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## Notes on *Minority Report*

### I. Bennett Capers\*

When I was first invited to participate in this symposium, *Legal Outsiders in American Film*, I initially thought of myself. I thought maybe I would be the outsider among the contributors. I have never taken a law and film course, let alone taught one. I certainly do not claim to have a background in film studies, unless having an unlimited plan with Netflix and occasionally frequenting art houses count. And although I have written in related interdisciplinary fields—law and literature,<sup>1</sup> and law and the visual arts<sup>2</sup>—I have not written directly about law and film.

The more I thought of the issue presented by this symposium, the more confident I felt that I had something unique to contribute. After all, although I have never taught law and film, I routinely use film as a pedagogical tool. When I teach criminal law, for example, I use film and television clips to illustrate criminal law concepts, to problematize those concepts, and even to raise larger issues about justice. And my criminal procedure students will attest to the fact that knowing every episode of *The Shield* and *The Wire* comes in handy in class. My Evidence course, thanks to the casebook I use, comes with its very own DVD of useful film clips.<sup>3</sup> Even in my Race and the Law class, I find myself turning to film again and again to illustrate how race is socially constructed and maintained.

In addition, as a former prosecutor, I have firsthand experience with using film as a predictive tool. Prior to any jury trial, I would invariably include in my proposed voir dire questions something along the following lines: “What are some of your favorite television shows and/or movies?” Fans of the television show *24* were, in my mind, good jurors for the prosecution. Fans of the film *The Fugitive*, in which Harrison Ford plays someone wrongfully convicted, were not.

Lastly, although I do not have a background in film studies, I am acutely

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\* Visiting Associate Professor, Fordham Law School (2008-2009); Associate Professor of Law, Hofstra University School of Law; Assistant U.S. Attorney, Southern District of New York (1995-2004); B.A., Princeton University; J.D., Columbia Law School. E-mail: capers@law.fordham.edu.

1. I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9 (2006); I. Bennett Capers, *The Trial of Bigger Thomas: Race, Gender, and Trespass*, 31 N.Y.U. REV. L. & SOC. CHANGE 1 (2006).

2. I. Bennett Capers, *On Andy Warhol's Electric Chair*, 94 CAL. L. REV. 243 (2006); I. Bennett Capers, *On Justitia, Race, Gender, and Blindness*, 12 MICH. J. RACE & L. 203 (2006); I. Bennett Capers, *Flags*, 48 HOW. L.J. 121 (2004).

3. GEORGE FISHER, EVIDENCE (2d ed. 2008).

aware of the work that film does. The film theorist Saul Morson has observed that film casts a “sideshadow” on reality, projecting onto the screen an alternative reality.<sup>4</sup> Film thus functions as a reminder that

[a]lternatives always abound, and, more often than not, what exists need not have existed . . . . Instead of casting a foreshadow from the future, [the medium of film] casts a shadow “from the side,” that is, from other possibilities . . . . Sideshadows conjure [a] ghostly presence . . . [in which] the actual and the possible . . . are made simultaneously visible . . . . [A] present moment subject to sideshadowing ceases to be Ptolemaic, the unchallenged center of things. It moves instead into a Copernican universe: as there are many planets, so there are many potential presents for each one actualized.<sup>5</sup>

Or as Austin Sarat puts it in his reading of Morson, “The moving image attunes us to the ‘might-have-beens’ that have shaped our worlds and the ‘might-bes’ against which those worlds can be judged and toward which they might be pointed.”<sup>6</sup>

Morson is right, of course, but I want to suggest another effect that seems to be in play when it comes to law and order films, whether it be Film Noir, one of the many cop-buddy television shows or movies (*Cagney & Lacey*, *Starsky & Hutch*, *Miami Vice*, *Rush Hour*, *Lethal Weapon*, the list seems interminable), or more recent dramas like *The Wire*. The effect I want to suggest is a type of de-shadowing. There is the justice administered by the courts. There is also the justice that the courts imagine they are regulating. The moving image brings out of the shadows justice as it actually exists. I can think of no better illustration of this than the justice the courts imagine they are regulating via the Bill of Rights, our de facto “code of criminal procedure.”<sup>7</sup>

For example, in *Terry v. Ohio*,<sup>8</sup> the Supreme Court interpreted the Fourth Amendment as permitting the police to conduct a limited detention and questioning of an individual (short of an arrest, which requires probable cause) so long as the officer has specific and articulable facts—i.e., reasonable suspicion—to believe that “criminal activity may be afoot.”<sup>9</sup> The Court further held that if the officer also has reasonable suspicion that a person is armed and dangerous, the officer could couple the limited detention and questioning with a

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4. GARY SAUL MORSON, NARRATIVE AND FREEDOM: THE SHADOWS OF TIME 117-72 (1994). That films have a pedagogical function cannot be overstated. For example, when I teach Evidence, students are often surprised by how many rules of evidence they already know, merely from watching television and film.

5. *Id.* at 118.

6. Austin Sarat et al., *On Film and Law: Broadening the Focus*, in LAW ON THE SCREEN 2 (Austin Sarat et al. eds., 2005).

7. See generally Henry J. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 CAL. L. REV. 929 (1965).

8. 392 U.S. 1 (1968).

9. *Id.* at 30.

pat down for weapons: in common parlance, a stop and frisk.<sup>10</sup> In short, officers are free to stop and frisk individuals, but only if they first have specific facts to believe that the individual is engaged in criminal activity and is armed.<sup>11</sup> This is all fine and good, except no one really believes that this is how the police typically operate on the street, especially in poor, minority communities, where “*Hey, you, come here*” and stop and frisks seem to be the order of the day. Similarly, under *Terry*, an officer with reasonable suspicion that a person is armed and dangerous can frisk a person for weapons, but not for drugs.<sup>12</sup> Except we know that officers frisk individuals for drugs all the time.

Here’s another: in *Miranda v. Arizona*,<sup>13</sup> the Court interpreted the Fifth Amendment as requiring officers to advise suspects of certain rights before engaging in custodial interrogation, and in *Edwards v. Arizona*,<sup>14</sup> made clear that once a suspect invokes his right to consult with counsel, all questioning must cease “until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.”<sup>15</sup> The Court’s rationale for adopting this bright-line rule was straightforward: “to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights.”<sup>16</sup> But none of us seriously thinks that *Edwards v. Arizona* has prevented the police from continuing to question suspects. The carrots are too plentiful. The sticks are too paltry. In short, there

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10. *Id.* In fact, Chief Justice Warren’s majority opinion paid only cursory attention to the authority of officers to engage in stops. *See id.* at 22. Rather, the crux of the Court’s opinion dealt with the authority of officers to engage in frisks. The Court adopted the following standard for frisks where probable cause is lacking:

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

*Id.* at 27 (citation omitted).

11. *See id.* at 30.

12. *See Terry*, 392 U.S. at 30. What the Fourth Amendment does allow, at least as interpreted by the Court, is the seizure of contraband detected during a pat down for weapons, if the nature of the item as contraband is immediately apparent by touch. *Minnesota v. Dickerson*, 508 U.S. 366, 379 (1993) (seizure of cocaine during *Terry* pat down violated the Fourth Amendment where nature of item as contraband was not apparent solely from touch).

13. 384 U.S. 436 (1966).

14. 451 U.S. 477 (1981).

15. *See Miranda*, 384 U.S. at 471; *Edwards*, 451 U.S. at 484-85.

16. *Michigan v. Harvey*, 494 U.S. 344, 350 (1990).

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is the world of justice as imagined by the courts, and then there is the world of justice as it exists on the ground.

Law and order films are rarely fooled by the justice that the courts imagine is happening just outside their hallowed halls. Rather, law and order films tend to shed light on the world of justice that exists in fact. This is what I mean by a de-shadowing effect, because film brings into the open how the criminal justice system actually operates, and it makes for interesting conversation when I teach criminal procedure. We talk about justice as articulated by the Court. And then we talk about a scene everyone saw on *The Wire*, or *The Shield*, the night before. Lastly, we talk about personal interactions with the police. Even my students, almost all white, almost all privileged, see the disconnect between the law as envisioned by the courts, and the law as enacted in practice. They see that their experiences are more accurately reflected in film than in our casebook.<sup>17</sup> They also know that their own experiences often pale in comparison to the experiences of minorities and other outgroups, other *outsiders*. This, in part, is what film does.

## II.

The film I want to focus on, to zoom in on, is Stephen Spielberg's *Minority Report*.<sup>18</sup> The story, though interspersed with complications, is at bottom a simple one, and is set up by the opening sequence. The year is 2054, the place is Washington, D.C., and homicides have been eliminated because of the "precogs," three siblings not only capable of seeing homicides before they actually happen but also communicating their visions to the District of Columbia police authorities. Their visions, which come to them in a dreamlike state and have all the disjunctions and distortions of regular dreams, are projected onto a screen—much the same way films are projected onto screens—thus allowing the police to arrest the would-be perpetrator before the homicide actually takes place. In other words, the police can make a preemptive arrest. Although the narrative features several conflicts, ranging from the personal<sup>19</sup> to the national, two major conflicts propel the story forward. The first can be categorized as a background conflict, a pre-conflict that exists before the film begins. There is about to be a referendum on whether to take the precog program national—for the moment it exists only in the District of Columbia. A conflict arises because the Department of Justice, represented by Colin Farrell's character, seems determined to prove that the

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17. This seems especially true when my students discuss their interactions with police during traffic stops near college campuses.

18. *MINORITY REPORT* (DreamWorks 2002).

19. The "back story" is that Chief Anderton feels responsible for the disappearance of his son. The disappearance has prompted a break-up with his wife and has motivated him to embrace Precrime. One of the many ways in which the film maintains suspense is by leaving open the possibility that the son is alive, will be found, and that Anderton and his wife will be reconciled.

precog system must be flawed in order to defeat the referendum.<sup>20</sup> In fact, Farrell's character, Witwer, the one lawyer in the film, functions as a type of legal outsider. He is the outsider to Precrime. Of course, being a lawyer, he is quickly killed off. The real conflict, the one that is triggered within the film itself, occurs because of two things that the "hero" of the film, Chief John Anderton, played by Tom Cruise, "sees." Anderton, the hotshot police chief, is the favorite of the Director of Precrime, and as police chief is in charge of viewing and interpreting the precog's visions<sup>21</sup>—much like the spectator must interpret the film's visions. One of the visions he sees early in the film is a vision of a woman being drowned in a lake. But it is a second vision, in which he sees himself committing premeditated murder, that really propels the narrative. According to the precogs, Anderton will commit premeditated murder in exactly thirty-six hours. The victim will be an individual named Leo Crow, whom Anderton has never met. In one fell swoop, Anderton, who at the start of the film is the quintessential insider, becomes the quintessential outsider. He is a fugitive wanted for a murder he has yet to commit, a hero on the lam.

This being a Spielberg film, *Minority Report* is thoroughly entertaining, filled with high-speed chase scenes, special effects, humorous asides, and a tidy enough resolution at the end. One could even characterize the film as merely pure entertainment. But *Minority Report* also raises a host of interesting issues of criminal law and morality. For starters, what does it mean to arrest someone for a crime they have yet to commit? This is an issue that criminal law continues to wrestle with. We don't arrest people for their thoughts alone (if we did we would all be in prison right now), but just where should our police powers come into play short of completion of a crime?

This is an issue Professor Robert Batey has explored specifically in the context of *Minority Report*.<sup>22</sup> As he observes, the common law employed a variety of tests to determine when to criminalize inchoate, or incomplete, crimes, but tended to focus on acts that suggested the defendant had reached a "point of no return."<sup>23</sup> The modern trend, spurred by the Model Penal Code,<sup>24</sup>

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20. The implication of this is interesting. The Department of Justice opposes Precrime almost entirely on the ground that the system is potentially flawed. This seems to suggest that society should prefer a criminal justice system in which the flaws abound and are well-known over a system in which the flaws are mere possibilities.

21. The film refers to the work the detectives do as "scrubbing the image." Interestingly, this parallels the work that film editors do.

22. See generally Robert Batey, *Minority Report and the Law of Attempt*, 1 OHIO ST. J. CRIM. L. 689 (2004).

23. *Id.* at 694 (quoting HERBERT PACKER, *THE LIMITS OF CRIMINAL SANCTIONS* 75 (1968)). Indeed, in his influential hornbook *Understanding Criminal Law*, Joshua Dressler identifies no less than six common law tests: the "last act" test, the "physical proximity" test, the "dangerous proximity" test, the "indispensable element" test, the "probable desistance" test, and the "unequivocality" test. See JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* § 27.06, at 425-30 (4th ed. 2006).

24. See MODEL PENAL CODE § 5.01 (2001).

is to allow the criminal law to intervene once an individual has committed a “substantial step” strongly corroborative of criminal intent, though what this means is left to the fact finder.<sup>25</sup> Instead of a bright line rule, we are left with a standard. This has its own problems, of course. What one jury might deem a “substantial step,” another jury might dismiss as mere preparation.<sup>26</sup> The Columbine massacre, I suspect, had the effect of immediately changing what decision-makers are willing to consider a substantial step in mass murder crimes. I suspect September 11, 2001, had the same effect.

*Minority Report* also raises the related issue of factual impossibility. After all, because the precogs see homicides before they occur, allowing the police to effectuate a preemptive arrest, the likelihood of someone actually completing a homicide is close to nil. Most jurisdictions do not recognize factual impossibility as a defense.<sup>27</sup> The reasoning, though not always stated, is that the happenstance of factual impossibility should not excuse an actor who demonstrates dangerousness and manifests criminality.<sup>28</sup> Still, the certainty of factual impossibility—and thus absence of true dangerousness—does raise the issue of whether the criminal justice system should punish factually impossible attempts less severely than other attempts.

There are Fourth Amendment issues within *Minority Report* as well. Washington, D.C. in 2054 is, after all, a surveillance state. Individuals are tracked via eye scans as they move about the city. Public spaces are surveillance spaces. But then again the same could be said of many cities today.<sup>29</sup> We currently permit such surveillance on the theory that individuals

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25. See Batey, *supra* note 22, at 694-97. This is not to suggest that the “substantial step” test is completely without boundaries. Applying the test, the police intervention that occurs in the opening scene—in which a husband is seconds away from stabbing his adulterous wife and her lover—is completely appropriate: the husband has formed the requisite intent to kill and has committed a substantial step in thrusting the knife at his victims. However, the police intervention that occurs when the police “attempt” to arrest Anderton for the future murder of Leo Crow, which Anderton is “predicted” to commit in about twenty-four hours seems inappropriate; Anderton then lacks any intent to commit homicide, and arguably has not taken any step, let alone a substantial step, toward commission of the crime. In between these two extremes of Anderton and the jealous husband is where application becomes difficult, and too often *unpredictable*, as the film makes clear. For example, upon learning that he is scheduled to commit murder, Anderton flees rather than risk apprehension. Is *that* a substantial step, because it “frees” him to commit the crime? While a fugitive, Anderton takes several steps to identify Leo Crow, his future murder victim. Is *that* a substantial step? He even goes to the building where he is predicted to commit the murder. Is *that* a substantial step? He then confronts Leo Crow. Is *that* a substantial step? This is to say nothing of the related issue of abandonment, which some jurisdictions recognize as a defense to an attempt crime. See DRESSLER, *supra* note 23, § 27.08.

26. Indeed, what a jury might deem mere preparation one day might be deemed a substantial step the next day.

27. See DRESSLER, *supra* note 23, § 27.07.

28. *Id.*

29. See, e.g., Gary Emerling, *District Will Be Looking at You: City Eyes Higher Use of Cameras*, WASH. TIMES, Mar. 16, 2006, at A1; Editorial, *Keeping Eyes on the City*, CHI. TRIB., Feb. 13, 2006, at 20; Charles Savage, *U.S. Doles out Millions for Street Cameras—Local Efforts Raise Privacy Alarms*, BOSTON GLOBE, Aug. 12, 2007, at 1A; Justin Rocket Silverman, *Thousands More Surveillance Cameras*, N.Y. NEWSDAY, Dec. 14, 2007, at A17; see also Christopher Slobogin, *Public Privacy: Camera Surveillance of Public Places and*

do not have a reasonable expectation of privacy, the sine qua non of a Fourth Amendment right, in information that they knowingly expose to the public<sup>30</sup> and also on the theory of consent. Thus, the expectation of privacy we theoretically enjoy behind closed doors, we lose in public spaces, at least in terms of items exposed to public view. In this respect, the surveillance state that exists in *Minority Report* is the surveillance state that current Fourth Amendment law already sanctions. But *Minority Report*, in a scene in which the police use thermal imaging to ascertain the number of individuals in a building and then release mechanical spiders to conduct retinal scans of those individuals in a search for John Anderton, does serve as a cautionary tale of sorts, exposing the steep declivity of a slippery slope. The scene recalls *Kyllo v. United States*,<sup>31</sup> in which the Supreme Court held that thermal imaging directed at a private residence amounted to a search and thus required a warrant supported by probable cause.<sup>32</sup> Except here, the technology seems to have been refined to survive constitutional scrutiny.<sup>33</sup> In *United States v. Jacobsen*,<sup>34</sup> the Court read the Fourth Amendment as protecting only legitimate activity and thus excluding from its ambit government conduct that could only reveal illegitimate activity.<sup>35</sup> In *United States v. Place*,<sup>36</sup> the Court assumed canine sniffs disclose “only the presence or absence of narcotics, a contraband item” and thus fell within this category.<sup>37</sup> Followed to the extreme, these cases would permit the very mechanical spiders that are used to such effect in *Minority Report*, assuming such spiders are only capable of “seeing” the eyes of, say, a fugitive. Nor is the Fifth Amendment’s privilege against self-incrimination implicated in the compelled retinal scans. In *Schmerber v. California*,<sup>38</sup> the Court read the privilege against self-incrimination as not including evidence that is not of a “testimonial or communicative nature,” such as blood.<sup>39</sup> Presumably eyes would fall into this category. Tellingly, the overhead camera shots reveal just how invasive such “non-searches” can be, notwithstanding the

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*the Right to Anonymity*, 72 MISS. L.J. 213 (2002).

30. See, e.g., *California v. Greenwood*, 486 U.S. 35, 40 (1988) (no reasonable expectation of privacy in trash left for collection); *California v. Ciraolo*, 476 U.S. 207, 215 (1986) (aerial surveillance of exposed items not a search within the meaning of the Fourth Amendment); *United States v. Knotts*, 460 U.S. 276, 285 (1983) (surveillance by electronic beeper in public spaces not a search within meaning of Fourth Amendment).

31. 533 U.S. 27 (2001).

32. *Id.* at 40.

33. Part of the concern of *Kyllo* was that the imaging could reveal information about the occupants of the home, such as whether they were taking a bath or in bed. See *id.* at 33-40. The imaging in *Minority Report*, however, seems designed only to reveal the number of individuals in a building and their general whereabouts.

34. 466 U.S. 109 (1984).

35. *Id.* at 123 (ruling that a search that can *only* reveal illegitimate activity “compromises no legitimate privacy interest”).

36. 462 U.S. 696 (1983).

37. *Id.* at 707.

38. 384 U.S. 757 (1966).

39. *Id.* at 761.

Supreme Court's statements to the contrary.

There are also evidentiary issues. After all, the primary evidence in this imaginary future consists of the previsions of the precogs, which are projected onto a screen, witnessed by two justices, and recorded. (The use of two justices here is perhaps intentional. It creatively positions the viewer as the third judge, the third jurist to decipher an image and determine what happened. In this sense, *Minority Report* foregrounds the "jurifying" of the spectator.)<sup>40</sup> Beyond the issue of authentication and the admissibility of novel scientific evidence, there is the issue of the weight to be given to such photographic evidence. Photographic evidence, for example, is often taken as uncontroverted, and uncontrovertible, proof.<sup>41</sup> *Minority Report* uses such photographic evidence to challenge it. The images projected by the precogs turn out to be accurate but not true. Or as one theorist has put it, the film "raises crucial questions about the complexities of spectatorship, the shifting truth of images, and the inherent subjectivity of visual information."<sup>42</sup> At the same time that their visions reveal, they also conceal and obscure. Perspective matters, angles matter, framing matters. What appears from one angle to be Police Chief John Anderton committing premeditated murder, appears from another angle as suicide. Photographic evidence that amounted to certain guilt thus becomes photograph evidence that concealed actual innocence. John Anderton does not kill Leo Crow, as the precogs and the justice witnesses assumed. Instead, Anderton is merely present when Leo Crow kills himself. In her discussion of the documentary *Paradise Lost*, Jennifer Mnookin suggests that films

raise profound questions about how to "read" evidence and its absence: What kinds of inferences should persuade us, and what proofs should we require before we think we "know" something? Should evidence be dissected and parsed, or should it be analyzed more holistically? Whose reading of "the facts" ought to be deemed authoritative, and why? Who, in the end, has the social and epistemic authority to render a legitimate judgment?<sup>43</sup>

*Minority Report* poses these same questions and more.<sup>44</sup>

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40. Jennifer L. Mnookin, *Reproducing a Trial: Evidence and Its Assessment in Paradise Lost*, in *LAW ON THE SCREEN*, *supra* note 6, at 160; see also Jessica Silbey, *Patterns of Courtroom Justice*, in *LAW AND FILM* 106-11 (Stefan Machura & Peter Robson eds., 2001) (discussing how films often position the viewer as a member of an "adjudicatory audience").

41. As Susan Sontag put it, "Photographs furnish evidence. Something we hear about, but doubt, seems proven when we're shown a photograph of it . . . . [There exists a] presumption of veracity that gives all photographs authority." SUSAN SONTAG, *ON PHOTOGRAPHY* 5-6 (2001).

42. LESTER D. FRIEDMAN, *CITIZEN SPIELBERG* 58 (2006).

43. Mnookin, *supra* note 40, at 156.

44. Indeed, on a certain level, *Minority Report* is also about how images *manipulate*. For example, the film includes a political commercial touting Precrime and asking voters to vote "yes" on the National Precrime referendum. This commercial is filmed in soft tones, designed to lull the viewer into a sense of comfort. This filming stands in stark contrast to the film itself, thus foregrounding how images can be used to manipulate the

All of this relates to another, perhaps more fundamental issue. After all, it is this final knowledge that the precogs are not always correct—which should be more accurately phrased as the precogs are correct, but what *we* see is not always true—that prompts the District of Columbia, in the end, to abandon the precog system and presumably results in the defeat of the National Precrime Initiative as well.<sup>45</sup> In his *Commentaries on the Laws of England*, William Blackstone famously suggested that it is better to let ten guilty men go free than to allow one innocent man to be wrongfully convicted.<sup>46</sup> *Minority Report* invites the viewer—as both the spectator/third justice and the spectator/putative voter—to ponder a different formulation. Although it may be better to let ten guilty people go free rather than have one innocent person suffer, can the same be said when we change the number to permit 100 guilty men go free, or 1000, rather than have one innocent man suffer? Moreover, by showing the recurring image of a murder victim, *Minority Report* further redrafts Blackstone’s formulation to focus on its victims.<sup>47</sup> Assuming *arguendo* that it is better to let ten guilty people go free rather than have one innocent suffer, is that really true if one of the “freed” guilty then murders an innocent? How does the innocent murder victim compare to the innocent person wrongly convicted? Which “wrong” is worse? Or rather, given a choice of evils—the classic necessity defense question—which is the lesser of the two?

These are all interesting issues. What interests me, however, is something entirely different. As should be obvious, one of the recurring motifs in *Minority Report* is the motif of sight, of vision.<sup>48</sup> Consider the frenetic and disorienting opening sequence,<sup>49</sup> which ends with a close up of the eyes of Agatha (Samantha Morton), the one female precog. Like seers, the precogs have a second sight, of sort, and this second sight propels the narrative line. Or consider the scene illustrating how Precrime works. An unfaithful wife tells -

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viewer.

45. This is perhaps the most radical change from the short story on which *Minority Report* is based. In the story, Precrime remains intact. See Philip K. Dick, *The Minority Report*, in *THE MINORITY REPORT AND OTHER CLASSIC STORIES* 71 (2002).

46. 4 WILLIAM BLACKSTONE, *COMMENTARIES* \*358.

47. For a discussion of the use of the victim’s image in *Minority Report*, see Joanne Clarke Dillman, *Minority Report: Narrative Images, and Dead Women*, 36 *WOMEN STUDIES* 229-49 (2007).

48. This motif has not gone unnoticed. See, e.g., Cynthia D. Bond, *Law as Cinematic Apparatus: Image, Textuality, and Representational Anxiety in Spielberg’s Minority Report*, 37 *CUMB. L. REV.* 25, 26 (2006) (observing that *Minority Report* “obsessively thematizes vision, valorizing image over text”). There are also many parallels to Sophocles’s *Oedipus Rex*, a play about blindness and sight. See ANDREW GORDON, *EMPIRE OF DREAMS: THE SCIENCE FICTION AND FANTASY FILMS OF STEVEN SPIELBERG* 243-52 (2007). The screenwriter Tom Cohen acknowledges this theme in the audio commentary that accompanies the DVD, stating, “One of the themes is about seeing, looking into the future. For me, that was the great insight about shaping the story into a script . . . I found my theme: sight, eyes; what do you see; what does the hero see; what do the precogs see?” *MINORITY REPORT* (DreamWorks 2002).

49. For a fascinating discussion of the affective dimension of this opening sequence, see Ruth Buchanan & Rebecca Johnson, *Strange Encounters: Exploring Law and Film in the Effective Register*, 46 *STUD. IN L., POL., AND SOC’Y* 33-60 (2008).

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her husband how blind he is without his glasses. Meanwhile, her son uses a pair of scissors to pierce out the eyes from a paper mask. And in another scene, Chief Anderton surreptitiously purchases an illegal narcotic called Clarity, which he ingests so that he can better see holographic images of his missing son.<sup>50</sup> But the attention to vision goes well beyond this, as the viewer learns in the scene in which Agatha “comes to life,” awaking from her induced dream state and grabbing Anderton. Her words to him? “*Can you see?*” This question is repeated several times in the film. Later, after Anderton sees the projection of himself committing what appears to be murder and flees from the police, he locates one of the geneticists who designed the precogs, hoping the designer will tell him “how someone can fake prevision.” In fact, the information the designer shares with Anderton is far more cryptic: “In order to *see* the light, you have to risk the dark.” In the very next scene, Anderton goes to a sadistic black market plastic surgeon, who removes his eyes, replacing them with new ones, literally giving him “new eyes.” Indeed, it is during the surgery and healing process—Anderton must remain still, his eyes bandaged, for twelve hours—that he appears most vulnerable and that his transition to outsider seems most complete. At the same time, the iconography of the scene suggests Justice, her eyes bandaged. One senses that it is at this liminal moment that Anderton is finally able to see “justice” differently and to realize that the justice system that he has been a part of is flawed. All of this is to say that the arc Anderton follows in the film is that of one who has sight to one who has insight. The spectator too follows this arc, learning that images are not always trustworthy, that evidence is not always true. But I want to suggest that *Minority Report* demands something else of the viewer as well. I want to suggest that the film also asks the viewer to *see* differently. To see deeper. To see through. To see around. To see what is *outside*. And that is the goal of the remainder of this essay.

### III.

The first time I saw *Minority Report*, I kept wondering where all the minorities were. I mention this not to be facetious; this is what I actually thought. And as I thought about this symposium, it occurred to me that minorities are also the outsiders in this film. This is not to suggest that the film is entirely without minorities. Anderton’s secretary is a black woman, although her main role seems to consist of taking and hanging up Anderton’s jacket every morning. Anderton does not have a black sidekick à la Danny Glover or Chris Tucker or Eddie Murphy, but he does have a black team member whom he orders about. Other than those characters, however, the film is pretty much

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50. Indeed, in a very real sense, Anderton lost his son because he failed to keep an eye on him while the two of them were at a public pool. In short, because Anderton failed to see.

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a white affair. I thought to myself, this film is set in D.C., which in 2002, the year of the film's release, consisted of a majority of black citizens. The paucity of minorities is also interesting in light of demographic projections: racial minorities are projected to comprise 54 percent of the United States population by 2050.<sup>51</sup> *Minority Report* is set four years later in 2054. And yet consider the sequence in which Lamar Burgess (Max von Sydow), the director and creator of the Precrime system, is honored at a black-tie banquet. At the banquet, it is the general absence of people of color that becomes conspicuous; the one black person who stands out is a waiter in the background. This, I think, reveals a lot about us as a society. Even prior to the election of President Barack Obama, we have had little trouble imagining, at least in a fictional world, a "sideshadow" world, a black president, or a Latino president, or a female president—think *24*, *The West Wing*, *Commander in Chief*, *Battlestar Galactica*. Yet we still have trouble imagining a future in which whites are not in the majority.

Indeed, 2054 is decidedly traditional in the film. There are no Asians or Latinos; homosexuality has been erased or is at least invisible. And the only women are in subordinate, traditional roles. The film is full of secretaries and wives. Even the Department of Precrime is decidedly gendered. Although there is a team of officers that work in Precrime, engaging in preemptive arrests, only one is female. Her role, as we learn from the opening sequence, is a feminine one. She consoles crime victims.

What are we to make of this? Is the paucity of minorities explainable simply as a commercial decision? Should I read the film as just one of many that constructs and (re)produces gender and race, in this case (re)producing maleness and whiteness as positions of power even fifty years into the future? Or am I reading too much into the film? I am convinced that our visions, like dreams, reveal more than we may intend. Several scenes in *Minority Report* are jarring because of their juxtapositions. One moment we are watching a high-speed chase involving cars that travel horizontally and vertically along superhighways of the future. The next moment we are in a dark alleyway that reeks of abject poverty, the ghetto that is referred to as "the Sprawl." The backdrop of *Minority Report* is a world in which resources have been devoted to eradicate crime but not to eliminate racial inequality, or gender inequality, or class inequality. Is this what we have to look forward to? Is this the cautionary tale? Is it possible that *Minority Report*, based on a Philip K. Dick story written in 1954,<sup>52</sup> the same year the Supreme Court decided *Brown v. Board of Education*,<sup>53</sup> and set exactly one hundred years later, invites the reader to

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51. See U.S. Census Bureau, *An Older and More Diverse Nation by Midcentury*, Aug. 14, 2008, <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html>.

52. Philip K. Dick composed the story in 1954. It was not published, however, until 1956.

53. 347 U.S. 483 (1954).

question the ability of law to effect change?

In short, is this what *Minority Report* wants us to see?

#### IV.

I began to think through what it means to say that minorities are “outside” the film. That in *Minority Report*, minorities are the outsiders. Except the more I thought about this, the more I thought about the precogs. After all, the precogs exist in a society that allows them to be subjugated because of their status, treated as machines, nonhumans. When the film opens, Precrime, this place of justice, keeps the precogs in a dreamlike state, because only in the dreamlike state can they have these visions and serve their function. They are treated like machines, like chattel. Moreover, they themselves are behind glass, without privacy, always watched, kept in a state of suspended animation, much like the prisoners we see later in the film. Indeed, in Philip K. Dick’s short story, the treatment of the precogs is even more extreme. The precogs are treated as “deformed and retarded,” as babbling “idiots,” as “monkeys,” as slaves.<sup>54</sup> And this is the scary thing: their treatment seems completely natural to everyone, to the Precrime team, to the Department of Justice representative who comes to visit, to the populace who stands ready to vote in favor of the National Precrime Initiative, and to us, the viewers. But then one of the precogs, one of the subalterns, Agatha, speaks.<sup>55</sup> *Can you see?* She looks up at a screen on which a murder is being projected, and John Anderton looks up too. But Anderton and the camera also focus on her. *Can you see?* I found myself thinking about this scene and recalling the opening sequence, in which a boy uses a pair of scissors to remove the eyes from a paper mask. The mask, I recalled, was of Abraham Lincoln. Is it possible that the precogs are the true outsiders in the film? That the precogs metaphorically stand for all outsiders? That, in answering whether it is better to let ten guilty men go free than allow one innocent to suffer, we must recognize the precogs, our outsiders, as innocents? That the journey of *seeing* is also a journey about seeing how the precogs are treated, about how we treat each other, and about recognizing the precogs as human, as part of us? That ultimately, *Minority Report* is also about another kind of justice? A justice that ends not with loss or abandonment but with emancipation and equality?

#### V.

Thanks for allowing me to contribute my thoughts about *Minority Report*. As someone more comfortable with law and literature, I think I understand

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54. Dick, *supra* note 45, at 73-74.

55. This is, of course, a reference to Spivak’s well-known essay. See Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 271 (Cary Nelson & Lawrence Grossberg eds., 1988).

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narrative. I make no claim to understand everything, or rather anything, about movies, about shots, about frames, about angles. I will, however, note one thing: the night before the panel discussion of the papers in this symposium, Rebecca Johnson and I were discussing *Minority Report*, and she pointed out how physically disorienting the opening sequence of the film is, with about forty cuts in the space of thirty seconds. When watching that opening sequence, she said, something happens to the body. The contrasting visuals are anxiety inducing. Later, I thought about how different the final shot in the film is from this. The final shot is also all visuals, but it is calming rather than anxiety-inducing. In fact, it is my favorite scene in the film. This is, in part, because of the slowness of the camera, which pans back in one slow take. But it is also because of the scene depicted: the precogs, Agatha and her two brothers, at ease in a room of their own, a home of their own, on what appears to be a deserted island, far from the madding crowd. They are at last in a place where they are not subjugated. They are in a place at last that is not a police state, a place where they are free from the prying eyes of the law, a place where they are free from the law. They are free. And they are surrounded by my favorite things: books.