Thy Silence Voices Thee

Respectability, Secrecy, Academia, & Criminology

by
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Abstract

Academic research on White Collar Crime has almost totally ignored the matter of corruption and fraud within academia itself, even though a college degree is an almost-universal trait of white collar criminals. This paper addresses that lacuna, arguing that academic respectability has assumed the character of a "900-lb. gorilla" that prevents timorous criminologists from contending with academic misconduct as itself a significant factor in white collar crime. The paper centers on the secret trial, in 2004, of my federal lawsuit against Brown University. A most significant aspect of this trial was "ruse-reporting" by the campus newspaper, a cover-up practice that contributed signally to the fact that this trial is almost completely unknown to either the academic community at Brown University or the general public – even though there appeared to have been not only perjury by at least two senior academics, but also misconduct by the presiding judge. The paper then reports on events suggesting a trans-continental organization of this cover-up, and reports also on the epistemological gaucheries and ethical transgressions (e.g., academic mobbing) of a dubious network of academic ethnomusicologists active in and around Brown's Department of Music, where I had once taught, and whose workings were at issue in the lawsuit. The paper concludes with an open ended discussion of theoretical concerns arising from the secret trial, such as the plausibility of prosecuting or criminalizing some of this misconduct, as contrasted with a non-legalistic conversation on issues of academic fraud, morality, and the law.

Thy Silence Voices Thee

Respectability, Secrecy, Academia, & Criminology[1]

> Look! See yonder Turkish cheeks of spotted tawn… the unrecking and unworshipping things, that live; and seek, and give no reasons for the torrid life they feel! The crew, man, the crew! Are they not one and all with Ahab, in this matter of the whale? … Stand up amid the general hurricane, thy one tost sapling cannot, Starbuck … Ah! Constraining seize thee; I see! the billow lifts thee! Speak, but speak! – Aye, aye, thy silence, that – *that* voices thee.
>
> *Moby Dick,* Chapter 36

A few years ago, one of America's oldest and most prestigious universities went on trial in US District Court, having been charged with violations of The Americans with Disabilities Act. No spectators were in the gallery,[2] and no news report was ever published, anywhere. Testimony dealt with the possible involvement by the CIA, with alleged sexual harassment, with academic and medical fraud, with disability discrimination, and retaliation. Two senior academics gave testimony that immediately appeared to have been perjury. In the end, the university prevailed in court. All this happened in the spring of 2004, but because the gallery contained neither reporters nor onlookers, relatively few people know it ever happened. In future times, nobody will discover information on this trial in newspaper archives. Those that do know about it don't discuss it publicly. The trial was brought off in near-perfect secrecy, and appears to have been removed from public knowledge.

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[1] Sincere thanks to David Friedrichs, Stuart Green, and Gary Potter for valuable suggestions after reading an earlier draft of this paper.

[2] There was a single exception: for the first ninety minutes of the first day of the trial, a solitary woman sat listening in the gallery. At the first break, she was accosted by a group of university officials, and after a few moments dialogue with them, she left the courtroom and never returned. No other onlooker ever entered the courtroom.

In this paper I will describe circumstances suggesting that courtroom proceedings were deliberately concealed, partly through a well-disciplined cover-up imposed through the campus newspaper. I will also describe circumstances suggesting that at least one of the student journalists who perpetrated the cover-up may have been rewarded for her collaborationism (for so it appears to have been) with a fraudulent faculty appointment in one of America's foremost medical institutions – 3000 miles away.

A secret trial is inimical to commonsense notions of American justice; such things aren't supposed to happen here. A public trial in criminal cases is guaranteed by the Constitution, and although the sixth amendment doesn't include civil litigation in this guarantee, juridical proceedings in all cases at public law are traditionally open to the public – it's not for nothing that we call them *public laws*. Of course, the secrecy surrounding the 2004 trial of Brown University is not something that was ordered by the President or the Attorney General, nor did it result from a judicial or legally authoritative gag-order. Some might prefer to doubt that the trial was really and truly "secret," but will think that it was innocently judged insufficiently newsworthy as to merit reportage – after all, lots of court cases go without reportage. One of the purposes of this essay, then, will be to establish the genuine secrecy of the trial, to describe events and actions that effected the secrecy surrounding this trial and the academic corruption being hidden.

ACADEMIA AND WHITE COLLAR CRIME

My knowledge of the above is grounded in the fact that I myself was the Plaintiff *pro se* in the lawsuit, *Henry Kingsbury v. Brown University*, C.A. 02-068L, that went to trial on April 26, 2004, in Rhode Island's US District Court. I hasten to add also that my knowledge of these things is, by and large, <u>limited</u> to the fact that I was the plaintiff: my lawsuit against Brown was grounded in a welter of disastrous misadventures I experienced in 1991-92 following brain surgery. I am an ethnomusicologist-anthropologist, hardly a criminologist, and certainly no lawyer. My academic training was in ethnography, more specifically, the

study of music in it socio-cultural context. Recent events, however, have so impressed me regarding the appearance of fraud, crime, and corruption within my own academic discipline that I have undertaken to familiarize myself with some basic issues regarding the study of white collar crime. One of my first and most striking findings, however, has been, well, a non-finding: apparently there isn't much scholarly research on academic crime.[3] In my readings of the literature on white collar crime, I have found only one title, this being a short paper by Bankole Thompson, focused specifically the matter of white collar crime in academia (Thompson calls it "academic deviance"). Prof. Thompson appears to believe that academic corruption might plausibly become a legitimate focus of criminological research in some future circumstance – but that it is not one at present. He tells us that

> there is nothing, in principle, precluding some scholarly focus from a social scientific perspective on harmful and prejudicial activities undertaken within universities with a view to exploding the myth that the culture of academia continues to be paradigmatic of excellence... [however,] there is, as of now, no evidence or substantial body of evidence justifying scholarly attention to the concept as a social problem.[4]

A fundamental undertaking of the present essay will be to establish a substantial demurrer from Prof. Thompson's assessment, to establish that there is, indeed,

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[3] To be sure, matters of academic fraud and misconduct have been the object of other types of scholarly study. Ron Robin, for example, in *Scandals & Scoundrels: Seven Cases that Shook the Academy* (2004, U California Press), analyzed famous academic frauds and hoaxes, concluding that the recent flurry of attention to academic fraud is largely a function, within academia, of "a destabilizing process of self-reflection, accompanied by acrimonious philosophical clashes between practitioners of different persuasions," and, outside academia, changes in reportage through public media; Robin holds that academic "scandals...reveal vital signs rather than pathology" and are "not... an indication of crisis" (pp. 4, 228, 232). Jon Weiner, in *Historians in Trouble*, (2005, The New Press), treats issues of academic plagiarism and fraud in terms of what might be called "academic politics," that is, as matters of power; David Friedrichs , a genuine criminologist (about whom, more below) includes a section headed "academic crime" in his *Trusted Criminals*(4th edition, 2010, Wadsworth), although he makes an apology that nicely anticipates my presnt undertaking: Friedrichs acknowledges that "an academic text on crime by members of other professions would seem to have a special obligation to consider the crimes of academics" (chapter 4); Friedrichs' discussion covers plagiarism and student cheating, but also extends to murder and embezzlement by academics

[4] "Toward an Understanding of Academic Deviance," in *Controversies in White Collar Crime*, edited by Gary Potter, Anderson Publishing Co., 2002, pp. 73-84, p. 75

something "in principle, precluding some scholarly focus" on academic fraud, and that this "something" is *respectability*. My purpose, here, is to urge the present-day importance of direct scholarly attention on matters of academic corruption and their bearing on white collar crime. The problem, as I see it, is not that criminologists hold insufficient "evidence" of academic corruption, but that criminologists are insufficiently responsive to signs of corruption and criminality within academia. Criminologists' present-day inattention to academic corruption is analogous, it seems to me, with the criminological bias of seventy years ago that Edwin Sutherland lamented when he coined the phrase, "white collar crime." By now, of course, corporate brands linked with crime comprise the very firmament of American culture: Exxon, IBM, ADM, BF Goodrich, Johnson & Johnson, Blue Cross Blue Shield, Beech-Nut, Pfizer, Monsanto, Enron... The list could be endless – but not boundless. There remains one (and, it might appear, *only* one) salient sector of elite culture that escapes the shadow of criminal opprobrium. To consider another stellar listing – Yale, Grinnell, Berkeley, Kenyon, Swarthmore, Williams, Vanderbilt, Reed, Vassar, Rice, Bowdoin, Northwestern – is to realize that those criminals that Sutherland and his followers have found insinuating themselves into American corporations emerged from a crime-free and sanctified sector of our culture: academia. Has there ever been a white collar criminal that wasn't educated at such an institution? If so, how could they gain and maintain their "high status and respectability?" On the other hand, how can such hallowed institutions of truth and understanding generate so many corporate criminals? It would appear that they do it through behavior that is less than hallowed. If criminologists want to make progress in their double-winged study of crimes in the streets/crime in the suites, they might do well to train their sights on – well, let's call it "the means of the deans."

In this paper I will present a piece of reportorial/ethnographic criminology. In order to address the criminological issue I have just raised, I will be presenting a considerable body of original ethnographic data. Perhaps not unlike my anthropological colleagues, who travel to the far-flung rainforest home of some

exotic people in order to give readers an in-depth account of the social workings of an "other" culture, I will be reporting-describing events and persons within academia ("my own" culture) – persons and events comprising a community, or, perhaps, a portion of a community, sufficiently remarkable and sufficiently provocative as to merit reflection in a criminological light.

A close reading of Prof. Thompson's quoted comments yields significant inferences. He uses the word "myth" to characterize the proposition that "the culture of academia continues to be paradigmatic of excellence." Connotations surrounding the word "myth" lead readers to infer that although this proposition is widely known, its truth is widely doubted (he uses the word "explode" to characterize what he thinks some social scientist might do to this "myth" in future research). Prof. Thompson is a foreign-born professor in a large American university, but we can be reasonably certain that his comment on the "myth" of academic culture does not draw on, say, folklore from his native land. No, his comment surely draws on observations – things he has seen and heard in the course of his professional and personal comings and goings within American academia. Prof. Thompson's rhetoric might itself be understood as "evidence" of academic corruption. *Flama fumo est proxima,* as Plautus taught us. Where there is smoke there is fire. And Prof. Thompson's rhetoric, to my way of thinking, is "smoke."

Thomson's remark triggers a sociologically portentous inference: academic "deviance" (I would prefer to call it *knavery*) is sufficiently rampant and obvious that it is only through cultural-juridical blindness that some of it is spared codification as criminality. My suggestion, here, is that academic corruption exemplifies what the Harvard anthropologist Michael Herzfeld has called "cultural intimacy," that is, in-group behavior which must be concealed from outsiders because it would be embarrassing or shameful, but of which the in-group members, among themselves, feel most proud.[5]

[5] See Michael Herzfeld's *Cultural Intimacy: Social Poetics in the Nation State,* Second Edition, 2005, Routledge.

There remains much about the secrecy of the 2004 trial that I cannot explain. I am reminded of the awe-struck words of one H. Eastman, who in 1868 was an agent of the Freedman's Bureau in Tennessee, reacting to the secret terrors of the postwar Ku Klux Klan: "I am so impressed with my own inability to understand the exact condition of affairs," he wrote, "that I will be excused for not making the same comprehensible to you."[6] Although the secret social organization surrounding Brown University has shown no proclivity toward KKK-style violence, it certainly does appear that Benjamin Franklin got things very wrong when he famously said "three can keep a secret if two of them are dead." For notwithstanding the truly secret nature of the 2004 trial, there are a lot of people who do indeed know about it. Certainly scores – and probably hundreds – of prominent music scholars around the United States are well aware of the trial and the issues it raised. There has, however, been no public remonstrance, no statement of concern, alarm, consternation, or disquiet from the world of (ethno) musicology. All of this could not have occurred randomly, without social planning, organization, and enforcement.

There is an epistemological "catch-22" inhibiting understanding of academic fraud, one that affects me quite directly: the most obvious and immediate sources of information on academic fraud are people who have been directly victimized by it. The problem here is that such persons are almost sure to be dismissed — at least, among respected academics — as disgruntled failures. Self-serving disseminators of sour grapes and vindication (for so are they judged) are hardly reliable social scientists (a few years ago, one well-positioned university professor abruptly ceased e-mail dialogue with me in response to nothing more than my having used what he called "intemperate language" — the word, "fraud"). Any question of whether someone is a whining and recalcitrant token of academic failure or a courageous champion of unorthodox truth is almost certain to be resolved in favor of the former. In other civil rights arenas, such as racial inequality, gender discrimination, and sexual orientation, there obtains something more akin to a balance. Of course, civil rights leaders are

[6] quoted in *The Fiery Cross: The Ku Klux Klan in America*, by Wyn Craig Wade, Simon &

often accused of simply grinding their own axe, but racist bigotry directed at n*****s is generally offset by admiring recognition of civil rights leaders such as Martin Luther King, Jr.; resentment of uppity, bra-burning b****es is balanced by admiration for feminists such as Betty Friedan; revulsion toward "queers" is balanced by respect for eloquent gay rights champions such as Harvey Milk.[7] Recalcitrant academics, however, have no counterpart to King, Friedan, or Milk (academics have a "got no Milk" problem), and although their victimization may be less horrific than for blacks, gays, and women, it is no less systematic. Arguments from recalcitrant academics have at most a tainted legitimacy, if any legitimacy at all; by nature they are self-serving, and by implication they are *nothing but* self-serving. The truth is, however, that elite academic fraud is serious and consequential. Although it doesn't result in dead bodies, cracked safes, embezzled bank accounts, or polluted landfills, it results in generalized public harm; it degrades what economists call "human capital," and it is a moral affront to the nation's students and their parents.

Another aspect of the "catch-22" surrounding the investigation of academic criminality is adumbrated in a valuable paper by Finnish criminologist Anne Alvesalo, who calls attention to various ways in which traditional law enforcement practices have been biased toward problems of "common" crime. "In most cases," she observes, "it is not clear whether a crime — or which crime — is in question in the first place... in traditional crime investigation, the police are searching for the *criminal*, but in cases of white collar crime, they are searching for the *crime*."[8] The matter of academic criminality extends and complicates this already-vexing problem: while it may be true that scholars of white collar crime have been saddled by their colleagues' biases toward matters of "common" crime, they have by now established an epistemological bias of their own, an epistemology of white collar crime that is almost totally oblivious

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Schuster, 1987, p. 47

[7] It is possible, however, that the emerging movement of scholars concerned with academic "mobbing" may tend to remedy this "got no Milk" problem. I will return to the matter of mobbing, below.

of academia, such that not only are they not looking for academic crime, they are unclear as to what its morphology might be. Aesop's fable of the sour grapes has been with us even longer than Joseph Heller's *Catch-22*; an epistemology of academic criminality will be very difficult to sustain: someone of high status and respectability is sure to say it is nothing more than a chain of non sequiturs and idiosyncrasies, a rhetoric of bitterness. Seventy years after Sutherland, scholars of white collar crime are apparently unclear as to whether there could be a theory of academic crime. They certainly have made inroads into banking crime, pharmaceutical crime, real estate fraud, false advertising, and all manner of industrial criminality, but they have devised no phenomenology of academic crime. It is time to get started.

Although I do not fully understand *how* the 2004 trial has been kept secret, there seems little question regarding *why* it has been kept secret: trial testimony involved unseemly – and possibly criminal – shenanigans by Ivy League music scholars and their academic superiors, all of whom are, in the famous words of Edwin Sutherland, "persons of high social status and respectability." The trial was made the object of a cover-up in order to protect the high status and respectability of the witnesses and of Brown University itself. The witnesses were prestigious academic luminaries: professors, deans, and provosts (i.e., academic counterparts to bank executives, oil barons, real estate magnates) whose professional conduct the federal judiciary had already judged sufficiently dubious as to merit trial by jury (Brown had unsuccessfully filed a motion for summary judgment; I will return to this, below).

My contention is that the dearth of criminological scholarship on academic fraud is a response to timidity. My contention is that the dearth of criminological research on academic corruption does not derive from a paucity of data or insufficient evidence, that the problem, rather, is respectability: scholars of white collar crime are avoiding a 900 pound gorilla. White collar criminals aren't born at age thirty, already engaged in corrupt business

[8] "Downsized by Law, Ideology, and Pragmatics: Policing White Collar Crime," by Anne Alvesalo, pp. 149-64 in *Controversies in White Collar Crime*, edited by Gary W. Potter, Anderson

practices. No, white collar criminals are graduates — sometimes, distinguished graduates — of colleges and universities, institutions that are guarantors of cultural respectability. It is to these institutions that one must look if one is to understand the origins of white collar criminality.

RESPECTABILITY: THE 900 LB. GORILLA

It is an understandable but inconvenient truth that in 1949, as the first edition of *White Collar Crime* was about to go to print, Edwin Sutherland made an intellectual-moral compromise in response to having been intimidated; he belatedly deleted the names of the 70 corporations that had provided the basis for his criminological analysis, now identifying them only as "corporation 1," "corporation 2," etc. Sutherland had been threatened with one or more defamation lawsuits, and legal concerns had been raised by corporate underwriters of Indiana University,[9] where he was a professor. Of course, only the compulsively peevish would fault Sutherland for his unwillingness to hang a bell on the cat. Sutherland's onetime student, Donald Cressey, in his *Foreword* to the second edition (1961), gave voice to a commonsense attitude when he said, "my idealistic desire to see a scientific principle tested in a court of law was not tempered by any practical consideration such as having money riding on the legal validity of the scientific principle. Such was not the case with either the publisher or Professor Sutherland."[10] This is nicely said, but there remains a modicum of philosophical fuel for theoretical fire in the alibi proffered by Sutherland himself: "the objective of the book," Sutherland wrote in the *Preface*, "is the theory of criminal behavior, [and this] can be better attained without directing attention in an invidious manner to the behavior of particular corporations." Having been intimidated by the threat of lawsuits from corporations that he believed to be criminal, Sutherland averred to his readers that his self-defensive reaction had

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publishing, 2002; pp. 157f (emphasis original)

[9] See p. x-xi of Geis & Goff's introduction to the third edition of Sutherland's *White Collar Crime* (Yale University Press, 1983)

[10] Donald Cressey, "Foreword," *White Collar Crime*, 2nd edition, 1961, Holt, Reinhart, & Winston, p. xi, fn.9

improved the book. Notwithstanding Sutherland's titanic stature, few today would afford credence to such a claim.

In the present essay, there will be no assertion of actual criminality – no specter of defamation suits. On the other hand, whatever may have been the "scientific" benefits of maintaining the anonymity of protagonists understood to be criminal, I can envision no justification, in a critical discussion of respectability, for maintaining anonymity of high-status individuals and elite institutions. Unlike Sutherland, I will be naming names. Although the first presumption of Sutherland's *oeuvre* – indeed, the motivation behind the notion of white collar crime – is that high social status and respectability does not protect elite individuals from criminal liability, there can be no question that status and respectability do indeed protect elite social actors from candid talk bearing on dubious honorability. Among persons of high respectability, there are some things that one just doesn't say: that's what respectability is. Things are quite different, however, in the context of a critical-sociological examination of respectability itself. To have status and respectability is to have "a name," and there can be no critical analysis of names – without naming.

"Reputation," says Iago, "is an idle and most false imposition, oft got without merit and lost without deserving" – and yet in the very next act he says, "Good name in man and woman, dear my lord, /is the immediate jewel of their souls... he that filches from me my good name /robs me of that which not enriches him/ and makes me poor indeed." In *Othello,* of course, everything Iago does is false while most of what he says is true: real courage is required of the reader who would disentangle the contradictions in Iago's criminal persona. But no less is courage required of those who would understand the makeup of the "status and respectability" of a white collar criminal. Iago's paradox deconstructs Sutherland's very definition. How can a *criminal* maintain *respectability* if it wasn't "got without merit?"

It should come as no surprise that the events giving rise to my lawsuit were highly disruptive of my aspirations, emotions, and career. In their aftermath, I have more than once been dismissed not just as disgruntled but as embittered – a few

years ago one former colleague exclaimed that, in my efforts to raise issues of academic fraud, I was re-enacting "the sad spectacle of Ahab going down with the whale." I believe it is quite the contrary: momentarily keeping with my interlocutor's allusion to *Moby Dick*, the danger to be avoided is not that I might become another Ahab, but that I might become another Starbuck. Starbuck, let's remember, is the Pequod's first mate; among the men of the crew it is Starbuck alone who immediately recognizes the criminality of Ahab's mission. An experienced seaman, Starbuck is a man who, somewhat like a college professor, knows things. But Starbuck declines – repeatedly and tragically – to speak actively in opposition to Ahab, who is left to revel in what Melville calls "the enchanted, tacit acquiescence of the mate."

Melville is explicit and emphatic that Starbuck is a good and upright man. He tells us that

> the courage of this Starbuck ... must indeed have been extreme. [and yet] brave as he might be, it was that sort of bravery ... which, while generally abiding firm in the conflict with seas, or winds, or whales ... yet cannot withstand those more terrific, because more spiritual terrors, which sometimes menace you from the concentrated brow of an enraged and mighty man.

Starbuck's silence, like Ahab's madness, is implicated in the destruction of the Pequod at the end of the novel. If Ahab's evil nature is what drives him to his crime, then Starbuck's timorous silence enables him to bring it off. By extension: the organized silence surrounding the 2004 trial of Brown University engenders a climate of ethical laxity and academic corruption; it engenders willingness – and perhaps an obligation – to overlook academic misconduct. If the august reputation of Brown University could not withstand possible fallout from public discussion of the 2004 trial, then that august reputation has been "got without merit." And the fact that nobody has publicly expressed concern suggests rather unmistakably that invidious implications extend to academia generally, and not just to Brown University alone. Why would it be that no academic institutions should rise up in opposition to the untoward events of 2004? Things are

happening as though the only way for academic institutions to distance themselves from invidious inferences is to maintain secrecy regarding untoward events. I referred above to Yale, Grinnell, Berkeley, Kenyon, Swarthmore, Williams, Vanderbilt, Reed, Vassar, Rice, Bowdoin, and Northwestern: I respectfully submit that all these, and more, lose cultural luster because of the national silence surrounding the 2004 trial of Brown University. The American academy is maintaining a Starbuck-like silence in the presence of apparent fraud. A highly dubious form of academic "respectability" has become a 900 pound gorilla. "Constraining seize thee," as the evil Ahab taunts his "tost sapling," Starbuck.

BEHIND CLOSED DOORS

Among the provisions of The Americans with Disabilities Act is a prohibition on retaliating against someone who has previously filed a charge of discrimination under the act. The 2004 trial of Brown University involved such a suit; accordingly, I will refer to it as "$suit_2$." In $suit_2$, I was claiming that Brown had falsely reprimanded me on a phony sexual harassment charge – and had terminated my appointment – in retaliation for my having previously filed a charge of discrimination. In the prior suit ($suit_1$), I had charged that Brown refused to grant me "reasonable accommodation" to neurological deficits resulting from brain surgery; the prior case had been dismissed on a procedural technicality, although not before legal wrangling throughout the 1990s had been given considerable play in the pages of *The Brown Daily Herald*.[11] The fact that the *Herald* gave extensive coverage to lower-level proceedings in 1995 but then declined to report on the federal trial a few years later in federal court invites this analogy: imagine the campus daily publishing a couple of midweek stories about the football team's preparations for this weekend's big game (an injury to our star halfback seems to be healing, but we're worried about our opponents' vaunted passing attack, etc.); now imagine that once the game has been played, the paper decides to make no report on the game itself. It's ridiculous, but it parallels the

[11] See illustration, page 28, below. See also, front page stories in *The Brown Daily Herald*, 3/3/97, 3/4/97, 9/17/97, and 12/2/97.

situation with respect to the 2004 trial. *The Brown Daily Herald* had published extensive stories about early stages in the litigation, but they obdurately refused to report on the jury trial at the federal courthouse – which in fact is closer to the offices of *The Brown Daily Herald* than is Brown's football stadium. The news embargo could not have been motivated simply by a desire to prevent an obscure ethnomusicologist (me) from gaining re-appointment to the faculty. The secrecy surrounding the 2004 trial is a sign of something far greater than my professional demise. The non-reportage of the trial was highly, highly provocative.

For example. On the morning of Monday April 26, 2004, testimony regarding my alleged sexual harassment of a doctoral student was taken from Dr. Karen Romer, Brown's recently-retired Dean of Academic Affairs. Dean Romer had played a prominent administrative role in the matter of the sexual harassment charge, although I myself had not previously met her. On the witness stand, she testified that she judged my behavior "a classic case" of sexual harassment.

> Q: And you formulated that opinion [that] it was a classic case of sexual harassment without having any response or input from me; is that correct?
>
> A: That's correct. [12]

My primary agenda in questioning Dean Romer was to highlight administrative bias. Her testimony was hardly uneventful. Here's an exchange from a few minutes later –

> Q: ... did you entertain the thought that she was lying, saying something in order to make her charge look more powerful?
>
> *Attorney Little*: Objection
>
> *The Court*: Sustained. The document speaks for itself. It's irrelevant what this witness thought about it.

[12] From the official transcript of Karen Romer's testimony [p. 14].

Q: Dean Romer, did you take any steps, either verbal or written communications, to independently establish the truth of that statement, that she was surprised and scared?

A: I did not.

Q: You didn't ask her any cross – prod her or ask any follow-up questions on that?

A: I did not.[13]

Next morning the campus newspaper brought no inkling of this testimony, no inkling that the trial was taking place. The lead story in the next day's *Brown Daily Herald* (4/27/04) deals with an on-campus academic debate about national immigration policy. This calls for a neologism. That Tuesday morning, , *The Brown Daily Herald* was engaging in <u>ruse-reporting</u>: deliberately leading its readers into the false belief that nothing newsworthy was under way. The student-owned newspaper was engaged in a cover-up – something a criminologist might call an *actus reus*. I will return to this issue below.

Nor did the *Herald*, a couple of days later, report on courtroom proceedings during which Brown's Professor Jeff Todd Titon, an influential professor of ethnomusicology, discussed what he himself insisted was "a potentially scandalous situation for the department, for the university," regarding whether or not Katherine Hagedorn (formerly one of his female graduate students: she was the one that had filed the disputed charge of sexual harassment) was a CIA informant. With Professor Titon at the witness stand, I asked him to elaborate on his statement that he would be applying "procedures of evidence" in determining whether or not Ms. Hagedorn was an operative of the CIA. To me it seemed absurd that there might be such a thing as "evidence" regarding such a matter, and I questioned Prof. Titon accordingly. *Mr. Titon, did you find "evidence" that Ms. Hagedorn <u>was</u> involved with the CIA? (No) What about her past employment at Radio Free Europe, and in the Reagan administration? (That's not evidence, just innuendo) Did you find any "evidence" that she <u>was not</u>*

[13] This dialogue is excerpted from pp. 20-21 of the transcript of Dean Romer's testimony.

involved with the CIA? (I believed her denial). Did you consider her denial to be evidence? (I considered it at the time to be sufficient evidence to say, well, I'm not going to be able to find out anything more about it). Is there anything that you believe would constitute genuine "evidence" on such a matter? (I'm kind of at a loss to answer your question).[14] Of course, the matter of whether someone really-really is or really-really isn't a CIA agent is more likely to be the plot for a new edition of *The Pink Panther* than to be the stuff of real "scandal" – but it may be scandalous that none of Professor Titon's federal court testimony made the next day's news (see illustration on next page).

Judicial misconduct?

To my way of thinking, the most newsworthy moments in the trial might have been the two occasions in which the presiding judge appeared to have acted directly as an advocate for the defendant. While I myself was on the witness stand, the judge broke into my testimony – quite without prompting from Brown's lawyer – with his own objection to what I was saying. Because I was acting *pro se* (without lawyer), the judge had required me to ask questions of myself. He quickly raised his own objection to one of my earliest questions. Consider this two-line exchange (taken directly from the official transcript):

> Mr. Kingsbury: What is the representation of your book?
>
> The Court: Objection. Sustained. Again, it's all based on hearsay.

To be sure, my own self-questioning was in some disarray. On the other hand, the phenomenon of a federal judge entering and sustaining his own "objection" to testimony in a jury trial seems worthy of notice, worthy of reportage in the local daily, worthy of commentary in, for example, *The Chronicle of Higher Education*. How many times has such a thing happened? How many times has such a thing been reported in a newspaper?

[14] Dialogue excerpted from the court transcript of Prof. Titon's testimony.

RUSE REPORTING: The 4/29/04 issue of the *BDH* reported on the university's having been served with subpoenas related to a file-sharing suit against a few Brown students, but it concealed the previous day's "scandalous situation" testimony by Music Department Professor Jeff Titon, testifying in the federal trial in which Brown University was defendant.

THURSDAY
APRIL 29, 2004

THE BROWN DAILY HERALD

Volume CXXXIX, No. 58 — *An independent newspaper serving the Brown community since 1891* — www.browndailyherald.com

UCS presidential race goes to runoff

Payne '05, Savitzky '06 to face off in election beginning at noon

BY CAMDEN AVERY

WebCT polls will reopen at noon today for a runoff election between UCS presidential candidates Joel Payne '05 and Ari Savitzky '06, just 10 hours after extended voting hours ended.

In other races, Charley Cummings '06 was elected vice president, Adam Deitch'05 was elected UFB chair and Thilakshani Dias '05 was elected UFB vice chair.

Members of the Election Board would not reveal whether Payne or Savitzky came in first. Election Board members released the percentages of votes attained by the presidential candidates but would not say which candidates received those percentages. The top two candidates garnered 47.9 percent and 38.6 percent of the 2,823 votes cast; the third and fourth-place candidates earned 9.1 and 5.5 percent, respectively.

As the results were announced at about 3:30 a.m. to a crowd of about 50 people at Faunce House, Savitzky called for UCS election reform, saying that students have a right to know who came in first and second.

Outgoing UCS President Rahim Kurji '05 told The Herald that releasing how many votes candidates earned would "bias the vote." He would not say whether Payne or Savitzky came in first.

In an election night saga that dragged well into Thursday, members of the Undergraduate Council of Students Election Board were forced to first reopen the polls from 1 to 2 a.m. after the WebCT polling site became inaccessible and then, after the final results came in, replan today's runoff.

UCS Corporation Liaison Sam Hodges '04, a member of the Elections Board, said the board decided to not release who earned what percentages "to make the information available to voters essentially the same as before the election, only with two of the candidates removed from the field."

"Basically, we want the runoff election to come as close as possible (to the original election), only with two people on the ballot," Hodges said.

Hodges said Election Board officials feared that if they announced who got the most votes in the original election, it could taint the runoff vote.

Students might make the "choice to go with the underdog" or otherwise change their vote, he said. "There are a huge number of hypothetical bounds. ... It's much better just to say, 'Here are the people who got the higher number of votes' but not say which ones."

see **ELECTION**, *page* 10

Dana Goldstein / Herald

At top, UCS presidential candidates Joel Payne '05 (right) and Ari Savitzky '06 anticipate the announcement of election results. Below, Adam Deitch '05 (right) and Tilli Dias '05 celebrate upon learning of their elections to UFB chair and vice chair, respectively.

U. faces subpoena for names of students caught file-sharing

BY STEPHANIE CLARK

The Recording Industry Association of America announced Wednesday that it is suing students at Brown and 13 other universities for filesharing.

The RIAA filed a lawsuit against 477 people, including 69 college students who used university networks to distribute copyrighted materials via unauthorized peer-to-peer networks, according to an RIAA press release. The lawsuit is filed against "John Doe" individuals identified only by the Internet protocol addresses of their computers.

In order to obtain the names of students being sued under the lawsuit, the RIAA must obtain a subpoena against the universities and the Internet service providers of private users.

Brown has not officially gotten word of the lawsuit from the RIAA, said Mark Nickel, director of the Brown News Service, in a statement released to the press. But the University will comply in full if a subpoena is issued.

The statement also said any Brown student found to be in violation of copyright laws will be subject to University discipline.

Since last summer, 2,454 lawsuits have been filed against illegal file-sharers, but none of the cases have gone to trial, according to the San Francisco Chronicle.

see **LAWSUIT**, *page* 6

Greene, interim VP for campus life and student services, named to permanent position

BY SARAH LABRIE

David Greene, interim vice president for campus life and student services, has been hired by the University to remain in that position, effective July 1. After a national search, Greene was chosen for the position by a committee of students, faculty and administrators.

President Ruth Simmons appointed Greene her executive assistant when she came to Brown in July 2001. In May 2003, he was named interim vice president.

Greene's position gives him oversight over a range of University offices and departments, including the Office of Residential Life, the Department of Athletics, Dining Services, Health Services and the Third World Center. Greene will also continue work on elements of the Plan for Academic Enrichment that relate to campus life, including planning for a campus center.

"This job is fundamentally about doing everything I can to ensure students have an excellent experience at Brown," he said.

This year, Greene initiated campus center planning, established a 24-hour study space in New Pembroke 4 and approved plans for dorm renovations and the creation of satellite fitness facilities this summer. Next year, a second 24-hour study space will be opened in Faunce House and the space in New Pembroke will be fully renovated.

Greene said one of his first steps will be to "formalize support" for Brown's LGBT community by moving the Queer Alliance Resource Center into a larger space. The Queer Alliance moved into its current space in Faunce House earlier this semester but has already outgrown the facility, according to Greene.

In terms of dining, Greene said students will have greater flexibility next year once designated meal times are eliminated. Meal choices will also increase, with more fresh fruit and organic produce

see **GREENE**, *page* 6

As buzz fades, Slavery and Justice members contemplate mission

BY DANA GOLDSTEIN

At the first public event of the University Steering Committee on Slavery and Justice last month, committee members said they hoped questions from the audience would grapple with Brown's historic ties to the slave trade and the University's current responsibility to come to terms with that legacy.

Instead, many audience members, including journalists and alumni, asked committee chairman James Campbell, associate professor of Africana studies, American civilization and history, to explain the group's purpose and in particular whether the committee is likely to propose that Brown pay monetary reparations to the descendants of slaves.

Committee members say a March 13 New York Times article contributed to the widespread misconception that Simmons formed the committee to advocate monetary reparations. In fact, the group will spend the next two years researching many different ways for Brown to come to terms with its relationship to slavery.

But weeks after a national media

see **SLAVERY**, *page* 11

WEATHER FORECAST

A few moments later, Judge Lagueux again inserted himself as a party to the suit. This time, he suggested to Brown's lawyer that he (Brown's lawyer) might want to file a motion to strike, which of course the lawyer did, whereupon the judge promptly granted the motion he himself had just suggested. It's in the fourth and fifth lines of this exchange:

> Mr. Kingsbury: not very long before that I had been told that no sexual harassment charge would be forthcoming.
>
> Attorney Little: Objection.
>
> The Court. I didn't hear the full answer.
>
> (answer is read by the reporter).
>
> The Court. I'll sustain the objection. You move to strike?
>
> Attorney Little: Yes, your honor.
>
> The Court. The motion to strike is granted.[15]

Again: the phenomenon of a presiding federal judge engaging defense counsel in this kind of colloquy calls for public comment, not nationwide secrecy.

Would the judge have dared to behave in this way if there were reporters in the courtroom? If there were other lawyers? I don't think so.

Apparent Perjury

There were also two apparent instances of perjury. On Tuesday 4/27/04, Emeritus Dean Newell Stultz and former Music Department Chairman James Baker denied having seen exhibits that had been handed to them, thereby preventing those exhibits from being admitted into evidence. In both cases, testimony appears to have been given falsely; in both cases, their testimony appears to have been perjury – which is a felony. Dean Stultz' testimony pertained to his participation in the sexual harassment matter, and I will return to it in a moment. The baleful implications of Professor Baker's testimony derive

[15] Court transcript, CA 02-068L, 5/3/04, pg. 25

primarily from the fact that Dr. Michael Glantz – a neuro-oncologist hired by the university eleven years earlier to examine me and evaluate residual effects of my 1991 brain surgery – was not present at the trial (I shall return, below, to the complicated matter of Dr. Glantz' absence from the proceedings). Since my lawsuit had been brought under The Americans with Disabilities Act, authoritative documentation of my disabilities was, quite simply, a *sine qua non* for the progress of my claim. Although Dr. Glantz was no longer available, I had in my possession his detailed report of his/my office exam. This was the report that, in 1993, university administrators had invoked – quite wrongly, I thought – in refusing to allow me to return to active duty (this dispute led to $suit_1$). In response, I at that time had circulated copies of Dr. Glantz' report throughout the music department: it was my opinion that the Glantz report supported my position and not the university's. Dr. Glantz' report gives unambiguous medical evidence that I am what the ADA calls "a qualified individual with a disability." Unfortunately, by the time of the trial, this report was the <u>only</u> such evidence of my disability, and herein lies the significance of Prof. Baker's testimony. On the witness stand, Professor Baker denied ever having seen the exam report of Dr. Glantz. Dr. Glantz report of my disability was never entered into evidence.

> Q: Can you identify this document, Prof. Baker?
>
> A: I can tell you what it's labeled, but I can't authenticate it... medical documents did not come to the department. I never would have had occasion to see something like this.
>
> Q: You have no memory of having been given this by me?
>
> A: No, I do not.[16]

I immediately recognized this testimony as incredible, and probably perjurious. Here's why: in 1993, I had given Prof. Baker a copy of Dr. Glantz' report, just as I had given copies to everyone else in the department. My circulating of these documents had created a considerable furor. My audacity had aroused the ire of

[16] This dialogue is a digested summary of the exchange that can be found on p. 27 of the transcript of Prof. Baker's testimony.

Prof. David Josephson, who promptly sent Prof. Baker a blistering 1000 word memo bewailing the "silent hostility or open belligerence" that had been manifested as "Henry placed a brace of documents in our faculty mailboxes," one of which was Dr. Glantz' medical report. Prof. Baker's claim to have no memory of this was surely mischievous. A few minutes later, Prof. Baker let the cat out of the bag by testifying that he did remember received Prof. Josephson's angry memo.[17] Unfortunately, I was not quick enough to notice the contradiction between his denial of the Glantz medical report and his acknowledgment of having received Prof. Josephson's raving about my having circulated it. There should be little doubt that Prof. Baker had seen Dr. Glantz' report – and that he understood its significance – at the time of his testimony.

Surely, my own ignorance of the *Federal Rules of Evidence* was a major factor in this trial. I might have lost the case even if Dr. Glantz' report had been admitted into evidence. But the presiding judge at this trial would not have been able to say, in calling a halt to the trial, "there is no evidence in this case, medical or otherwise, that Professor Kingsbury had a disability,"[18] were it not for Prof. Baker's testimony of 4/27/04. Prof. Baker's denial of Dr. Glantz' report was of unquestionable relevance to the legal dispute. To be sure, Prof. Baker has not been convicted of perjury on this basis, and if he were to be so charged, his counsel might wish to raise points of fact and law that I have not adumbrated here. But as I understand things, the above discussion constitutes a *prima facie* case of perjury by Prof. Baker. Perjury is crime, and a *prima facie* case reverses the presumption of innocence. And one can only wonder what might have happened if, the next morning, the lead story in *The Brown Daily Herald* announced, "Baker & Stultz testify at trial: Kingsbury alleges perjury."

For earlier that same day, testimony had been taken from the administrator who in 1994 had conducted Brown's investigation of the sexual harassment charge. This was Emeritus Dean Newell Stultz, who had concluded his report to the

[17] The three-page memo from Prof. Josephson was admitted into evidence as "exhibit #36" during the trial; it is included as appendix Z; on the first page of this memo, I have used colored lettering to indicate the medical report of Dr. Glantz ("exhibit #30"), which was <u>not</u> admitted into evidence at trial because Prof. Baker during testimony denied having seen it.

Provost by finding me guilty of "blatant sexual harassment." In that report, Dean Stultz had given an obviously incredible – indeed, somewhat ludicrous – interpretation to one of the documents that had been given to him, a 1992 personal letter from me to Katherine Hagedorn.[19] Dean Stultz' 1994 report invoked this letter as evidence of my inability to maintain an appropriately "collegial" (i.e., non-sexual) relationship with my accuser, who was then a graduate student. At the trial, I wanted to expose the capriciousness of Dean Stultz' report, and had just handed him a copy of this letter when he said, "I have never seen this previously."

> Q: Excuse me. Just to make sure, did you say you've never seen this?
>
> A: I have not seen this document previously.
>
> Q: You're certain of that?
>
> A: Yes... The reason I say that is because you make a reference to a social science text with which I am familiar in this letter. And I think if I had read the letter, I would have picked up on that, and it would have impressed me that you were aware of the Lewis Coser book on social conflict, and it would have made some impact on me.[20]

Surely, this was false testimony. Dean Stultz' 1994 report to the provost refers explicitly to a December 1992 letter from me to Ms. Hagedorn – but in his courtroom testimony, Dean Stultz was claiming that he might never actually have seen such a letter. He was claiming that he had apparently been relying on nothing more than Ms. Hagedorn's allegation that she had received one; he was testifying that the letter I had just handed him – a December 1992 letter from me to Ms. Hagedorn – was not the December 1992 letter from me to Ms. Hagedorn that he himself had specified in his 1994 report. The real significance of his testimony seems clear enough. By testifying as he did, Dean Stultz prevented this

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[18] Judge Lagueux' remark comes from page 13 of the transcript of his ruling.
[19] In his 1994 report to the Provost, Dean Stultz had written "in December, 1992, Kingsbury referred in a letter to Hagedorn to the difficulty he would have isolating his personal from his collegial relationship with her"
[20] This dialogue comes from pages 55, 56, and 60 of the transcript of Dean Stultz' 2004 courtroom testimony.

document from being admitted into evidence. I was not allowed to question Dean Stultz about his bizarre interpretation of it; I was not allowed to demonstrate to the jury the caprice of the sexual harassment ruling that precipitated the termination of my employment.

The apparent falsity of Dean Stultz' testimony is indicated also by an earlier circumstance: his courtroom testimony contradicted testimony he had given previously. Five years earlier, Dean Stultz had testified in a formal Hearing before the Rhode Island Commission for Human Rights, this regarding the legal dispute that later gave rise to what I have called "$suit_1$." At this 1999 Hearing, I asked Dean Stultz to identify not only the letter, but also the specific passage in the letter that justified his 1994 claim about my excessively sexual feelings toward Ms. Hagedorn. According to the transcript of the 1999 proceedings, Dean Stultz testified explicitly and expansively, not only on the identity of the 1992 letter but also on his 1994 interpretation of it.

> Q: ... Could you read any passage from exhibit 13 [my December '92 letter] which honors your statement in exhibit 1 [his 1994 report to the provost] that I expressed in a letter my difficulty of separating my personal from collegial feelings toward Ms. Hagedorn?
>
> A: This is December 6th, 1992, to Katherine Hagedorn from Henry Kingsbury. "You and I are in fairly fundamental disagreement regarding not only the chronic link/reconstruction[21] of events which transpired in the spring of 1991 but also regarding the possibility of isolating collegial from personal relationships."
>
> Q: Is that the sentence that you think –
>
> A: Yes.
>
> Q: – indicates that I was having difficulty separating my romantic feelings from my personal, from my collegial feelings for Ms. Hagedorn.

[21] The phrase "chronic link" is a slightly errant phonetic transcription of "chronicling."

A: Yes... There is to be sure a continuing theme of this issue in other correspondence, but the reference to December 1992 pretty clearly is to this letter.[22]

Dean Stultz' 1999 testimony before the Human Rights Commission was given under oath, as was his 2004 testimony in federal court. His sworn statement in 1999 that "the reference to December 1992 pretty clearly is to this letter" seems ominously contradictory of his later courtroom insistence, "I said I haven't seen any letter from Kingsbury to Hagedorn in December of '92"[23] — with which he prevented the admission into evidence of an embarrassing document. As I said with respect to Professor Baker: Dean Stultz is not here being formally charged with, much less convicted of, any crime, and if he were to face a formal accusation of perjury, I would expect him to raise a robust defense, quite possibly including points of fact and law that have not been mentioned here. But as I understand things, the above does constitutes a *prima facie* case of perjury by Dean Stultz.[24] Perjury is crime, and a *prima facie* case is assumed to be true until it has been refuted by superior evidence.[25] One can only wonder as to what might have happened, had any of this found its way into the newspapers.

Notwithstanding the significance of these two *prima facie* cases of perjury, there are circumstances far more compelling than their constitutional right to "due process of law" separating Newell Stultz and James Baker from possible ignominy. There appears to have arisen an array of corrupt tactics safeguarding and maintaining academic respectability — collective actions preventing disrespectful public discourse bearing on unpleasant academic practice. In the next section I will describe collective actions that have effectively stifled control over academic misconduct.

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[22] Transcript of testimony by Newell Stultz at the 2/22/99 hearing (re: RICHR #94 EPH 362 06/06) before the Rhode Island Commission for Human Rights, pages 93-4.
[23] Court transcript, 4/27/04 testimony of Newell Stultz, p. 59.
[24] Attorneys representing Brown would surely respond to this by charging that I had committed perjury during pretrial depositions. While acting *pro se*, I testified falsely in response to deposition questions that were obviously being asked for the purpose of generating gossip, questions having no possible relevance to issues in the suit. I am confident that I could not be found guilty of perjury, although the character of my testimony would have made provocative news copy — had there been any news reportage!

The present disposition of higher education has been substantially diverted toward the suborning of America's most promising students, toward encouraging our brightest youngsters to participate actively in dirty tricks, toward rewarding student misconduct with illicit career advancement. To those who would label me an academic Chicken Little, or who would insist that such a thing couldn't possible happen here (and surely not in the Ivy League!), I submit one rhetorical question as riposte: where on earth did those white collar criminals – the ones that so thoroughly bedevil the culture of capitalism, the ones that populate criminologists' studies of white collar crime – get their education? From whom did they gain their social skills and acquire their moral values? Was it not from Yale, Grinnell, Berkeley, Kenyon, Swarthmore, Williams, Vanderbilt, Reed, Vassar, Rice, Bowdoin, Northwestern – and Brown?

In an impassioned polemic on the immediate dangers of White Collar Crime, Gary W. Potter and Karen S. Miller assail James Q. Wilson's trivializing of the matter by asserting that, notwithstanding Wilson's demurrer, White Collar Crime does indeed "rend asunder the social contract."[26] Potter and Miller spew forth a dismal catalog of criminal convictions, adverse rulings, and punitive fines, all with a view toward demonstrating the degradation of social norms effected by misconduct from highly-placed and supposedly respectable miscreants. Their catalog, of course, includes no academic mischief-makers, and it would be impossible for me to emulate their assignment of dollar-values to the damage incurred through listed crimes. There can be no avoiding, however, the degradation to "human capital" that has been accomplished by the above-described shenanigans.[27] It is hard to imagine a more exquisite ethical polluting of America's intelligentsia, or a more incisive rent in "the fabric of the social contract" than that which has been effected by the *actus reus* at *The Brown Daily*

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[25] *Black's Law Dictionary*, sixth edition, p. 1189 (entry for "prima facie case")
[26] "Thinking about White Collar Crime," pp. 1-36 in *Controversies in White Collar Crime*, edited by Gary W. Potter, Anderson Publishing Company, 2002; see esp. pages 9-13; see also James Q. Wilson, *Thinking About Crime*, Basic Books, 1975, pp. 5-6.
[27] Unless, perhaps, one is to point out that this corruption vitiates the very notion of human capital, so important in contemporary theories of economics (Gary Becker and others). For surely, the corruption being described here brings dismaying credence to the opposing theory of "credentialing" (David Labaree and others).

Herald.[28] And it is hard to imagine a more portentous lacuna in the literature of White Collar Crime than its omission of research into academic corruption.

A CONTINENTAL CONSPIRACY?

The Brown Blackout. Brown University's phone book contains a half-page section titled "Courtesy Listings," where one finds enumerated some twenty-five institutions and organizations of which, we are told, "all are separately incorporated and operated and are independent of Brown." It is here that one finds listed *The Brown Daily Herald:* the student newspaper is not an administrative division of the university. *Wikipedia* informs its readers that *The Brown Daily Herald* "is financially and editorially independent of the University." The *Herald*'s editors and writers are, of course, undergraduate students at Brown, but one is left with the inference that financial and administrative independence will be reflected in unbiased and irreverent reportage, that the intellectual vitality of these young journalists would never be compromised by the fact that they comprise the lowest echelon in a highly hierarchical institution, that their journalistic practices will not exhibit anything akin to fawning obeisance toward their academic superiors. In this section of my essay, I will describe events suggesting that before 1999, reportage at *The Herald* was indeed reliable, but that between 1999 and 2004, this supposedly-independent student daily conducted itself more in the fashion of a conspiratorial-collaborationist organ of a criminal undertaking than an independent news outlet. Events surrounding the federal trial of *Kingsbury v. Brown University* suggest that the paper's editorial independence from the university was seriously compromised in the earliest years of this millennium.

It wasn't always that way. For example, on the morning of March 3, 1997, the lead headline in *The Brown Daily Herald* proclaimed, "Brown Sues RI Commission over Discrimination Charge," with the sub-head, "Prof. Kingsbury Filed Complaint with State Agency." There followed, under the byline of staff

[28] Unless, of course, we include the ongoing generalized silence surrounding these event, continuing to the present day

writer Marcella Bombardieri, an article of approximately 35 column-inches in which readers learned — in considerable detail — of the university's attempt to occlude proceedings on my discrimination charge by filing a pre-emptive lawsuit against the Rhode Island Commission for Human Rights. Next day there was another front-page headline, "Judge Urges Kingsbury, U. Settlement," this followed by a substantial report (20 column-inches) on proceedings on Brown's suit. Ms. Bombardieri's reportage was replete with quotations from trial witnesses, from the judge, from court papers, and from others, including me. Six months later, her reportage resumed with front-page stories on 9/17/97 ("Kingsbury Files Additional Charges Against U. Regarding His Dismissal" – 36 column-inches) and on 12/2/97 ("Kingsbury Case To Go Before RI Commission: Judge Rejects U. Attempt to Block Case" – 19 column inches). In those days, Marcella Bombardieri and her student colleagues were producing journalism that one might expect from America's best and brightest.[29] (illustration next page)

In February, 1998, however — the middle of Ms. Bombardieri's junior year — her name abruptly disappeared from the *Herald*'s list of staff writers, and a year later, when the Rhode Island Commission for Human Rights (RICHR) convened three days of formal hearing on this case, *The Brown Daily Herald* sent no reporter whatever to cover the proceedings. I had sent a blizzard of press-releases, e-mails, and phone messages not only to the *Herald* but to such outlets as the *Boston Globe*, *Providence Journal-Bulletin*, and *Harvard Crimson* (indeed, the *Crimson* published a 500-word article on 12/8/98[30]), but the *Herald* sent no reporter to the proceedings. The absence of a *Herald* reporter, however, did not mean the absence of a *Herald* story. On the morning after the three days of testimony, there appeared an evasively-worded story under the byline of Brooks King, announcing that "nearly five years after [Prof. Kingsbury] filed charges... the case went before the Rhode Island Commission for Human

[29] Since graduating from Brown, however, Ms. Bombardieri has ignored my several attempts to re-establish contact with her. At present and for the past several years she has been a reporter at *The Boston Globe*, formerly as an "investigative" reporter (!!), now as a reporter on higher education (!!!). One can only wonder at the extent of this marvelous cover-up.
[30] "Brown Faces Bias Charge from Former Professor," *The Harvard Crimson*, 12/8/98

Rights."[31] Mr. King's article included numerous quotations from Ms. Bombardieri's 1997 pieces, but added little new information other than that "this week, the Commission heard arguments from lawyers for both sides."

NEWS REPORTING: The lead story on the front-page of the 3/3/97 issue of the *BDH* had given energetic coverage of the Kingsbury-Brown dispute: *"Brown Sues RI Commission… Prof. Kingsbury filed complaint…"*

THE BROWN DAILY HERALD

ESTABLISHED 1866 DAILY SINCE 1891

Vol. CXXXII, No. 27 | Providence, Rhode Island | Monday, March 3, 1997 | 35 Cents

Michaelangelo Signorile. Amanda Treza/Contributing Photographer

Brown Sues RI Commission Over Discrimination Charge

Prof. Kingsbury Filed Complaint With State Agency

By Marcella Bombardieri
STAFF WRITER

Brown University is suing the Rhode Island Commission for Human Rights to prevent the Commission from pursuing charges of discrimination leveled against the University by Assistant Professor of Music Henry Kingsbury, according to Kingsbury's lawyers.

Kingsbury has filed a complaint with the Commission alleging that the University discriminated against him based on his disabilities.

In September 1991 Kingsbury was granted a medical leave of absence from his teaching duties to undergo surgery to remove a brain tumor. Kingsbury requested that he return to Brown for the 1993-1994 academic year, but the University refused to reinstate him at that time. It was not until 1995 that Kingsbury was granted a new three-year contract.

"This is a case of discrimination against a person with a handicap," Kingsbury told The Herald. "[The University] didn't want to have someone who limps and talks funny and doesn't look like you. There's a visceral gut fear of the impact of a teacher needing help to climb stairs. The Gregorian administration needs to be called to question on that issue."

Though Kingsbury has been teaching since the fall of 1995, he said he will be removed from the faculty this summer.

Kingsbury says that although he suffered from a partially paralyzed larynx after his operation, by 1993 he was able to function as an instructor. In 1993 he gave a series of lectures both at Brown and numerous other colleges and universities.

"I gave a lot of lectures as a way of saying 'Hey, I can still talk musicology,'" Kingsbury said.

According to Brown's court documentation, the University ordered an independent medical evaluation in 1993, which found that, "Kingsbury had substantial neurological defects which would affect his ability to meet the requirement of his position."

The University said it requested that Kingsbury provide a doctor's statement asserting that the professor was able to perform his duties. Kingsbury did not do so until May 1995, upon which he was allowed to return to work.

Human Rights Commission

In March 1994, Kingsbury filed a charge of discrimination based on handicap against Brown with the Commission for Human Rights. He is seeking compensation for the earnings he lost while not allowed to return to his position.

The Commission is a state institution with the authority to investigate charges, hold hearings and make legally-binding decisions. Rhode Island law gives the Commission up to one year from the occasion of discrimination to process charges made against an employer.

But according to Lynette Labinger, Kingsbury's attorney, "The Commission deals with a shortage of staff and a huge backlog," and thus routinely requests extensions from the parties involved in an investigation.

Brown granted a series of four of these extensions, the last of which gave the Commission until February 26, 1997 to conduct its investi

Please see LAWSUIT on page 6

Pride Month Speakers Advocate Visibility

By Selena Skelly-Dorn
STAFF WRITER

Visibility — the central theme of Pride Month, organized by the Lesbian Gay Bisexual Transgender Alliance (LGBTA) — manifests itself in many forms, as is attested by the experiences of the three speakers at the month's convocation on Saturday night.

Cameron Smith '00, a first-year speaker at the convocation and a recently-elected assistant coordinator of LGBTA, spoke of his experience coming out. Jessica Hempel '97, treasurer of LGBTA and a senior speaker at the convocation, talked about the reasons she feels it is important to be visible as an "out queer person," while keynote speaker Michaelangelo Signorile talked about the importance of having homosexual public figures visible in the media.

Please see PRIDE on page 5

Conference Locates 'Feminist Work'

By Jordana Haspel
STAFF WRITER

While most people merely go to see Star Trek movies for entertain-

dents also presented papers at this panel.

Okoomian stated that the Borg Queen — the antagonist in First

"Bodies" was only one of several panels, screenings and exhibits that were part of the Locating Feminisms Conference this past weekend.

Ahem: Mr. King was bluffing. Although in earlier stages of the litigation I had been represented by legal counsel, by the time of these hearing sessions, I was

[31] "R.I. Commission for Human Rights hears discrimination case," *The Brown Daily Herald*, 2/26/99

acting *pro se* (without lawyer).[32] The commission had not heard "arguments from lawyers for both sides." No, the commission had heard — and Mr. King was deliberately concealing — three day's worth of provocative sworn testimony. For example, as was mentioned above, the commission in 1999 had heard sworn testimony from Dean Newell Stultz about the sexual harassment case, including Stultz' comments in response to what he himself called "absolutely scandalous" questioning on whether Katherine Hagedorn might have been a CIA operative while a doctoral student at Brown. The commission that week had heard testimony carrying ominous hints of criminality, such as the testimony regarding the possibility that in 1993, Brown's Provost might have used his administrative clout to suborn medical fraud from Dr. Michael Glantz, an untenured neuro-oncologist on the faculty of Brown's school of bio-medicine. On the witness stand in 1999, Provost Frank Rothman had been asked about discrepancies between Dr. Glantz' three-page medical report and Mr. Rothman's own characterization of oral remarks he (Rothman) claimed Dr. Glantz made in a phone conversation (the phone call had been initiated by Rothman) a few weeks later — oral remarks that Dr. Glantz refused to confirm in writing. *Mr. Rothman, did your administrative authority as Provost extend over the school of bio-medicine, where Dr. Glantz was an untenured faculty member? (Yes). Was it you or Dr. Glantz who first expressed the opinion that my impaired gait constituted a "risk"? (It was Dr. Glantz). Did you ask why Dr. Glantz made no mention of risk in his lengthy written report? (No, I didn't ask him that). Did you ask if this risk might be remedied through reasonable accommodation? (No, I didn't ask him that). Did you ask him to put his oral remarks into writing? (No, but I read my report to him over the phone).*[33]

Suspicion that Dr. Glantz might have been in defiant rebellion against administrative abuse of his medical reportage hung also over the 1999 testimony of Bryan Shepp, then Brown's Dean of Faculty. Dr. Glantz had not only refused

[32] My inability to retain legal counsel through the period of the federal lawsuit was a source of no small anxiety and worry, but its dynamics are beyond the scope of the present essay.
[33] This is a composite of testimony to be found on pages 179-83 of the transcript of Mr. Rothman's testimony before the Rhode Island Commission for Human Rights, February 23, 1999.

obdurately to reply to an administrative communication from Dean Shepp,[34] but shortly thereafter he had bolted from his faculty position at Brown and his practice in two Providence hospitals.[35] Testifying under oath, Dean Shepp talked about Dr. Glantz' failure, a few months after the above-mentioned phone call, to reply to his (Shepp's) request for a subsequent medical evaluation, one that would explicitly put his (Glantz') imprimatur on the apocryphal phone-call remarks. *Dean Shepp, can you explain why you sent an administrative request to Dr. Glantz via US Certified Mail, rather than through inter-office memo or e-mail? (I wanted to be absolutely sure he got my letter). Would it be accurate to say that he gave you the silent treatment (Dr. Glantz rather consistently gave me the silent treatment).*[36]

All of this would have been known to Brooks King's editorial superiors at *The Brown Daily Herald*. Press releases prior to the 1999 hearing had called attention to the dubious and unconfirmed phone statements attributed to Dr. Glantz, and to Glantz' provocative disappearance. Press releases had called attention to the disputed sexual harassment case, and to allegations regarding the CIA. Press releases had called attention to the fact that the Commission had already arrived at a finding of "Probable Cause." During lunch-break on the first day of the 1999 hearings, a phone message had been left on the *Herald*'s answering machine with the urgent reminder that the proceedings were already under way and would be continuing for two more days. Mr. King and his colleagues at the *Herald*, however, chose not to report the provocative testimony.

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[34] On 11/1/93 (about twelve weeks after the dubious telephone conversation) Dean Shepp sent a certified-mail letter to Dr. Glantz, the pertinent portion of which read, "I am writing to request your assistance in determining whether Professor Henry Kingsbury has sufficiently recovered from the neurological problems that you identified... in your phone conversation of 19 August 1993." ([Letter from Bryan Shepp to Dr. Michael Glantz, 11/1/93; exhibit #31, RICHR hearing, 2/24/99) Dr. Glantz refused to reply to this letter. His silence suggests that perhaps Dr. Glantz did not accept the dean's premise that he [Glantz] had "identified" neurological problems in the telephone conversation of August 19.

[35] Sometime between 1994 and 1999, Dr. Glantz abandoned not only his position on Brown's faculty but also his practice at two Rhode Island hospitals. As of the time of writing this essay (summer 2013), Dr. Glantz has a practice in Bennington, Vermont. He has repeatedly declined to answer questions regarding the events of my case, and apparently intends to carry this secret to the grave.

[36] Dialogue synthesized from pages 75-6 of the transcript of Bryan Shepp's RICHR testimony, 2/24/99

The alibi I got from Mr. King,[37] "we were simply not aware of the... hearing until it was over," doesn't pass the smell-test. The story that was published ("arguments from lawyers for both sides") was printed at the top of the front page on the morning immediately after the hearings: the editors must have been holding a place for it. A careful reading of the story shows that Mr. King had been given sufficient lead-time to both research the *Herald*'s archive (he quotes extensively Marcella Bombardieri's earlier pieces) and interview an officer of the Human Rights Commission. As early as 1999, *The Brown Daily Herald* was engaged in a well organized cover-up.

The proposition that a provost and an academic dean at Brown University may have colluded in medical fraud is a serious legal matter (the finding of "probable cause" underscores this), and the proposition that a supposedly independent newspaper knowingly concealed from the public legal proceedings concerned with possible medical fraud is a matter of no small public harm. Criminal harm, of course, is typically quantifiable: with regard to the dollar value of stolen property, with regard to the number of persons killed or injured in an armed assault, with regard to the amount of land polluted by chemical waste deposits, etc. The harm caused by The Brown Blackout cannot be nicely quantified — but the harm is no less public and no less pernicious in a democratic culture. Parents of college students want their kids to get the best intellectual guidance possible; honorable parents in a democracy don't want their children to be inculcated with skills of corruption and graft. The corruption being describe here is a devaluing of human capital, no less than the printing of counterfeit money is a devaluing of the national treasury. The value of higher education is supposed to be linked to the developing of skills in critical thinking, not in sophisticated sycophancy. Higher education prepares young people for living in a society governed by principles of legal equality, honesty, and fairness: that's what critical thinking IS. College students do emulate their superiors and do conform to their peers; when their superiors and their peers misbehave, college students will be inclined to misbehave.

[37] Personal communication, 4/6/99

There is no need to wonder whether shenanigans such as those of Rothman, Shepp, and Glantz would have been overlooked by news media had they taken place at Monsanto, Dow Chemical, Pfizer, Kerr-McGee, Enron, or Citibank. They didn't, of course, happen in an industrial corporation; they happened in an Ivy League university — one of the places where we send our brightest young people for the best and most uplifting education possible. Brooks King was the recipient of such an education, but his conduct indicates rather conclusively that he was lying in his capacity as a supposedly-independent student journalist, suggesting that he was acting as a precocious young agent in a cover-up of academic fraud.

The Claremont Conclave

During oral argument at a hearing on one of Brown's pre-trial motions (3/26/04), Brown's attorney Christopher Little made an impassioned plea for an injunction preventing me from "further harassing" the woman who had accused me of sexual harassment many years earlier. The woman, Katherine Hagedorn, was by that time a faculty member at Pomona College, 3000 miles away. There were several aspects of Attorney Little's argument that were, in my opinion, over-stated and inaccurate, but there was one extraordinary circumstances that he got at least partly right. Attorney Little informed the court that in 2002 I had sent accusatory e-mails to several of Ms. Hagedorn's colleagues at Pomona College, explicitly complaining about Ms. Hagedorn. "When she was up for tenure," exclaimed Mr. Little, "she received, her colleagues received, e-mails attacking her research as being shoddy. When she published a book, which won one of the national awards as being a top publication, she was attacked *and her colleagues were attacked* with e-mails accusing it of being a slickly written book of lies."[38] Although much of what Attorney Little said that morning was incorrect, I had indeed sent provocative e-mails to twenty-nine individuals at Pomona College;[39] my communications contained no aspersions directed toward her colleagues, nor

[38] Court transcript, hearing conducted on 3/26/02, p. 5, emphasis added.
[39] By searching through the Pomona College website, I obtained e-mail addresses for all nine music department faculty, nine members of the student council, six faculty recipients of Pomona's "WIG" prize, and five senior administrators, including the college president. Shortly before that, I had tried unsuccessfully to find a name and address for a Pomona College campus newspaper. My e-mail was titled, "an open letter to the Pomona College Community."

was there any reference to Ms. Hagedorn's scholarly writings (at the time, I had not read her book, which had just been published). My accusatory e-mails called attention to Ms. Hagedorn's phony sexual harassment charge and the recently-initiated lawsuit, nothing more.[40] Attorney Little made it sound like a big deal, and he had gotten the matter partly right. My behavior had been provocative at best, outrageous at worst.

All of this, however, had taken place two years before Attorney Little's courtroom oration. It had taken place 3000 miles from the Brown campus and the Rhode Island courthouse. And in contrast with the indignation manifested in Attorney Little's remarks that morning, my irreverent e-mails had elicited nary a peep from folks at Pomona College. I had sent the e-mail to nine Pomona College students, nine Pomona College music faculty, five senior administrators, and six faculty winners of Pomona's "WIG" award for outstanding teaching. Not one of these twenty-nine individuals acknowledged my shocking email: nobody said, "gee, Mr. Kingsbury, are you sure?" Nobody said, "wow, we're going to look into this." Nobody said, "hey Kingsbury, mind your own #%$@*# business," or "f*** you, Kingsbury." Pomona's President — Dr. Peter Stanley, who was one of the recipients of the offending e-mails — did not take it upon himself to reprove me for my audacious impertinence, nor did anyone else. No, twenty-nine diverse individuals at one of America's elite academic institutions unanimously kept mum in the face of some provocative and derogatory allegations (e.g., "it is my distinct perception that... Pomona's ethical toilet is backing up") regarding their own beloved community. Perhaps we are to understand that instead, they confidentially relayed their outrage and dismay to Defense Counsel for Brown University, who two years later would articulate their indignation for them in Rhode Island's federal court. I don't believe this.

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[40] The e-mails said, "While she was working on her dissertation at Brown University, your own Prof. Katherine Hagedorn played a prominent and malodorous part in a perfectly stunning piece of academic fraud. That fraud -- including the part that Ms. Hagedorn played in it -- is the focus of a lawsuit currently docketed in US District Court, Rhode Island District. ¶With the making of the above announcement, I am immediately cognizant of the difficulty that I would have if I were now to try to repair your impression of my personal character. I probably won't help things by also pointing out that the smelly business involved a phony sexual harassment case ... I know of no

It would not have seemed remarkable if one or two individuals at Pomona College – or perhaps several – had had remained silent even after receiving an insulting e-mail from an unknown individual. It is not altogether impossible (although this strikes me as unlikely), that all twenty-nine might have made no acknowledgment to the provocation. Nothing criminal is demonstrated by the fact that twenty-nine members of the Pomona College community unanimously remained silent in such a circumstance. On the other hand, Attorney Little's oral argument in March of '04 made it explicit that the provocative e-mails had immediately been interpreted as an attack — "she was attacked and her colleagues were attacked," Mr. Little told the court. Mr. Little's remarks to the court also made it explicit that this was an attack meriting strong response, and that that this attack against Pomona College was being answered through a pretrial motion from a lawyer representing Brown University – two years later. It is perfectly impossible that this could have happened as it did without there having been, two years earlier, a confidential collective conversation among the Pomona College community – let's call this the "Claremont Conclave"[41] – about my e-mails relating to professor Hagedorn's conduct prior to her arrival on Pomona's faculty.

Two weeks prior to Mr. Little's courtroom remarks, Ms. Hagedorn had in fact testified in a deposition relating to my lawsuit — and appears herself to have committed perjury. In response to written questions I had submitted under seal, Prof. Hagedorn testified that she could not remember whether or not she had flunked her first set of doctoral exams at Brown.

> *Is it correct that at some time prior to Mr. Kingsbury's arrival in the fall of 1990, you had already taken a set of Ph.D. qualifying exams and not passed? (I don't remember). Was Jeff Titon away from campus at the time of the exam? (I don't remember). It is Mr. Kingsbury's memory that you told him that the professors on your examining committee gave you passing grade on your exam, but that*

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graceful way of telling someone that their toilet has suddenly started to back up [but] I know of no acceptable excuse for shielding someone from such knowledge."

[41] Pomona College is located in the town of Claremont, California

Prof. Titon saw to it that you did not pass — is that about right? (I don't remember). What role did Jeff Titon play in giving you a failing grade in your first doctoral exam? (I don't remember).[42]

To my way of thinking, this in itself constitutes another *prima facie* case of perjury, since the principal claim of my lawsuit (that her sexual harassment charge was fraudulent and used by the university as pretext for retaliatory action after I filed a charge) was tied in to the circumstance that in 1990 Brown's Prof. Titon appeared to have mischievously flunked Ms. Hagedorn such that she might perceive the eventual passing of her doctoral exam as having been made contingent on her willingness to engage in dirty tricks. Whatever may have been the real nature of Prof. Titon's conduct in 1990, Prof. Hagedorn's claim in 2004 to have forgotten the results of that first doctoral exam are perfectly incredible (readers holding the Ph.D. are invited to imagine a tenured professor at Pomona College being unable to remember whether or not she flunked her doctoral exam).

With respect to criminology, however, the more significant point is that the twenty-nine points of silence at Pomona College in 2002 were, pretty obviously, coordinated with the 2004 news embargo at *The Brown Daily Herald* and the all-campus silence surrounding the trial: the "Claremont Conclave" was coordinated with "the Brown Blackout ." Evident perjury and fraud from respectable professors at both Pomona and Brown was surrounded by uncanny silence at both Pomona and Brown. An inference of a nefarious organization is inescapable. The people who participated in the "Claremont Conclave" – senior academic administrators, award-winning professors, and bright young students at Pomona College – taught and learned a most corrosive lesson about the nature of academic success: apparent fraud can and shall be concealed; authority must not be questioned; sycophancy pays. And let's not forget that college campuses

[42] Katherine Hagedorn's deposition took place on 3/9/04, in Pasadena, California. The above dialogue is taken from pages 48-9 of the deposition transcript. A couple of weeks later, in his 3/26/04 oral presentation to the court, Attorney Little observed of Prof. Hagedorn that, "she, your honor, in the course of this deposition broke down in tears." (transcript, p. 6). One struggles to comprehend the academic distinction of a tenured professor delivering such testimony through sobs and tears.

are places where young adults learn about respectability, or that respectability is a defining characteristic of white collar criminals. Criminologists interested in the question of 'where white collar criminals come from' should take a lesson from this. Babies do not come from storks, but white collar criminals – all of them – DO come from college campuses. Pomona College was the *alma mater* of one of America's greatest writers on white collar crime (Stanton Wheeler, class of 1952). Prof. Wheeler is no longer among us, but Prof. Hagedorn and her ilk *are* still among us. Wheeler's legacy in criminology is being demeaned by a terrible lesson now being taught at Pomona. One may wonder whether the importance of Wheeler's celebrated scholarly work in white collar crimin*ology* is now being overtaken by his former school's indifference to white collar crimin*ality*.

Quid pro quo incentives?

Circumstances surrounding Brooks King's conduct at *The Brown Daily Herald* throw into relief the fact that scholars of white collar crime have as yet developed no concept analogous with "juvenile delinquent" — and compel me to contend anew with the prospect that my insistence on naming names may seem singularly onerous. In the spring of 1999, Mr. King appears to have been but a college freshman, a rank of sufficient juniority, one might think, as to merit keeping his name and identity out of my very unpleasant discussion. Indeed, even the most ominous and portentous inference to be drawn pertaining to Mr. King's conduct ironically entails an assumption that is most forgiving of him: that his transgressions were nothing more than youthful peccadilloes resulting inevitably from irresistible pressure from corrupt and overbearing superiors — he was only a youngster and should be held to a lowered standard of liability. This exculpation, of course, runs directly against the *Herald*'s claim of editorial independence. More compelling, it seems to me, is the fact that students at elite universities such as Brown are supposedly being prepared for positions of heightened, rather than diminished, responsibility — and that their elevation into lofty positions of social respectability-responsibility is not supposed to be tied in with inter-generational academic fraud. And most compelling of all is the realization that although the suborning by senior academics of misconduct by an

elite university student may be exculpatory for Mr. King himself, it is hardly an auspicious proposition with respect to Brown University! Unfortunately, the facts of Mr. King's 1999 journalistic dishonesty are irrefutable: documents demonstrate unambiguously that he deliberately failed to report provocative and newsworthy events and then lied about his reasons for this failure. To be sure, his misconduct is not reflected in any adverse juridical ruling or disciplinary action. His conduct was never put on trial. His misconduct could never become data in a criminological data-base; it would pass below the sociological radar. But the facts of his privileged youthful dishonesty remain. The question then becomes one of whether criminologists are willing to contend with relevant facts in raw form, whether academic criminologists can make their own ethical-moral-legal judgments that don't pre-suppose rulings by courts or code-enforcement agencies. Criminologist John Braithwaite once remarked that "Sutherland's mission was to turn muckraking into sociology,"[43] and my mission in this essay is to augment the muckraking aspect of White Collar Criminology by extending it into academia. Mr. King's misconduct, along with that of his colleagues at the *Herald*, has caused considerable public harm; it was not just an isolated individual matter. Notwithstanding Mr. King's juniority, the 1999 news embargo at *The Brown Daily Herald* was but the opening act in a mischievous drama that concluded in 2004 with a twilight-zone scene of perfectly uncanny social discipline.

Two years after filing his phony article about "arguments from lawyers from both sides" (then lying to me about why he had written such a story), Brooks King had ascended to the position of Editor-in-Chief at *The Brown Daily Herald*.[44] I will admit that to me, this invites thoughts of *quid pro quo* promotion in recompense for dishonest behavior. I hasten to add, however, that in the case of Brooks King I know of no direct evidence that confirms such a suspicion. I will be equally prompt in saying, however, that there may be direct evidence of a *quid pro quo*

[43] Braithwaite, John, 1985. "White Collar Crime," *Annual Review of Sociology*, vol 11, pp. 1-25; p. 2.
[44] Brooks King is identified as Editor-in-Chief of the *Herald* on 3/05/02.

professional reward for journalistic misconduct from a younger generation at *The Brown Daily Herald*.

This part of the story begins in the spring of 2003, when my litigation had been removed from the jurisdiction of the Rhode Island Commission for Human Rights and was a fully-fledged federal lawsuit, apparently headed for trial. At that time, mindful of the dismaying non-reportage by Brooks King, I traveled from Maine to Rhode Island where I barged uninvited into the office of *The Brown Daily Herald*. There I was engaged by a young woman who identified herself as Kavita Mishra, the paper's Senior Editor. I talked with Ms. Mishra for about half an hour, then resumed the dialogue by e-mail the next day. In effect, Ms. Mishra continued the tradition that had been established four years earlier. She repeatedly promised that my lawsuit would be thoroughly reported (e.g., "we are definitely covering your case and will be publishing a story about it next week;" e-mail 4/17/03), but her promises were not kept: as I stated at the opening of this essay, no report of the lawsuit was ever printed. Ms. Mishra also declined to publish my "open letter." "We can't publish open letters," she told me, "it's a basic journalistic practice amongst newspapers not to publish letters that would appear 'out of the blue' unless previously covered in the paper or related to discussions prompted by an article." Ahem: although some newspapers do hold to such a policy, it is clear that such was not the policy of *The Brown Daily Herald*. For example, in the "letters to the editor" of *The Brown Daily Herald* for 3/3/97 (that's the day of Marcella Bombardieri's first article about my litigation) there appeared — "out of the blue" — a Brown student's 700-word exhortation that readers join with her in a national boycott of a particular soft-drink brand. To be sure, this letter was printed before Kavita Mishra arrived on the Brown campus, but Ms. Mishra had certainly been on the *Herald*'s staff in 2001, when the paper cause a national sensation by publishing an open letter that many considered to be nothing but a bigoted-racist diatribe from an off-campus

activist named David Horowitz.[45] Pretty clearly, Ms. Mishra's 2003 statements of editorial policy were journalistic stonewalling.

As it happened, the trial wasn't scheduled until a year later, shortly before Kavita Mishra herself was to receive the baccalaureate. So in March of 2004 (a few weeks prior to the actual trial), I again traveled to the Brown campus, where I handed out fliers proclaiming the upcoming event to some 600 students as they passed through Brown's landmark "Faunce Arch"— keeping a few copies to be crammed under the closed door of *The Brown Daily Herald*. But not only was there no *Herald* reporter at the trial, neither were there were any curious onlookers – no students, no secretaries, no lab technicians, none of my onetime pupils, colleagues, rivals, friends, or neighbors. The surreal secrecy-privacy of the 2004 trial is something that touches painfully on the innermost reaches of my social persona; an adequate accounting of that experience would require a tale written in the fashion of Franz Kafka, Rod Serling, or Mervyn Peake.

The dishonesty of the front-page copy in *The Brown Daily Herald* for the period of the trial (April 26- May 5, what I have called ruse-reporting) were a marvel of journalistic deception, inspiring thoughts of journalism in totalitarian countries. In American culture, perhaps the most useful comparison is with an April Fool's story. While researching for the present essay, I came across a 2009 *Brown Daily Herald* article titled, "Second SDS attempt to storm U. Hall ends in tragedy." The story assumed a somber mien, and began,

> A male undergraduate student was rushed to Rhode Island Hospital yesterday with severe spinal injuries after friends launched him from an improvised catapult outside University Hall... The student, Trevor Demers '11, lost consciousness upon colliding with the brick face of the historic building... and will likely face partial or full paralysis from the neck down.[46]

Of course this wasn't true; of course there are no students at Brown foolish enough to try to catapult someone through a third-floor window of a brick

[45] "Ten Reasons why Reparations for Blacks is a Bad Idea – and Racist, Too!" *The Brown Daily Herald*, March 13, 2001.

building; of course this was intended as a joke. So there was no real mischief here. But the leading *Herald* story of April 29, 2004 ("U. faces subpoena for names of students caught file sharing" – see illustration on page 17, above), however accurate, was positioned at the head of the page *in order to conceal the most important news of the day*. The most newsworthy events of the previous day had taken place at the federal courthouse. Brown University – *itself* – was on trial. The *Herald* was deliberately diverting attention from the news; the *Herald* would allow no mention of the day's most portentous news to appear on its pages. One must wonder where such an editorial policy originated — and how it was implemented.

And the news blackout at the *Herald*, extraordinary as it was, was only part of the matter. For not only were there no reporters at the trial, neither was there a single citizen onlooker — none of my former colleagues, pupils, neighbors, supporters, or adversaries, attended so much as a morning session, let alone the entire trial. There were no townspeople in the gallery; none of the 600 students who'd taken my flier at Faunce Arch came to watch. This could not have happened unless there had been authoritative central planning and ordering. Thoughts of an Ivy League campus populated by brainwashed automatons is hardly conducive to cheerful feelings about American education, and yet the ruse-reporting did take place: this means that somebody had the social wherewithal to

1. compel or induce elite and sophisticated student journalists to produce ruse-reports, and
2. compel or induce other elite and sophisticated students to not attend the trial (even though I handed out 600 fliers on campus), and
3. compel my friends, associates, and neighbors not to attend the trial.[47]

The above belies common sense; these things "couldn't" happen. It is simply impossible, for example, to control community gossip, and when someone in an

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[46] *The Brown Daily Herald*, 3/31/09 http://www.browndailyherald.com/campus-news/second-sds-attempt-to-storm-u-hall-ends-in-tragedy-1.1667391 (visited 3/12/12)

[47] From my own personal-affective perspective, this is, by far, the most disturbing and frightful aspect of the entire matter, although it is not one that I will describe in full, for obvious reasons.

organization sues another person in the same organization, others in the organization will surely have an interest in the proceedings and wants to know what's going on. The ruse-journalism at *The Brown Daily Herald* in 2004 is astonishing. But since it did happen, and since we don't known how it was made to happen, we must acknowledge it could happen again, could happen elsewhere. This may not be a crime,[48] but it would be foolhardy to treat it as innocuous.

Although I have no direct knowledge of how the ruse-reporting happened, there are some provocative oddities surrounding the trajectory that may have been taken by Ms. Mishra's career after she left Brown. A few apparent facts must be set forth.

1. After serving as senior editor at *The Brown Daily Herald*, Kavita Mishra graduated from Brown with the class of 2004;[49]
2. After leaving Brown, Kavita Mishra apparently studied the M.D. at the Medical School of the University of California San Francisco; in October of 2006, while a doctoral student at UCSF, Kavita Mishra was featured in a news-story on a UCSF website; this article mentions her past work at *The Brown Daily Herald* and various minutiae regarding her family, personal history, and career aspirations; [50]
3. As of May, 2011 (and extending at least to January, 2012), Kavita Mishra was identified as an Assistant Professor in the division of Radiation Oncology at the Medical Center of the University of California at San Francisco (UCSFMC)[51]
4. ***However***: the Kavita Mishra identified as an Assistant Professor at the UCSFMC was identified as a graduate of Harvard (class of 1998), as having

[48] See Alvesalo, op. cit., "in most cases, it is not clear whether a crime... is in question in the first place." P. 157."
[49] Her 2004 graduation is attested in her essay, "The True Power of the Press," which appeared in *The Brown Daily Herald* on 9/22/04, followed by the identifier, "Kavita Mishra, '04, was a *Herald* senior editor."
[50] "Kavita Mishra: Following her family's footsteps into medicine" 10/27/06; *http://www.ucsf.edu/news/2006/10/6856/kavita-mishra-following-her-familys-footsteps-medicine* (visited 12/31/11)
[51] *http://radonc.ucsf.edu/faculty/physicians/mishra.html#two*

completed her UCSF doctorate in 2002, and as having done her residency at UCSF between 2004 and 2008 – precisely when Brown's Kavita Mishra ("BKM") was a doctoral student and being written up in an online UCSF newsletter;

5. The October 2006 UCSF feature story on BKM makes no mention of a Harvard alumna also named Kavita Mishra ("HKM") who would then have been doing residency at UCSF.

6. On November 26, 2011, I sent an e-mail to Assistant Professor Kavita Mishra, using the e-mail link from the UCSFMC website. In the belief that I was addressing the former editor of *The Brown Daily Herald* (i.e., BKM), I alluded to our previous meeting in the office of *The Brown Daily Herald*, and then asked her to clarify the anomaly regarding her having been student at Brown and her present claim of holding a degree from Harvard. I received no reply.

7. A few weeks later, both Mr. Michael Burke, Registrar of Harvard College, and Dr. Mack Roach, Chief of UCSFMC's Division of Radiation Oncology, replied to communications from me by pointing out a contrast in the snapshots on the two Kavita Mishra websites, and by insisting that the Assistant Professor at UCSFMC is a legitimate graduate of Harvard. [52]

This calls for a bit of sleuthing. The most sinister inference, of course, is that by dint of collusion among officials at Brown, Harvard, and UCSF, a set of phony credentials was given to BKM along with an accelerated climb up the ladder of academic medicine — with criminal implications bearing on Harvard, Brown, UCSF, and BMK herself. On the other hand, it is not impossible that there might be two unique physicians, both named Kavita Mishra, both holding a recent M.D. from UCSF (one dated 2002, the other dated 2008), both having graduated from Ivy League universities. It's not impossible that Harvard's registrar and UCSFMC's division chief were telling the truth. Indeed, on 3/25/14, I discovered an entry for one Dr. Kavita Mishra on the web page of Brown's school of

[52] E-mail from Mack Roach 1/3/12, letter from Michael Burke, Harvard Registrar, 1/16/12

medicine. Even if there are two unique physicians named Kavita Mishra, however, it is nigh unto impossible that they would have been unaware of each other's existence; the coincidence of their names and professions, the close proximity of their age, academic background, and working conditions would surely have been a source of confusion, or misunderstanding, or amusement, in and around UCSFMC during those years. So it strikes me as a bit queer that in October of 2006, when UCSF dispatched one of its staff reporters to produce a feature-article about a young medical student — a Brown University graduate named Kavita Mishra — the reporter (and/or her editor, and/or Kavita Mishra herself) would have overlooked the existence of a second Kavita Mishra — a Harvard graduate who at that very moment and in the same institution was conducting medical research of such outstanding quality that it would soon gain her a faculty appointment right there at UCSF – had such a person existed. And it strikes me as utterly impossible that in November of 2011, when Assistant Professor Kavita Mishra received at her UCSF office an email containing unambiguous implications of criminal misconduct on her part, she would have *remained* unaware of a second Kavita Mishra, had there been such a person, whose existence would have nullified the accusatory thrust of the e-mail she had just received. So it is extremely provocative that UCSF's Assistant Professor Kavita Mishra should have made no reply to the accusatory 11/26/11 email. She might easily have said, for example, *Mr. Kingsbury, you must be referring to the other Kavita Mishra, the one that went to Brown – this sort of mistake happens all the time around here.* Why did she make no such reply? There might be an honorable explanation for all of this, but I am unable to conceive of one.

In light of the above, and from my confined perspective, it seems to me that any presumption of honorability for UCSF's Assistant Professor Kavita Mishra ("HKM") is warranted by little more than a few 900 lb. gorillas — Harvard's highly respectable registrar Michael Burke, UCSF's highly respectable division chief Mack Roach, and the website of Brown's school of medicine. In my view, the journalistic misconduct of the Kavita Mishra that I encountered in 2003 ("BKM") must be understood as a blemish on the reputation of not only HKM,

but also Harvard, Brown, and UCSFMC — *until it has been demonstrated empirically that there are two unique persons with this same name.* And I shall proceed no further without stating explicitly that nothing in what I have just reported is inconsistent with providing criminal cover for BKM, Harvard, Brown, and UCSF. -If it should develop that BKM and HKM are in fact duplicitous manifestations of a single human being, then the implications for white collar criminality in higher education would be nothing less than staggering.[53]

[53] Of course, the matter of the possible dual identity of Kavita Mishra, while crucial to a issue of possible medical fraud at UCSF, and perhaps to the matter of understanding how the policy of ruse-reporting was established, it is tangential to the ruse-reportage itself.

THE ETHNOMUSICOLOGY RACKET

Perhaps it should be only trivial to point out that the secret trial of 2004 had roots in academic quarreling – or that this quarreling is not confined to Brown University. The academic quarreling, however, pertained to the field of ethnomusicology, and innocent readers might be forgiven for doubting that ethnomusicology could engender a dispute such that anyone could make, um, a federal case out of it. The reality, however, is the reality: ethnomusicology has begun to take on a global economic significance, and it is rife with corruption and intrigue. In recent years ethnomusicology has been overtaken by the revolution in digital technology; there has been an economic explosion in the music recording industry – particularly as it relates to "non-Western" cultures. At the center of all this is The Ethnomusicology Racket.

Largely in response to the digital recording revolution, ethnomusicology has crossed a watershed, changing from an erstwhile hodgepodge of eccentric enthusiasts of this or that exotic music, emerging now as a surging new wave of voluble arbiters of style in the globally fashionable industry of "world music." Unfortunately, the crossing of this watershed involves some stunningly opportunistic and dishonest behavior. The result has been an academic-economic bubble; the Society for Ethnomusicology has been commandeered by something that I am calling The Ethnomusicology Racket – a moniker I have adapted from "The Appreciation Racket," an invective that was famously hurled at "music appreciation" by the American composer-critic Virgil Thomson in 1939. Thomson's words are startlingly apposite to the present discussion.

> I've seen many a private teacher forced out of business for refusing to "cooperate" with the publishers of [music] Appreciation books... The composer who teaches... is usually obliged to "cooperate." The racket muscles in on him... I do not know whether it would be possible to publish a book or offer a course of instruction in music appreciation that would question the main assumptions of the present highly organized racket... I doubt if it would... The musical ignorance of the army of teachers that is

> employed to disseminate Appreciation should be enough to warn any musician off it.[54]

The workings of The Ethnomusicology Racket – which is indeed a "highly organized racket" – are distressingly reminiscent of Thomson's complaints about The Appreciation Racket. Many of its particulars, however, are hidden from sight, and I must confine myself to an outline of what I do know, what I have seen. What I have seen clearly entails a continent-wide organization.

Almost certainly, a central issue here is my own 1988 book, *Music, Talent, and Performance*. It's an anthropological-ethnographic account of teachers and students at an American conservatory of music; it was the first study of Western art music to be conducted from the perspective of ethnomusicology – a field previously associated more or less exclusively with music outside that tradition. The first principle of my book is that Western art music is a contemporary cultural idiom (i.e., not something pertaining only to European cultures of 100-500 years ago), and that this cultural idiom is presently centered on face-to-face negotiations of "talent" – which of course is the same notion lately being used by Wall Street CEOs to justify nine-figure remuneration packages. A principal finding of the book is that musical talent is a social construct; many non-Western societies have neither such concept nor a comparable social phenomenon. Musical talent is not a gift from God, nor is it evidence that social hierarchy is "natural." Initial reaction to the book featured either jubilation[55] or consternation,[56] but relatively little in between. Subsequent developments make it obvious that the community of professional ethnomusicologists is either unable

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[54] Virgil Thomson, "Why Composers Write How," in *A Virgil Thomson Reader*, pp. 122-47; the quotations come from pp. 139, 142f

[55] "In a brief review, it is not possible to do justice to the many provoking ideas developed in this slim volume." -- Laurence D. Loeb (U. of Utah), writing in *American Anthropologist* (December 1988). "A model study of music as a cultural system" -- UCLA Prof. Timothy Rice, writing in *American Ethnologist*, November 1994 (Rice was President of the Society for Ethnomusicology 2003-05).

[56] "The book is a set-up: it only presents part of the story," and "he does not present a convincing picture... I got the sense that Kingsbury had an axe to grind." The Eastman School's Ellen Koskoff, writing in *Ethnomusicology* (v. 34, 1990). Koskoff preceded Timothy Rice as President of the Society for Ethnomusicology, serving from 2001 to '03.

or unwilling to contend with the philosophical, political, and moral implications of my work.

Nothing could illustrate this problem more instructively than the 180^0 flip-flop by Brown's senior ethnomusicologist, Jeff Todd Titon. As my book first appeared, the back jacket was emblazoned with Titon's exultation:

> At long last, an ethnomusicologist has cast a searching eye on the highest levels of music education. The result is a brilliant, often ironic, analysis of language, communication, and the negotiation of authority that takes place among teachers and students. Kingsbury shows that basic concepts like music, musicianship, talent, and taste mean different things depending on who is talking to whom. In the highly politicized atmosphere of the music conservatory, learning to traffic in this sacred, sociolinguistically constructed reality – music – becomes the real education of musicians, quite apart from the skills they develop.[57]

Once I had joined Brown's faculty, however, Jeff abruptly reversed himself with respect to my treatment of "the highly politicized atmosphere of the music conservatory." By 1996 he was publicly hinting that I had been "lying, and spying" when I did my fieldwork. In the context of a discussion of fieldwork ethics and epistemology, Titon published this parenthetical reference to me:

> Infrequent and atypical roles [for an ethnomusicology fieldworker] include opposition, deception, lying, and spying—unethical under most circumstances, but rationalized on the grounds that the music-culture being understood and then exposed is illegitimate and corrupting (see Pillay 1994; Kingsbury 1988).[58]

Jeff's innuendo, here, is that my fieldwork in a music conservatory was ethically parallel with Jayendran Pillay's fieldwork in South Africa. Pillay is an ethnic Indian native of South African who in the 1980s had famously lied to school

[57] A photocopy of the book jacket, showing Titon's endorsement, is attached as an appendix.
[58] See p. 95 in Titon's "Knowing Fieldwork," in *Shadows in the Field*, edited by Gregory Barz and Timothy Cooley, Oxford University Press, 1997.

administrators in order to conduct clandestine research into racist music educational policies of the notorious apartheid regime. Pillay had been, in retrospect, ostentatiously surreptitious: the ethical oddities of his position were a central topic of his paper, which was not published when he was in South Africa, but only after he arrived safely in the US.

Readers unfamiliar with Pillay's or my writing (including, presumably, most criminologists!) would probably pass over Titon's otherwise unobtrusive comment. On the other hand, an attentive reading of Titon's paper is troubling: anyone who *does* notice this passage will surely realize that Titon is being malicious and dishonest. For in fact there is no hint of lying or spying about my book. In the body of the book,[59] I went into great detail about the extensive negotiations I had with conservatory officials prior to my fieldwork. Jay Pillay had been similarly detailed and expansive[60] *about his own lying and dissembling* in the South African schools: Jeff knew that his innuendo was dishonest. He also knew, however, that among certain people my book had aroused substantial animosity and resentment,[61] and that his suggestion that I had treated the conservatory as an enemy – in the way that Jay Pillay had treated South Africa's apartheid regime – would tend to solidify that resentment.[62]

Black's Law Dictionary defines libel as "maliciously written or printed publication which tends to blacken a person's reputation or to... injure him in his business or profession."[63] With respect to the innuendo about my "lying, and spying," the matter is simple enough: Jeff's innuendo is libelous. On the other

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[59] See pages 18-26 of *Music, Talent, and Performance*, 1988, Temple University Press (e.g., "In the summer of 1980, I discussed my plans for research with Stuart Robinson... I tried to reassure Robinson that I would not create a problem... that I saw my presence... as a 'mock student,'" etc.).
[60] See pages 281-288 in Pillay's "Indian Music in the Indian Schools in South Africa," Ethnomusicology 38/2, 1994. (e.g., "I lied to the interviewers... the people I talked to did not know they were being interviewed," etc.).
[61] "The impression Kingsbury has given to some readers," wrote ethnomusicologist Bruno Nettl, "is of a culture or subculture that is essentially mean or even brutish..." (see Nettl's *Heartland Excursions*, U. of Illinois Press, 1995, p. 143).
[62] In the spring of 1997, I remonstrated on this matter directly to Jeff in writing. He replied, saying, "my intention was not to disparage anyone's work. If this paper is ever reprinted I will try to make that clearer, either in the body text or with a footnote" (personal correspondence, 5/23/97). He did not keep this promise. Although he made numerous changes to the paper when it was re-printed in 2008, his innuendo that I had been lying was left unchanged.
[63] *Black's Law Dictionary*, Sixth Edition, West Publishing, 1990, entry for *libel.*

hand, few readers would notice his parenthetical remark if I myself did not call attention to it, and an obscure parenthetical remark isn't very dangerous *as libel*. Jeff's slur is libelous only in an academic sense; the more significant point is that the potency of his remark works in other ways. Libel law would provide but minimal understanding of Titon's remark about lying and spying. To really understand its pernicious thrust, it will be necessary to look elsewhere.

MOBBING AND THE NEW FIELDWORK

Titon's slur appeared in the middle of an essay on musical epistemology, on the importance of *friendship* in ethnomusicology – friendship in what he was calling "The New Fieldwork," a phrase that was appearing, now and for the first time, in *Shadows in the Field*, an Oxford University Press book on ethnomusicological fieldwork edited by two of Titon's students. Alas, for "The New Fieldwork" is little more than a banner phrase of The Ethnomusicology Racket. The core premise of The New Fieldwork appears to be that a famous kafuffle during the 1980s among anthropologists regarding a "crisis of representation"[64] was misplaced. "We deliberately shift the focus of the resulting 'crisis' from representation... to experience,"[65] say Gregory Barz and Timothy Cooley, the book's editors. "The crisis is not representation," they insist, "the crisis is experience, for it is only in experience that we know."[66] Now, this is either giddy foolishness or sheer idiocy. Although I will resist the temptation to unequivocally proclaim the direct opposite – that it is only while learning that we truly experience – it is hard to think that the Barz-Cooley formula could survive ridicule if the august imprimatur of their publisher weren't now made the more daunting by the caustic winds of intimidation that presently swirl around The Ethnomusicology Racket.[67] It might be possible to overstate the importance for

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[64] I'm referring, here, to such books as *Anthropology as Cultural Critique* and *Writing Culture*. These books had an almost revolutionary impact on the field of anthropology.

[65] "Casting Shadows in the Field," in *Shadows in the Field*, edited by Gregory Barz and Timothy Cooley, Oxford University Press, 1997, p. 4

[66] *Shadows in the Field*, second edition, 2008, p. 12

[67] In August of 2006, the illustrious ethnomusicologist Steven Feld (1991 recipient of a MacArthur Fellowship) threatened to sue me for defamation unless I retracted what I had recently written about him (in my 2005 booklet, *The Truth of Music*, I wrote that Feld might have perpetrated a "scam" in connection with his recent world music CD, *Voices of the Rainforest*). Instead of

present day "experience" of prior learning about, say, William Shakespeare or Charles Darwin, but it would be perfectly impossible for us to "experience" a *sunset* had we not previously *learned* some important lessons of astronomy from Nicolaus Copernicus and Galileo Galilei. And if Barz or Cooley would now remonstrate to the effect that they intended their formulation to refer only to social phenomenology, then I would appeal to the opening pages of R.D. Laing's *The Politics of Experience:* "I cannot experience your experience. You cannot experience my experience... Experience is man's invisibility to man."[68] And musicological echoes of "man's invisibility to man" become clear when, as I discussed in connection with my own research, a student's facile rendition of a Chopin sonata can inspires a listener's remark that "she doesn't play the music, she only plays the notes.[69] "The New Fieldwork" is sham.

Titon's essay[70] is a brief piece extolling personal friendship as the basis of ethnomusicological knowledge. His fourteen-page paper contains more than thirty references to friendship – all of them bearing on <u>fieldwork</u> relations. As for <u>collegial</u> relationships, his essay leaves readers with little more than the parenthetical remark about my putative lying and spying.[71] Two characteristics of Titon's slur can be distinguished. The first is that it's malicious; the second is it's encrypted. Lay readers who don't know about Pillay or Kingsbury will take little notice of his remark, but few professional ethnomusicologists will fail to see its significance. And the significance is NOT that 'Kingsbury is a liar.' No, the significance of Titon's slur is that <u>Kingsbury is fair game</u>. The *raison d'etre* of

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retracting anything I'd written, I challenged Feld to a public debate. Not only did Feld decline my challenge, but censors at the Society for Ethnomusicology refused to print the listserv posting of my challenge, saying that it was a "personal attack" on Steven Feld. Feld's work has centered on a community in Papua New Guinea, so I have described his authority as "Papual Infallibility," but in truth, it's bullying and intimidation. I have become sociologically radioactive since I started criticizing individuals I'm now identifying collectively as The Ethnomusicology Racket.

[68] R.D. Laing, *The Politics of Experience*, p.17-8

[69] See my *Music, Talent, and Performance*, pp. 143-49

[70] Titon, "Knowing Fieldwork," in *Shadows in the Field*, edited by Gregory Barz and Timothy Cooley, Oxford University Press, 1997; second edition, 2008

[71] It is significant that the notion of "cronyism" is so closely linked with that of "friendship." How different it is to suggest that Titon's scholarship relies on cronyism than to say that it is based on friendship!

"The New Fieldwork" isn't scholarly methodology: among other things, it was cover for Titon's slur, which is a highly-situated call for academic mobbing.

"Mobbing" is a notion that is, of late, gaining adherents among psychologists, sociologists, and human resource professionals. The term has been defined as "workplace expulsion through emotional abuse," and as "a malicious attempt to force a person out of the workplace... a 'ganging up.'[72] Heinz Leymann, the Swedish psychologist who coined the term in its present usage, observed that "[t]hese actions take place... over a long period (at least 6 months) and, because of this... result in considerable psychic, psychosomatic, and social misery."[73] In some respects, my experience at Brown in the 1990s[74] is well confirmed by the descriptions of mobbing to be found in this literature. My experience of mobbing, however, entails two signal point of contrast from what previous scholars have described.

First, my experience of harassment has not been confined to "the workplace" – quite the contrary. I left Brown (and Rhode Island) in 1997, but harassment-ostracism has continued in Maine (vandalism, telephone harassment, various small-town social booby-traps, etc.). Second, the locus of Titon's slur – a book published by Oxford University Press – appears to lift mobbing into a new cultural orbit. The animus of mobbers is now being expressed under the imprimatur of one of academia's foremost publishing houses; mobbing is not confined to the office mail-room, the school corridor or playground, or the Facebook page.

There is an irony here, for Oxford University Press has recently become the first major academic publisher to produce a scholarly and critical study of mobbing itself. The book is *Mobbing: Causes, Consequences, and Solutions,* by Maureen Duffy and Len Sperry, published by OUP in 2012. The book is a cultural-

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[72] *Mobbing: Emotional Abuse in the American Workplace,* by Noa Davenport, Ruth Schwartz, & Gail Elliott; Civil Society Publishing, Ames, Iowa, 1999, pp. 20, 4o

[73] Heinz Leymann, quoted in *Mobbing,* p. 42. It has occurred to me that the recent surge of interest in "mobbing" may have the effect of mitigating what I call the "got no Harvey Milk" problem.

[74] Some of these experiences were described, in fictional form, in *Poisoned Ivy*, a set of five short stories, presently posted at http://www.henrykingsbury.net.

organizational study, with topics extending from the eighteenth century witchcraft trials in Salem Massachusetts to present-day case studies of the sociological-institutional dynamics of tormenting workers, classmates, etc. One of many such cases is of school children who, in tormenting one of their classmates, gave themselves "high-fives" each time one of them thought up an insulting new synonym for "ugly."[75] Duffy and Sperry's intent in presenting this case is to establish a distinction between mobbing and bullying (the latter term being associated with an individual tormentor rather than a group working collectively), and to show the formation of in-group/out-group divisions through mobbing. My own reason for resurrecting their discussion is that the children's game of hi-fives is iconic of a pseudo-scholarly passage in *Shadows in the Field* – also published by Oxford University Press.

In their introduction to the second edition (2008) of *Shadows in the Field*, Gregory Barz and Timothy Cooley are rhetorically giving themselves high-fives when they proclaim that

> The new fieldwork is assertively global in its subjects. No musical genre... is off limits for contemporary ethnomusicologists... Henry Kingsbury's ethnography of The New England Conservatory of Music is an important early example of fieldwork in Western Art Music (1988); Kay Shelemay's ethnography of the early music movement is a more recent example (2001).[76]

In this little passage, Barz and Cooley hint that that my book is little more than an illustration of The New Fieldwork (even though they know full well that my approach to fieldwork is quite inimical to their emphasis on 'experience' – which I find solipsistic and egocentric). Much more importantly, they have also "outed" me, violating a personal-professional confidence regarding anonymity and ethics in ethnographic writing.

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[75] See p. 10 of *Mobbing: Causes, Consequences, and Solutions*, by Maureen Duffy and Len Sperry, Oxford University Press.

[76] *Shadows* 2nd edition (2008), p. 15. Cooley & Barz "Casting Shadows: Fieldwork is Dead! Long Live Fieldwork!"

During the period when they were Jeff Titon's doctoral students, Greg Barz and Tim Cooley were my friends – or rather, I would have thought as much.[77] For the year 1992-3, Greg Barz was my roommate: he was newly arrived at Brown; I was newly-released from the hospital and in need of help. My parents paid Greg's rent in exchange for such chores as driving me to medical checkups, keeping track of medications, etc. As for Tim Cooley: he had lately visited me in the hospital; after my release, he and I shared such experiences as TV broadcasts of the Lillehammer Olympics, trekking to Boston for his wife's organ recital, and getting my TV to and from the repair shop. During those years Greg, Tim, and I had numerous conversations on such matters as the honorable treatment of "human subjects," anonymity in ethnographic writing, and so on. But now, in their debut book with, ahem, Oxford University Press, they were engaged in an infantile game of self-congratulation upon rising in their profession by bringing down a former teacher and friend. Greg and Tim were both married men in their thirties, but their behavior was quite in keeping with the pre-pubescent schoolchildren's game of giving high-fives as reward for insulting a classmate. After getting their doctorates at Brown, Cooley and Barz ascended with stunning rapidity to positions of authority in ethnomusicology publishing– Cooley suddenly became editor of *Ethnomusicology* (the flagship journal of the Society for Ethnomusicology) and Barz was appointed to an ethnomusicology editorial post at *The New Grove Dictionary of Music and Musicians* (far and away the most influential music encyclopedia in the English language). To my way of thinking, these were inauspicious developments, although hardly inconsistent with the dynamics of The Ethnomusicology Racket.

ACADEMIC FRAUD AS COLLECTIVE ACTION

In this essay I have identified a configuration of high-status academics holding a variety of positions in several institutions – each of whom played a recognizable role relating to the secret trial. From Brown University I identified one Provost (Frank Rothman), three deans (Bryan Shepp, Newell Stultz, Karen Romer), and

[77] Prior to publication, this essay was sent to Jeff Titon at Brown, Greg Barz (now at Vanderbilt), and Tim Cooley (at UCSB) for review. All have remained silent.

three music professors (David Josephson, James Baker, Jeff Titon), persons whose academic-administrative activities and/or trial testimony were issues for the secret trial. I identified one medical doctor (neuro-oncologist Michael Glantz) whose medical reportage was suppressed through a combination of his own sudden disappearance and dishonesty testimony at the secret trial. I identified three undergraduate students (Marcella Bombardieri, Brooks King, Kavita Mishra) who, as journalists for *The Brown Daily Herald*, played various roles in maintaining the trial's secrecy. I identified three doctoral students (Gregory Barz, Timothy Cooley, Katherine Hagedorn) who appear to have in various ways colluded-cooperated with Jeff Titon in defrauding me. I described, albeit without naming each individual, a group comprised of at least nineteen people (students, professors, and administrators) at Pomona College in California, identifying it descriptively as "The Claremont Conclave." I identified one trial lawyer, Brown's attorney Christopher Little, whose 3/26/04 courtroom presentation linked the secret trial in Rhode Island with the collective silence at the "Claremont Conclave." I identified one senior federal judge, Ronald Lagueux, who appears to have engaged in judicial misconduct during the trial. Taken together, these individuals comprise a working organization, a continent-wide "network of people whose cooperative activity [has been] organized via joint knowledge of conventional means of doing things."[78]

The quotation in the previous sentence comes from sociologist Howard Becker's definition of an "art world." I have introduced Becker's theoretical construct because it will help in illuminating an important characteristic of the trial's secrecy. In his 1982 book, *Art Worlds*, Becker deliberately drew his reader's attention away from the individual ***artiste*** (socially elevated, sometimes mystified, as the central figure for works of art), focusing instead on the plethora of persons who play supporting roles: the diverse and variously skilled "backstage" people whose coordinated activity is no less necessary (although much less central) than the celebrated artists for the successful creation of works of art. "Producing art works," argues Becker, "requires elaborate cooperation

[78] Howard Becker, *Art Worlds*, 1982, U California Press, p. x

among specialized personnel."[79] A diva on an opera stage may be the star of the show, but the show would not be what it is without the skilled cooperation of the clarinetist playing in the pit orchestra, the musicologist writing the program notes, the engineer operating the stage lights, or the makeup artists painting the performers faces (this catalog, of course, could be extended for several pages). It is such configurations of cooperating skilled persons that Becker emphasizes in his analysis. He was concerned with art as collective action.

Such a perspective will be instructive with respect to "The Brown Blackout." The secret trial of 2004 was an instance of academic fraud as collective action, thus distinguishing it from individualistic academic fraud (biologists who falsify research data, historians who plagiarizes prior historians, etc.). The secrecy surrounding the trial of Brown University was produced through collective action: it didn't "just happen." It required planning and coordinated activity among numerous high-status individuals, some near, some far (considerably more people, it should be said, than my enumeration at the beginning of this section), planning that continued over a considerable period of time. The "ruse reporting" at *The Brown Daily Herald*, for example, entailed as much collective action as a production of *Aida*. The sociological model put forth in *Art Worlds* is of great value in understanding the secrecy of the 2004 trial of Brown University.

There is, however, an important point of contrast to be noted between my present analysis of academic corruption and Howard Becker's classic analysis of art worlds. To clarify this, I return to Becker's definition of art worlds, now including (italicized for emphasis) a few words from his definition that I had previously omitted. Becker defines an "art world" as a

> network of people whose cooperative activity, organized via joint knowledge of conventional means of doing things, *produces the kind of art works that art world is noted for*.

Becker's "art worlds" are social networks mobilized in the production of art works: plays, movies, sculptures, etc., unified products, entities, tangible things. -

[79] *Art Worlds*, p. 28

By contrast, the collective action that I am concerned with here is mobilized in the production of an intangible, ideologically-centered community: a culture. This culture is anything but static and unchanging. Although intangible, it is actively reproducing itself through time and space. Just as families reproduce themselves (children grow into adults, have careers and children of their own, who in their turn will grow into adults, etc.), The Ethnomusicology Racket *is reproducing itself*. This is clearly seen in the interrelated career trajectories of Jeff Titon (the senior professor) and Gregory Barz or Timothy Cooley (once Titon's students, now well-established professors).

There is also a significant distinction to be made between The Ethnomusicology Racket and the Society for Ethnomusicology (SEM). The Ethnomusicology Racket is a top-secret organization, whose "members" would, we can be sure, object to the name I have assigned to it. The SEM, by contrast, is a formalized organization with no small degree of institutional hubris: according to its website, SEM has 1800 dues-paying members, holds annual conventions that are attended by upwards of 1000 people, publishes a thrice-annual journal, etc. The SEM is a collectivity with membership and organization that is, most certainly, not the same as the configuration of people that I identified at the beginning of this section on fraud as collective action. The SEM is <u>not</u> the same thing as The Ethnomusicology Racket, and indeed, The Ethnomusicology Racket surely entails a much larger organization than I can account for in this essay. The connection between these two organizations, however, could be denied only by the willfully ignorant. The SEM is to The Ethnomusicology Racket as a vine is to a trellis. By now, it is almost impossible to distinguish illicit from licit scholarship in the discipline of ethnomusicology.[80]

Few people are more important to The Ethnomusicology Racket than Barz' and Cooley's mentor, Jeff Titon, and few texts are more central to it than Jeff's book, *Worlds of Music*, a highly popular textbook intended for entry-level

[80] On the topic of the mixing of licit and illicit commerce, see the important book by Moises Naim, *Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Economy*,(Doubleday, 2005).

ethnomusicology students.[81] The remarkable commercial success of this book derives to a large extent from the recent addition, into the curricula of many colleges and universities, of introductory classes in world music, as well as from the recent boom in the "world beat" recording industry. However, on a careful reading of *Worlds of Music* it becomes clear that the book is liberally sprinkled with sophisms, banalities, and simplifications that belie the scholarly mien of its general editor. For example, on page 1 of *Worlds of Music*, we find the seemingly unremarkable statement that "so far as we known, every human society has music. Music is universal, but its meaning is not."[82] Notwithstanding the tone of professorial equanimity, this remark is an insidiously tendentious sophism. In order to inject scholarly discipline, four points should be made in response:

1. There is ample literature by well-established academic ethnomusicologists that either directly contradicts Titon's claim or raises radical doubts about it. I know of no definitive scholarly statement supporting Titon's assertion. An observation of pioneering ethnomusicologist Klaus Wachsmann (1907-1984) is to the point: "I don't know how widespread the desire is to view music as a universal. This problem is not posed universally. It strikes me, rather, as a particularly Western idea."[83]

2. Most of the world's languages have no word that translates to the English word, "music." In non-Western cultures, a person who sings a song or plays an instrument is <u>not</u>, *ipso facto,* understood to be making "music;" no, the concept of music just doesn't exist in most languages. Although this is well nigh to incomprehensible for many lay people, it is – but perhaps I should say, it <u>once was</u> – common knowledge among

[81] *Worlds of Music*, Jeff Todd Titon, General Editor, Schirmer, New York, 1984; Second edition, 1992, third edition, 1996
[82] Titon, Jeff Todd, et al, *Worlds of Music*, Third Edition, 1996, Schirmer Books, New York (the quotation is to be found on page 1 of the first and second edition, also)
[83] There have been special issues on the topic of musical universality in *Ethnomusicology* [volume VI/1, 1962, and volume XV/3, 1971] and *The World of Music* [volume XXVI/2, 1984], with contributions from many major ethnomusicologists – John Blacking, Kenneth Gourlay, Ellen Koskoff, George List, David McAllester, Bruno Nettl, Carol Robertson-DeCarbo, Charles Seeger, Klaus Wachsmann, among others.

professional ethnomusicologists.[84] A founding assumption of the discipline of ethnomusicology is that, in the study of non-Western singing and instrument-playing, the legitimacy of basic Western terminology pertaining to "music" need not be doubted.[85]

3. The proposition that something is *universal* brings with it the understanding that it is a fundamental and essential characteristic of humanity – without which a group might not survive, or not be recognizable as human. However, if music is in fact universal, then it follows that most non-Western peoples – lacking any term for it – are conceptually powerless to explain, evaluate, interpret, or understand this essential element of their own humanity; they must rely on Western notions to de-mystify their lives. This is a most disquieting assumption, carrying unambiguously implications of cultural imperialism.[86]

4. In Prof. Titon's 1988 endorsement of *Music, Talent, and Performance*, he himself observed that music is a "sacred, sociolinguistically constructed reality." Such a proposition is, quite simply, mutually exclusive with his proposition that music is universal, since most languages have no concept with which they could have "sociolinguistically constructed" such a "sacred... reality."

Jeff Titon is supposed to be one of America's leading ethnomusicologists, but his claim that music is universal is a chimera. The proposition that music is universal has a recent – and decidedly curious – derivation. It is a belief that was not held in the early years of the 20th century. In those days, a baleful

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[84] "Ethnomusicologists need hardly be told that people in some societies simply have no concept 'music'... [and] the difficulties inherent in making [the music concept] cross cultural are almost overwhelming in their magnitude." Alan P. Merriam, "Definitions of Comparative Musicology and Ethnomusicology: an Historical-Theoretical Perspective" *Ethnomusicology* XXI/2, 189-204; quotation is on p. 190.

[85] Much of the apparent legitimacy of this assumption is grounded in Western music literacy: sound that might be represented in western music notation (i.e., using G & F-clef, 8th & 16th notes, sharps & flats, etc.) are, *ipso facto*, "music." This auditory-visual intuition is almost irresistible among professionals and laymen alike, although it entails myriad contradictions and paradoxes. For example, Merriam's widely accepted notion of "music sound" was ironically linked to transcription (i.e., soundless writing), and conceived as music *per se*.

[86] A similar point is presented by Kenneth Gourlay in his "The Non-Universality of Music and the Universality of Non Music," in *The World of Music*, 26/2, 1984.

combination of cultural bigotry and musical racism combined to exile *jazz* from the genteel domain of "music." This is something that needs to be said twice: a century ago, jazz was not considered to be music. The mirthful title of a 1921 ragtime composition, "Don't Jazz Me: I'm Music," illustrates this. Ragtime was held to be midway between *jazz*, which was thought to be socially degrading, and "music," which was culturally respectable. Early in the 20th century, American magazines were printing diatribes lamenting the evil influence of jazz on the nation's youth.[87] Distinctions between music and nonmusic were effectively distinctions of elitism. The more recent idea that music is "universal" should be understood as a belated apology for this racist elitism. The proposition that "music is universal" is a pseudo-scientific idea now being proffered in the hope that the public will grant indefinite respectability to a seemingly more enlightened and benevolent Ethnomusicology Racket. The benevolence of the Ethnomusicology Racket, however, is a rapacious benevolence.[88] The idea that music is universal simply replaces bygone bigotry with present-day imperialism. Western scholars do not improve anyone's sensitivity to (or understanding of) exotic singing genres by assigning them to the category of "music" – any more than they would improve our understanding by referring to the Passover Seder as "Jewish Communion" or identifying cricket as "British baseball."

I will confess that I was only dimly aware of the scholarly shortcomings of *Worlds of Music* when I first came to Brown. It was shortly after I arrived on campus that the matter was brought into focus by a gabfest with a group of Titon's doctoral students. I had just remarked on the book's reliance on an outmoded notion of "culture" when one of the students chimed in with, "but you can't criticize that book, it's only an undergraduate text." The remark, and the circle of nodding grad-student heads that accompanied it, precipitated an intellectual tailspin for me: just having arrived on the faculty of an Ivy League university –

[87] See, for example, Ann Shaw Faulkner's "Does Jazz put the Sin in Syncopation?," *Ladies Home Journal*, August, 1921. Faulkner argues that "jazz is an influence for evil," and she quotes with approbation the opinion of a presumed authority that "jazz is not music at all. It is merely an irritation of the nerves of hearing." For an overview of this unfortunate legacy, see Morroe Berger's "Jazz: Resistance to the Diffusion of a Cultural Pattern," in *American Music: From Storyville to Woodstock*, edited by Charles Nanry, Transaction Books, 1972.

the pinnacle of academic prestige – I was now being told rather unambiguously that it's OK to be sophomoric if you're writing for freshmen.[89]

The secrecy of the 2004 trial drew attention away from some execrable scholarship. The fact that execrable scholarship is now being fobbed off not only as respectable but as "excellence" is a bitter irony. The fact that this being accomplished through well-planned collective action is more than irony – it is an emergency.

CONFRONTING RESPECTABLE KNAVERY

The solution to these problems is <u>not</u> to "lock those bastards up and throw away the key." Much of this academic mischief is not criminal (although pretty certainly some of it is). And although it might be possible to criminalize some of what I've described above, the first order of business must be to have a candid discussion of academic misconduct. In writing the above, I have broken a taboo; I have spit in the eye of academia's 900 lb. gorilla. This taboo/gorilla is preventing criminologists (and others) from addressing the problem of ill-gained respectability among academics – and ill-gained respect is, surely, a major source of white collar criminality. I would hope that my having broken the taboo would precipitate a public conversation about academic morality. Criminologists' theories regarding the origins of white collar crime are, to my way of thinking, only slightly less evasive than stork-stories of where babies come from (stork-stories are designed to avoid discussion of adult sexuality; white collar crime theories[90] have the effect of avoiding discussions of academic misconduct). The first order of business is to look critically at the fallacies underlying academic respectability. The first order of business is to confront respectable knavery.

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[88] This amazing phrase honors Mrs. Pardiggle of Dickens' *Bleak House* (chapter 8).
[89] This incident came to be the basis for my brief article, "Should Ethnomusicology be Abolished (Reprise)," published in *Ethnomusicology* 41/2, 1997, pp. 243-59.
[90] Readings that I have consulted include Travis Hirschi and Michael Gottfriedson, "Causes of White Collar Crime" (*Criminology* 25/4, 1987), Darrell Steffensmeier, "On the Causes of White Collar Crime" (*Criminology* 27/2, 1989), Stanton Wheeler, "The Problem of White Collar Crime Motivation," (in *White Collar Crime Reconsidered,* 1992); Martin Needleman and Carolyn Needleman, "Organizational Crime: Two Models of Criminogenesis" (*The Sociological Quarterly* 20/4, 1979) Edwin Sutherland, *White Collar Crime* (1949) etc.

Knavery? The word seems hopelessly antiquated, but the phenomenon is timeless. And perhaps partly because of it antiquity, the word retains a moral bite considerably in excess of, say, "deviance." For its precise meaning, readers are invited to consult their OED, their Merriam-Webster, or their American Heritage Dictionary. For my part, however, I will invoke Shakespeare, in this brief exchange between Swallow (a country justice) and Davy (his servant) --

Davy: I beseech you, sir, to countenance William Visor of Woncot against Clement Perkes o' the hill.

Shallow: There is many complaints, Davy, against that Visor. That Visor is an arrant knave, on my knowledge.

Davy: I grant your Worship that he is a knave, sir; but yet, God forbid, sir, but a knave should have some countenance at his friend's request. An honest man, sir, is able to speak for himself, when a knave is not. I have served your Worship truly, sir, this eight years; and if I cannot once or twice in a quarter bear out a knave against an honest man, I have but a very little credit with your Worship. The knave is mine honest friend, sir; therefore, I beseech your worship, let him be countenanced.

Shallow: Go to; I say he shall have no wrong. (*Henry IV part II,* Act V)

I submit this passage as depicting the essence of not only judicial misconduct, but also academic misconduct. And I submit Davy's jarring candor as the obligatory starting point for anyone who wants to understand the secrecy surrounding the 2004 trial of Brown University. *An honest man, sir, is able to speak for himself, when a knave is not.* The secrecy surrounding the 2004 trial of Brown University was maintained for the unhappy reason that elite academics at and around Brown University were unable to speak for themselves, unwilling to answer questions that had been certified and legitimized by the federal court.

This, too, needs to be said twice. A year earlier, Brown's lawyers had moved for summary judgment, but the motion had been denied. A few months before the trial began, the court had ruled that

> Plaintiff has made a substantial showing that the reasons given by Brown for not renewing his contract were false... There is evidence in the record which would permit a rational factfinder to conclude that Brown retaliated against Plaintiff... The court finds that there are specific facts in the record which would allow the factfinder to infer that Brown's reasons for initiating the investigation and issuing the letter of reprimand [for alleged sexual harassment] were pretext for retaliatory motive.[91]

It was on the basis of such findings that the federal court had sent the case to trial. Brown had lost its traditional right to academic confidentiality. "We the people" now had a legal right to see those "specific facts in the record." Herein lies the legal (criminal?) significance of the secrecy surrounding the trial. The ruse-reporting at *The Brown Daily Herald* was a willful usurpation of the public's right to know. This was no less a "cover-up" than the famous cover-ups surrounding the Watergate and Enron scandals, and in all likelihood, it was no less illegal. Of course, in American political discourse, it is commonplace to note that cover-ups generally make bad situations worse; Watergate was particularly notable in this respect, but the same conclusion is often drawn regarding Enron, Iran-Contra, Bill Clinton/Monica Lewinsky, etc. Unlike those cover-ups, however, Brown University's was *a cover up that worked*. One inference, here, is that academics are more effective than politicians and business executives at covering up fraud. If so, this may be partly because white collar criminology has become something of a game in which respectable and high-status people holding the Ph.D. collectively demonstrate their moral superiority over high-status individuals who hold nothing more than a lousy M.B.A. worth a few hundred million dollars. For so does it seem to me. Criminologists claim to be concerned

[91] These statements are taken from page 7 and page 42 of the 44-page Report and Recommendation written by Magistrate Judge David L. Martin, September 30, 2003.

with the origins of white collar crime, and yet they maintain a telling silence regarding its most obvious origin: academic knavery. *Thy silence voices thee*, as Ahab said to Starbuck.

WIDENING THE CRIMINOLOGICAL GAZE

A recent paper by David Friedrichs[92] make an impassioned case for broadening criminology's net, so as to now include a phenomenon heretofore not included in the domain of criminology – exorbitant remuneration of corporate CEOs. Friedrichs believes this should be criminalized -

> Walking into a bank with a gun and demanding money from a teller is one way to steal money. Walking into a corporate boardroom and securing from that board's compensation committee, made up of cronies, consultants, and even relatives, millions – sometimes tens of millions or hundreds of millions – is another way to steal money. The principal differences are that the second way of stealing money pays much better, is all too often legal, and does not result in criminal prosecution and imprisonment....

For Friedrichs, a first-principle in the study of white collar crime is that it should not be limited to acts which <u>are</u> crimes, but should extend also to act that <u>ought to be</u> crimes: "The whole history of white collar crime scholarship within criminology," says Friedrichs, "has been one of not simply analyzing the nature of acts that are in violation of the criminal law, but also ... actions that ought to be violations of the criminal law, even when they are not." (p. 69) This is well said, but it may be that in a democracy, the tentacles of criminal law can never be made to extend as far as the shadows of moral opprobrium; it may be quixotic of Friedrichs to harbor such hopes. For example: Friedrichs in the above excerpt tells us that his hypothetical robber-CEO has cronies and relatives on the board of the corporation that is about to be relieved of hundreds of millions; to me it seems whimsical beyond reason to think that any executive so powerfully situated would lack kith or kin in the Senate Banking Committee, the House Ways and

Means Committee, the Department of Justice, or the FEC. It may be whimsical beyond reason, in other words, for Friedrichs to think that he might get past first base in an attempt to criminalize exorbitant CEO remuneration. Friedrichs seems to be advocating a thrilling but fantastic development (criminalizing exorbitant remuneration) in spite of the fact that scholars of white collar crime are doing almost nothing about academic knavery – something that would be much closer at hand, something that would not entail arm-wrestling with K Street lobbyists, congressional aides and their bosses, polling data on public opinion, and the like. For me, Friedrichs' argument raises the question of whether criminologists aren't banging their fists on the table in excoriating a bunch of M.B.A.s in order to divert our moral gaze from knavery among Ph.D.s. Or maybe Friedrichs is "preaching to the choir." I myself would cheerfully sing in that choir: I have precious little sympathy for robber-CEOs, but it seems to me that a more immediate problem is the unwillingness of white collar crime scholarship to confront a sociologically prior problem: respectable academic knavery.

It was half a century ago that William Douglass wrote that the US Constitution has "penumbras,"[93] and if I might now combine Justice Douglass' metaphor with my own, it seems to me that white collar crime, also, has "penumbras," and that the penumbras of white collar crime – cultural regions where harmful-wrongful behavior is legally ambiguous – are heavily populated with 900 lb. gorillas: self-appointed guardians of ill-gotten social respectability, gorilla-guardians who take it upon themselves to make damn sure there is no public discussion of this stuff. It has been my goal in this essay to throw a bit of light onto one such penumbra: academia. My present essay, no less than Friedrichs', is an attempt to widen the criminological gaze. Mine, however, is not aimed at criminalizing a form of harmful behavior but at urging criminologists and others to confront academic knavery for what it surely is – a causal factor in white collar crime. The Ethnomusicology Racket is presently disseminating, among persons of

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[92] David O. Friedrichs, "Exorbitant CEO Compensation: just reward or grand theft?" *Crime, Law, and Social Change*, vol. 51 #1, (2009).
[93] *Griswold v. Connecticut*, 385 US 479 (1965)

respectability and high social status, an attitude of knavery that, in a juridical context, might be identified as *mens rea*. This is an issue that should not be ignored.

A new essay by Lynn Stout[94] approaches the issue of corrupt and excessive remuneration from an angle quite different from Friedrichs'. Prof. Stout is concerned with the criminogenic nature of what she calls *ex ante* contracts: corporate employment contracts that, instead of stating a fixed annual salary for a given person, stipulate in advance how much this person will be paid *if specified production goals are, subsequently, met* – presumably because of the individual's successful job-performance. Stout's argument begins with the observation that such "incentives tempt[] employees to succumb to opportunistic or even illegal behavior,"[95] that these so-called "pay for performance" contracts are often rather easily defrauded (e.g., enormous remuneration resulted even in cases where the apparent success of an individual's job-performance proved illusory). "Pay for performance schemes... create criminogenic environments that first tempt honest individuals into unethical or illegal behavior and then invite them to adopt looser views of what is unethical or illegal,"[96] observes Stout. Her remedy is, to me, a surprising one: rather than giving prosecutors more and more statutory weapons with which to arrest and punish such miscreants, Stout would urge corporations, employers, *and the law* to institute policies that encourage and nurture conscientious behavior.

For my part, I would emphasize the fact that when Stout refers to "environments in which conscience may be suppressed or snuffed out,"[97] she is referring to corporate employment environments, and not to academia. In this respect, Stout is reproducing Edwin Sutherland's assumption that new college graduates are generally idealistic – that their conscience hasn't already been "suppressed or snuffed out" through academic knavery. Sutherland, let's remember, had been

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[94] Lynn Stout, "Killing Conscience: The Unintended Behavioral Consequences of 'Pay for Performance,'" forthcoming 2014, *Journal of Corporation Law*. (http://www.law.leeds.ac.uk/assets/files/research/cblp/conf-jan13/killing-conscience.pdf)
[95] "Killing Conscience, " p. 1
[96] "Killing Conscience," p. 26
[97] "Killing Conscience," p. 2

quite explicit on this matter. "As a part of the process of learning practical business," Sutherland wrote, "a young man with idealism and thoughtfulness for others is inducted into white collar crime."[98]. Indeed, Sutherland's archetypical white collar criminal tells us, "When I graduated from college I had plenty of ideals about honesty... [but when I got a job] they told me to forget the things I had learned in school, and that you couldn't earn a pile of money by being strictly honest"[99]. Respectfully, I submit that the stereotype of an idealistic college graduate whose conscience is snuffed out by ruthless business executives is an insidiously self-serving delusion on the part of academics. For notwithstanding the oft-heard quip that white collar criminals "look like us," the Stout-Sutherland assumption (college graduates are generally idealistic, but corporate avarice is killing their conscience) is, in the last analysis, collective-defensive social distancing (*they* might "look like" *us*, but "we" don't condone that sort of thing). I think such a belief is dangerous, and I submit my above presentation as evidence.

On the other hand, I would also submit this brief word of deference. It is hardly my intent, in raising this issue, to assert a parallel with the Sermon on the Mount. I am <u>not</u> identifying academic knavery with "the beam that is in thine own eye" (*Matthew* 7:3-5), for the simple reason that I cannot justify an image of billions of swindled corporate dollars as a "mote." The legendary words of Everett Dirksen ("a billion here, a billion there...") lose none of their bite for being linked with criminal activity: big-money corporate crime is serious business, and it may well be more serious than academic knavery. But unless there is to be at least some criminological accounting for academic knavery, it does seem to me that there is an aura of bravado surrounding the eye-popping dollar figures that criminologists love to print in their reports of white collar crime. For if it's true that business executives fight dirty because the stakes are so high, then it's also true that college professors fight dirty because the stakes are so low. That's an old joke, but it holds a serious lesson for those who would understand the origins of white collar criminality.

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[98] Sutherland, Edwin, *White Collar Crime, The Uncut Version*, 1983, Yale University Press, p. 245

I was already well-begun work on this essay before I first encountered Stuart P. Green's important book, *Lying, Cheating, and Stealing*,[100] but that is not the reason that I have reserved reference to it for the conclusion of my essay. *Lying, Cheating, and Stealing* is not only an unflinching appeal to moral theory; it posits moral theory as little less than the redemption of white collar criminology, a topic that Green find riddled with epistemological holes. Regarding the notion of white collar crime, Green warns his readers that

> Its ideological overtones are significant and, in the pursuit of objective and scientific analysis, unforgivable. And although it was coined only 60 years ago, the point at which all parties might agree on a definition has long since passes. ¶ In light of all these problems, is there any justification for the term's continued use?[101]

A few paragraphs later, however, Green relents, saying, "I believe it would be a mistake to give up on the term entirely." On the other hand, he rather pointedly declines to *define* "white collar crime." Indeed, his opening contention is that white collar crime isn't "susceptible to definition through a precise set of necessary and sufficient conditions." Instead, he presents white collar crime as "a category of criminal offenses that reflects some particular group of legal and moral characteristics," as "a set of offenses connected by what philosophers call family resemblances."[102] He then gives us his catalogue (but beware: "I make no claim to exhaustiveness"[103]) of nine offenses that for him comprise the substantive core of white collar crime – perjury, fraud, false statements, obstruction of justice, bribery, extortion-blackmail, insider trading, tax evasion, and regulatory offenses – in each case presenting a descriptive-comparative analysis of the moral wrongfulness and harmfulness at issue.

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[99] Ibid., pp. 240, 241
[100] Stuart P. Green, *Lying, Cheating, and Stealing: A Moral Theory of White Collar Crime*. Oxford University Press, 2006.
[101] Green, *Lying, Cheating, and Stealing*, p. 18
[102] In this passage I have first "cut and pasted," then rearranged, Green's words on pages 15 and 18.
[103] *Lying, Cheating, and Stealing*, p. 19

Green's focus on moral theory, along with his appeal to "family resemblances," turned an important corner in my thinking, for it provides a useful perspective from which I would like to view academic knavery. Particularly relevant are Green's remarks on fraud:

> Under American federal law... there are now dozens of statutory provisions that criminalize offenses such as mail fraud, wire fraud, bank fraud, health care fraud, tax fraud, computer fraud, securities fraud, bankruptcy fraud... ¶ Fraudsters use means of mass communication and commerce—television and radio, the Internet, and the mail—to perpetuate frauds that are capable of causing widespread, aggregative harms. Such offenders are often privileged, highly compensated, ostensibly respectable citizens who are perceived as (and may in fact be) providing valuable goods and services, increasing stock-value, and creating employment opportunities. They commit such frauds in the context of complex business activities, such as securities offerings, health care financing, and bank transactions. Such activity can be hard to distinguish not only from civil frauds (in terms of their elements, the two offenses are virtually indistinguishable), but also from lawful, if aggressive, business activity— 'creative accounting,' 'puffing,' 'sharp dealing,' 'seller's talk,' and the like. ¶ The victims of fraud can also be hard to identify. In addition to its immediate targets, fraud also causes (more remote) harms to less easily identifiable victims, including consumers and taxpayers. More generally, it can result in a loss of confidence in the system of free and fair enterprise... In light of such characteristics, fraud is appropriately classified as a white-collar offense.[104]

Why is it not so, I ask, when similar fraud takes place within the ivory tower? It quacks like a duck and swims like a duck, so what is one to make of Green's notion of family resemblances? But perhaps I should back up a bit.

Corporate capitalism is engaged in the production of goods and services – consumer "widgets," financial "instruments," call them what you will – and fraud in these industrial sectors can causes sufficient public harm as to impel

legislatures and courts to establish systems of legal and preventive retribution. Academia is no less engaged in production – it's not production of widgets or financial instruments, but it's production all the same. Academia is engaged in the production of understanding, of knowledge, and of values, including moral values. Not only does academic productivity bear a "family resemblance" with industrial productivity (each is characterized by a highly regimented division of labor: a mode of production), but the moral wrongs Green identifies for corporate fraud (dishonesty and deception) are more than a little bit similar with the moral wrongs (deception and dishonesty) to be found in academic fraud. One important difference is the extent to which in academia, dishonesty and deception are themselves products. But by far the most important difference is the taboo that prohibits discussion of academic fraud, the fearsome mystification that has been wrapped around academic respectability.

Notwithstanding my enthusiasm for Green's focus on moral norms, I do find myself in occasional disagreement with specific moral positions he takes. I do not agree with Green, for example, when he says that lying is in principle a more serious wrong than "merely misleading." I do not believe that an act of deception that includes a lie is in principle more wrongful than deception that doesn't include a lie. Green asserts that a principle of *caveat auditor* applies to misleading communications but not to lies. As Green explains, this is the moral principle underlying the crime of perjury: a misleading statement cannot constitute grounds for conviction of perjury unless it is a lie, and Green claims that this moral differential applies more generally. I do not agree.

As counter-example, I again invoke Iago. Consider this exchange –

> *Othello:* Was not that Cassio parted from my wife?
>
> *Iago*: Cassio, my lord! No, sure, I cannot think it,
> That he would steal away so guilty-like
> Seeing you coming.

Iago is "working on" Othello here. Iago has quickly realized that it was indeed Cassio, but wants to let Othello find this out for himself. Iago is making sure that

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[104] *Lying, Cheating, and Stealing*, pp. 152f.

in a few moments, when Othello ascertains that it really was Cassio, he will have ascertained for himself the identity of someone who "would steal away so guilty-like." If Iago had told an overt lie ("Cassio just had sex with your wife and ran when he saw us coming") it would have weakened his deceitful ploy, and might have let the cat out of the bag altogether. Iago is up to something much worse than mere lying.

Perhaps Jeff Titon is not quite so shifty as Iago, but I believe his dishonest innuendo in *Shadows in the Field* was the more immoral, not less, for having been deceptive without being a lie. Titon's slur wasn't "merely misleading." Similarly, I believe that the 2004 ruse-reporting by *The Brown Daily Herald* was the more immoral, not the less, by virtue of its having misled the public without telling lies. Indeed, I am at least mildly discomfited by Green's notion of "merely misleading," a notion which plays a rather prominent part in his argument. Deception, it seems to me, can never be "mere" — the essence of deception is to in fact be other than it appears to be. Deception, necessarily, is complex activity, especially when the deception involves highly complex collective action, as was the case in the cover-up of the 2004 trial. In short, while I am in fervent agreement with Green's proposition that moral theory is necessary in order to provide a reliable underpinning for white collar criminology, I believe that such a moral theory must at least attend to – if not be centered on – the dishonesty in elite academia that is not only collective-pervasive but also does not depend on lying. Academia, after all, is the sector of culture in which morals are taught and learned by persons of high status and respectability. The problem is that contending with collective dishonesty will require the cultivating of conscience and the exercise of courage – enough courage to spit into the eye of the 900 pound gorilla that is respectability. As of the present, Ahab's boast is still pertinent: Thy silence voices thee.

In her 2011 book, *Cultivating Conscience,*[105] Stout actually argues that the cultivation of conscience should be included among the missions of law, that the

[105] Stout, Lynn, *Cultivating Conscience: How Good Laws Make Good People*, Princeton University Press, 2011

law should be more focused on encouraging good behavior and less exclusively on punishing bad behavior (i.e., more "carrot" and less "stick"). She argues that the classic premise that law should be focused solely on "the bad man" is misguided.[106]

> The law plays an important role in promoting... unselfishness, not only by creating incentives, but also by signaling what conduct is appropriate and expected... modern societies rely not only on formal law, but also on complex webs of nonlegal rules, including workplace rules; religious rules; ethical rules... we may put rules to work best when we put them to work in tandem with conscience.[107]

It's a startling and fascinating thesis, even if I am inclined to wonder if it isn't even more quixotic than Friedrichs' hope of criminalizing exorbitant CEO remuneration. In any event, this irony strikes me as exquisite: here we have an Ivy League academic (Stout is presently on the faculty at one Ivy League university, having been educated at a different Ivy League university) who is calling for an augmented collective reliance on conscience – *not within academia, but only in the institutions of criminal law*. To be sure, Stout apparently has no association with Brown University, and it may be that she has no direct experience of The Ethnomusicology Racket. I am certain, however, that neither Brown University nor The Ethnomusicology Racket defines the outer limits of academic knavery, nor do they confine the academic dissemination of such elitist attitudes as those that so inauspiciously link conscience with naiveté, foolhardiness, or, perhaps worst of all, mediocrity. Stout's analysis draws heavily on game theory research showing that "real people" spontaneously-voluntarily behave in socially appropriate ways (i.e., they DON'T generally behave in selfish, anti-social ways unless fearful of punishment for misbehavior). Stout's argument is that, in light of such research, a legal system oriented almost exclusively toward retribution for criminals (such as obtains, presently, in USA) is myopic. It's a

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[106] On this matter, Stout identifies a *bete noir* in the person of Oliver Wendell Holmes, Jr. Her interpretation of his classic 1897 paper, "The Path of Law," strikes me as somewhat peevish, but the central thrust of her work is, to my way of thinking, visionary.
[107] *Cultivating Conscience*, p. 327

fascinating and portentous argument. I suspect, however, that if there were to be additional behavioral research controlling for differentials in educational advancement, the findings might well indicate an inverse relation between advanced education and the cooperative, "prosocial," behavior that has so exercised Stout. For so, at least, does it seem to me. Stout's analysis is understandably silent on this matter, but it is hard to believe that conscience would be less efficacious in the context of higher education than it might be in the context of the criminal law. And make no mistake: legal retribution is hardly humankind's only device for effecting a fall from respectability (recall, for example, the stunning scene at the end of *Dangerous Liaisons*, where the Marquise de Merteuil (Glernn Close) is brought down by nothing more official than a swell of catcalls from the audience at the opera). It is not impossible to insist on human decency as a requisite for social respectability, even without the sanctions of the law. It is likely, however, to require substantial courage, and to require the exercise of a robust conscience. Here again rises the shadow of Herman Melville's Starbuck, whose courage in confronting a mighty leviathan did not translate to courage in confronting the evil Ahab. In the end it may be easier not only to get the famously dysfunctional US Congress to follow Friedrichs' exhortation and enact laws prohibiting exorbitant remuneration for corrupt corporate CEOs[108] – indeed, easier to get Congress to follow Stout's exhortation to, well, to fundamentally revise the philosophy underlying the American legal system of retributive justice – than to get a committee of social scientists and academic humanist to engage in a robust critique of contemporary academic morality. Perhaps it is I who is quixotic – but it is my hope that a robust conversation such as this will not forever be the object of a mightily-enforced taboo.

A PERSONAL POSTSCRIPT

[108] As of this writing, there is one bill before the US Senate (S. 1476, the "Stop Subsidizing Multi-Million Dollar Corporate Bonuses Act") that is addressed to excessive corporate remuneration. This bill would eliminate a tax exemption for performance-based remuneration, but would not criminalize it. The bill has few sponsors (no Republicans), and has been given no action in the Senate. See "Report shows taxpayers are supporting CEO bonuses," *Public Citizen*, November-December 2013, p. 14.

I still have in my possession a hand-written letter from Jeff Titon, dated 8/23/93, in which he says, among other things, "I look forward to your friendship and collegiality." He wrote this letter on the day when I learned that I was not to be reinstated to active duty following my post-surgery period of medical leave. The letter affected to be friendly and supportive, although it includes several jarring mis-statements, such as "the provost had decided not to offer you a contract," and "you won't be joining us as an assistant professor this fall." Now, Jeff was a senior academic with much administrative savvy: he knew that I already held a contract as assistant professor. In his letter he went on to say that "the department wants to give you Visiting Scholar status, so that you can use the libraries..." Jeff also knew that my library privileges had not been affected by the recent decision. Pretty certainly, Jeff's letter was part of a bizarre plot to deceitfully entice me into acquiescing to the nullification of my contract, enabling the music department to hire an additional faculty member while relegating my remuneration to Social Security disability insurance. This, of course, would entail medical fraud at various points, something that might be fairly easy to demonstrate through a few well-appointed depositions.[109]

The prominence of Jeff Titon's extraordinary friendliness throws into relief the fact that not one of my friends attended the federal trial of Brown University in 2004. The aftermath of my experience on the faculty at Brown has been one of an incomprehensible degradation of my own personal friendships, an ostracism that beggars verbal description. I might invoke the memory of *On the Waterfront*, the classic film where, under peril of death, everyone was required to be "d & d" (deaf & dumb) in order to protect the murderous gangster known as Johnny Friendly. "My friends don't wanna talk to me," says Terry (Marlon Brando), after he's given testimony against Johnny Friendly. "Are you sure they're your friends?," answers Edie (Eva Marie Saint). Or I might say, simply, that since initiating my litigation I have become socially radioactive. It is clear to me that a spirit of intimidation – an intellectual carcinoma of no small portent –

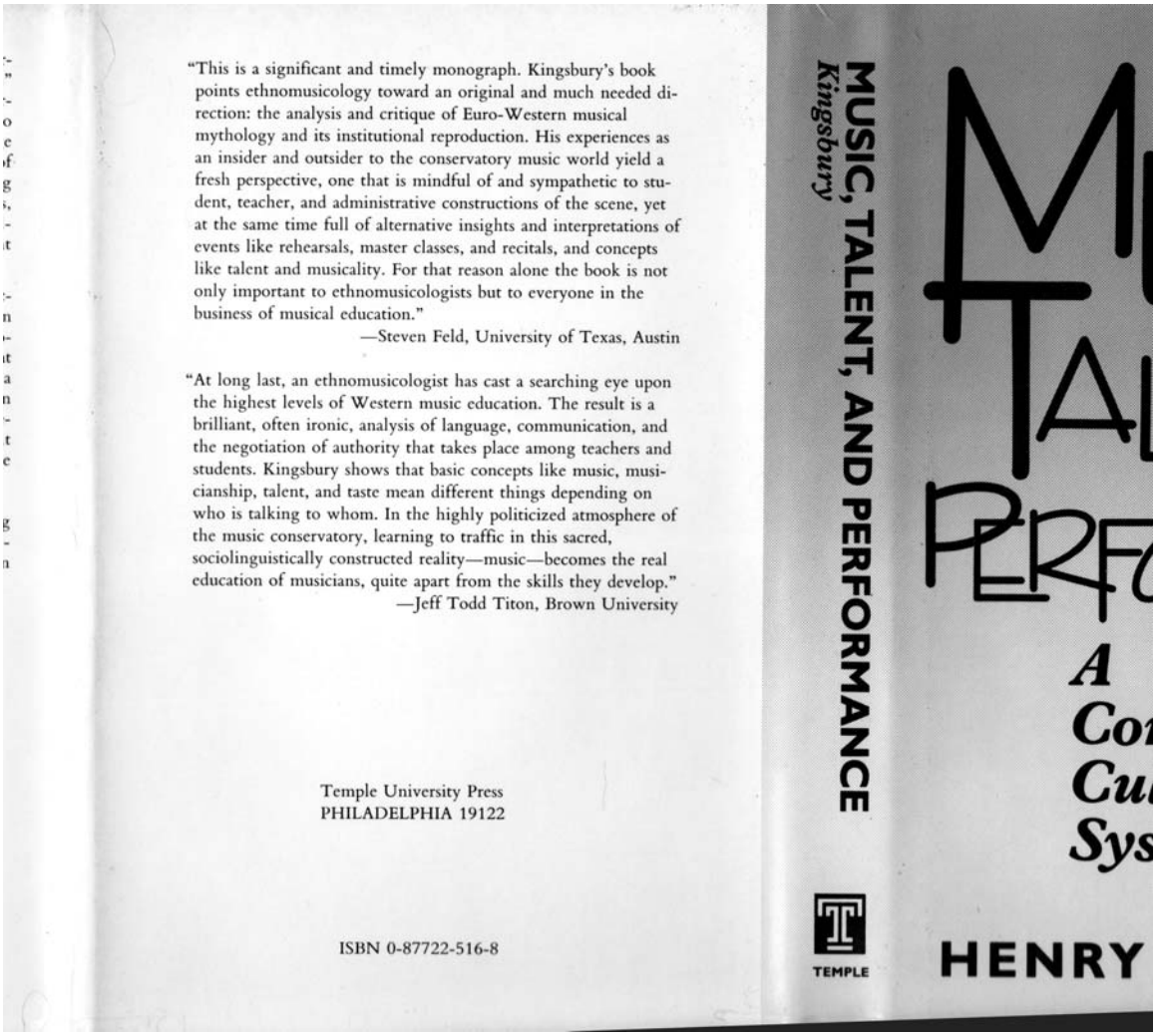
[109] A deposition of Brown's then-Provost Frank Rothman regarding his alleged phone 1993 conversation with neuro-oncologist Dr. Michael Glantz, and a deposition of Dr. Glantz himself (now practicing in Bennington, VT), would provide some lurid information on this matter.

rules over The Ethnomusicology Racket. After my experience as a colleague of Jeff Todd Titon, I no longer understand the significance of true friendship, although I do believe that my friendships could resume normalcy if there were to be an exposé of the circumstances surrounding the preternatural secrecy of the 2004 trial of Brown University. I have been writing about these things for well over a decade, with no public results that I know of. At the risk of sounding like the canary in the coal mine that cried wolf, I think this is a pretty important issue. Maybe even a matter of national security.

*

APPENDIX

Part of the book-jacket for the 1988 printing of *Music, Talent, and Performance*, showing the endorsements from Steven Feld and Jeff Titon.



"This is a significant and timely monograph. Kingsbury's book points ethnomusicology toward an original and much needed direction: the analysis and critique of Euro-Western musical mythology and its institutional reproduction. His experiences as an insider and outsider to the conservatory music world yield a fresh perspective, one that is mindful of and sympathetic to student, teacher, and administrative constructions of the scene, yet at the same time full of alternative insights and interpretations of events like rehearsals, master classes, and recitals, and concepts like talent and musicality. For that reason alone the book is not only important to ethnomusicologists but to everyone in the business of musical education."

—Steven Feld, University of Texas, Austin

"At long last, an ethnomusicologist has cast a searching eye upon the highest levels of Western music education. The result is a brilliant, often ironic, analysis of language, communication, and the negotiation of authority that takes place among teachers and students. Kingsbury shows that basic concepts like music, musicianship, talent, and taste mean different things depending on who is talking to whom. In the highly politicized atmosphere of the music conservatory, learning to traffic in this sacred, sociolinguistically constructed reality—music—becomes the real education of musicians, quite apart from the skills they develop."

—Jeff Todd Titon, Brown University

Temple University Press
PHILADELPHIA 19122

ISBN 0-87722-516-8

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