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The Ethical Dilemmas of the True Crime Genre

By

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Science in Business Administration in Marketing**

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Introduction

Along with the recent mainstream popularity of true crime entertainment, the genre has been increasingly criticized for ethical violations. Interestingly, the centuries-long history of true crime and the moral debates around it has led to an abundance of literature on the subject with little to no consensus. The mere existence of true crime entertainment can even be considered controversial in some cases. For those who produce and market true crime content, a lack of common guidelines means receiving a wide range of feedback. This dichotomy of both backlash and praise being published about the same works reveals a gap in accepted practices. The gap highlights the need for more research into the moral dilemmas of true crime and a common framework to help guide ethical decision-making in the production of the genre. To address the lack of established ethical marketing norms in the space, I will recommend the use of a normative marketing framework after reviewing the literature surrounding the topic.

Prior to stating the recommendation, I will first define true crime entertainment in accordance with Punnett's *Toward a Theory of True Crime Narratives* for this paper. After narrowing the literature, I will review relevant articles that discuss ethical quandaries and praise qualifying works. The diverse perspectives included in the literature review dissect reporting styles, legal interactions, and exploitation. After discussing the findings from the literature review, I will close the paper with the recommended guidelines. The objective of this paper is to add to the literature on the ethicality of true crime and recommend a framework I believe has the potential to apply widely to the genre's marketing and production.

Definition

For the purposes of this paper, true crime will refer to works in accordance with the guidelines established by Ian Punnett in the book *Toward a Theory of True Crime Narratives*. This 2018 book was part of Punnett's doctoral dissertation for his Ph.D. in Journalism and Mass Communication, earned after three decades of experience in the field (*Kansas State University*). *The Kim Wall Murder Serialized: Ethics & Aesthetics in High-Profile True Crime* characterized the 2018 book as "[a] recent, exhaustive description of the genre, as it appears both historically and on contemporary television screens" (Gemzøe, 2021). Punnett's theory was chosen due to its multiple relevant citations (Boling, 2019) (Gemzøe, 2021). The media used in reference to this definition in the following literature review will be limited to include documentaries, non-fiction books, and podcasts. Punnett defines true crime as "an occasionally controversial multi-platform storytelling genre that is most often associated with murder narratives and shares some common ancestral heritage with journalism, but always has been driven by different impulses" (Gemzøe, 2021). While the main impulse for journalism is arguably to inform the public, there are aspects of true crime that point to additional motivations. Punnett's theory identifies a number of these impulses. Despite the varying judgments of true crime, Punnett formulates eight categorizations to classify true crime narratives. Under Punnett's guidelines, if the media examined is found to include most of the following components, it is deemed true crime (Boling, 2019).

- Truth-Based: First, the narrative must be true. If the facts of the story are not truthful and accurate, it is not true crime according to these standards (Gemzøe, 2021). To support this convention, Boling, a doctoral candidate at the University of South Carolina School of Journalism and Mass Communications, found that the true crime podcast audience appears to value honest, accurate, and thorough reporting more than objectivity (Boling, 2019). After establishing the story's veracity, the following factors can be examined.
- Justice: This element ensures that seeking justice for the victims "is at the core of the narrative" (Boling, 2019). The podcast, *Serial*, is one of a growing number of cases in

which true crime content has led to legal action. The decision in the convicted killer's 2015 post-conviction relief hearing was influenced by *Serial*, according to the judge (Syed v. Maryland, 2016, as cited in Boling, 2019).

- Subversive: A true crime narrative is subversive if it disrupts the status quo. A narrative qualifies if audience members need to reconsider the evidence, call for further investigatory actions, or shed light on shortcomings in the criminal or judicial systems (Boling, 2019).
- Crusader: The narrative calls for social change with a clear call to action to satisfy this item. The calls to action in true crime have evolved through the years, as will be touched on in this paper.
- Geographic: A story is geographic if the impact of the locality is discussed. Boling elaborates, "...Punnett describes geographic components as going beyond simply the 'where' of a story" (Boling, 2019). An example of a work that can be classified as Geographic is *Up and Vanished*, a podcast by Payne Lindsey that investigated the murder of Tara Grinstead. The locality of the case was a pervasive topic in the podcast, reportedly helping lead to a confession, "Being that Grinstead disappeared from a very tight-knit community, news of the podcast spread like wildfire and reignited discussions about the case" (Esquivel, 2020).
- "Forensic: the level of 'visual portrayal of crime narratives, detailed description of crime scenes, autopsies, and scientific methods of crime detection'" (Punnett, 2018:98, as cited in Gemzøe, 2021).
- Vocative: The vocative element signals a departure from a neutral, purely factual account toward a position of advocacy and subjectivity.
- Folkloric: Without straying from the truthful and accurate features of true crime, Folkloric elements "may bend the truth a little" to incorporate instructive fairy tales into a narrative (Gemzøe, 2021). Sarah Koenig, the host of *Serial*, has referred to her role "...in terms of 'storytelling,' where her choices are about what to reveal, more than about outcomes" (Rutman, 2014).

Literature Review

I. Early True Crime Review

Having outlined the operational definition of true crime for the purposes of this paper, the following literature review will analyze the coverage of several qualifying true crime pieces and discuss the findings in relation to ethical production. The focus on writings related to production was inspired by *Ethics and True Crime: Setting a Standard for the Genre*, which states, "How true crime is produced (in publishing specifically this means how it is written, researched, edited, and acquired) affects whom it influences and how, resulting in either or positive or negative benefit" (Wright, 2020). The overlap of the legal, journalism, and entertainment industries creates an unclear ethical field that appears difficult for true crime creators to successfully navigate. Despite frequent negative appraisals, true crime has continued to find success for centuries by appealing to a broad range of consumer interests and evolving with new technology and media forms. Adding to the above definition, "By reporting details of an actual crime in a sensationalized way, the genre is often described as 'infotainment' the blending of information and entertainment" (Rutman, 2014). In this section, Punnett's guidelines are referenced not only for providing a definition but as possible motivating factors for consuming/producing true crime.

There are varying reports on the origin of true crime but the genre, and its criticism, can be traced back to at least the 16th century (Burger, 2016). "Hundreds of crime pamphlets—short, unbound books of roughly six to twenty-four pages, usually detailing horrific murders—circulated

during this era” (Burger, 2016). These crime reports are said to have focused on domestic cases that involved multiple deaths and typically concluded with a Christian moral (Antoniak, 2021). True crime in this era aimed to promote punitive actions, spread religious agendas, and regulate and strengthen social order. A shift in ideals due to the dawn of Enlightenment led to the first fall in approval for the genre. When the crime pamphlets were “...heavily criticised for their insensitivity to the suffering of victims, exploitative character, and overemotional style, they were soon pushed to the margin” (Antoniak, 2021). Later, the emergence of the newspaper thrust true crime back into demand. Differing styles of presenting true crime became apparent by the expanding number of media outlets covering cases for new, diverse motives. For example, the 1892 case of Lizzie Borden was reported in several newspapers, but the storytelling was inconsistent as noted in “The Bloody History of the True Crime Genre” (Burger, 2016). The article reports *The New York Times* provided factual, emotionless information, while the *Boston Globe* sensationalized the case (Burger, 2016). Up until the late 1890s, it appears critics of true crime focused their frustration on the possible exploitation in the genre. However, the rise of the demand for true crime in newspapers was followed by new ethical dilemmas to plague the category. In an effort to keep up with competing papers, famed publisher Randolph Hearst formed a group of reporters to investigate criminal cases (Bolin, 2018). The titled “Murder Squad” acted as an extralegal police force that would commonly “trample crime scenes, plant evidence, and produce dubious witnesses whose accounts fit their preferred version of the case” (Bolin, 2018). This is one of the earliest accusations found of true crime interfering with the course of a case. To summarize, true crime appears to have origins in crime pamphlets and newspapers starting from at least the 16th century, with controversy consistently surrounding the content.

II. 20th Century Rebirth

The next notable period in true crime entertainment was introduced by Truman Capote’s 1966 book, *In Cold Blood*. Capote’s book made it “respectable” to read about gory crimes (Punnett, 2018, as cited in Gemzøe, 2021). *In Cold Blood* is a non-fiction novel that detailed the murders of the Clutter family in Kansas. By classifying it as a non-fiction novel, it is included in a genre that employs narrative techniques characteristic of fiction to describe true events (Antoniak, 2021). In this medium, there is said to be a lot of room to blur the lines between reality and entertainment (Antoniak, 2021). *In Cold Blood* can also be defined as true crime under Punnett’s theory. The most obvious fulfilled components include Justice, Subversive, Geographic, Forensic, and Folkloric. Also included in this era, is the 1988 documentary, *The Thin Blue Line*. This film by Errol Morris was one of the earliest examples of true crime directly impacting a legal case. While investigating the 1976 murder of police officer Robert Wood, Morris “drew a taped confession from one interviewee, David Harris, that led to the acquittal of the [sic] another, Randall Adams...” (Bruzzi, 2016). Morris exemplified the Justice quality of true crime when he claimed to create the film while thinking ““What can be used in order to get him out of prison?”” (Butler 2016, as cited in Stoneman & Packer). This documentary would be the first of many works produced with the intention of legal action. The few documented criticisms of *The Thin Blue Line* were focused on the stylistic choices and use of reenactments (Bruzzi, 2016).

In addition to documentaries having created a sense of justice through the legal system as noted above, justice in true crime can be met when instilling new ideas, resulting in meaningful reflection, and/or distributing punishment through the media as seen in *The Act of Killing*. A few years before the next era in true crime had been established, 2012’s *The Act of Killing* was released. The documentary by Joshua Oppenheimer and Christine Cynn lacks the opportunity for any legal action in the case but arguably delivers justice through alternative means. Throughout the

documentary, folkloric and subversive themes aid in the film's goal of justice. The reason that prosecution was not a possibility concerning the film's subject, gangster Anwar Congo, was because the local norms and government view his involvement in the Indonesian mass killings of 1965 to 1966 as justified (Stoneman & Packer, 2020). The casual demeanor of Congo captured in the film (Stoneman & Packer, 2020), illustrates a lack of moral awareness and cultural differences as he initially boasted of crimes that violate the Geneva Convention. *The Act of Killing* directors placate Congo by giving him a sense of creative direction and position the film as an opportunity to increase his notoriety through a film-within-a-film delivery. Unknown to Congo, however, directors Oppenheimer and Cynn are "attempting to reveal to Congo his self-deception in the face of the violence [*sic*] acts" that he and his fellow perpetrators admit to (Stoneman & Packer, 2020). The directors alternate between realistic reenactments targeting Congo and outlandish scenes through the documentary to elicit discomfort with the contrast between reality and the retelling of it (Stoneman & Packer, 2020). By including these elements and presenting the film to Congo as a chance to become a Hollywood star, a sense of folklore is utilized to further the narrative set up by Oppenheimer and Cynn. As *The Act of Killing* progresses, Anwar Congo's enthusiasm for the project turns to noticeable discomfort, and he soon details the emergence of nightmares about his victims. "By forcing Congo to attend to how he represents the historical world, the documentary subverts the substance—the what—of that representation, while simultaneously documenting for viewers Congo's pained experience of that subversion" (Stoneman & Packer, 2020). The documentary focuses on subverting the status quo in the minds of its subject and the surrounding perpetrators, and in the culture that accepted their heinous crimes. The climax of the documentary showcases the aftermath of forcing Congo to reenact his previously reported actions from the victim's position (Stoneman & Packer, 2020). When he reflects on his experience in the artificial situation, "Congo says, 'Did the people I tortured feel the way I do here? I can feel what the people I tortured felt. . . . All the terror suddenly possessed my body.'" (Stoneman & Packer, 2020). Oppenheimer exposes Congo's dissonance here by countering that Congo's victims must have felt worse because their experience was real. Stoneman and Packer describe the final scene, "All the joyful hubris is removed from Congo. He admits he was wrong and then begins to retch" (Stoneman & Packer, 2020). With the impression that Congo has realized the severity of his offenses, *The Act of Killing* leaves the audience with a sense of justice. Despite no opportunities for legal action, *Reel cruelty: Voyeurism and extra-judicial punishment in true-crime documentaries* credits *The Act of Killing* with delivering retribution by publicly vilifying and punishing the criminals through true crime media (Stoneman and Packer, 2020).

III. Ethical Dilemmas and Other Effects of Modern True Crime

The years 2014-2015 are academically cited as introducing a revitalized and expanded true crime genre (Punnett, 2018, as cited in Gemzøe, 2021) (Boling, 2019) (Pruden, 2019). As the prominence of true crime entertainment grows, moral dilemmas about the production of this content are being progressively raised. This has led to differing opinions on true crime from several industries. To best illustrate the backlash and acclaim for the intent of this paper, this subsection will be arranged not by the work of true crime, but by the overarching ethical dilemma or effects being reviewed. Concerns about true crime covered in this paper are the exploitation of victims or their loved ones through sensationalism, interference in the legal process, and biased reporting. Literature crediting the genre with positive influences is also explored here.

A. Exploitation

Found in discussions of true crime through centuries, one of the longest-standing ethical dilemmas has been the exploitation of crime victims or their families. The lack of a clear line of

exploitation makes this a difficult topic. While a true crime creator may not intend exploitation, it could still be classified as such by the family or audience. As noted in “Ethical True Crime Content Needs to Center The Victims”, “The lines between ethical and unethical true crime content often mirror the lines between informative and exploitative content” (Esquivel, 2020). This paper will not include accusations of exploitation based solely on the spread of information. *True crime is popular: But is it ethical?* says, “There is an old adage that justice is not done unless it can be seen to be done, and the media has a significant role in that” (Pruden, 2019). The justification for covering crime in this manner is therefore established, but the following questions are then raised: Are we hurting families just by consuming these stories? Are we using the pain of others for our entertainment? (Pruden, 2019). These questions are raised in reference to the 2014 podcast about the case of Hae Min Lee and Adnan Syed, *Serial*, which was the first popular true crime foray into the medium of podcasting. A Canadian newspaper notes its swift acclaim saying, “By the time the 12th and final episode of the show’s first season dropped in late December, each instalment had been downloaded an average of 3.4 million times, for a total of 40 million downloads” (Houpt, 2018). The main outcome of the podcast’s notoriety has been legal action, but it also produced ethical questions and negative reactions. A user claiming to be victim Hae Min Lee’s brother posted a statement shaming listener reactions. “TO ME ITS REAL LIFE,” the note read. “To you listeners, it’s another murder mystery, crime drama, another episode of CSI... I pray that you don’t have to go through what we went through and have your story blasted to 5mil listeners.” (Houpt, 2018) This response may mean that *Serial* answers ‘yes’ to Pruden’s previously mentioned question. If this is truly a message from Lin’s brother, the coverage has hurt the family, furthering their anguish. The harm caused here shows the importance of an ethical framework to minimize similar repercussions.

Additional true crime accused of exploiting another’s trauma for entertainment include works centered on the murder of Swedish journalist Kim Wall. The works referenced in a review of these claims are *The Secret Recordings* documentary and *The Investigation* television series. *The Secret Recording’s* producer, Tine Røgind Quist, claims that covering the convicted murderer’s first confession and the public interest in his psychological state justifies its distribution, despite no possibility for further justice in the case (Gemzøe, 2021). The opinion of experts asked to evaluate the documentary is revealed to be at odds with some audience interpretations. In contrast to condoning the show, some viewers rebuked it as insensitive through Facebook comments. “Popular comments include: “Stop giving that loser attention and airtime!”; and “Respect for the victim’s family isn’t really Discovery+’s thing, is it” (Gemzøe, 2021). It is suggested that “*The Secret Recordings* may also have suffered from the fact that it is sensationalist without seeking to correct an injustice” (Christensen 2020, as cited in, Gemzøe, 2021). As evidenced by these responses, providing any coverage of an accused killer can be seen as sensationalism, but the total eradication of this coverage is unrealistic.

It is noted that endorsement from the victim’s loved ones can somewhat combat the appraisal of exploitation but cannot eradicate it. While *The Investigation* is endorsed by Wall’s family (Gemzøe, 2021), her boyfriend at the time of her death does not approve. An article by Ole Stobbe explains his disapproval of the series despite *The Investigation’s* efforts to avoid sensationalizing the murder. The emphasis on Kim Wall’s accomplishments and life, narration from her parents, and the refusal to include the murderer’s perspective, image, and name “wasn’t enough” in the eyes of her significant other (Stobbe, 2019). In *What the media borrows is never returned*, he claims there is a power imbalance between those who experience and feel and those who describe and convey (Stobbe, 2019). He experienced this asymmetry when being told about

The Investigation after its production was already a reality. Stobbe explains the dilemma by saying, “Whether or not I cared about it was not secondary, but neither was it decisive” (Stobbe, 2019). By insinuating that the producers either did not care enough or were ambivalent about the potential of retraumatizing him, this statement is similar to the one allegedly made by Hae Min Lee’s brother on Reddit (Gemzøe, 2021). A statement that illustrates the presentation of Kim Wall in Stobbe’s mind, “She was to be the basis of the series in the same way that a dish is the basis of serving cake: essential, and at the same time completely subordinate” (Stobbe, 2019). Unfortunately, he is surely not the only loved one to feel this way because the opinion of loved ones is not a common dealbreaker for true crime production, which is a possible consequence of the lack of accepted guidelines in this area.

B. Paying Criminals

A clear ethical issue, even in the eyes of the legal system, is present in the production of true crime book *Murder in Mississippi* by John Safran. While the legal interactions of true crime are discussed in a later section, *Murder in Mississippi* is reviewed here due to its confirmed violation of established norms and the rarity of this concern in relevant conversations. Author John Safran acknowledges that he went against moral and legal norms when he paid a convicted murderer for information after being threatened in connection to 2013’s *Murder in Mississippi* (Rutman, 2014). While Safran approached the book in a “Truman Capote style”, he hypocritically broke “Son of Sam” laws in the expressed pursuit of legal justice for a man he originally thought was wrongfully convicted (Martin & Safran, 2014). After discussing the American laws “designed to stop criminals selling their stories to publishers” with the convicted, Australian Safran still decides to pay Vincent McGee with prepaid Walmart cards (Rutman, 2014). Interestingly, this is not the only unique situation he finds himself in. In an interview about the book, Safran discusses how another issue he faced was the inclusion of his relationship with a white supremacist related to the book (Martin & Safran, 2014). As noted in the discussion of *The Investigation*, any attention given to the villains of true crime can be interpreted as exploitative. While Safran first thought this would harm the book, he appears to have changed his mind saying, “... I didn’t quite work out at that point that messiness is good” (Martin & Safran, 2014). The changing perspective of Safran and his distinctive contributions to the conversation help illustrate the lack of defined acceptable actions and outlines in true crime.

C. Biased Reporting

Biased reporting is another documented concern when retelling true stories. The issue has brought negative attention to multiple works of true crime, notably increasing after its transformation to a more highbrow style. While this label is often based on aesthetics, it is also characterized as being thoughtful and college-educated according to “The Ethical Dilemma of Highbrow True Crime” (Bolin, 2018). This shift in production style is asserted as a catalyst for accusations of biased reporting because “highbrow true crime focuses on character sketches instead of police procedure” (Bolin, 2018). This paper identifies a work of true crime that should easily come to mind when invoking true crime entertainment and its biased reporting: Netflix’s *Making a Murderer* (2015-2018). Gemzøe helps this paper frame the series by stating, “Similarly, *Serial* and *Making a Murderer* illustrate how allegedly innocent people are convicted in the US” (Gemzøe, 2021). Despite the highbrow stylization of *Making a Murderer* through the incorporation of archival data, interviews, and character sketches of Steven Avery and Brendan Dassey (Bruzzi, 2016), the series presents an obvious bias. Another ingredient that disguised the bias is the exclusion of the creator’s voice or narration. English and Drama Professor Stella Bruzzi furthers the preceding claim by stating, “This lack of direct and overt authorial presence sits in

dialectical juxtaposition to the fact that Demos and Ricciardi believe Avery and Dassey to be innocent...” (Bruzzi, 2016). The title alone reveals the television show’s focus on the perpetrator but does not advertise that “the documentary omits evidence that would raise doubts about the innocence of Avery and Dassey” (Esquivel, 2020). The producers’ lack of clearly scripted intentions positions the series as justice-motivated investigative journalism obscures the opportunity for criticism or bias detection. Popular true crime author, Ann Rule, has argued against excluding evidence in true crime as done in *Making a Murderer*. After bringing up the fairness tenet of crime reporting, Rule claims, “the overall balance of the court case must be retained in the report” (Rule, 2014, as cited in Rutman, 2014). This includes presenting both sides of the evidence, given by the prosecution as well as the defense (Rule, 2014, as cited in Rutman, 2014). The one-sided view of *Making a Murderer* not only broke the guidelines for crime reporting but “the season completely neglects the life of Teresa Halbach and her family” (Esquivel, 2020) according to existing norms.

The Staircase, focusing on author Michael Peterson’s conviction for murdering Kathleen Peterson, is an earlier work of true crime that is critiqued for biased reporting. The eight 45-minute-long episodes were released in 2004 and became influential in the entertainment genre. Its massive influence is due in part to the case’s outlandish facts which “prove that reality can be stranger than *Gone Girl*” (Bruzzi, 2016). For example, one of the shocking facts revealed in *The Staircase* is that the biological mother of Michael Peterson’s adopted daughters died in a very similar way to Kathleen years before her death (Bruzzi, 2016). This understandably brings up the question of Peterson’s involvement in the earlier case. The strange coincidences surrounding the case and the performative nature of Peterson’s interviews and dramatizations are in awkward conflict with the appraisal that “*The Staircase* is mounting the emotional narrative case for Michael Peterson.” (Bruzzi, 2016). This character sketch is used by director De Lestrade to “jurify” the audience, a term used first by legal scholar Jennifer Mnookin (Bruzzi, 2016). When ‘jurified’, the audience is encouraged to judge the character of those involved, the conflicting evidence, and the verdict. De Lestrade aims to portray a sense of impartiality to further his goal, but the bias in *The Staircase* cannot be fully obscured. The series shows the process of Peterson accepting an Alford Plea¹, but never admitting guilt otherwise. The audience is left to decide the guilt of Michael Peterson in the deaths of the women around him while being prompted to believe his argument for innocence.

This section reviewed the literature surrounding works of true crime that have produced ethical controversy for being sensationalist, paying attention and/or money to murderers, or biased reporting. The following literature review will mainly cover the acclaim and legal interactions (both positive and negative) stemming from true crime content.

D. Balanced Reporting

While biased reporting has negative connotations it has also been incorporated to minimize the sensationalist tones in true crime which can disrespect victims. Contrary to the previous examples of *Making a Murderer* and *The Staircase*, which focused on the convicted killers, it is becoming more popular to focus on the victims of these crimes. This shift in shared narratives is likely due to concerns raised regarding older works and the increasing demand for conscious entertainment. As stated in “Ethical True Crime Content Needs to Center The Victims”, “Deciding on what to focus on is where directors and production teams can veer into ethical quandaries” (Esquivel, 2020). A documentary that has been praised for its selective reporting is Netflix’s *American Murder: The Family Next Door*. The film explores the murders of Shanann, Celeste,

¹ An Alford Plea, named after U.S. Supreme Court case North Carolina v. Alford, allows the defendant to be sentenced while claiming their innocence (Devendorf, 2021).

Bella, and unborn Nico Watts by convicted family annihilator Chris Watts. The large acclaim for *American Murder: The Family Next Door* is because “The intense focus on the perspective of Shanann Watts provides the foundation for retelling a story that originally gained notoriety because of the killer rather than the victims” (Esquivel, 2020). Director Jenny Popplewell strays from the available reporting by framing the story through Shanann’s perspective, instead of her husband Chris Watts’. Since most of the media focused on Chris Watts before this film, the use of bias was arguably positive by adding balance to the story. Popplewell does this by highlighting Shanann’s Facebook posts, personal messages, and footage that gives insight into her life (Esquivel, 2020). *American Murder: The Family Next Door* is a less common form of true crime currently, but its ability to evade controversy and give a voice to victims is likely to inspire similar victim-focused retellings.

E. Corrective Power

In addition to giving a voice to victims, true crime media is credited with a corrective power that has helped to solve crimes and affect the legal system. Examples of true crime works aiding the course of justice include the podcasts *Serial* and *Up and Vanished*. Due to true crime podcasts like these, innocence projects have seen an influx of donations; audience members have shown up in support of defendants at court dates; and listeners are participating in investigations by offering tips and research assistance (Boling, 2019). This statement highlights the possible ethical uses of true crime. The most notable case of true crime media leading to change in a legal case is Sarah Koenig’s *Serial*. *Serial* uncovered a potential alibi witness for the man convicted of killing Hae Min Lee and led to legal action. Koenig, similar to De Lestrade, ‘jurified’ the audience by asking “what do you think?” without revealing her pretty easy-to-decipher opinion (Bruzzi, 2016). The idea of a ‘jurified’ audience is “what we the audience/jurors/people on the street think...” (Bruzzi, 2016). Koenig explains the confusing, conflicting evidence while incorporating phone interviews with Syed, giving the audience previously unknown insight. These conversations and near real-time releases are partially credited with Syed’s case being reopened. Colin Miller of *Undisclosed*, a podcast that covers wrongful convictions said, “Without *Serial* and *Undisclosed* Adnan wouldn’t have gotten a new trial” (Boling, 2019). Since the 2016 overturning of Syed’s conviction, it has been reinstated and his appeal has been denied (Vigdor, 2022). Despite the lack of a permanently overturned verdict, Syed is still fighting for additional DNA testing in the case (Vigdor, 2022)

A lesser known, but probably more productive podcast in the true crime space, *Up and Vanished*, covered the unsolved murder of Tara Grinstead. For his debut podcast in 2016, Payne Lindsey chose an unsolved case from his home state of Georgia (Esquivel, 2020). Lindsey’s coverage in the tight-knit community of Ocilla quickly spread in popularity and reignited discussions about the 2005 disappearance. According to Esquivel, “After months of publicly examining the final moments of Grinstead’s life, the pressure from Lindsey’s investigation ultimately prompted the murderer to confess before being exposed on the podcast” (Esquivel, 2020). The confession of Ryan Duke has led to his arrest and the arrest and conviction of Bo Dukes concerning the murder of Grinstead (Stevens, 2019). *Up and Vanished* is the perfect representation of what can happen when true crime is done in an effective justice-focused manner.

F. Negative Legal Interactions

While there are clear instances of true crime being corrective, the legal article *Good TV Makes Bad Justice* by Joshua Irwin, J.D. claims that the possibility of influencing someone’s right to a fair trial is undoubtedly unethical (Irwin, 2017, as cited by Wright, 2020). By presenting a case, or interfering, before its legal conclusion, true crime creates ethical quandaries. This is due to the reciprocal relationship between journalism and the justice system (Bolin, 2018). Unlike

historic true crime which typically focused on resolved cases to praise the police, the ‘highbrow’ feature of examining current cases can interfere with the police’s work on the case since it is taken seriously (Bolin, 2018). People now want stories about the criminal justice system breaking down, wrongful convictions, and cold cases (Haupt, 2018). Some of the negative legal interactions due to true crime include the possibility of prejudicing juries, accusations of wrongful arrests, and withholding evidence, which will be touched on in the following section.

Cold Justice is a documentary television series that follows investigations into cold cases and has faced lawsuits due to allegations of airing arrests before multiple acquittals. Steven Noffsinger of Ohio and Joshua Singletary of Tennessee were both featured on *Cold Justice* and later acquitted, according to *Good TV Makes Bad Justice* (Irwin, 2017). The men have filed lawsuits against the show, its hosts, and the police departments responsible for their unjust arrests (Irwin, 2017). By airing episodes that portrayed the arrested before their trial concluded, *Cold Justice* allegedly tarnished the reputation of those acquitted. Noffsinger and another person acquitted of murder, Terry Supino, allege that *Cold Justice* representatives told state officials controlling their investigations that unless the investigation resulted in an indictment, the show would not air (Irwin, 2017). This is a clear violation of ethics as it could and did, help lead to arrests that lacked evidence. A book editor similarly notes that contracts for true crime writers often contain a “conviction clause that states if the guy is not convicted of the crime, then we have the choice to cancel the book...” (Browder, 2006). This type of ultimatum could also set actual murderers free if the rushed investigation does not produce enough evidence to quell reasonable doubt. Irwin claims that factors such as contractual obligations to an entertainment media production company should be eliminated as much as possible to cut down on wrongful arrests of this type. The quick-release and massive audience of *Cold Justice* episodes also have the potential to tamper with jury pools (Irwin, 2017). This is because jurors may be dishonest in their answers at voir dire, possibly resulting in a juror with prior knowledge of the case. This risk is heightened by the involvement of the media in a criminal case. In *Skilling v. United States*, the court stated “[p]rominence does not necessarily produce prejudice, and juror impartiality, ... does not require ignorance”, but the court also indicated the need for individual evaluations of the media in question (Irwin, 2017). This statement highlights the fact that knowledge of a case does not have to produce prejudice, but it can. The risk of prejudice is made possible in part by the “Endearing anecdotes and testimonials on the moral character of various suspects would be excluded from evidence” (Rutman, 2014). Another aspect of trials that have been affected for similar reasons, is the location. For example, a podcast by the *Atlanta-Journal Constitution*, releasing daily coverage of a case, was cited by Judge Mary Stanley Clark as a justification for requesting a change of venue for the defendant (Boling, 2019). This request was made due to the established local knowledge and opinions on the case. Influencing a potential jury and wrongful arrests are some legal issues that can be fueled by true crime entertainment. For the justice system to be fair and effective, there must be guidelines established for true crime to prevent jury tampering and hastily arresting suspects for time on television.

The final and most blatant ethical and legal dilemma attributed to true crime is identified in the six-part documentary, *The Jinx: The Life and Deaths of Robert Durst*. The director of the documentary series, Andrew Jarecki, and the production are accused of delaying the handover of evidence to the police which led to breaks in the murder case of Susan Berman (Gumbel, 2015). This was claimed to be done by Jarecki “to ensure maximum impact and exposure for the series finale” (Bruzzi, 2016). While Jarecki denies the claim and says he turned in the evidence months prior, there are reports of a time lag of anywhere from nine months to two years (Grumbel,

2015). The validity of these claims has not been confirmed, but they bring up moral questions about the timing of submitting relevant information. For example, how soon should producers hand over pertinent information they discover to the police? The bombshell evidence, incriminating footage of Durst being confronted with a letter from the killer and an audio recording of him saying “What the hell did I do? Killed them all, of course.”, seems to have existed for some time before being given to the police (Grumbel, 2015). The timing of Durst's arrest—on the evening before the season finale broadcast—may corroborate the accusation that producers delayed submitting evidence to the police. (Bruzzi, 2016). *The Jinx: The Life and Deaths of Robert Durst* greatly aided in the conviction of a presumed serial killer but is plagued by accusations of unethically impeding the justice system.

Recommended Framework: Integrative Social Contracts Theory

The preceding literature review briefly explores some of the ethical dilemmas, motives, and effects of true crime entertainment. The production focus is used in this paper similarly to Hazel Wright's research questions for her Book Publishing final research paper at Portland State University, “What are the perceived ethical problems with true crime as a genre? What considerations should be included in a preliminary ethical standard for true-crime literature?” (Wright, 2020). In line with Wright's research results, I found that the most pressing ethical issues in true crime include the sensationalism and humanization of those involved (Wright, 2020). However, this paper and Wright's differ in their recommendation for a relevant ethical framework. Wright's recommendation explicitly excludes marketers, while this paper aims to suggest a theory expressly for both marketers and producers of true crime.

As noted in *Social Contracts and Marketing Ethics*, there are two prevailing approaches to marketing ethics: descriptive and normative (Dunfee, et al, 1999). The theory recommended in this paper is a normative approach that “is concerned with prescribing what managers "ought to do" when faced with an ethical issue” (Dunfee, et al, 1999). A normative approach was chosen because of its ability to be translated into specific frameworks for marketers and other decision-makers in true crime. The approach recommended is a fusion of multiple theories of social contracts, the Integrative Social Contracts Theory. “The particular relevance of social contract theory for marketing ethics lies in part in its shared focus on exchange” (Dunfee, et al, 1999). While this exchange is referencing the kind between consumers and marketers, it evokes a similar claim from Stoneman and Packer regarding justice in true crime: “And so on that basis of requital and exchange interrogators are interrogated, monitors are monitored, and torturers are tortured” (Stoneman and Packer, 2020).

Social Contracts and Marketing Ethics concluded that the three most common elements in most social contract theories are: “(1) consent of the individual, (2) agreement among moral agents, and (3) a device or method by which an agreement (actual or hypothetical) is obtained” (Dunfee, et al, 1999). These elements are also notably present in the Integrative Social Contracts Theory (ISCT). The authors claim that the term “integrative” captures the hypothetical macrosocial contract and actual microsocial contracts based in living communities, and the term “contracts” expands this to the millions of community-based microsocial contracts whose norms are important in rendering judgments in business ethics (Dunfee, et al, 1999). For the framework and this paper, norms are identified as generally accepted standards or rules that are socially enforced.

In *Social Contracts and Marketing Ethics*, the credit for formulating the Integrative Social Contracts Theory is given to the 1994, 1995, and 1999 works by Donaldson and Dunfee (Dunfee, et al, 1999). “Donaldson and Dunfee argue that this global macrosocial contract is the

only rational solution to the need for a moral fabric in the face of bounded moral rationality” while letting individual contractors retain the right to select their values to the maximum extent possible (Dunfee, et al, 1999).

The following ISCT macrosocial contract laid out in *Social Contracts and Marketing Ethics* (see figure 1) and discussed here is recommended for the ethical marketing and production of true crime entertainment:

1. Local economic communities may specify ethical norms for their members through microsocial contracts (i.e., the "moral free space" term).

This moral free space is claimed to allow communities to create ““authentic” ethical norms” (Dunfee, et al, 1999). Communities include a massive number of groups, such as states, corporations, organizational units, and trade associations (Dunfee, et al, 1999). It is important to keep in mind that the norm is only classified as authentic if it is widely supported by the community and qualifies under the second term of ISCT.

2. Norm-generating microsocial contracts must be grounded in informed consent, buttressed by rights of exit and voice (i.e., the "protected informed consent" term) (Dunfee, et al, 1999).

As earlier found to be one of the most common social contract theory elements, ISCT calls for the consent of those in the exchange. “Thus, a dissenting member of a community who is distressed about a particular authentic norm may elect to leave the community,” (Dunfee, et al, 1999). Consistent with “organizational justice literature that emphasizes procedural justice” (Dunfee, et al, 1999), individuals must also be given the freedom to use their voices.

3. To be obligatory, a microsocial contract norm must be compatible with hypernorms (i.e., the "hypernorms" term). “According to ISCT, a hypernorm is a norm by which authentic norms are tested” (Dunfee, et al, 1999). If the norm does not violate any hypernorms, then it is classified as legitimate. Hypernorms are principles that have been continuously accepted throughout history and the world. They are described as a “set of standards to which all societies can be held—negative injunctions, most likely, rules against murder, deceit, torture, oppression, and tyranny” (Walzer, 1992, as cited by Dunfee, et al, 1999).

4. In the case of conflicts among norms that satisfy Terms 1-3, priority must be established through the application of rules consistent with the spirit of the overall macrosocial contract (i.e., the "priority rules" term, as seen in Figure 1) (Dunfee, et al, 1999).

The following rules are taken from a 1995 work on ISCT by Donaldson & Dunfee:

1. “Transactions solely within a single community, which do not have significant adverse effects on other humans or communities, should be governed by the host community's norms;
2. Community norms for resolving priority should be applied, as long as they do not have significant adverse effects on other humans or communities;
3. The more extensive the community that is the source of the norm, the greater the priority that should be given to the norm;
4. Norms essential to the maintenance of the economic environment in which the transaction occurs should have priority over norms potentially damaging to that environment;
5. When multiple conflicting norms are involved, patterns of consistency among the alternative norms provide a basis for prioritization; and
6. Well-defined norms ordinarily should have priority over more general, less precise norms” (Donaldson and Dunfee, 1995, as cited in Dunfee, et al, 1999).

Conclusion

The multifaceted terms of ISCT support the recommendation of the theory in this paper due to its wide applicability. The norms and hypernorms of both the small and overarching communities involved are essential for true crime marketers to be aware of and accommodate in their productions. As noted in *Social Contracts and Marketing Ethics*, “though marketing literature makes use of social contracts or norms within exchange relationships, little attention has been given to their potential use in a normative evaluation of marketing practice” (Dunfee, et al, 1999). Together, the glaring need for an accepted way of operating in true crime productions and the ability of Integrative Social Contracts Theory to provide a normative framework led to the recommendation of ISCT for the genre’s marketers.

FIGURE 1
The ISCT Decision Process: Multiple Communities and Multiple Competing Norms

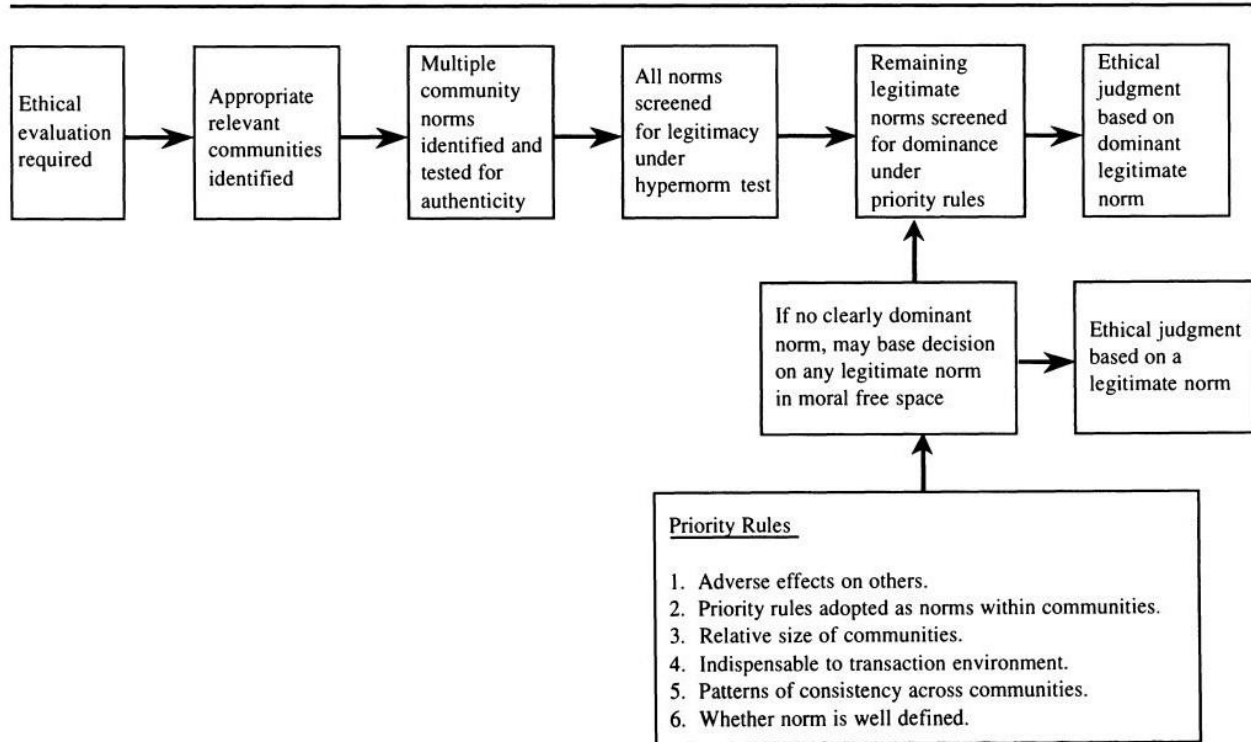


Figure 1. The ISCT Decision Process: Multiple Communities and Multiple Competing Norms. Figure from *Social Contracts and Marketing Ethics* (1999).

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