the image will eventually result in a better society. *Id.*

more benign view that might be summed up as “change is inevitable and in the long run, neither the medium nor the message matters, it all comes out in the cultural wash.”<sup>24</sup>

In the last fifteen years, the legal profession itself has been subjected to two mega-visual events: the television program *L.A. Law*<sup>25</sup> and the national telecast of the O.J. Simpson criminal trial. Both of these have generated comment and controversy within the profession—comment and controversy that have in some ways mirrored the polarization of public views about more general visual topics.<sup>26</sup>

The first mega-visual event to be visited on the legal world came in the Fall of 1986, with the advent of *L.A. Law*.<sup>27</sup> There had, of course, been legal shows and movies before, some of them quite popular.<sup>28</sup> *L.A. Law* was, however, arguably different from those that had come before, both qualitatively and quantitatively.<sup>29</sup>

It was qualitatively different in that it focused on the ethical and personal lives of lawyers.<sup>30</sup> Where Perry Mason had been a detective hero, always seeing to it that the innocent were acquitted, *L.A. Law* showed lawyers at times working hard to acquit the guilty, at all times working hard to make lots of money, and rarely working hard to follow strict legal ethics.<sup>31</sup> And, oh yes, occasionally “dating” secretaries, clients, and assorted others.<sup>32</sup>

The public loved the mix of the personal and the substantive, and its love of the show also made it qualitatively different from the legal shows that had come before. *L.A. Law* became the first true “blockbuster” legal show, watched some weeks by as many as forty million people.<sup>33</sup> It ran for eight years and, at least anecdotally, caused an entire generation of young college graduates to turn to law as a profession.<sup>34</sup>

24. *Id.*

25. *L.A. Law* originally aired on NBC.

26. Paul Gewirtz, *Victims And Voyeurs At The Criminal Trial*, 90 *Nw. U. L. Rev.* 863, 883 (1996).

27. John Brigham, *L.A. Law*, in *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* 21 (Robert Jarvis & Paul Joseph eds., 1998).

28. See generally *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (Robert Jarvis & Paul Joseph eds., 1998) (providing a detailed description of the most important episodic legal television dramas of the past 50 years).

29. Brigham, *supra* note 27.

30. Rosenberg, *supra* note 8, at ix–xii.

31. Brigham, *supra* note 27.

32. *Id.*

33. *Id.*

34. *Id.* at 21. The assertion that *L.A. Law* caused a marked increase in law school applications is often asserted, but sound statistical proof of this cause and effect phenomenon is lacking. It may simply be an example of the *post hoc ergo propter hoc* fallacy.

The legal profession, at least initially, did not fall immediately in love with *L.A. Law*.<sup>35</sup> The criticisms tended to be of several varieties. Interestingly, a lot of the criticism tended to focus on the trial scenes in the show, as well as lawyer behavior.<sup>36</sup> The criticisms were:

- 1) The trials (and cases in general) were too short.<sup>37</sup>
- 2) Judges were not in adequate control of their courtrooms.<sup>38</sup>
- 3) The rules of evidence were applied sloppily, if at all.<sup>39</sup>
- 4) Lawyers were often unethical.<sup>40</sup>
- 5) The jury verdicts seem to have little to do with the evidence.<sup>41</sup>

The Simpson criminal trial had, at times, even larger audiences than *L.A. Law*.<sup>42</sup> Although the “show” lasted only one season, it ran most weekdays for more than ten months.<sup>43</sup> Its “viewership” was enormous.<sup>44</sup> Yet, even though (or perhaps because) what people were seeing was real and not fiction, the legal profession tended, on average, to be very critical of the Simpson trial. The criticisms might be summed up this way:

- 1) The trial was too long.<sup>45</sup>
- 2) The judge was not in adequate control of his courtroom.<sup>46</sup>

35. *Id.*

36. Lawrence M. Friedman, *Law, Lawyers and Popular Culture*, 98 *YALE L.J.* 1579, 1600 (1989).

37. David A. Harris, *The Appearance of Justice: Court TV Conventional Television, and Public Understanding of the Criminal Justice System*, 35 *ARIZ. L. REV.* 785, 809–10 (1993).

38. Charles B. Rosenberg, *Inside L.A. Law*, 74 *A.B.A. J.* 56, 56 (1988).

39. Stephen Gillers, *Taking L.A. Law More Seriously*, 98 *YALE L.J.* 1607, 1611 (1989).

40. *See, e.g.*, Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 *U. CIN. L. REV.* 805, 814–16 (1998) (describing *L.A. Law* lawyers and other modern television lawyers, as well as those in post-1980 print fiction, as “the occupant of a crucial but morally ambiguous and precarious role”). Galanter’s comments, of course, are not really a criticism in the negative sense but a depiction of the ways in which modern fiction has described lawyers as morally ambiguous rather than heroic. *Id.* at 815.

41. Angelique M. Paul, *Turning the Cameras on Court TV: Does Televising Trials Teach Us Anything About the Real Law?* 58 *OHIO ST. L.J.* 655, 662 (1997).

42. *Id.* at 674.

43. *Id.* at 647–94 (providing a good survey of the post-O.J. Simpson trial arguments, pro and con, concerning cameras in courtrooms, and a survey of the alleged “bad” effects on the public of watching real trials via broadcast media).

44. *Id.* at 663.

45. HAROLD J. ROTHWAX, *GUILTY: THE COLLAPSE OF CRIMINAL JUSTICE* 24 (1996).

46. *See, e.g.*, JOSEPH BOSCO, *A PROBLEM OF EVIDENCE: HOW THE PROSECUTION FREED O.J. SIMPSON*, 32–33 (1996) (quoting an anonymous colleague of Judge Ito’s as saying,

- 3) The rules of evidence were applied sloppily, if at all.<sup>47</sup>
- 4) The lawyers were often unethical.<sup>48</sup>
- 5) The jury verdict seemed to have little to do with the evidence.<sup>49</sup>

The convergence of the profession's criticism of fake trials and a very real trial is rather eerie.

One possible inference from this double x-ray of the profession's insides is that the profession has simply succumbed to the same angst as many others concerning the rise of the moving image as a way for people to access the world beyond their personal borders. Indeed, many of those who argue, in the wake of the mass watching of the Simpson criminal trial, that television cameras should be banned from real courtrooms,<sup>50</sup> often sound themes similar to the themes sounded by those who argue for restrictions on children's access to violent or sexual moving images.<sup>51</sup> The core of both arguments is that the audience is not really able to understand what it is looking at, and, as a result, will be badly influenced or misinformed by the experience.<sup>52</sup>

A different inference that can be drawn is that there is, somewhere in the profession's collective unconscious, an image of the mythical perfect trial to which all trials—fictional and real—are compared and found

"Ito lost control of his courtroom and never got it back . . ."). I do not mean, by quoting this statement, to suggest that Judge Ito was not in fact in control of his courtroom. The Judge has, in my view, generally gotten a bum rap from the bar, his colleagues, and the press on this point. I have set forth my detailed views as to why this is so elsewhere. Charles B. Rosenberg, *The Law After O.J.*, 81 A.B.A. J. 72, 74-75 (1995). See also MARCIA CLARK, WITHOUT A DOUBT 134 (1997) (calling Judge Ito "indecisive").

47. See VINCENT BUGLIOSI, OUTRAGE: THE FIVE REASONS WHY O.J. SIMPSON GOT AWAY WITH MURDER 65-90 (1996) (providing a pointed criticism of several of Judge Ito's evidentiary rulings). Bugliosi also mirrors others' criticism of Ito's general stewardship of the trial. Although he does not agree that Ito lost control of his courtroom, he criticizes his demeanor and decisions, saying "Ito did several things at the trial I can only characterize as irrational, almost goofy . . ." *Id.* at 80.

48. See, e.g., JEFFREY TOOBIN, THE RUN OF HIS LIFE: THE PEOPLE v. O.J. SIMPSON 438-39 (1996) (commenting on defense lawyer Robert Shapiro's post-trial comment "Not only did we play the race card, we dealt it from the bottom of the deck." Toobin calls Shapiro's comment "shameful on several levels" and suggests, among other things, that Shapiro's post-trial behavior put his own interests ahead of those of his client).

49. Benjamin Z. Rice, Note, *A Voice From People v. Simpson: Reconsidering the Propensity Rule in Spousal Homicide Cases*, 29 LOY. L.A. L. REV. 939, 966-67 (1996).

50. Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1448 (1999).

51. STEPHENS, *supra* note 9, at 36.

52. See Paul, *supra* note 41.

wanting. It would not be surprising if this interpretation were correct. Our culture, after all, has a penchant for thinking that everything comes ultimately in a perfect form, from truth to beauty.<sup>53</sup>

Is there a perfect trial somewhere? Perhaps there is on rare occasion. But the truth is that trials which do not match the myth of perfection are commonplace. Many trials are too short or too long. Every day, in courtrooms all over the United States, judges with egg timers or their metaphorical equivalent make trials shorter than at least what the parties think they should be. Long trials—no doubt often too long—are also common.

The rules of evidence are often applied in courtrooms more as a vague gestalt rather than as a series of uniform rules.<sup>54</sup> As a result, reversals for evidentiary violations are rare, due in part to the robust development of the appellate concept of “harmless error.”<sup>55</sup>

Courtrooms are hardly the uniformly decorous spaces that the myth suggests. Anger, outbursts, and short tempers are common place. As for ethics, lawyers being disciplined for ethical violations is a regular occurrence.

Perhaps most important—and most at odds with the myth of perfection—the outcomes of a substantial number of trials are badly flawed. In the criminal justice system alone, for example, we know that the guilty are at times acquitted or released for lack of a unanimous verdict,<sup>56</sup> and the innocent at times convicted.<sup>57</sup> Injustice is thus a constant companion to the trial system.<sup>58</sup>

53. For this we supposedly have the ancient Greeks to thank. *See generally* DEMOCRACY: THE UNFINISHED JOURNEY, 508 BC TO AD 1993 (John Dunn ed., 1992) (analyzing the creation and development of democratic institutions through the present day).

54. *See generally* Thomas M. Mengler, *The Theory of Discretion in the Federal Rules of Evidence*, 74 IOWA L. REV. 413, 456–57 (1989).

55. *See generally* Bruce A. McGovern, *Invalid Waivers of Counsel as Harmless Error: Judicial Economy or a Return to Betts v. Brady*, 56 FORDHAM L. REV. 431, 438–41 (1987).

56. *See, e.g.*, Daniel Givelber, *Meaningless Acquittals, Meaningful Convictions: Do We Reliably Acquit the Innocent*, 49 RUTGERS L. REV. 1317, 1325 (1997)

57. *See* EDWARD CONNORS, ET AL., U.S. DEP’T OF JUSTICE, NAT’L INS. OF JUSTICE, CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL 12 (1996) (the study involved 28 defendants convicted of crimes who were ultimately set free as a result post-conviction DNA testing which proved actual innocence). Additionally, as of 1997, 32 death row inmates have been released, through the efforts of the Innocence Project headed by Peter Neufeld and Barry Scheck, where actual innocence has been proved through DNA testing. Naftali Bendavid, *For Innocent, DNA Proving Sturdy Ally in Five Years, The Innocence Project Has Freed 32 Convicts Through DNA Testing*, CHICAGO TRIBUNE, Oct. 27, 1997, at A4.

58. *See, e.g.*, Givelber, *supra* note 56, at 1318–22 (arguing that the criminal justice system in the United States has created a significant risk that innocent men and women will be systematically convicted).

Does the difference between the myth of perfection and the reality of imperfection make any difference? One could argue that it does not. Indeed, one could argue that holding out a model of perfection as a goal is a good thing. On the other hand, the attitude that the system is near to perfect can get very much in the way of needed reforms.

As only one example, consider how difficult it is to get a criminal conviction reversed, or even seriously considered for reversal, once it is final, even in the face of important new evidence. The working assumption behind the policies that make revisiting convictions difficult is that the system works well.<sup>59</sup> Although the system may work well on average—indeed, may work perhaps even at a high average level of accuracy—the ingrained myth of perfection now gets in the way of revisiting flawed convictions, particularly when they are old convictions.<sup>60</sup>

Were the legal profession—both judges and lawyers—to embrace the idea that the system is far from perfect, it might pave the way for what every complex system needs: constant adjustment to the realities of the world.<sup>61</sup> That is the way that systems are made better and, ultimately, more just. Instead, the profession, when it observes depictions of the system that are flawed—whether fictional or real—seems to retreat into an odd form of denial, followed by admonitions that if everyone would just be nicer to one another, it would all be better.<sup>62</sup>

For example, criticism of the supposedly flawed and atypical behavior of lawyers and judges during the Simpson criminal trial was one of the goads to the creation of the National Action Plan On Lawyer Conduct And Professionalism, adopted in early 1999 by the Conference of Chief Justices.<sup>63</sup> On the whole, the report is a thoughtful, comprehensive, earnest work that acknowledges the flaws in lawyer ethics and conduct, and makes

59. See *Herrera v. Collins*, 506 U.S. 390, 427 (1993) (O'Connor, J., concurring) (stating that the Supreme Court has "no reason to pass on . . . the question whether federal courts may entertain convincing claims of actual innocence. That difficult question remains open. If the Constitution's guarantees of fair procedure and the safeguards of clemency and pardon fulfill their historical mission, it may never require resolution at all.").

60. See Givelber, *supra* note 56, at 1325–28.

61. For example, Daniel Givelber argues that [t]he presumption of guilt, not the presumption of innocence, permeates the criminal adjudicatory system. There are no formal events or pronouncements to contradict this view. All results, including acquittals and dismissals, can be rationalized on the grounds that a guilty defendant "beat" the charge rather than that an innocent person was vindicated.

Givelber, *supra* note 56, at 1326.

62. *Id.*

63. A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (1999) [hereinafter NATIONAL ACTION PLAN].

concrete proposals for achieving better results.<sup>64</sup> But the thick report, with the ghosts of the Simpson criminal trial lurking as invisible marginalia on every page, assumes that the current system needs only to be improved, not scrapped and rebuilt.<sup>65</sup>

Thus, the report's suggestions are largely hortatory rather than profoundly reformist. The report suggests that law professors, judges, mentors, and "good lawyers" should more effectively teach law students, new lawyers, strung-out lawyers, and "bad lawyers" how to behave, with more effective discipline applied if teaching by example does not work.<sup>66</sup> Nowhere does the Report analyze the underlying problems of the system—for example, that it is built on principles of combat and that it is hard to make combatants behave.<sup>67</sup> Nor does it suggest that the public be told the truth—that no perfect system is able to be achieved because the system is too large and too complicated for perfection or anything even close to it.<sup>68</sup> The report is also at times rather thin-skinned in regards to true criticism. For example, the Report states:

[L]aw faculty should always be mindful of their own status as role models. Law students who are consistently exposed to faculty who disparage legal practice and courts will assume these views themselves and translate them into disrespect and unprofessional conduct towards their legal colleagues and judges. Even when critiquing particular judicial opinions or legal practices, faculty should instill in their students respect for the justice system and for the individuals who work in it.<sup>69</sup>

This comment, of course, comes from individuals who, deep down, think that the problems of the judicial system come from what people—in this case future lawyers—see and hear about the system. The authors of this report think that if everyone is just polite and respectful, it will all work out in the end.

Unfortunately for the structures of the judicial system, "respect" is likely to prove ever more illusive, as the system comes under

64. *Id.*

65. *See id.*

66. *Id.*

67. *See id.*

68. *See NATIONAL ACTION PLAN, supra* note 63.

69. *Id.* at 24. The odd thing about this concept is that it seems to fly in the face of what might really work—teaching law students about the realities of the system—its flaws and imperfections—including the occasional bad, surly, or less than thoughtful judge, so that students do not become deeply cynical when they confront the realities of practice.

increasing scrutiny from the public.<sup>70</sup> Nor is the increased criticism likely to come through the very narrow-cast medium of critical law professors or even from the broader-cast media of television and radio, whether fictional or real.<sup>71</sup> Rather, the scrutiny will come more and more from the Internet, which has only begun to write its writ on our culture.<sup>72</sup>

David Weinberger, the editor of the Journal of the Hyperlinked Organization, recently wrote:

Businesses frequently—usually—make the mistake of thinking that the Web is a marketing medium and the intranet is a communications medium. It's not. The Web is a world . . . a world that is in the process of swallowing the business world whole. The rumbling you hear is the sound of digestion.<sup>73</sup>

If Weinberger is right about what will happen to businesses, then the justice system will in time also be swallowed by the world of the Internet. Right now, the inhabitants of the system do not see that coming. Far from being worried about being eaten by the Internet, courts, and other public institutions associated with the justice system are embracing the Internet. Courts are putting up their opinions for all to read. States are making their statutes available. Entire law libraries are being made accessible to the public. But all of this has the feel of marketing, of courts saying to potential "users," "look at us and like what you see."

What has not yet really begun, however, but is likely coming, is the flipside of the marketing phenomenon: people are going to talk back to and about the courts. Individuals and small groups—people with no connections, no professional training, and certainly no sense of respect—will be able to tell everyone, with the click of a mouse, when they *do not* like what they see. One individual, sitting in the back of a courtroom, will be able to take her notebook computer out in the hallway and tell the world what she thinks she sees going on in a trial. It may be accurate; it may be inaccurate. It may be respectful; it may be disrespectful. What it will not be, however, is mediated by professional journalists, lawyers, or anyone else.

There may be political ramifications as well. Judicial elections or retention elections, still held in many states, are often thinly funded and ill-

70. Kelly L. Cripe, *Empowering The Audience: Television's Role In The Diminishing Respect For The American Judicial System*, 6 UCLA ENT. L. REV. 235, 281 (1999).

71. Carl E. Stewart, *Contemporary Challenges To Judicial Independence*, 43 LOY. L. REV. 293 (1997).

72. *Id.*

73. David Weinberger, *The Web is a World*, J. HYPERLINKED ORG. 7, 8 (July 8, 1999) <<http://www.hyperorg.com/backissues/joho-july8-99.html>>.

covered by the press. Come election day, most voters have never heard of the candidates, including the incumbents. A well orchestrated Internet campaign, attacking a sitting judge, could change all of that rather quickly.

In the end, how the Internet will eat and digest the justice system is a matter of speculation. Perhaps it will only eat part of it. The question, of course, is which part. If we want it to spare the truly good parts, we as a profession need to get away from worrying about the frumpy worry of projecting an image of perfection for our institutions and worry more about letting people in on the reality—a bumpy system that tries its best to get it right, but sometimes fails.

Otherwise, we should prepare to be digested.

Lisa Scottoline, who has been called “the female John Grisham” by *People* magazine, writes legal thrillers that draw on her experience as a trial lawyer at a prestigious Philadelphia law firm and her clerkships in the state and federal systems of justice. Ms. Scottoline won the Edgar Award for excellence in suspense fiction for her second legal thriller, *Final Appeal*, and her first, *Everywhere That Mary Went*, was nominated for the same high honor. Subsequent novels, *Running From the Law*, *Legal Tender*, and *Rough Justice* were national best sellers and received critical acclaim. In addition, *Publisher’s Weekly* said that Ms. Scottoline’s books may change the way people think about lawyers, and her novels have been used in law schools and continuing legal education courses for the ethical issues that they present.

Ms. Scottoline is a magna cum laude graduate of the University of Pennsylvania and a cum laude graduate of its law school, where she was an associate editor of the *University of Pennsylvania Law Review*, had her student comment published, and won the Loughlin Prize for Legal Ethics. Her novels have been translated into more than twenty languages, including Chinese. A native Philadelphian, Ms. Scottoline lives with her family in the Philadelphia area and welcomes email through her Web sight, [www.scottoline.com](http://www.scottoline.com).