

2001

American "Road Rage": A Scary and Tangled Cultural-Legal Pastiche

Robert F. Blomquist

Valparaiso University, robert.blomquist@valpo.edu

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Robert F. Blomquist, *American "Road Rage": A Scary and Tangled Cultural-Legal Pastiche*, 80 Neb. L. Rev. (2001)

Available at: <https://digitalcommons.unl.edu/nlr/vol80/iss1/3>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Robert F. Blomquist*

American “Road Rage”: A Scary and Tangled Cultural-Legal Pastiche

TABLE OF CONTENTS

I. Introduction	18
II. Popular Media Accounts	20
A. Early Stories: 1988-1995	20
B. Later Stories: 1996-2000	23
1. 1996	23
2. 1997	24
3. 1998	26
4. 1999	28
5. 2000	29
III. Legal Media Accounts	29
IV. Lawyerly Deployment	35
A. Law Reviews	35
1. 1998	35
2. 1999	38
3. 2000	40
B. Legislative Materials	40
1. Congressional Road Rage Hearings: Opening Statements by Committee Members	41
2. Congressional Road Rage Hearings: Key Witness Testimony	43
C. Judicial Opinions	50
1. 1997	50
2. 1998	52
3. 1999	57
4. 2000	60
V. Conclusion	62

© Copyright held by the NEBRASKA LAW REVIEW.

* Professor of Law, Valparaiso University School of Law. B.S. (Economics), University of Pennsylvania (Wharton School), 1973. J.D., Cornell Law School, 1977. My thanks go to the participants in a faculty colloquium at Valparaiso University School of Law for helpful comments on an earlier draft. Moreover, I am grateful for the thoughts and observations of Ellen Jurczak. This Article is dedicated to my road-raging brother-in-law, Frank Krieger.

I. INTRODUCTION

Although most of us may be unaware of the phenomenon, the English language gains hundreds of new words and phrases every year—driven by a host of cultural variables such as new technologies, emerging social concerns, and ethnic interaction.¹ This “new word” creation is more precisely referred to as “lexical creation.”² The phrase “road rage” entered the American-English language lexicon sometime in the late 1980s and early 1990s.³

Initially bantered about and amplified in the general media,⁴ the new lexeme⁵—which sought to describe a hodgepodge of intentional, vengeful, irrational, stress-induced, mean-spirited actions involving motorists and, sometimes, automobile passengers, cyclists, or pedestrians—was gradually picked up and used by the legal press⁶ and, eventually, by legal scholars in journal articles,⁷ judges in written opinions,⁸ and legislators in legislative materials.⁹

-
1. “In 1993, the English language, according to lexicographers, was gaining 400 words every year.” JOSEPH F. COATES ET AL., 2025: SCENARIOS OF U.S. AND GLOBAL SOCIETY RESHAPED BY SCIENCE AND TECHNOLOGY 449 (1997) (emphasis added). The authors of this book of future scenarios posit a plausible state of affairs in the year 2025—writing from the imagined perspective of that year at the quarter century mark of the twenty-first century. They project that by 2025, 900 new English words will be added every year. Here are a few examples of their futuristic, imaginary account of “new words” in the year 2025:

<i>cryoengineering</i>	— engineering systems and the management of physical and quantum physical effects in supercold temperatures.
<i>forensic allelography</i>	— genetic component matching and lineage tracing through minute genetic samples.
<i>sponge polymers</i>	— high-surface-area materials used in catalyzing bioecological regeneration.
<i>socioclastic</i>	— adjective denoting a behavior considered destructive of social institutions or the fabric of society. Analogous to <i>ecodestructive</i> .

Id.

2. See *infra* notes 5 and 12.
3. See *infra* Part II.A.
4. See *infra* Part II.A.1-5.
5. In light of confusion that occurs from using “word” I shall generally prefer “lexeme” as a more precise term. A “lexeme” is “a basic lexical unit of a language comprising one or several words, the elements of which do not separately convey the meaning of the whole.” THE OXFORD DICTIONARY AND THESAURUS 862 (American ed. 1996). The problem with the term “word” is that it is “used in ways that obscure the study of meaning,” is generally “useless for the study of idioms,” and has been “appropriated for use elsewhere in linguistic study.” DAVID CRYSTAL, THE CAMBRIDGE ENCYCLOPEDIA OF LANGUAGE 104 (2nd ed. 1997) [hereinafter LANGUAGE].
6. See *infra* Part III.
7. See *infra* Part IV.A.1-3.
8. See *infra* Part IV.C.1-4.
9. See *infra* Part IV.B.1-2.

Less formal and less legalistic than creative lexemes such as "new tort"¹⁰ and "toxic tort,"¹¹ deployment of the language of "road rage" by the legal community has nevertheless had interesting practical and theoretical influences on legal reasoning. The purpose of this Article is to provide a cultural, legal, and policy "take"—a tentative, broad-brushed and descriptive analysis—on the implications of the evolving use of "road rage" parlance over the last decade or so. While there have been several psychological explorations of road rage,¹² there have been no systematic legal discussions of the topic in American law reviews.

What kind of human situations are addressed by road rage language in the popular press? Does the legal press, consisting of bar journals and legal newspapers, deploy the road rage lexeme in an analogous fashion to the popular press? How have legal scholars, courts, and legislatures used the phrase? Has use of the road rage lexeme helped or impeded legal reasoning and understanding? In addressing these questions, I shall proceed as follows: in Part II, I canvass a sample of popular print media accounts of road rage, with primary emphasis on major American newspapers. In Part III, I examine the use of road rage language in the more rarified context of the legal media (primarily legal newspapers and bar magazines). In Part IV, I describe and analyze lawyerly use of road rage parlance in law review articles, legislative materials, and written judicial opinions. Finally, in Part V, I draw a few short and tentative conclusions.¹³

10. See generally Robert F. Blomquist, "New Torts": A Critical History, Taxonomy, and Appraisal, 95 DICK. L. REV. 23 (1990).

11. See generally Robert F. Blomquist, *American Toxic Tort Law: An Historical Background, 1979-87*, 10 PACE ENVTL. L. REV. 85 (1992); Robert F. Blomquist, *Emerging Themes and Dilemmas in American Toxic Tort Law, 1988-91: A Legal-Historical and Philosophical Exegesis*, 18 SO. ILL. U. L.J. 1 (1993).

12. For a prominent example of psychological exploration of "road rage," see *infra* text accompanying notes 174-179. Henceforth, unless indicated in a quotation from a specific source, I will refrain from using quotation marks around the phrase road rage in the remainder of the Article. Although it is obvious that motorists sometimes became angry, frustrated, and stressed while driving as soon as automobiles were made widely available for purchase at the beginning of the twentieth-century, the social "problem" of motorists' anger, frustration, and stress was logically preceded by the lexical creation of the phrase "road rage." "Lexical creation" is a complex linguistic process. For an excellent account, see LANGUAGE, *supra* note 5, at 863.

13. I draw on the artistic technique of California graphic artist, Ed Ruscha, whose work was recently exhibited at Chicago's Museum of Contemporary Art, for inspiration in this article. Ruscha experimented with unusual materials and modes of presentation—including artists' books of common images such as gas stations, motels, and swimming pools. By analogy, I hope to gain legal insight by cataloguing road rage parlance.

II. POPULAR MEDIA ACCOUNTS

A. Early Stories: 1988-1995

Use of road rage language in major American newspapers was a relatively rare occurrence in the late 1980s and early 1990s.¹⁴ The earliest appearance of the road rage lexeme in a major American newspaper was a short, April 2, 1988, article in the *St. Petersburg Times* entitled "Highway Driver Accused of 'Road Rage' Shooting Series."¹⁵ With a Mount Dora, Florida locale for the incident, the entire article stated:

A fit of "road rage" has landed a man in jail, accused of shooting a woman passenger who's [sic] car had "cut him off" on the highway. Robert Edward Muller Jr., 40, was in the Lake County Jail on Friday, charged with firing the shot that critically wounded Cassandra Stewart, 20, on U.S. 441 on March 19. Police said Ms. Stewart's boyfriend was driving when he was passed by a late-model Buick. A passenger in that car then stuck a pistol out of the passenger side and fired one round, shattering a rear window in the car driven by Troy Washington. Ms. Stewart was wounded in the back of the neck. Police Chief Bob Roberts said an anonymous note led to Muller's arrest, but he would not disclose the contents.¹⁶

No major American newspaper article published in either 1989 or 1990 contained any explicit mention of road rage. In 1991, however, two such articles appeared in June—a mere four days apart. On June 20, 1991, in a lengthy article entitled "Don't Tangle With Tailgaters" in the *Washington Post*,¹⁷ a journalist provided observations and suggestions concerning aggressive driving in the Washington, D.C., area. The article opens with the following lament:

A number of people have asked for advice on what to do about tailgaters. We all know who they are. No matter that you're obeying the speed limit, these pests rapidly approach from the rear to within, say, five inches of your bumper, and flash headlights, blow horns, and make it quite clear that you

-
14. My research methodology in scanning major American newspapers was to use the Westlaw database ("NPMJ" newspapers—major). The scope of this database "contains full text coverage of over forty of the most widely circulated daily newspapers in the United States, as provided by Dow Jones Interactive to Westgroup. A document is an article, column, letter, briefing, or other section of text." See WESTLAW, *NPMJ Scope*. The coverage dates vary but generally start in the late 1980s or early 1990s; some representative papers include the *Baltimore Sun*, *Boston Globe*, *Denver Post*, *Houston Chronicle*, *Indianapolis Star*, *Los Angeles Times*, *New York Times*, *Orlando Sentinel*, *Plain Dealer*, *San Francisco Chronicle*, and *St. Louis Post-Dispatch*. In addition, the database includes some newspapers distributed in Canada and Great Britain; accordingly, I had to discount the total number of documents in any particular year in counting articles from major American newspapers.
 15. *Highway Driver Accused of 'Road Rage' Shooting Series*, ST. PETERSBURG TIMES, April 2, 1988, at 1B, available at 1988 WL 2569951.
 16. *Id.*
 17. Ron Schaffer (a/k/a "Dr. Gridlock"), *Don't Tangle With Tailgaters*, WASH. POST, June 20, 1991, at J1, available at 1991 WL 2133369.

are in the way and HAD BETTER MOVE IMMEDIATELY. The temptation is to nail 'em with a death ray, but that won't do. So, what to do?¹⁸

The *Washington Post* columnist, writing under the alias of "Dr. Gridlock," provided his research findings on the subject, noting:

Dr. Gridlock checked around the area police, and they all say pretty much the same thing: No matter how irritating, move over as soon as it is safe to do so and let the pest pass. Do not tap your brakes to force him to slow down (he might wind up in your trunk). Do not make eye contact. Do not make an obscene gesture. Do not stop. The other person may be in a real emergency, or may be fleeing from a crime. Try to keep your blood pressure level and continue with life.

...

"We've heard cases of people ramming each other and getting into fist fights and accidents, and getting their car door kicked in. Best to just pull over and let the other driver pass."

It sounds simple enough. But there is a lot of road rage out there . . .¹⁹

In a June 1991 article in the *Boston Globe*, entitled "Learning to Be a Boston Driver,"²⁰ a reporter discussed the plight of "Carol O'Keefe, 32, a married mother of one"—a resident of the Boston suburb of Dorchester.

Ms. O'Keefe, while attending to the needs of her infant son, had found it unnecessary to drive an automobile. "Life was blissful then. Nobody passed her at 90 miles an hour in the expressway breakdown lane. Nobody tried to ram her broadside. Nobody leaned out a window and gave her the finger."²¹ O'Keefe was willing to shop locally and ride light rail urban transportation to downtown Boston while her son was young. But as described by the *Boston Globe* staff writer:

Now, all of this is changing. O'Keefe's son, Ryan, is now 2½, and she wants to take him to the New England Aquarium and to the beach without the hassle of changing subways. Then there's the South Shore Plaza.

Besides, who knows? O'Keefe might even want to get a part-time job.

So, her heart in her throat and two hands clutching the steering wheel, Carol O'Keefe is about to join the world of . . . the Massachusetts driving public.²²

O'Keefe, however, even though she was a licensed Massachusetts driver, decided to relearn how to drive in the Boston area by taking lessons from a driving school instructor; but before her first lesson, "she said that she was more nervous than on her wedding day . . . because there are lunatics out there"²³ and because "[e]ven as a pedes-

18. *Id.*

19. *Id.*

20. Barbara Carton, *Learning To Be A Boston Driver: Speeding Cars, Rude Drivers, Narrow Streets—It's an Ugly World Out There, but She's Ready For It*, BOSTON GLOBE, June 24, 1991, available at 1991 WL 7424585.

21. *Id.*

22. *Id.*

23. *Id.*

trian, [she] had sometimes felt the brunt of Massachusetts drivers' pent-up road rage. 'They don't stop,' she says. 'They aim.'"²⁴

The frequency of reference to road rage language in major American newspapers increased after 1991, although there were no major American newspaper articles utilizing the term in either 1992 or 1993. The next reference to the road rage lexeme in a major American newspaper article was a December 1994 column in the *Los Angeles Times* from the "Metro Desk" entitled "You Can Fill Up in More Ways Than One at New Breed of Service Station."²⁵ This piece focused on Southern California automobile service stations that were exploring "new ways to appeal to customers' tastes"—from cappuccino machines to gourmet cheese, from fresh flowers to holiday gift baskets.²⁶ In a tongue-in-cheek reference at the end of the column, the writer compares American service stations with British stations: "In some British stations, motorists are treated to a free five-minute massage of the head, shoulders and hands aimed at 'alleviating stress and combating road rage among drivers.'"²⁷

In 1995, the number of articles mentioning the road rage lexeme in major American newspapers jumped to three. A blurb in *USA Today* mentioned the problem of road rage in Great Britain²⁸ and articles in both the *Houston Chronicle* and the *Orange County Reporter* mentioned "safety tips for highway driving" including the admonition: "Be courteous to other drivers. Signal your intentions when turning and changing lanes. Hold your temper—'road rage' can result in a serious crash or altercation."²⁹

24. *Id.*

25. Richard Simon, *You Can Fill Up in More Ways Than One at a New Breed of Service Station*, L.A. TIMES, Dec. 5, 1994, at 1, available at 1994 WL 2375153.

26. *See id.*

27. *Id.*

28. Doreen Wright & Arlene Vigoda, *Satellite Degree*, USA TODAY, Jan. 31, 1995, at 7A, available at 1995 WL 2920899. Interestingly, the process of lexical creation may have been significantly catalyzed by reports from the British press about an outbreak of road rage by traditionally unflappable British motorists during the "hot" summer of 1995. *See, e.g., Car Insurance Claims Soar in Heatwave*, MAIL ON SUNDAY, August 27, 1995, available at 1995 WL 11791234; *Driving Lesson on the Superhighway*, EVENING STANDARD, Nov. 3, 1995, available at 1995 WL 11785041.

29. *Top 10 Safety Tips for Highway Driving*, HOUSTON CHRON., Nov. 24, 1995, at 2, available at 1995 WL 9416829; *More Deaths Likely if Congress Repeals 55-mph Speed Limit*, ORANGE COUNTY REP., Nov. 25, 1995, at G8, available at 1995 WL 10768457.

B. Later Stories: 1996-2000

1. 1996

During 1996, the number of major American newspaper articles deploying road rage language skyrocketed to eighty-two. The year 1996, indeed, marked the beginning of the widespread use of this lexeme in the popular American press. The newspaper articles described a variety of road rage behavior, while providing various facts and figures about the phenomenon.

Some of the more interesting articles published in major American newspapers during 1996 included the following information: an estimate that the number of "annual road-rage fatalities [in the United States] was 1,200";³⁰ a reference to the "Mr. Hyde Syndrome" which some therapists speculate causes road rage and "emerges when people enter the 'private bubble of space inside their own automobiles';³¹ an editorial which condemned Texas' "right-to-carry" concealed weapons law as contributing to "a high-pressure environment that has made Texas a leading state for road rage";³² a report in the *Washington Post*, concerning a road rage incident on George Washington Memorial Parkway which killed three people, stating that "[a]ggressive and dangerous drivers aren't new, but a combination of factors—including a decline in overall politeness and increased gridlock on area roads—has made the [problem] worse in recent years";³³ a look at the possible links between the poorly designed modern "four lane freeway" and rising incidents of "confrontational driving";³⁴ and mention of a Los Angeles psychologist who wrote *A Handbook for Overcoming Road Rage* and who takes calls from patients by cellular phone "the moment they feel violent on a highway."³⁵ An article in the *Star-Ledger*, in Newark, New Jersey, detailed the results of a recent national study on road rage, noting:

[T]he vast majority of aggressive drivers were male. Four percent were women

Most of the aggressive drivers were young, poorly educated males with criminal histories who had recently suffered an emotional or professional set-

30. Beth Teitell, *Road Rage Driving Motorists to Brink and Some Over the Edge*, BOSTON HERALD, Jan. 4, 1996, at 35, available at 1996 WL 5324775.

31. *Id.*

32. *Deadly Force Shooting Sends Warning to Weapons Trainers*, DALLAS MORNING NEWS, Feb. 23, 1996, at 20A, available at 1996 WL 2104975 (internal quotation marks omitted).

33. Rajiv Chandrasekaran, *Crash Gives Drivers Wake-Up Call*, WASH. POST, Apr. 21, 1996, at B1, available at 1996 WL 3075346.

34. Thom Marshall, *Road Rage Drives Some to the Brink*, HOUSTON CHRON., Oct. 30, 1996, at 29, available at 1996 WL 11572921.

35. Steve Harvey, *Only in L.A.*, L.A. TIMES, Nov. 30, 1996, at B2, available at 1996 WL 12761192.

back, according to the study. But hundreds of others were successful men and women with no such histories.

Though guns, knives, clubs or tire irons were used in 44 percent of the cases, other attacks involved pepper spray, eggs or golf clubs. In one instance, a crossbow was used.

Violent traffic disputes were rarely the result of a single incident, according to the study, but were “the last straw” in a stressed-out motorist’s series of problems. And alcohol wasn’t cited as a common factor in the outbursts.³⁶

2. 1997

During 1997, road rage was mentioned in over 1,000 major American newspaper articles—approximately twelve times the number in 1996. A selective sampling of the more striking newspaper items appearing in 1997 includes the following:

- A gallows humor joke by comedian Dave Barry positing a scenario whereby “[t]he nationwide epidemic of ‘Road Rage’ reaches an alarming new level when a Los Angeles commuter, after being cut off, uses a surface-to-surface nuclear missile to destroy 17.3 miles of freeway,” with this action “actually improv[ing] traffic flow”;³⁷
- A letter to the editor of the *Wall Street Journal* describing an anti-road rage prayer for drivers to employ so that “if another driver does something stupid or rude, [you] say a brief prayer for that person”;³⁸
- An Arizona motorist poll conducted by the Behavior Research Center indicating that “[r]eports of ‘road rage’ belie the experience Arizona motorists find most common—drivers who behave with graciousness and courtesy,” which were “reported by nine of ten drivers,” while “[o]n the other hand . . . 49 percent reported having been yelled at, subjected to obscene gestures or had headlights flashed at them by an impatient driver at least once a month” with “16 percent [reporting that] they have been threatened orally, followed to their destinations or sustained car damage from another driver,” and “less than 1 percent reported having been harmed physically as a result of a traffic disagreement”;³⁹
- A report of parking lot rage behavior at a busy shopping mall during the holiday shopping season, with drivers frustrated by crowded parking conditions and engaging in verbal insults, obscene gestures, and intentional damage to other cars in a situation described by one psychologist as being

-
36. STAR-LEDGER (Newark), Nov. 18, 1996, at 16, available at 1996 WL 11888793; see also Fred Barbash, *King Arthur’s Land Caught in Coils of Dragon Called Traffic*, FT. WORTH STAR-TELEGRAM, June 23, 1996, at 11, available at 1996 WL 5546994 (one of many news articles published in American papers during 1996 describing road rage problem in England); Caroline Palmer, *All the Rage Manners Can Make or Break Co-Workers’ Relationships*, ST. LOUIS POST-DISPATCH, July 22, 1996, at 2, available at 1996 WL 2781423 (discussing cognate concept of “office rage”).
37. Dave Barry, *Dave Barry’s 1997 Year in Review*, SAN DIEGO UNION-TRIB., Dec. 29, 1997, at E1, available at 1997 WL 14542901. This article is actually reminiscent of science fiction writer Harlan Ellison’s story *Along the Scenic Route* in his book *DEATHBIRD STORIES* 40-53 (1975).
38. Ben M. Carter, Letter to the Editor, *Sin of Road Rage: A Driver’s Prayer*, WALL ST. J., Dec. 26, 1997, at A9, available at 1997 WL 14178800.
39. *Poll Suggests Courteous, Irritable Drivers Mix in Arizona*, ARIZ. REPUBLIC, Dec. 26, 1997, at B1, available at 1997 WL 8416455.

"similar to road rage with people who feel they're on edge expressing their anger anonymously",⁴⁰

- A statistic that during a three month period, the Ohio State Patrol arrested 728 people because of "road rage incidents",⁴¹
- The announcement of the offering of a two hour class, by an ordained Buddhist monk in Dallas, Texas, on "Deflating Road Rage" with the aim of "help[ing] people find ways to develop happiness and peace in their minds rather than getting angry",⁴²
- A *USA Today* report of various state and private efforts designed to "curb a growing epidemic of aggressive driving and road rage, its violent and irrational byproduct" including 30-second public service television announcements in Colorado, laser-equipped high-tech police cruisers in Maryland "to spot and record" road rage incidents, a statewide "# 77" number "that cellular-phone users can call for free to report aggressive drivers" in New Jersey, the preaching of "aloha driving" by a University of Hawaii psychology professor on his "Doctor Driving" homepage, and the launching of a website, "www.roadrage.com," by a Southern California psychologist to promote his "road rage resolution seminar",⁴³
- A report that a former Ohio State employee with access to Ohio motor vehicle records pleaded guilty to mailing thirty-seven so-called "'road rage' letters" to motorists' homes because the employee "became angry with motorists while driving along central Ohio roadways." He wrote down their license plate numbers and later mailed letters like one where he threatened "to poke your eyes out . . . cut off your head and hand it to you on a platter . . . dispose of you like trash . . . put you in a box six feet under . . . (and) crush your wind pipe",⁴⁴

40. Susan Dodge & Becky Beaupre, *Holiday Hostility—Tempers High as Shoppers Vie for Parking*, CHI. SUN-TIMES, Dec. 24, 1997, at 4, available at 1997 WL 6385495.

41. *Driver Charged in Highway Attack*, COLUMBUS DISPATCH, Dec. 12, 1997, at 3D, available at 1997 WL 12523922 (internal quotation marks omitted).

42. *Driver Rage Shouldn't Run Your Karma Off the Road*, DALLAS MORNING NEWS, Dec. 10, 1997, at 6C, available at 1997 WL 16184738.

43. Patrick O'Driscoll, *In Hot Pursuit of Road Rage*, USA TODAY, Dec. 9, 1997, at 3A, available at 1997 WL 7022229 (internal quotation marks omitted). Other interesting data and statistics provided in the article include the following:

[T]he National Highway Traffic Safety Administration estimates that two-thirds of [1996's] 42,000 highway deaths were caused by aggressive driving. At least 17 states have beefed up road patrols in high-profile enforcement campaigns. Some police agencies and safe-driving advocates are trying education and driver awareness as well.

....

Driving the issue today are too many cars on too few miles of road. In the last 10 years [1987-1997], road mileage in the U.S.A. has increased just 1% while vehicle miles driven have accelerated 35%. Traffic exceeds road capacity in more than half of the 50 largest urban areas. And 70% of urban freeways are clogged at rush hour, compared with 55% in 1983.

Faced with tempers boiling over like radiators in rush-hour gridlock, police agencies are seeking ways to brand aggressive drivings as socially unacceptable in the same way that education and strict enforcement have stigmatized drunken driving.

Id.

44. Robert Ruth, *'Road Rage' Writer Pleads Guilty*, COLUMBUS DISPATCH, Dec. 6, 1997, at 1B, available at 1997 WL 12523463.

- An account of the Colorado State Patrol Chief who suggested motorists give each other the “peace sign” to calm tempers on the road and to lessen incidents of road rage;⁴⁵
- A complaint that “road rage rhetoric” is all the rage and is unnecessarily leading to government proposals to solve the problem;⁴⁶
- An opinion by a psychologist that “the origins of road rage can be traced to the Mad Max movies of the early 1980’s.”⁴⁷

Significantly, in June of 1997, *U.S. News and World Report* published a cover story on road rage entitled: “Road Rage: Tailgating, Giving the Finger, Outright Violence—Americans Grow More Likely to Take Out Their Frustrations on Other Drivers.”⁴⁸ The substance of the cover story suggested that aggressive driving and road rage were not just a matter of a few crazy people, but amounted to a “subculture of driving.”⁴⁹ Moreover, the article cited problems of urban-suburban sprawl, edge-city growth, low public interest in mass transit, and the increased popularity during the 1990s of hulking “suburban assault vehicles” (sport utility vehicles and pickup trucks). The article also described demographic changes—like the number of women drivers increasing 84 percent from 1969 to 1990, in part to commute to work—as broad-based causes of road rage and aggressive driving in America.⁵⁰

3. 1998

In 1998 road rage parlance was used in over 2,400 major American newspaper articles, over double the number in 1997. A few articles deserve specific reference, as follows:

- A Tacoma, Washington incident of a shooting “after a car hit a pedestrian” followed by “[a] bystander [who] reportedly pulled out a gun and blasted away at the vehicle as it sped off”;⁵¹
- A discussion of a Wisconsin Department of Transportation Road Rage Task Force Survey, which found that 89% of Wisconsin drivers had witnessed aggressive driving in the month before the survey, and that 42% of the respondents admitted that they had committed an act of aggressive driving in that period of time;⁵²

45. *State Patrol Chief Urges Peace Sign, ‘Road Rage’ Behavior Called “Epidemic” in State*, ROCKY MOUNTAIN NEWS, Oct. 18, 1997, at 38A, available at 1997 WL 14966923.

46. Bill Thompson, Editorial, *Road Rage Rhetoric is Suddenly All the Rage*, FT. WORTH STAR-TELEGRAM, JULY 23, 1997, at 13, available at 1997 WL 11894693.

47. Joey Lenford, *Rage on Our Roads*, ATLANTA J. & ATLANTA CONST., Mar. 29, 1997, at E6, available at 1997 WL 3965382.

48. Cover, U.S. NEWS & WORLD REP., June 2, 1997, available at 1997 WL 8332133.

49. *Id.* (internal quotation marks omitted).

50. *See id.*

51. *Washington Road Rage Scope Expands to Sidewalks, Parking Lots*, PORTLAND OREGONIAN, Jan. 4, 1998, at B4, available at 1998 WL 4171102.

52. *See* Larry Sandler, *Wild Driving Called Widespread, 89% of Motorists Say They’ve Recently Seen Overly-Aggressive Actions*, MILWAUKEE J. & SENTINEL, Feb.

- A gruesome account of a California road rage incident that escalated into face-slashing when, after receiving an obscene gesture from a motorist in retaliation for honking, a passenger in another vehicle "brandished a pair of garden shears and slashed the other man in the face";⁵³
- A confession by a Los Angeles journalist that he had "experienced road rage the other day for the first time in [his] life" and that "[i]t surged through [him] like a flash of fire and transformed [him] into a screaming, roaring, honking madman";⁵⁴
- A bone-chilling tale of "[t]wo carloads of young people . . . feuding after the driver of one car failed to use his turn signal properly" leading to a high speed chase involving eleven teenagers, the brandishing of a baseball bat and a pipe, and the death of one teen;⁵⁵
- A bizarre account, out of California, of a motorist—outraged "about being cut off on the freeway"—first "hurl[ing] hot coffee through his window" at the offending driver, then following the driver for several miles "before confronting him on a busy city street, shoving him under an accelerating big rig and kicking him even after he had been run over," causing the victim to suffer internal bleeding and fractured ribs.⁵⁶

An editorial appearing in the Newark *Star-Ledger*, entitled "Road Rage in Overdrive," seemed to sum up the American carnage and violence of 1998:

We know who they are and we're sick of them.

They run red lights—from behind you, threatening to take you out if you even think about stopping.

They turn every intersection into a game of chicken.

They don't just ignore "No Turn on Red" signs. They'll pass any car in front of them, fast and close, like you're a fool for sitting there obeying the sign.

They ride an inch off your bumper, even on the highway, even if you're in the slow lane doing considerably better than the limit. They'll pass on the shoulder. They'll squeeze between cars, half a hairsbreadth from disaster at 65 mph.

...

20, 1998, at 1, available at 1998 WL 6301945. The Wisconsin survey asked people what driving acts were most bothersome. According to the article:

Tailgating topped the list, followed by cutting someone off, driving too fast in bad weather, driving too slowly, blocking someone who's trying to pass or merge, and turning in front of oncoming cars at the last second. Further down the list were obscene gestures (14th), flashing high beams (20th), cursing (23rd), and honking (25th).

Drivers 35 and older were most angry about tailgaters and less concerned about people driving too slowly, while drivers 16 to 19 were most upset about people driving too slowly and less concerned about tailgating

....

Id.

53. *Road Rage Escalates into Face-Slashing*, SAN DIEGO UNION & TRIB., Jun. 10, 1998, at B4, available at 1998 WL 4014784.
54. Al Martinez, *From Here to Infinity*, L.A. TIMES, Aug. 8, 1998, at B1, available at 1998 WL 2451559.
55. *See Teen Dies After Brawl South of Hillsboro*, PORTLAND OREGONIAN, Oct. 13, 1998, at A1, available at 1998 WL 20378721.
56. *3 Held After Driver is Hurt in Road-Rage Attack*, ORANGE COUNTY REG., Dec. 16, 1998, at B4, available at 1998 WL 21285463.

And we're all sick of them. Sick of every selfish, aggressive stupid act.

...

You see the SUV trying to squeeze past? Speed up, move over—run his four-wheel-drive-butt into a car. Serve him right. It's time you won one. You don't have to take it. You can dish it out. Vengeance is what you want. Anger is what you feel.

You're mad enough to kill somebody.

You want to see some road rage? Check out your rear-view mirror. Look at your own angry eyes and the rage behind your wheel.

The AAA says aggressive drivers should be sent for therapy. That might help but for a couple of things. We don't have enough cops to catch them, and we don't have enough shrinks to treat them—because most of us would have to go.⁵⁷

4. 1999

Articles published in major American newspapers which deployed the road rage lexeme in 1999 numbered over 2,500—roughly equivalent to the prodigious output during 1998, which averaged about seven articles a day. A selective sample of the more interesting road rage newspaper articles appearing in 1999 includes the following:

- The story of how former boxing champ Mike Tyson was sent back to jail for assaulting two motorists in a road rage incident in Gaithersburg, Maryland, where he “kicked one motorist and punched another after a minor three-car accident”,⁵⁸
- A thoughtful analysis which linked road rage to urban sprawl and lack of mass transit options;⁵⁹
- A report of the initial enforcement of a new St. Louis County ordinance against a driver who smashed another motorist's windshield with a golf club and against another driver who “purposely swerved out of his lane to hit [another] car,” the ordinance punishing “aggressive driving” (defined as any of the following: “[i]ncreasing or decreasing speed suddenly,” “[c]hanging lanes,” “[f]ollowing the other vehicle too closely,” “[o]bstructing the other vehicle,” or “[d]riving in a manner that endangers . . . any person or property”),⁶⁰
- Discussion of “[a]n apparent case of road rage sparked by nothing more than a glance between people in two cars” leading to a 14-year-old boy receiving a gunshot wound to the neck in the Atlanta, Georgia area;⁶¹

57. *Road Rage in Overdrive*, STAR-LEDGER (Newark), May 7, 1998, at 20, available at 1998 WL 3413772.

58. *Tyson is Sent to Jail for Up to One Year in 'Road Rage' Case*, STAR TRIB. (Minneapolis-St. Paul), Feb. 6, 1999, at 1A, available at 1999 WL 7485032.

59. *See Road Rage Linked to Urban Sprawl, Lack of Mass Transit*, BALT. SUN, Mar. 9, 1999, at 2A, available at 1999 WL 5175396.

60. Paul Hampel, *County Police Cite First Two Drivers in Road Rage Law*, ST. LOUIS POST-DISPATCH, July 17, 1999, at 7, available at 1999 WL 3032750.

61. *Shooting Ends Car-To-Car Dispute*, ATLANTA J. & ATLANTA CONST., May 11, 1999, at B6, available at 1999 WL 3769915.

- The story of a "5-year-old boy [who] was wounded in the face by a stray bullet as two motorists whose cars collided traded gunfire in a 'road rage' shooting in northern New Jersey";⁶²
- An account of a 41-year-old male physician "punching a 70-year-old woman in the face on a highway ramp" in Minnesota because she cut in front of him on the highway.⁶³

5. 2000

As of June 30, 2000, there were approximately 1,100 news articles in major American newspapers which deployed road rage language—an approximate annual rate of 2,200 articles, which is a slight decrease in frequency compared to 1998 and 1999. A selective batch of these articles includes accounts of "[a] 69-year-old man who was shot three times in a road-rage incident" in Minnesota;⁶⁴ a proposal unanimously passed in the Maryland Senate that would make Maryland one of the few states in the country with road rage as a crime;⁶⁵ a road rage incident where an angry motorist threw another motorist's pet dog into ongoing traffic in California killing the dog;⁶⁶ the availability of installing in automobiles a "screen that flashes friendly messages: 'Thanks,' 'Sorry,' and 'Help'";⁶⁷ and road rage being exhibited by inconsiderate drivers peeved at funeral processions that cause a slight inconvenience or delay in their journey.⁶⁸

III. LEGAL MEDIA ACCOUNTS

The legal media, lagging behind the lead of the popular press, did not start to use road rage language until late 1997. During 1997 only three legal media discussions of road rage occurred. The first road rage article to appear in the American legal press⁶⁹ was a criminal

62. *Rage Shootout Hurts Bystander*, ORLANDO SENTINEL, June 17, 1999, at A15, available at 1999 WL 2814886.

63. Jim Adams, *Doctor Charged With Assault in Punching Driver in Eagen*, STAR TRIB. (Minneapolis-St. Paul), Sept. 2, 1999, at 2B, available at 1999 WL 7508450.

64. Richard Meryhew, *Stapler Man Who Was Shot in Good Condition*, STAR TRIB. (Minneapolis-St. Paul), Jan. 14, 2000, at 2B, available at 2000 WL 6955911.

65. See Amy Argetsinger, *Md. Senate Goes After Aggressive Drivers; Proposal Would Make Their Actions a Crime*, WASH. POST, Feb. 18, 2000, at B1, available at 2000 WL 2286242.

66. See *Police, Owner Try to Identify Dog-Tosser*, S.F. CHRON., Mar. 10, 2000, at A19, available at 2000 WL 6477213.

67. Anyssa Johnson, *Road-Rage Remedy? Flashing Rear Window Message Says 'Sorry,'* MILWAUKEE J. & SENTINEL, Apr. 27, 2000, at 15A, available at 2000 WL 3855008.

68. See Alan Sipress, *Funeral Processions Must Compete With Inconsiderate Drivers*, MILWAUKEE J. & SENTINEL, June 25, 2000, at 25A, available at 2000 WL 3866240.

69. In researching the American legal press, I utilized Westlaw's LEGALNP (legal newspapers) database. This database includes several national, regional, and state publications. As pointed out to me by my colleague Adam Myers, it is possible that road rage parlance was used prior to 1997 but that my computer search

law and procedure summary in the *Chicago Daily Law Bulletin* in October of 1997.⁷⁰ This summary detailed an Illinois intermediate appellate court decision that affirmed the conviction of a male automobile commuter for continuous and persistent harassment of a female automobile commuter. According to the article, “[t]he defendant was charged after a long-running feud between two commuters, who despite their mutual animosity . . . continued to travel the same route at the same time each morning on their way from their homes in Delavan [Illinois] to their jobs in Peoria.”⁷¹ The plaintiff, Beverly Larson, testified at trial

That beginning in October 1995, the defendant began to harass her on her commute to work each morning by doing such things as tailgating her car with his, positioning his car in front of hers while traveling down a two-lane road and then slowing down so that she could not pass, and following her to work, even to the point of running a red light to keep up with her.⁷²

A November 1997 article in the Baltimore *Daily Record* followed up on popular press accounts during the previous year in the Baltimore-Washington area, which had detailed a multiple car accident on the George Washington Memorial Parkway, stemming from “a high speed duel” between two men occasioned by “[t]he problem of aggressive driving, also called road rage.”⁷³ This article described “Project Advance”: a \$400,000, specially-outfitted police van, designed by the Maryland State Police to videotape and target “motorists who speed, tailgate and recklessly change lanes.”⁷⁴

In December of 1997, a brief account in a regular column in the *Legal Times* described—using road rage parlance—a bizarre incident that took place near the White House between a black woman pedestrian and a white male Secret Service supervisor commuting home in his car.⁷⁵ During the criminal prosecution of the Secret Service Agent, the pedestrian testified that the male motorist “was an angry driver who lost control when she stepped in front of his stopped car.”⁷⁶ Admitting that she was crossing against the traffic signal because it was raining, the African-American pedestrian testified that she heard the driver yell racial epithets and the F-word and then repeatedly strike her leg with the bumper of his car.⁷⁷

did not uncover such usage because of the time lag in getting legal media articles online.

70. *Criminal Law & Procedure—Road Rage*, CHI. DAILY L. BULL., Oct. 21, 1997, at 1.

71. *Id.*

72. *Id.*

73. Bart Jansen, *Police Will Tape Unruly Drivers on Capitol Beltway*, DAILY REC. (Baltimore), Nov. 24, 1997 at 5, available at 1997 WL 17886868; see *supra* note 33 and accompanying text.

74. *Id.*

75. Sam Skolnik, *Hitting Traffic*, LEGAL TIMES, Dec. 1, 1997, at 6.

76. *Id.*

77. See *id.*

During 1998 the number of references to road rage in the legal media mushroomed to twenty-one. These eclectic sketches included a *Chicago Daily Law Bulletin* account of a state intermediate appellate court affirming a 2.2 million dollar verdict against a road raged motorist who shot another motorist "following an altercation on the Stevenson Expressway";⁷⁸ extracts from a New York State town justice's opinion which, while pontificating on the nature of road rage, exonerated a slow-moving motorist who was abiding by the fifty-five miles per hour speed limit, for failing to drive in the right lane of a three-lane expressway under the State Vehicle and Traffic Law;⁷⁹ an editorial with the title "Lawyer Road Rage" in the *New Jersey Law Journal* complaining about "the increasing lack of civility in the [legal] profession";⁸⁰ a humorous tale of a trucker convicted of careless driving for angrily spitting drinking water at another motorist (who happened to be a state judge);⁸¹ and a description of a state prosecutor's inappropriate flashing of his automobile's strobe light on the Garden State Parkway on his way to bogus "official business" in Atlantic City.⁸²

During 1999, however, the legal press cut back in the deployment of the road rage lexeme; during this time period there were only 13 references to road rage in the legal print media. Despite the decreased references to the phrase, one can detect a sophisticated turn of thought by legal journalists and legal opinion writers in 1999, from earlier references which tended to mimic the lowbrow approach to road rage in the popular press. Four print pieces in the legal media during 1999 illustrate this turn to a more nuanced appreciation of the causes and social implications of road rage and the relative gravity of the problem when juxtaposed with other social issues. In an opinion piece in the *Chicago Lawyer* in May of 1999, for example, the author reflected on whether or not the Illinois prison system was doing a good enough job in training inmates to temper their social behavior to deal with the petty annoyances of everyday life without overreacting. The author made a trenchant normative observation, in this regard, noting:

The prison system is under the umbrella of the Illinois Department of Correction. What is it correcting? It obviously is telling the public that it is cor-

78. CHI. DAILY L. BULL., Mar. 2, 1998, at 3.

79. See N.Y. L.J., Mar. 13, 1998, at 33 (discussing *People v. Ilievesk*, 670 N.Y.S. 1004 (J. Ct. 1998)); see *infra* notes 202-206 and accompanying text.

80. *Lawyer Road Rage*, 152 N.J. L.J. 194, Apr. 27, 1998 (opining that "[i]t would be a good beginning for judges to strive to lower the volume level of personal attacks [by lawyers against one another] and to discourage machete-like brief writing").

81. See *Driver Accused of Road Rage; Judge Acquitted of Robe Rage*, NAT'L L. J., Jun. 15, 1998, at A27 ("TRUCKERS BEWARE: If you are going to spit your drink out of your rig, make sure it doesn't land on a judge's windshield, and don't tell another state judge you meant to hit the pavement.").

82. See Tim O'Brien, *Prosecutor Flashes Strobe, Then Badge in Parkway Ruckus*, 153 N.J. L.J. 1305, Sept. 28, 1998.

recting the behavior of the inmates. What is being done to get people ready to go back into society?

Members of society who get jostled on a bus or lose a parking space to someone must learn to take it without believing the behavior is conspiratorial or intentional.

Horror stories involving road rage are so common they need not be repeated here. Abusive language to sales help, or waitresses or ticket sellers is common enough; but the insults usually do not escalate into physical violence. A person coming out of the penitentiary has to learn and has to be prepared by state officials to deal with these everyday nuisances, affronts and challenges to their "manhood."⁸³

A second illustration of a more refined exploration of road rage comes from a July 1999 legal news article in the *New Jersey Lawyer*.⁸⁴ This report discussed a directive from the New Jersey Administrative Office of the Courts to the state judiciary, which admonished state judges to avoid issuing summary contempt citations to litigants who engage in offensive conduct outside the courtroom. For problematic out-of-courtroom behavior, the directive reiterated that the proper course of action for a state judge who is arguably threatened by offensive conduct is to report the conduct to the state police for investigation. According to the article, road rage directed at a motoring jurist by another motorist would present a difficult investigatory assignment:

Threats come in all sizes and shapes: a verbal outburst from a defendant during sentencing, a handwritten scrawl on the back of an envelope or a person who pickets a judge's home.

...

[I]t's crucial to separate harmless from serious as quickly as possible so judges can be free from even the remote possibility of their decisions being influenced.

That includes determining what prompted the threat.

"Was the threat made because he's a judge or just a bad neighbor?" [asked a police observer]. For example, road rage makes for a tough investigation. Did a person use his vehicle as a weapon because he was upset by a judge's ruling in a child custody case or was it prompted solely by the judge's failure to signal a lane change?⁸⁵

A brief report in a July 1999 edition of the *New York Law Journal* shows an instance of urbane appreciation by the legal press, as well as public officials, of effective social interventions in dealing with road rage in New York.⁸⁶ The report favorably noted an innovative Saratoga County program "under which some overly aggressive drivers will be sent to a four-week educational program [at a state univer-

83. Patrick A. Tuite, *Teach Inmates How to Behave*, 22 CHI. LAW., May 1999, at 15.

84. See Nancy Ritter, *Court to Judges: Don't Rush to Contempt*, 8 N.J. LAW., July 12, 1999, at 1483.

85. *Id.*

86. See *Today's News*, N.Y. L.J., July 29, 1999, at 1.

sity]."⁸⁷ "[The program] include[s] a full psychological assessment and sessions on calming techniques and other ways to avoid road rage."⁸⁸ The legal columnist quoted the county prosecutor's rationale for the alternative sentencing approach: "We find a conviction and fine is not really causing behavior modification We need to educate drivers on how to deal with stressful driving situations."⁸⁹

The fourth example of a relatively more refined focus in the legal press during 1999 is derived from the pages of the *Journal Record* of Oklahoma City. In an August 1999 news analysis, the underlying simplistic assumption that road rage—and other types of "rages" labeled in the popular media—were on the rise in America was challenged in an article entitled '*Rages' Aren't What They're Cracked Up to Be*."⁹⁰ This article opened by referring to the national tragedy-of-the-moment:

When securities day trader Mark Barton walked into two Atlanta brokerage firms . . . and fatally shot nine people, it seemed like another gruesome indicator of a trend toward workplace violence and rage.

Barton, 44, had traded with at least one of the firms and had apparently experienced significant financial losses in recent weeks, investigators said. . . . Barton said he wanted to kill "the people that greedily sought my destruction."

But it is not clear that what has been dubbed "workplace rage" is really on the rise, researchers say. And similar doubts have been raised about other so-called "rages," namely road rage and air rage. Some experts suggest that the labels reflect only a national penchant for lumping similar but isolated acts of violence into categories—and question whether media coverage is making them appear to be bona fide trends.⁹¹

The article continued by referring to a prominent sociologist who doubted whether, indeed, there were trends of more violence and angry acts in America:

"Basically, what's going on is that anecdotes are being christened as trends," said Barry Glassner, a professor of sociology at the University of Southern California and the author of *The Culture of Fear: Why Americans are Afraid of the Wrong Things* "There is no reason to believe that we have any new alarming situation in American society."

Glassner said such problems get wide publicity in part because of television news, which thrives on showing chilling footage of each new act of public rage, and because politicians and others use them to advance their own agendas. "There are lots of people making money off of these scares," he said.⁹²

Yet, the article went on to mention that some experts were concerned about rage trends:

87. *Id.*

88. *Id.*

89. *Id.* (internal quotation marks omitted).

90. See Pam Belluck, '*Rages' Aren't What They're Cracked Up to Be*, J. REC. (Oklahoma City), August 4, 1999, available at 1999 WL 9847795.

91. *Id.*

92. *Id.*

Some psychologists say these are not spurious trends, but the natural consequences of more drivers on the road and more passengers in the air. Some, like Dr. Ervin Staub, a professor of psychology at the University of Massachusetts, attribute them to the decline of close communities and accelerating changes in society that make people more frustrated and angry.

Still others say that regardless of how many incidents there actually are, the labels serve the useful purpose of raising awareness about a problem and making people more careful about their safety. After all, drunken driving was common long before Mothers Against Drunk Driving came into existence, but it wasn't until after the group's formation that society began to seriously focus on the problem and take significant steps to curb it.⁹³

The *Oklahoma Legal News* article ended with some interesting analysis and information on the prevalence and seriousness of road rage in America:

With road rage, the numbers seem to vary considerably, depending on the definition of terms like "aggressive driver."

Dr. Arnold Nerenberg, the clinical psychologist who popularized the term road rage, has a Web site . . . that makes some alarming statements, like, "Twenty-eight thousand Americans died in 1996 because of aggressive driving," and, "There are estimated to be close to 2 billion episodes of road rage per year in our nation."

. . .

At that same hearing, Nerenberg testified that a survey he conducted of 585 drivers had found that 53 percent of drivers had "road rage disorder," which he described as one driver's clearly expressing anger to another at least twice a year.

Glassner said one consequence of inventing a term like road rage is that it is self-perpetuating; more incidents are reported because people suddenly have a category to group them in.

Another consequence is that people become more concerned about their own safety.

Dr. Ronald Nathan, a psychologist at Albany Medical College, sells an audio tape called Road Rage Readiness He also offers exercises designed to help drivers control their frustration over, say, being cut off by an aggressive driver. . . .

. . .

The most distressing consequence of the "rage" trends, critics say, is that they take attention away from dangers that are clearly much more common: drunken driving fatalities, for example, or injuries suffered on the job.⁹⁴

During the first six months of 2000, six references to road rage appeared in the legal print media—roughly the rate of road rage legal article citations appearing in 1999. Regrettably, these articles were rather simplistic and unsophisticated in their treatment of road rage.⁹⁵

93. *Id.*

94. *Id.*

95. *See, e.g.,* Patrick A. Tuite, *Screams of Anger Beat Screams of Pain*, CHI. LAW., Jan. 2000, at 1 (comparing so called violent American road rage with the passive rage of the French); *Corporate Responsibility*, 159 N.J. L.J., Mar. 20, 2000, at 1190 (arguing that automakers encourage road rage by television ads like General Motors' Chevrolet "Monte Carlo" commercial which "feature[s] a tornado

IV. LAWYERLY DEPLOYMENT

A. Law Reviews

Discussion and analysis of road rage in American law reviews, up through the first half of 2000, has been sketchy and uneven; lawyer-authors of some thirty articles in law review publications⁹⁶ mention the lexeme of road rage; only a handful of articles provide substantial discussion of road rage.

1. 1998

The first substantial discussion of road rage in an American law review was in a 1998 journal article by University of Pennsylvania law professor Stephen J. Morse entitled *Excusing and the New Excuse Defenses: A Legal and Conceptual Review*.⁹⁷ Morse addressed the broad theoretical context of excuse defenses in criminal law⁹⁸ and then briefly discussed what he called "new syndrome" excuse defenses—what Harvard law professor Alan Dershowitz generically has labeled as "the abuse excuse"⁹⁹—such as "battered woman syndrome," "Vietnam syndrome," "child sexual abuse syndrome," "Holocaust survivors syndrome," "urban survivor syndrome," "rotten social background [syndrome]," "adopted child syndrome," and "road rage [syndrome]."¹⁰⁰ Road rage was specifically mentioned by Professor Morse only once, when he stated that "road rage, from which many drivers allegedly suffer, has been proposed as a new syndrome."¹⁰¹ Road rage, however, was indirectly addressed at the outset of Morse's article when he posed the following hypothetical:

rushing up to a red light; at the light the driver, a hyena or similarly aggressive wild animal, snarls and grabs at the steering wheel until the light changes to green and the car can once more take off down the highway as a tornado").

96. I derived my estimate of the number of American law review references to road rage from my use of Westlaw's JLR (Journal and Law Reviews) database. After observing 38 citations as of June 30, 2000, which used road rage parlance, I went through the lot and omitted state bar journals, newsletters, and other non-traditional law review publications, ending up with a "soft" count of 34.
97. Stephen J. Morse, *Excusing and the New Excuse Defenses: A Legal and Conceptual Review*, 23 CRIME & JUST. 329 (1998).
98. In the first two sections of his article, Morse "addressed the doctrinal structure of criminal liability and the theoretical justifications for holding people responsible[] for blame and excuse." *Id.* at 362. In the third section of his article, he "considered the many confusing theories that do not and cannot explain the excuses we have or might want." *Id.* In the fourth section of his article, he assessed various claims "for potential new excuses based on syndromes." *Id.*
99. See ALAN M. DERSHOWITZ, *THE ABUSE EXCUSE: AND OTHER COP-OUTS, SOB STORIES AND EVASIONS OF RESPONSIBILITY* (1994).
100. Morse, *supra* note 97, at 363 (internal quotation marks omitted) (citing Joe Sharkey, *You're Not Bad, You're Sick: It's In the Book*, N.Y. TIMES, Sept. 28, 1997, § 4, at 1).
101. *Id.*

An otherwise unexceptional citizen becomes enraged whenever he is caught in traffic or is slowed or cut off by other drivers. One day, in the grip of one of these rages, he tries to pass the offending motorist by an exceptionally dangerous maneuver and crashes into an approaching vehicle, killing the driver and passengers in the other automobile.¹⁰²

While the Morse article provides helpful discussion of the meaning, use, and legal admissibility of psychological syndromes,¹⁰³ his article offers no explicit insights on the nature of the social problem of road rage in America and its legal implications.

The second substantial discussion of road rage in an American law review was in an article in a 1998 issue of the *Duke Environmental Law and Policy Forum* by an adjunct professor at Seton Hall Law School, Tirza S. Wahrman, entitled *Breaking the Logjam: The Peak Pricing of Congested Urban Roadways Under the Clean Air Act to Improve Air Quality and Reduce Vehicle Miles Traveled*.¹⁰⁴ Professor Wahrman's article provides a well-reasoned description and analysis of the economic policy tool of "congestion pricing"¹⁰⁵—"[t]he pricing of roadways [through tolls] to discourage peak usage"¹⁰⁶—to achieve a primary policy goal of improved urban air quality and a secondary policy goal of reducing road rage. In this regard, she observes:

As a nation, we are increasingly stuck in traffic. Motor vehicles idling in rush-hour traffic contribute significantly to air pollution in metropolitan areas. Traffic congestion has increased rapidly in urban areas where the growth in volume of motorists has risen faster than the growth in roadway capacity. Due to the expected growth in traffic and constraints in funding and space, there is a growing realization that we cannot "build out of this" mobility dilemma. In fact, recent news reports concerning an alarming rise in aggressive motorist behavior, popularly called "road rage," lay the blame on motorists' frustration with traffic congestion.¹⁰⁷

Wahrman's definition of road rage as "aggressive driving associated with congested road conditions which has been linked to an increase in traffic accidents"¹⁰⁸ is quite narrow; it excludes reported road rage incidents as of 1998 that apparently were not caused by roadway congestion, but rather, were due to motorist altercations incited by perceived rude or inconvenient behavior of another motorist,

102. *Id.* at 330. Professor Morse's road rage hypothetical was embedded in a paragraph which alluded to other kinds of "rages" which might give rise to an excuse or mitigation defense under criminal law to the charge of "murder."

103. *See id.* at 363-70.

104. Tirza S. Wahrman, *Breaking the Logjam: The Peak Pricing of Congested Urban Roadways Under the Clean Air Act to Improve Air Quality and Reduce Vehicle Miles Traveled*, 8 DUKE ENVTL. L. & POL'Y F. 181 (1998).

105. *Id.* at 182.

106. *Id.* at 182 n.5.

107. *Id.* at 181-82 (citations omitted).

108. *Id.* at 182 n.4 (citing Robert Cohen, "Road Rage" Hits the Gas and Here's Another Line: More Motorists Driven by Hostile Intentions," STAR-LEDGER (Newark), Jul. 28, 1997, at 1).

passenger, cyclist, or pedestrian.¹⁰⁹ Moreover, her unsubstantiated assumption, in the conclusion of her article, that "[a]side from air quality impacts, the time and cost savings to roadway users, in this era of growing road rage, are also compelling reasons to move forward with congestion pricing"¹¹⁰ is somewhat shallow. Yet, Professor Wahrman's article is significant because, as a lawyer, she used road rage parlance to describe a social-legal "problem" that she concluded could be partially ameliorated by the legal policy intervention of congestion pricing.

The third substantial discussion of road rage in an American law review was in an article published in the *San Diego Law Review* during 1998, *Why I Am A Lawyer*, by Hamline law professor Joseph L. Daley.¹¹¹ In his concise essay, Professor Daley stressed that "[t]he key facet of lawyering with which law students inevitably collide, which is rarely, if ever, formally discussed in the classroom, is that the profession is entirely about dealing with the reality of human conflict."¹¹²

He went on to point out that "warfare, whether in a courtroom or on the battlefield, is, on rare occasions, necessary";¹¹³ however, he noted that "warfare is not a useful method for dealing with the types of conflicts people encounter on a daily basis."¹¹⁴

By way of example to this thesis, Professor Daley mentioned road rage as a cautionary tale where the warlike response is out of all proportion to the minor annoyance that precipitated the response: "[T]he growing problem of road rage, where people are literally shot and attacked for doing something so small as forgetting to signal before they change lanes, shows how destructive employing an extremely adversarial method of resolving conflicts can be."¹¹⁵

Daley's analysis on this point is indirectly useful in helping to clarify the nature of the road rage problem in America: he reminds us of the basic point that driving in late twentieth-century America inevitably involves conflicts between motorists—and by implication, passengers, pedestrians, and cyclists—who are seeking to use the limited resource of roadways at the same time; these conflicts, he asserts, should theoretically be resolved in peaceful, non-adversarial, ways. Yet, Daley's facile assumptions that the phenomenon of road rage inevitably involves people being "shot and attacked"¹¹⁶ and is a "growing problem"¹¹⁷ impedes thoughtful consideration of the problem.

109. See, e.g., *supra* text accompanying notes 58-63.

110. Wahrman, *supra* note 104, at 208.

111. Joseph L. Daley, *Why I Am a Lawyer*, 35 SAN DIEGO L. REV. 1111 (1998).

112. *Id.* at 1116 (citations omitted).

113. *Id.* at 1119.

114. *Id.*

115. *Id.* (citation omitted).

116. *Id.*

117. *Id.*

A December 1998 article entitled *What Do We Know About Anger Management Programs In Corrections?*, by University of Wisconsin Law School Research Specialist Pamela Steibs Hollenhorst, published in the scholarly law and policy journal, *Federal Probation*, was the fourth substantial discussion of road rage in an American law review.¹¹⁸ This article provides an interesting catalog of anger management programs across a broad spectrum of social issues: from violence prevention programs in daycare to sports training; from coping skills for postal workers to police officer preparation programs; from physician management skills in dealing with changes in the healthcare delivery system to coping with road rage by the general public.¹¹⁹

In the course of her study, Hollenhorst discussed a driver improvement program in Portland, Oregon, which "permits counselors for teenagers convicted of at least two moving violations before age eighteen to impose limits on driving privileges or require the teen to take a course in defensive driving or anger management."¹²⁰

2. 1999

During 1999, a number of articles were published in American law reviews that provided substantial discussion of road rage.

In an article published in the *Albany Law Review*, two legal commentators, in the process of discussing the choice of law issues involved in "air rage" incidents during flights over international waters, made observations on the derivation of the phrase "air rage" from the antecedent phrase road rage.¹²¹ In this regard, the authors noted:

The term air rage has obviously been chosen for its similarity to the popular term "road rage," used in the United States to describe analogous types of intentional misconduct carried on by automobile drivers. . . . Some writers have instead used the term "sky rage" The term "cabin fever" is used to describe the same phenomena.¹²²

Another article, *Violence and Female Delinquency*,¹²³ offered fresh perspectives on the link between road rage and other types of violence in American society such as violent acts committed by teenage girls. The author provided an interesting insight on this matter:

It is not that Americans consider violence "normal" or "usual," but that violence has become so widespread that we find ourselves adjusting, accepting,

118. Pamela Steibs Hollenhorst, *What Do We Know About Anger Management Programs in Corrections?*, 62 *FED. PROBATION* 52 (December 1998).

119. *See id.* at 52-53.

120. *Id.* at 53 (citation omitted).

121. Nancy Lee Firak & Kimberly A. Schmaltz, *Air Rage: Choice of Law for Intentional Torts Occurring in Flight Over International Waters*, 63 *ALB. L. REV.* 1 (1999).

122. *Id.* at 7 n.37 (citations omitted).

123. Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 *BERKELEY WOMEN'S L. J.* 40 (1999).

and adapting to it "American culture currently fosters a perception that violence and fear-induced compliance are effective in achieving short-term objectives in controlling the behavior of others. Violence within the family is reinforced by reports and images in the media, in entertainment programming, and in sports that implicitly condone or promote the use of violence." We even coin terms, such as "date rape" or "road rage," for our new violent trends. Young women in the United States may reflect and reproduce this increasingly violent culture.¹²⁴

A 1999 article published in the *Nebraska Law Review* provided some interesting connections between a variety of emerging American social phenomenon: road rage, declining civility, the increasing divorce rate, the declining quality and tone of political discourse, and the rising property crime rate.¹²⁵ Moreover, a *New York Law School Law Review* article¹²⁶ discussed the relationship of "misbehaving" or "miscreant" males in a variety of social contexts (such as out-of-control college students, psychotherapy patients, drunkards, and aggressive automobile drivers) and the emergence of the American no-duty-to-rescue tort doctrine.¹²⁷ With regard to road rage, the author discussed studies that indicated that "the majority of aggressive drivers are men aged 18 to 26" and were young, "poorly educated males who have criminal records, past histories of violence, and drug or alcohol problems."¹²⁸

Other articles published in American law reviews during 1999 which provided significant discussion of road rage included an essay in the *William Mitchell Law Review* on the correlation between increased stress and overbearing conduct by attorneys and a "general level of atmospheric toxicity" in American society—from road rage to public disgust over Vietnam, Watergate, Whitewater, Ruby Ridge, Waco, and Monica Lewinsky;¹²⁹ an article on "Murder in America," which mentioned the "fondness" in American culture for "hidden handguns," leading to murders between husbands and wives, street gangs, and motorists;¹³⁰ and an article on social norms in the *South-*

124. *Id.* at 47 (quoting BD. ON CHILDREN AND FAMILIES, NAT'L RESEARCH COUNCIL, VIOLENCE AND THE AMERICAN FAMILY 5 (1994) (citation omitted)).

125. See William A. Wines & Michael P. Fronmueller, *American Workers Increase Efforts to Establish a Legal Right to Privacy as Civility Declines in U.S. Society: Some Observations on the Effort and Its Social Context*, 78 NEB. L. REV. 606, 612-17 (1999).

126. Peter F. Lake, *Bad Boys, Bad Men, and Bad Case Law: Re-Examining the Historical Foundation of No-Duty-to-Rescue Rules*, 43 N.Y.L. SCH. L. REV. 385 (1999).

127. See *id.* at 444-50.

128. *Id.* at 444-45 n.331 (internal quotation marks omitted; citation omitted).

129. Bernard E. Boland, *Introduction to Symposium: The Future of Callings—An Interdisciplinary Summit on the Public Obligations of Professionals Into the Next Millennium*, 25 WM. MITCHELL L. REV. 117, 120-21 (1999) (quoting William Raspberry, *From Plain Incivility to Savage Violence*, STAR TRIB. (Minneapolis-St. Paul), May 28, 1998, at 17A).

130. Roger Lane, *Murder in America: A Historian's Perspective*, 25 CRIME & JUST. 191, 218-219 (1999).

ern *California Law Review*, which postulated that a key explanation for rude and aggressive driving was the assumption that future social interaction between feuding motorists in a particular case was unlikely.¹³¹

3. 2000

During the first half of 2000 only two articles in American law reviews engaged in substantial discussion of the social problem of road rage. In the first article, published in the *University of Pennsylvania Law Review*,¹³² the author discussed American governmental reactions to the problem of urban and suburban sprawl. In this essay, Clint Bolick observed, in a critical way, how Vice President Al Gore “attributes all manner of social dysfunction to sprawl,” noting that:

In a single speech, [Gore] blamed sprawl for causing pollution, crime, congestion, and road rage; impeding welfare reform; and causing parents to get home too late to read a bedtime story. Mr. Gore’s liveable community [ideal], by contrast lets you and your spouse walk through a natural ecosystem as you simply take an evening stroll down your street.¹³³

In a second 2000 article, published in the *University of Miami Law Review*,¹³⁴ the author briefly discussed the public policy issues involved in pitting free expression of political viewpoints on license plates against possible adverse reactions by some to the plate’s message that could lead to incidents of road rage.¹³⁵

B. Legislative Materials

While a few legislatures have considered bills to address the problem of road rage,¹³⁶ the most important legislative product to date on road rage is a hearing report that took place in July of 1997 before the Surface Transportation Subcommittee of the United States House of Representative’s Committee on Transportation and Infrastructure. The title of the hearing was *Road Rage: Causes and Dangers of Aggressive Driving*.¹³⁷ For purposes of this Article, I shall focus on this congressional document and not discuss other American legislative

131. See Steven Hetchner, *Creating Safe Social Norms in a Dangerous World*, 73 S. CAL. L. REV. 1, 32-33 (1999).

132. Clint Bolick, *Subverting the American Dream: Government Dictated “Smart Growth” is Unwise and Unconstitutional*, 148 U. PA. L. REV. 859 (2000).

133. *Id.* at 862 (internal quotation marks and citation omitted).

134. Jack Achiezer Guggenheim & Jed M. Silversmith, *Confederate License Plates at the Constitutional Crossroads: Vanity Plates, Registration Organizations Plates, Bumper Stickers, Viewpoints, Vulgarity and the First Amendment*, 54 U. MIAMI L. REV. 563 (2000).

135. See *id.* at 566.

136. See, e.g., *supra* notes 60 and 65 and accompanying text.

137. *Road Rage: Causes and Dangers of Aggressive Driving; Hearings Before the Subcomm. on Surface Interpretation of the House Comm. on Transp. and Infrastructure*, 105th Cong. (1997) [hereinafter *Road Rage Hearings*].

materials on road rage. The *Road Rage Hearings* contain a wealth of information and policy analysis on the alleged emerging problem of road rage in America.

1. *Congressional Road Rage Hearings: Opening Statements by Committee Members*

The initial portion of the hearing consisted of vivid opening statements by key members of Congress. Representative Thomas E. Petri of Wisconsin, Chair of the Subcommittee, spoke first. Petri stated:

This morning's hearing will focus on the causes and dangers of aggressive driving, sometimes called "road rage." . . .

Probably most of us in this room have experienced an aggressive driving incident, and I dare say many may even be guilty of provoking a minor incident at one time or another. Aggressive driving is not a new problem. We have witnessed sporadic outbreaks since the late 1970s. It does seem, however, that this problem is on the rise and that more people either are taking extremely dangerous risks behind the wheel or are engaging in deadly confrontations with other motorists.¹³⁸

Chairperson Petri continued in his opening statement by reflecting on road rage statistics, a tragic road rage incident in the Washington, D.C., area, and the increasing congestion of the nation's highways:

A recent AAA study reported that incidents of aggressive driving have increased by 51 percent since 1991 [up to 1997] and that nearly 90 percent of motorists have experienced an aggressive driving incident within the past year.

. . .

We all remember the tragic result of the 1996 high-speed duel two motorists held on the George Washington Parkway over in Virginia. This senseless act resulted in the death of two innocent motorists and one of the participants. The other driver was convicted on two counts of manslaughter and sentenced to 10 years in jail.

This occurred because one driver was trying to teach the other a lesson. Hopefully we can all learn the lesson that the highway is no place to settle a dispute.

Although there are many causes of aggressive driving, a leading factor is the problem of congestion. While we're driving more—up by 35 percent since 1987 in the United States—the number of miles of roads has increased by just 1 percent. Congestion for a motorist is often the match that lights an already short fuse.¹³⁹

The ranking Democrat on the Subcommittee, Representative Nick Rahall of West Virginia, offered his overview of the hearings by beginning his remarks with a joke:

Aggressive driving is not a new phenomenon. The first recorded car accident in this country occurred on May 30, 1896. It took place in New York City when a car hit a bicyclist. History does not tell us whether or not the automo-

138. *Id.* at 1 (opening statement of Hon. Thomas E. Petri).

139. *Id.* at 1-2.

bile driver was operating in an aggressive manner or not, but being New York City there's every good reason to believe that that was the case.¹⁴⁰

According to Representative Rahall, "it should be obvious to even the most casual observer that the incidence and severity of aggressive-driving-related mishaps is on the definite increase."¹⁴¹ In this view—closely tracking the statement of Chairperson Petri—there are two fundamental reasons for the increased evidence of aggressive driving in America: "number one, the fast pace of our modern society; and, number two, the congestion which chokes our very sanity."¹⁴² Indeed, Representative Rahall added some colorful and incisive observations about the widespread, vexing nature of American road rage, relating aggressive driving to his own rural state of West Virginia and analogizing the public safety problem of road rage with the public safety problem of driving while intoxicated:

Just look at this very morning on I-395 North, or look at any major city or not-so-major city in Anyplace, USA, and I dare say that not a week goes by without similar traffic horrors.

I would also note that aggressive driving is not just limited to urban settings. It affects rural areas, as well. In my neck of the woods, following a coal truck chugging along at 25 miles per hour up a winding mountain road for 20 minutes or so tries the patience of the most sane drivers and can cause rather aggressive actions and reactions.

To be clear, aggressive driving is socially unacceptable behavior, but is not yet as unacceptable as driving under the influence of alcohol.

I believe the weapons employed to combat drunk driving are some of the very same tools that we need to use against the threat aggressive driving poses to the health and safety of the traveling public.¹⁴³

Other significant opening statements by committee members at the July 1997 *Road Rage Hearings* were Representative Bud Shuster's view that Congress should spend more money on building more and better roads to alleviate aggressive driving;¹⁴⁴ Representative Sue W.

140. *Id.* at 2 (opening statement of Hon. Nick Rahall).

141. *Id.*

142. *Id.* Rahall amplified his assessment that "the fast pace of our modern society" and "congestion" were the major causes of American road rage by noting:

Simply put, today people are much more in a rush to get from place to place than in the past. This, coupled with more cars and trucks on the road and the ensuing traffic congestion, are the ingredients which frazzle the nerves of even the most complacent drivers at times.

Congestion. We could count the millions of hours of shared human expertise and talent that are wasted in the snarling, mean, hot lines of traffic driving up the barometers of road rage. We could look at the millions of gallons of precious fuel wasted in these same lines of seething anger, with blood pressures bubbling to the danger level. In fact, the price of congestion is estimated at \$43 billion a year.

Id.

143. *Id.* at 2-3.

144. *See id.* at 4 (opening statement of Hon. Bud Shuster). Bud Shuster, Chair of the overarching Committee on Transportation and Infrastructure made some brief opening remarks at the *Road Rage Hearings*. His primary emphasis was his

Kelly's concern about strict enforcement against aggressive drivers;¹⁴⁵ Representative Earl Blumenauer's twin contentions that "we look too much at engineering solutions such as widening roads" and that "[w]e must raise our expectations for people's behavior, not make it easier for them to act with impunity";¹⁴⁶ Representative Merrill Cook's concern that "massive construction on I-15 in preparation for the 2002 Winter Olympics" [in Salt Lake City Utah, within his congressional district] could cause lives to be lost to road rage as tempers simmer;¹⁴⁷ and Representative Kay Granger's observations that "[t]he lack of a definition [of 'aggressive driving']"¹⁴⁸ complicates police enforcement and that "the reasons for aggressive driving vary greatly" from general "frustration found on the road" to the "outgrowth of external pressures that affect a driver's behavior behind the wheel, including work-related pressure, family-related pressure, lateness, busy personal schedules, and general anger."¹⁴⁹

2. Congressional Road Rage Hearings: Key Witness Testimony

Nine major witnesses with various viewpoints gave oral testimony at the *Road Rage Hearings*. The first witness to testify was Ricardo Martinez, Administrator of the National Highway Traffic Safety Administration.¹⁵⁰ Among the more striking points made by Administrator Martinez:

- "In 1996, 41,907 people die and over 3 million more were injured in police-reported crashes. These crashes cost the Nation over \$150 billion a year. We estimate that about one-third of these crashes and two-thirds of the resulting fatalities can be attributed to behavior associated with aggressive driving. The more serious the crash, the more likely aggressive behavior is involved";¹⁵¹
- "Though the causes of aggressive driving are complex, three factors in particular are associated with it" as follows: "First, we are seeing a lack of responsible driving behavior. The problem does begin with the individual driver. Driving is a privilege that demands responsibility, not a 'me first' philosophy. Driving is a cooperative venture and not a competitive sport." A second cause of aggressive driving is "reduced levels of traffic enforce-

strong opinion that "a very fundamental part of the solution [to American road rage] is to unlock these transportation trust funds [consisting, he said, of "over \$32 billion"] so that they can be spent to improve highways . . . , so these highways can be safer, so, indeed, congestion can be reduced and road rage certainly can be dealt with." *Id.*

145. *See id.* at 4-5 (opening statement of Hon. Sue W. Kelly).

146. *Id.* at 5 (opening statement of Hon. Earl Blumenauer).

147. *Id.* at 6 (opening statement of Hon. Merrill Cook).

148. *Id.* at 8 (opening statement of Hon. Kay Granger).

149. *Id.* This "frustration," according to Granger, is derived from "fast drivers, slow drivers, traffic congestion, weather conditions, and actions that a driver finds offensive." *Id.*

150. *See id.* at 10-37 (testimony of Hon. Ricardo Martinez); *id.* at 103-112 (written submission of Hon. Ricardo Martinez).

151. *Id.* at 10.

ment. Simply put, people tend to respect what we inspect. Despite large increases of travel on the road, traffic enforcement resources naturally have remained stagnant the past decade. Without enforcement, the laws of the road become the laws of the jungle. Strong laws well-enforced send strong messages that aggressive driving will not be tolerated." A third cause of aggressive driving is "increased congestion and travel, especially in urban areas. Since 1987, the number of miles of our roads has increased by about only 1 percent, while the number of vehicles driven has increased by 35 percent. During this time, the number of registered vehicles actually outpaced the population growth by 17 percent";¹⁵²

- "New lanes or roads should be considered, but we cannot build our way out of this problem";¹⁵³
- "Aggressive driving countermeasures include education, enforcement and engineering";¹⁵⁴
- "On the social level, we must do at least five things: increase awareness of the consequences and send a strong social message on responsible driving; we need to support and strengthen licensing systems so we train you before you come in, as opposed to capture you after you've made a mistake—programs such as graduated licensing; we need to support strong, well-enforced laws; we need to support appropriate punishment from the judicial system; [and] we need to support improved highway management and operations."¹⁵⁵

A second witness to testify at the *Road Rage Hearings* was David K. Willis, President of the American Automobile Association's Foundation for Traffic Safety (AAA Foundation).¹⁵⁶ In his testimony, Willis discussed a study that the AAA Foundation had commissioned from a consulting firm "which specializes in tracking crime and terrorism trends."¹⁵⁷ He explained to the Subcommittee that "[o]ur study is not a census of the aggressive driving problem; it is a snapshot of the most violent kinds of aggressive driving incidents. *Road Rage* has become the most popular term for describing this form of outlandish behavior."¹⁵⁸ The statistical picture of American road rage by Mr. Willis' testimony is chilling. He stated:

For every incident of road rage identified in our study, there are probably tens of thousands other less violent, but still scary, aggressive driving encounters. However, these more mundane instances never show up in newspaper and police reports, the sources of information used by [our consultant].

...
[Our consultant's] research uncovered 10,037 incidents of violent and aggressive driving between January 1, 1990, and August 31, 1996, the period studied. At least 218 men, women and children were killed as a result of these incidents, and another 12,610 were injured.

152. *Id.* at 11.

153. *Id.*

154. *Id.*

155. *Id.* at 13.

156. *See id.* at 37-39 (testimony of David K. Willis); *see also id.* at 152-197 (written submission of David K. Willis, incorporating AAA FOUNDATION FOR TRAFFIC SAFETY, AGGRESSIVE DRIVING: THREE STUDIES (1997)).

157. *Id.* at 38.

158. *Id.* (emphasis added).

The problem is national in scope, not just a phenomenon of congested urban areas, and the problem has been getting progressively worse, growing at a compounded annual growth rate of nearly 7 percent throughout the 1990s.¹⁵⁹

Willis put a human face on the problem of American road rage by discussing the seemingly ridiculous causes of intentionally violent episodes on the highways:

The so-called "reasons" for traffic disputes leading to road rage can be incredibly trivial. That means that motorists are increasingly being shot, stabbed, beaten, and run over for totally inane reasons such as: "he cut me off," "she wouldn't let me pass," "nobody gives me the finger," "he was playing the radio too loud so I shot him," "the bastard kept honking and honking his horn," "she was driving too slowly," "they kept tailgating me," "I would have never shot him if he hadn't rear-ended me."

The great American orator, Robert Ingersoll, once opined that "anger blows out the lamp of the mind." That's exactly what happens to violent aggressive drivers.¹⁶⁰

Willis ended his testimony with the following policy musings:

So what's to be done about all this? How do we create a more civilized driving environment?

The AAA Foundation and others have been offering drivers tips on how to get a grip on their tempers and how to deal with other angry or aggressive drivers. . . .

Ultimately, however, it will take strong law enforcement to reduce this problem. Happily, that is starting to happen. State police agencies in Maryland, New Jersey, and Virginia have campaigns underway to crack down on aggressive drivers and are urging the public to help by calling #77 on their cellular phones to report such drivers. The #77 concept is a good one that we would like to see adopted nationwide.

The 24 states that don't already have some kind of "drive right/pass left" law also need a wake-up call. The absence of such statutes is an open invitation not only to rude behavior by "left lane hogs," but also to tragedy on the road caused by other drivers enraged by the practice.

But aggressive driving doesn't have to end in mayhem for it to be a legitimate public policy concern. . . . It's time to get serious about dealing with this growing traffic safety problem.¹⁶¹

A third witness to testify at the *Road Rage Hearings* was Lisa Sheikh, founder, in February 1997, of the Washington, D.C., metropolitan area group "Citizens Against Speeding and Aggressive Driv-

159. *Id.* (emphasis added).

160. *Id.*

161. *Id.* at 38-39. Willis' written submission contains numerous fascinating stories of American road rage, tips on avoiding road rage incidents, and road rage statistics. One of the more eye-opening nuggets of information in Mr. Willis' written submission to the subcommittee concerns the "weapons used by aggressive drivers." In addition to the most prevalent weapons of choice by American road ragers—firearms and vehicles—the written submission stated that motorists used their fists and feet, tire irons and jack handles, baseball bats, knives, clubs, defensive sprays, eggs, water pistols, beer bottles, and more to express their anger. *See id.* at 171-72. Willis' written submission also discussed the role of domestic violence, crowds, attacks on law enforcement, and female perpetrators in road rage cases. *See id.* at 172-75.

ing.”¹⁶² Ms. Sheikh explained the genesis of her organization in terms reminiscent of the founding of Mothers Against Drunk Driving (MADD) years before. She remarked:

Each day I personally witness[ed] drivers traveling twice the speed limit on city streets, running red lights, weaving in and out of traffic, tailgating, and, in the most extreme instances, challenging each other for space on the roads.

I read the newspaper with horror every time another violent crash occurred in [Washington, D.C.] or the Beltway, and talked with victims whose stories confirmed my worst fear: that deadly driving behavior is going largely unpunished in our society.

Eventually, the answer became clear to me. Citizens needed to organize to combat the problem of speeding and aggressive driving, just as they did with drunk driving in the 1980s. Police and traffic safety experts with whom I spoke seemed ready and willing to do everything in their power to confront this epidemic, but they needed our help.¹⁶³

Ms. Sheikh was accompanied by another member of Citizens Against Speeding and Aggressive Driving, Brenda Fraser, a fourth witness to testify at the *Road Rage Hearings*.¹⁶⁴ Ms. Fraser told a personal tale of family tragedy. She told the Subcommittee of her mother’s death and her own injuries while they drove on a street in Washington, D.C., by “a speeding reckless driver [who] used his car to seriously injure [Fraser who was driving her car] and kill [her passenger] mother.”¹⁶⁵ Ms. Fraser expressed outrage that the driver received no criminal penalty and merely had to pay traffic ticket fines for his driving misbehavior.¹⁶⁶

A fifth witness to testify was Captain Robert Beach of the Fairfax County, Virginia Police Department.¹⁶⁷ He mentioned that aggressive driving, in the opinion of many law enforcement officials, “will be the number one problem that faces us in the area of traffic enforcement in the next decade.”¹⁶⁸ Beach described a traffic safety program called “Smooth Operator,” which was being spearheaded by his department, and consisted of “a year-long effort designed to identify specific behaviors which have statistically been proven to cause traffic crashes and congestion.”¹⁶⁹ For purposes of his program, Beach testified that “the definition of aggressive driving that we have come up with is a combination of unsafe and unlawful driving actions that show a disregard for safety.”¹⁷⁰

162. *See id.* at 39-40 (testimony of Lisa Sheikh).

163. *Id.*

164. *See id.* at 41-42 (testimony of Brenda Fraser).

165. *Id.* at 41.

166. *See id.* at 41-42.

167. *See id.* at 42-44 (testimony of Captain Robert Beach); *id.* at 63-85 (written submission of Captain Robert Beach).

168. *Id.* at 42.

169. *Id.* at 43.

170. *Id.*

Arnold Nerenberg, a diplomatic and board certified forensic examiner and clinical psychologist from California, was a sixth witness at the hearing.¹⁷¹ Dr. Nerenberg defined road rage "as one driver expressing anger at another driver for something he or she did on the road."¹⁷² In psychological terms, Dr. Nerenberg opined:

I consider road rage to be a mental disorder of the adjustment reaction type, and it involves clearly expressing the anger directly to the other driver at least twice a year. It causes physiological distress, and increases the risk of physical harm, such as being shot or rammed, and is a distraction from safe driving. Furthermore, there could be financial consequences.¹⁷³

In contradistinction, Nerenberg defined and contrasted what he termed "road annoyance" as follows:

Road annoyance is having negative thoughts towards another driver or verbalizing the negativity, such as muttering in a manner that is not communicated to the other driver. Road annoyance is normal. . . . Aggressive driving includes speeding and weaving in and out of traffic. The aggressive driver may or may not be angry at others. Conversely, a road rager may be driving safely and pull alongside another [driver] and make an obscene gesture.¹⁷⁴

Surprisingly, Dr. Nerenberg reported to Congress that, based on a study of 585 subjects whom he and his assistants had interviewed, "53 percent of the [American] population have road rage disorder."¹⁷⁵ Commenting on the causes of road rage, Dr. Nerenberg observed:

The kinds of causes in the context of aggressive impulses . . . [include] endangerment [as] the number one cause. If someone feels endangered, such as being cut off or tailgated, or feels that they would have been in an accident, that's the most likely cue for somebody to go into road rage reaction. Others include being slowed down, seeing somebody just breaking the rules, and other people's anger directed at us, plus someone taking the parking space. These are the traffic configurations that can trigger a road rage reaction.¹⁷⁶

Allen F. Williams, Senior Vice President of the Insurance Institute for Highway Safety, was a seventh witness before the Subcommittee.¹⁷⁷ Referring to three early popular American media articles concerning intentional angry reactions of American motorists that appeared between 1978 and 1987, Williams noted that "[t]he attention to this problem in recent months might lead us to believe that it is a new threat to law-abiding motorists, but the aggressive driving problem is really an old problem."¹⁷⁸ Mr. Williams continued his incisive

171. *See id.* at 44-46 (testimony of Dr. Arnold Nerenberg); *id.* at 113-119 (written submission by Dr. Arnold Nerenberg).

172. *Id.* at 44.

173. *Id.*

174. *Id.*

175. *Id.* at 45.

176. *Id.*

177. *See id.* at 52-54 (testimony of Alan F. Williams).

178. *Id.* at 52 (citing *Motorist Mayhem: Drivers Are Turning Increasingly Violent*, WALL ST. J., August 3, 1987; *Trigger Tempers on America's Overcrowded Roads Are Leading to Unprecedented Mayhem*, U.S. NEWS & WORLD REP., November 12,

and measured analysis by putting road rage in late twentieth-century America into perspective, and focusing on the less dramatic traffic safety problem of running red lights. He testified:

Most of the media coverage has focused on the egregious examples of aggressive driving—the shootings, deliberate running other vehicles off the road, and the like. But fortunately, these types of events are still relatively rare. A lot more common is the aggressive practice of deliberately disregarding traffic control signals. While this kind of everyday aggression does not attract the same degree of media attention, it does contribute substantially to the problem of crashes and injuries¹⁷⁹

An eighth witness at the *Road Rage Hearings* was David Snyder, Assistant General Counsel of the American Insurance Association.¹⁸⁰ Snyder urged Congress to enhance federal funding for law enforcement programs, “including wider application of technology,”¹⁸¹ and to institute federal laws and programs that would result in “stronger traffic safety laws . . . and safer cars.”¹⁸²

Dr. Leon James, Professor of Psychology at the University of Hawaii, was the final witness at the Subcommittee hearing.¹⁸³ He stated that he had been teaching a course in traffic psychology for 15 years and maintained an “educational internet site where [he is] known as ‘Dr. Driving.’”¹⁸⁴ James noted that his “research has confirmed [that] to some degree nearly every driver has feelings of rage and thoughts of retaliation.”¹⁸⁵ He had some interesting things to say about what he referred to as “habitual road rage”:¹⁸⁶

I think what’s on the increase is the amount of habitual road rage we see today. I define habitual road rage as a *persistent state of hostility behind the wheel*, demonstrated by acts of aggression and a continuum of violence, and justified by righteous indignation.

Driving and habitual road rage have become virtually inseparable. *Road rage is a habit acquired in childhood*. Children are reared in a car culture that condones irate expressions as part of the normal wear and tear of driving. Once they enter a car, children notice that all [of] the sudden the rules have changed. It’s okay to be mad, very upset, out of control, and use bad language that’s ordinarily not allowed.

1984; *Highway Massacre: Nowadays Carnage Isn’t All Accidental—Guns, Knives, Fists and Cars Become Drivers’ Weapons*, WALL ST. J., October 20, 1978).

179. *Id.*

180. *See id.* at 54-59 (testimony of David Snyder); *id.* at 122-144 (written submission of David Snyder).

181. *Id.* at 54.

182. *Id.*

183. *See id.* at 59-62 (testimony of Leon James); *id.* at 90-102 (written submission of Leon James).

184. *Id.* at 59.

185. *Id.*

186. *Id.*

By the time they get their driver's license, adolescents have assimilated years of road rage. The road rage habit can be unlearned, but it takes more than the conventional driver's ed.¹⁸⁷

Dr. James ended his testimony by suggesting that "aggressive driving is a cultural norm, so it takes a cultural method to fight . . . an epidemic like this": the formation of "quality driving circles, or QDCs, to help [American drivers] acquire . . . emotional intelligence techniques which they haven't been taught."¹⁸⁸ In the final analysis, Dr. James urged the adoption of what he called an "attitude of latitude" to cure aggressive driving and road rage.¹⁸⁹

187. *Id.* at 59-60 (emphasis added). As a cure for "habitual road rage," Dr. James pontificated on what he called a "social, cultural approach," culminating in an "aloha spirit of driving":

Training in emotional intelligence for drivers needs to begin in kindergarten, focusing on appropriate attitudes and behavior on actual roads, streets, parking lots, and in cars as passengers. By the time adolescents learn to drive, after years of learning to respect other road users, then they will be ready to operate vehicles as emotionally intelligent drivers. In my written testimony, this is referred to as "new driver's ed."

I have proposed a national organization called "Children Against Road Rage," or CARR, patterned after SADD, Students Against Drunk Driving, because children need support in helping each other to avoid acquiring this insidious generational imprinting.

In my written testimony I document key psychological plights of baby commuters around the country expressed by drivers in their own areas. I propose that quality driving circles, or QDCs, be established in areas of commuter congestion. These are small, informal citizen groups regularly meeting in neighborhoods. I explain why external approaches, alone, such as law enforcement and public education campaigns, will not succeed, and why a social, cultural approach is essential to contain aggressive driving.

I believe that we have to transform the culture of negative driving into a positive, but drivers need to be trained to apply emotional intelligence skills in traffic, to develop a smart driving philosophy—what in Hawaii we call "aloha spirit driving."

Id. at 60.

188. *Id.* at 61. Dr. James continued his emphasis on the need for social and cultural change by recounting a discovery about aggressive drivers that shocked him:

[O]ne of the things that shocked me is that many aggressive drivers who recount their outrageous behavior are proud of it. *They don't feel moral injustice has been committed.* In fact, *they feel the moral injustice against themselves.*

For instance, a tailgater, a habitual tailgater, would think of himself as a victim and would feel that the person who is going too slow is the aggressor. This kind of unintelligent thinking is what we have to work with.

Id. (emphasis added).

189. *See id.* at 62. In this regard he provided the following insight:

[A] driver who thinks that the other person is a moron because of what they just did is not thinking of alternatives. The fact is that today we have a diversity of drivers. We have older drivers, we have drivers who are less-experienced, we have drivers who travel and are confused as to where they are, so we have got to cut these people more slack.

C. Judicial Opinions

As of June 30, 2000, there were only thirty-five opinions in all Westlaw American judicial databases¹⁹⁰ that utilized the term road rage. It is instructive to review the fact patterns and legal reasoning of notable road rage opinions.

1. 1997

American courts issued three opinions during 1997 that deployed road rage parlance. The first opinion to utilize the road rage lexeme was *State v. Morgeson*,¹⁹¹ a decision by Ohio's intermediate appellate court; the court affirmed Morgeson's conviction for assault based on his no contest plea in the trial court. The court found no error in the lower court's refusal to grant a continuance to the defendant because his wife "who allegedly witnessed the road rage that gave rise to the charge] was ill and unavailable to testify."¹⁹²

The second opinion to use road rage parlance was written by Virginia's intermediate appellate court in review of a murder conviction in *Canipe v. Commonwealth*.¹⁹³ One notable aspect of the *Canipe* opinion is the court's recitation of the facts of rapidly escalating aggressiveness between two ostensibly ordinary male drivers on their way to a shopping mall on Valentine's Day. As expressed in the opinion:

Around 7:30 p.m. on February 14, 1995, both appellant and the victim were driving on the "250 bypass" near Charlottesville to a local shopping mall. Appellant was driving with his wife and child, and the victim was driving to meet his wife at the mall.

The cars were near each other as they approached the exit for Park Street, which was the road that eventually led to the mall. The victim was in the right lane preparing to exit onto Park Street. Appellant was in the left lane next to the victim, traveling "fast" and talking with his wife. Appellant suddenly realized he was passing the Park Street exit and, from the left lane, "made a quick right-hand turn to get over to the ramp." In doing so, appellant "cut off" the victim and forced the victim to sharply apply his brakes. Both cars proceeded up the exit ramp and turned right onto Park Street.

The portion of Park Street on which appellant and victim initially traveled is a two-lane road with a painted "double yellow" line separating the two lanes. Shortly after turning onto Park Street, the victim sped past appellant by moving his car across the double yellow line and into the lane designated for oncoming traffic. The victim then pulled his car in front of appellant's and slowed down to a speed of between 15 and 20 miles per hour. The speed limit

It's this attitude of latitude, which is another example that we need to teach people to think better.

Id.

190. I used the Westlaw "All States/All Feds" database to retrieve these judicial opinions.

191. 1997 WL 277184 (Ohio Ct. App. May 27, 1997).

192. *Id.* at *1 (internal quotation marks omitted).

193. 491 S.E.2d 747 (Va. Ct. App. 1997).

for Park Street is at least 35 miles per hour. Appellant proceeded to drive close to the victim's rear bumper, and at one point, the victim sharply applied his brakes, causing appellant to sharply apply his.

When appellant and the victim reached the point where Park Street becomes a four-lane road with two lanes designated for traffic in each direction, appellant passed the victim in the left lane, pulled in front of him, and slowed his car down. Appellant and the victim then engaged in a "cat and mouse game." The victim would move his car over to the left lane in an attempt to pass appellant, and the appellant would move over to the left lane and block the victim's path. The victim responded by driving close to appellant's rear bumper. Appellant and the victim continued driving in this fashion until they reached the left-hand turning lane at the intersection that led to the parking lot of the shopping mall. A driver who passed appellant and the victim during this time testified that "you could tell they were mad." Appellant later testified that he was upset because the victim had passed him by crossing a double yellow line.¹⁹⁴

As poignantly explained by the court in *Canipe*, the denouement of the runaway confrontation was almost surreal:

When appellant and the victim reached the stoplight adjacent to the shopping mall, appellant pulled into the left-hand turning lane and stopped his car several feet short of the intersection. The victim pulled in behind him. Appellant exited his car and walked back to the victim's car. He yelled at the victim, kicked his driver's side door, and told him to get out of his car. The victim remained in his car and motioned to the mall parking lot. . . .

Appellant returned to his car and turned left into the parking lot of the shopping mall, which was "basically empty." . . . Less than a minute later, the victim pulled up in his car. The victim "jumped" out without turning off his headlights, "threw down" his jacket, and started walking toward appellant's car. The victim did not display a weapon and was unarmed. Appellant became scared when he noticed that the victim was much larger than him and that the victim's face looked angry.

The victim continued to walk toward appellant's car, and appellant decided to abandon the confrontation and drive away from the parking lot. Although appellant could have left the scene by backing away from the victim or by driving to the left or right of him, appellant drove toward the victim, accelerated his car to a speed of 15 miles per hour, and hit him. . . . The impact of the victim's right shoulder on the windshield made a large indentation of shattered glass in the shape of a half moon. The victim rolled off of appellant's hood and landed on the pavement. He died of a "closed head" injury three days later. Appellant sped from the parking lot without stopping to check on the victim's condition.¹⁹⁵

Another noteworthy quality of the *Canipe* opinion is the cogent discussion of the sufficiency of the evidence to prove malice and, thereby, justify *Canipe's* conviction for second degree murder. The Virginia intermediate appellate court found that *Canipe* did not act in the heat of passion or upon a reasonable provocation. Rather, the court held that "the evidence was sufficient to support the jury's conclusion that appellant acted with malice when he struck the victim with his car" since "[t]he evidence regarding appellant's conduct before, during, and

194. *Id.* at 749.

195. *Id.* at 749-50.

after the incident established that [he] willfully and deliberately engaged in a cruel act that was likely to cause great bodily harm to the victim."¹⁹⁶ In closing its analysis, the court considered the road rage behavior that had led up to the killing and concluded:

The record established that appellant could have driven to the right or to the left of the victim or backed the car away from him. Although appellant and the victim had minutes earlier been enmeshed in a fit of road rage spurred by each other's aggressive driving, such conduct alone does not render a reasonable person deaf to the voice of reason.¹⁹⁷

2. 1998

During 1998 American courts wrote eleven opinions that utilized the road rage lexeme. Of these opinions six are worthy of extended commentary.¹⁹⁸

In *People v. Ilievski*¹⁹⁹ the defendant was charged with violating a New York statute requiring that "any vehicle proceeding at less than the normal speed of traffic" be driven in the right lane. Mr. Ilievski

196. *Id.* at 754.

197. *Id.* (internal quotation marks omitted; citation omitted). The third court opinion issued during 1997 to employ the road rage lexeme was an opinion by the Wisconsin intermediate appellate court in *Coopman v. American Family Insurance Co.*, 571 N.W.2d 925 (Wis. Ct. App. 1997) (table). *Coopman* involved a technical insurance claim pursuant to underinsurance motorist provisions arising out of an accident involving a "road rage incident." *Id.* (internal quotation marks omitted).

198. Less noteworthy cases issued by American courts during 1998 which mentioned road rage are *Ulrich v. State*, 1998 WL 349369, at *7 (Tex. App. July 2, 1998) (utilizing the phrase "road rage" in upholding prosecution's use of defendant's prior aggressive driving to rebut his claim of self-defense); *Terran v. Secretary of Health and Human Services*, 1998 WL 55290, at *12 n.22 (Fed. Cl. Jan. 23, 1998) (observing, in claim filed under the National Childhood Vaccine Injury Compensation Act, that the claimant's alleged disease could not be scientifically measured and that the claimed "disorder doesn't even have a name (in an age when every malady of the human condition has a name—e.g., 'road rage disorder')"); *State v. Jaap*, 1998 WL 332948 (Ohio Ct. App. June 24, 1998) (involving a conviction for felonious assault arising "[o]ut of a 'road rage' incident" wherein defendant allegedly attacked the victim with a shovel causing the victim to suffer a broken shoulder and severe lacerations to his head"); *Lewis v. Peoples Cartage, Inc.*, 1999 WL 4503 (Ohio Ct. App. Dec. 28, 1998) (involving the driver of a limousine "chasing" another vehicle in a road rage-like altercation that resulted in personal injuries to one of the driver's passengers); *Read v. Scott Fetzer Co.*, 990 S.W.2d 732, 738 (Tex. 1998) (Hecht, J., dissenting) (dissenting from the court's affirmance of a jury verdict imposing negligence liability for the rape of a customer by a door-to-door salesman on the manufacturer and the distributor, and asking with reference to a previous decision of the court which denied liability on a taxicab company for intentional shootings of other motorists by cab drivers, "why is the risk that a vacuum cleaner salesman will turn out to be a sexual predator more foreseeable than the risk of cab driver 'road rage' when it is at least a thousand times more likely that a Yellow Cab driver will shoot someone in an accident in Houston than it is that a . . . vacuum cleaner salesman will assault a customer anywhere in the world?").

199. 670 N.Y.S. 1004 (J. Ct. 1998).

was pulled over by a trooper because he observed Ilievski's car traveling in the left lane of a three-lane expressway going 55-56 miles per hour in a 55 mile per hour speed zone.²⁰⁰ The prosecutor argued that the "defendant's actions encouraged road rage by those impeded from using the left-most lane for passing."²⁰¹ However, the Justice of the Peace, while expressing concern about the apparently new social phenomenon of road rage, concluded that the law "cannot cower to those who violate the law by speeding or otherwise" since such an approach "would be a dangerous path that could lead to lawlessness."²⁰² In this regard, the magistrate opined that "[t]he remedy for aggression on our roads is not to ticket law-abiding drivers but to prosecute fully those who engage in road rage."²⁰³

*City of West Carrollton v. Rodda*²⁰⁴—the second noteworthy opinion of 1998—is interesting because of its peculiar facts. In the course of affirming the defendant's conviction for assault, the Ohio intermediate appellate court pointed out that "[t]his action has its basis in an incident of what popular culture has termed road rage."²⁰⁵ The court reviewed the "undisputed facts" about the male defendant being cut off by a woman motorist who "made an abrupt left hand turn in front of him."²⁰⁶ The trial record indicated that the defendant had "to slam on his brakes to avoid colliding"²⁰⁷ with the woman motorist's car; the woman gave the defendant "the finger";²⁰⁸ the defendant followed the woman to her apartment where a physical and verbal battle ensued between the two.²⁰⁹ The appellate court rejected the defendant's claim that his testimony concerning self-defense should have been credited by the trial court.²¹⁰

In the third remarkable case during this period, *State v. Moore*,²¹¹ the Ohio intermediate appellate court affirmed the conviction of Robert Moore, Jr. for felonious assault. The facts of the case as recited in the appellate opinion are gruesome:

This case presents an example of the phenomenon known as road rage. On the morning of March 6, 1996, James Roushkolb was driving westbound on Interstate 90 in Lorain County. Traffic was steady that morning, with cars traveling in both available lanes. At some point, appellant Moore came behind Roushkolb's vehicle in the left hand, or fast, lane. Because he believed

200. *Id.* at 1004.

201. *Id.* at 1005 (footnote omitted; internal quotation marks omitted).

202. *Id.* at 1005.

203. *Id.* at 1005-06.

204. 1998 WL 127497 (Ohio Ct. App. March 20, 1998).

205. *Id.* at *1 (internal quotation marks omitted).

206. *Id.*

207. *Id.*

208. *Id.*

209. See *id.*

210. See *id.* at *3.

211. 1998 WL 225045 (Ohio Ct. App. May 6, 1998).

Roushkolb was traveling too slow for the fast lane, Moore honked his horn, flashed his lights, and drove his Ford Explorer close to the rear of Roushkolb's car. Moore's behavior continued for several miles; Roushkolb applied his brakes once, trying to get Moore to back off. Roushkolb then exited the Interstate at the State Route 661 exit, in order to continue to his parents' house. Moore also exited, veering abruptly through the slow lane. Moore regularly used the same exit to return home.

Roushkolb entered a left turn lane and stopped, since the traffic exiting the Interstate was stopped for a red traffic signal. Moore pulled up behind Roushkolb and exited his vehicle. Moore then approached Roushkolb's car, opened the car door, and punched Roushkolb in the mouth. Roushkolb, a corrections officer at the Cuyahoga County Jail, grabbed a large flashlight from the passenger seat of his car. Moore then pulled Roushkolb out of the car. Roushkolb struck Moore once in the head with the handle of the flashlight. Moore jabbed his thumb into Roushkolb's left eye, causing Roushkolb to drop the flashlight. Moore picked up the flashlight and struck Roushkolb in the head several times. Eventually, Roushkolb fled from Moore, up a hill toward the State Route 661 overpass. Roushkolb then fell to his knees, whereupon Moore stuck him once or twice more.

Two witnesses to the incident had followed Roushkolb and Moore onto the State Route 661 exit. They witnessed the attack, then went to a gas station to call 911. After making the phone call, they returned to the scene, where they found Roushkolb in a semi-conscious state, lying face down in a pool of blood. Moore was still brandishing the flashlight when a police officer . . . arrived.

An ambulance took Roushkolb to a hospital, where he was treated for his injuries. Roushkolb received a concussion, a laceration on his cranium requiring ten staples to close, and various cuts and bruises. His vision in the left eye was impaired for some time thereafter.²¹²

A California intermediate appellate court opinion, *People v. Rodriguez*,²¹³ is a fourth judicial road rage artifact of 1998 that deserves extended mention. The case is interesting on the facts and the law. The facts evoke an image of Hoppnerian loneliness and desolation in late twentieth-century urban/surburban America, suffused with postmodernist icons of 7/11 Stores and hyperengineered automobiles. As starkly noted by the appellate court:

Defendant and his victim encountered each other late at night in the parking lot of a convenience store. The victim had placed his car in a position blocking or impeding ingress to the parking lot. Defendant, driving a van and attempting to enter the parking lot, took umbrage at the obstacle created by the victim's car.²¹⁴

The inevitable macho confrontation and rapidly escalating violence characteristic of road rage cases is described by the *Rodriguez* court as follows:

An argument ensued between defendant (sitting in his van) and the victim (on foot outside the van). Evidence was presented that threats (including threats to kill), challenges, profanities, vulgarities, etc., flowed in both directions. After some minutes, the victim broke off the confrontation, entered his car and drove away into an alley behind the convenience store. The alley connected to

212. *Id.* (internal quotation marks omitted).

213. 77 Cal. Rptr. 2d 676 (Ct. App. 1998).

214. *Id.* at 678.

nearby surface streets, and the victim apparently intended to enter the surface streets from the alley and leave the area. However, instead of allowing the confrontation to end, defendant chose to continue it. He circled his van into the same alley from the opposite direction. The defendant's van and the victim's car met in the alley behind the convenience store. They were observed stopping there for a short period, side by side, facing in opposite directions, driver's window to driver's window. Shots were fired, and defendant then turned off his headlights and drove off at a high rate of speed. The victim had been shot four times and died soon afterward.²¹⁵

The legal issue in *Rodriguez*—a case of first impression in California²¹⁶—boiled down to whether the special circumstance contained in the state penal code for sentencing enhancement in cases of first degree murder—that “[t]he murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death”²¹⁷—was unconstitutional.²¹⁸

The nub of the defendant's constitutional argument, rejected by the court, was that the discharging a firearm from a vehicle sentencing enhancement subsection was intended by the legislature to be narrowly limited to situations involving “gang-related drive-by shootings.”²¹⁹

In an extended exegesis of the meaning and implications of the statutory text, the court initially explained that while the legislature may have wanted to severely punish gang-related drive-by shootings, the record “does not reflect that this is the only purpose.”²²⁰ Specifically, the court reasoned:

The statute is not drafted to limit its reach to this purpose alone, even though the legislature could easily have done so. Instead, the statute is drafted more broadly to increase the punishment for any intentional murder perpetrated by shooting out of a vehicle with intent to kill. This more inclusive structure is the very characteristic of the statute which defendant attacks, yet the same characteristic tends to defeat defendant's [constitutional] claim *No convincing basis is presented for the proposition that the legislative intent did not extend to road rage murders* (of which the instant case is arguably an example), or other murders perpetrated by shooting out of a vehicle.²²¹

The court responded to the defendant's argument that it was irrational to criminalize the “mere fact of being in a car at the time of an offense”²²² by noting, in reply, that the legislature could “rationally decide, as a matter of public policy, to discourage the practice of carrying loaded firearms in vehicles by placing those who do so on notice

215. *Id.*

216. *See id.*

217. *Id.* at 679 (quoting CAL PENAL CODE § 190.2(a)(21) (West 2000)).

218. *See id.* at 678.

219. *Id.* at 688 (internal quotation marks omitted).

220. *Id.*

221. *Id.* (citations omitted) (emphasis added).

222. *Id.*

that misuse of that firearm in these circumstances can lead to increased punishment.”²²³ The court, in a scolding tone, wrote that: “[t]he instant case is a particularly egregious example of why the Legislature might want to discourage loaded firearms in vehicles” since the defendant had two times previously been convicted of assault with a firearm.²²⁴

*United States v. Thomas*²²⁵ is a fifth interesting opinion discussing road rage decided by American courts during 1998. *Thomas* is unusual for two reasons: first, it was a military court martial proceeding involving a naval technician; second, the road rage behavior discussed in the opinion involved a love spat. As described by the U.S. Navy-Marine Corps Court of Criminal Appeals:

The facts giving rise to . . . [this] communicat[ion] [of] a threat are relatively straightforward. Appellant picked up his girlfriend [an active duty petty officer in the Navy] from the restaurant where she worked at approximately 0200 on 2 August 1997. They were driving together in the appellant’s automobile when they became embroiled in a heated argument over why the girlfriend had engaged in conversation with “other men” at the restaurant where she worked. Appellant, who was driving, decided that the best way to express his anger was to operate his car in a reckless, erratic and . . . terrifying manner. He would slam on his brakes, throwing the car into a skid, and then rapidly accelerate to a high speed, spinning his wheels and causing the car to swerve from side to side. He ultimately careened into a curb, badly damaging his front wheel. The appellant’s bizarre display of road rage was intended to frighten his girlfriend. . . . It was in the midst of this terrifying ordeal that the appellant twice told his girlfriend that he was going to “kill her.” . . . His stated purpose was “to scare her.”²²⁶

The *Thomas* court decided to uphold the sentence of a bad-conduct discharge, confinement for nine months, “total forfeitures,” and reduction from the rank of Communications Electrician Third Class (E-4) to E-1.²²⁷

The Supreme Court of Illinois’ opinion in *People v. Kliner*²²⁸ constitutes the sixth noteworthy judicial opinion discussing road rage decided in 1998. The facts of *Kliner* entailed a macabre murder-for-hire scheme involving the shooting of a co-conspirator’s estranged wife in her car in an apartment complex parking lot.

Mr. Kliner was sentenced to death for being the shooter in the case. Due in part to extensive facts that indicated that he was a very bad person—including the fact that he had been involved in prior vio-

223. *Id.* (citations omitted).

224. *Id.* at 689.

225. 1998 WL 763922 (N.M. Ct. App. Oct. 26, 1998).

226. *Id.* at *3 (footnote, citations, and internal quotation marks omitted).

227. *See id.* at *1, 4.

228. 705 N.E.2d 850 (Ill. 1998).

lent road rage incidents—the court affirmed Kliner's death sentence.²²⁹

3. 1999

During 1999, American courts in fourteen opinions referred to road rage; of these opinions, six merit close attention.²³⁰

In the first out of the ordinary 1999 road rage case, *State v. Coronel-Perez*,²³¹ the defendant was convicted of first degree murder and two counts of reckless endangerment in a case arising out of a road rage confrontation which ended in a shooting death.

The appellate court affirmed the trial court's sentence enhancement of five years onto the base sentence of 321 to 407 months because of the traumatic impact of what the court labeled as a case of road

229. One of the incidents of aggravation offered by the prosecution included Kliner's alleged involvement in prior "road rage incidents in which [he] displayed a gun." *Id.* at 867.

230. The other eight 1999 cases that produced judicial opinions which mentioned road rage are as follows: *Boucher v. Grant*, 74 F. Supp. 2d 444, 445 (D.N.J. 1999) (involving an unusual "reverse road rage" case where a U.S. Postal driver waved the plaintiff out of a gas station into oncoming traffic. "At a time when 'road rage' has become commonplace on our highways, this case requires this court to decide whether a courteous wave by one driver to another can give rise to liability"); *E.M.C. v. K.C.Y.*, 735 So. 2d 1225, 1227 (Ala. Civ. App. 1999) (involving custody of the divorced parties' child taken away from the father who had a host of problems including domestic violence against his current wife and who had committed "a fit of road rage where he inflicted damage to a woman's vehicle with his fist after her vehicle had collided with his vehicle"); *F.J.W. Enterprises, Inc. v. Johnson*, 746 So. 2d 1145 (Fla. Dist. Ct. App. 1999) (involving racially motivated confrontation in parking lot); *Berkowitz v. State*, 744 So. 2d 1043, 1044 (Fla. Dist. Ct. App. 1999) (involving "an unfortunately all too familiar case of 'road rage' where a trivial traffic incident escalates into a physical confrontation between the two drivers"); *State v. Mushrush*, 733 N.E.2d 252, 262-63 (Ohio Ct. App. 1999) (Painter, J., dissenting) (dissenting from the affirmance of a ten and one-half year sentence for an eighteen-year-old who caused a public panic by setting off a canister of Mace in a crowded high school auditorium, and citing, among others, a case where the defendant attacked a victim with a shovel during a road rage incident and was sentenced for felonious assault to only three years incarceration); *City of Broadview Heights v. Claren*, 1999 WL 342234 (Ohio Ct. App. May 27, 1999) (affirming a man's conviction for obstructing official business for his refusal to discuss a "road rage incident" with police); *People v. Beeney*, 694 N.Y.S.2d 583 (Monroe County Ct. 1999) (reversing a conviction for impeding traffic because of insufficient evidence showing that the defendant's driving, involving slowing down to avoid a road rage confrontation with a tailgating motorist, created a substantially dangerous condition); *Crandall v. State*, 1999 WL 1097842 (Tex. App. Dec. 1, 1999) (affirming criminal mischief conviction arising out of a road rage incident involving defendant's intentionally accelerating his vehicle causing rocks to fly against another motorist's truck which damaged the paint and broke a side mirror).

231. 1999 WL 39491 (Wash. Ct. App. Jan. 29, 1999).

rage on bystanders.²³² The gruesome facts which justified the enhanced sentence were articulated by the court as follows:

On March 22, 1997, while driving along Interstate 5 near Centralia, Coronel-Perez fired a shot at another moving vehicle [stemming from a road rage incident]. The bullet hit and mortally wounded . . . a passenger in the other car. [The passenger] slumped over into the lap of the driver [who was the victim's fiancé]. As [the victim] lay bleeding to death, the frantic [driver] drove two miles down the freeway looking for an exit ramp where emergency medical personnel could meet her . . . Before the shot was fired, [the victim's fiancé] had called 911 on her cellular phone to report being menaced by the other car, and the dispatcher tried to calm her and direct her to an exit. [Her] 7 year-old son was also in the car, but was uninjured.²³³

The second remarkable judicial opinion invoking the road rage lexeme during 1999 was the California case of *People v. Romero*.²³⁴ Observing that the murder case stemmed "from an all-too-familiar formula: one party commits a relatively minor infraction which quickly escalates into street violence and then death or serious injury,"²³⁵ the appellate court opinion added an empathetic touch by going on to note: "Many of us can relate to this phenomenon by reflecting upon our own experience behind the wheel of a car when a driver cuts too close to your vehicle, and road rage sets in."²³⁶

The facts in *Romero* involved a driver who nearly hit a group of men who were crossing the road. "Words were exchanged, threats were hurled, and moments later [the driver] was dying with a knife wound to his heart."²³⁷ According to the court, "[w]hat makes this case unusual is defense counsel's attempt to introduce expert testimony on the sociology of poverty, and the role of honor, paternalism, and street fighters in the Hispanic culture."²³⁸ Affirming the trial judge's exclusion of this evidence, the *Romero* court quipped that while the sociological information was "interesting,"²³⁹ it was irrelevant to the underlying legal issue of whether the defendant "believed he was in imminent danger of death or great bodily injury" and that the court was "not prepared to sanction a 'reasonable street fighter standard.'"²⁴⁰

The third uncommon 1999 case which mentions road rage, *Blish v. Atlanta Casualty Co.*,²⁴¹—a seemingly garden variety personal injury protection benefits action to recover for injuries arising out of the

232. See *id.* at *2 (internal quotation marks omitted).

233. *Id.* at *1.

234. 81 Cal. Rptr. 2d 823 (Ct. App. 1999).

235. *Id.* at 823 (internal quotation marks omitted).

236. *Id.* at 824 (internal quotation marks omitted).

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. 736 So. 2d 1151 (Fla. 1999).

maintenance or use of a motor vehicle—led the Supreme Court of Florida to expound upon the reasonably foreseeable dangers facing modern-day Floridians who dare to drive their motor vehicles in the “dimpled chad” state. Reversing the lower court’s denial of insurance benefits to a driver who was assaulted and robbed while changing a flat tire, Justice Shaw, writing an opinion in which all justices concurred, amazingly opined:

Acts of violence are an ageless and foreseeable hazard associated with the use of a vehicle—for once a person sets out in a vehicle, he or she is vulnerable. The highwaymen and desperados of bygone times preyed on the wayfarer, and these villains are with us still. Each Floridian today, when he or she gets behind the wheel, faces a variety of dangers: a car-jacking at a stoplight, or a strong-arm robbery at a deliberately staged rear-end collision, or a road rage assault in rush hour traffic, or even a random shooting by an anonymous sniper from an overpass. The danger is particularly acute when the motorist is stranded as a result of a disabled vehicle.²⁴²

*State v. Plaisance*²⁴³ constitutes a fourth exceptional 1999 case which triggered the court to discuss the phenomenon of road rage. Affirming a guilty verdict of second degree murder, the Louisiana appellate court recited the facts of the case which involved a case of tailgating leading to murder by gunshot. The court affirmed the lower court’s admission of “other instances of road rage” involving the defendant to disprove his alleged self-defense justification in the case at bar.²⁴⁴ The *Plaisance* court concluded that such “similar act evidence combined with the defendant’s” admission that immediately after killing the victim he “said to the man he had just killed, ‘Why don’t you call 9-1-1, motherfucker?’” tended “to establish intent and lack of accident and mistake.”²⁴⁵

The fifth exceptional 1999 judicial opinion to discuss road rage is *State v. Sager*.²⁴⁶ The Ohio appellate court affirmed a fifteen-month sentence of incarceration for aggravated vehicular assault in a case where de minimis frustration mushroomed into tragic consequences. The facts—characterized in the opinion as “extreme reckless behavior known as ‘Road Rage’”²⁴⁷—were presented by the court as follows:

On May 21, 1997, . . . Michael A. Sager, became enraged when he was unable to cash his paycheck at a Genoa, Ohio, bank. Witnesses reported that [he] drove out of the bank lot at a high rate of speed, squealing his tires, and barely missing another motorist. The motorist, according to a witness, pulled to the side of the road to avoid a collision. Minutes later, [Sager] ran a stop sign and struck a car driven by Elwood Lau. Appellant Lau and Lau’s daughter, Sandra Szydka, were seriously injured in the collision. Some months later, El-

242. *Id.* at 1155.

243. 745 So. 2d 784 (La. Ct. App. 1999).

244. *See id.* at 789.

245. *Id.* at 788.

246. 1999 WL 1127286 (Ohio Ct. App. Dec. 10, 1999).

247. *Id.* (internal quotation marks omitted).

wood Lau died from his injuries. Sandra Szydka remains in a vegetative state as a result of her injuries.²⁴⁸

Rounding out the 1999 judicial opinions which utilized road rage parlance is *State v. Jones*.²⁴⁹ The remarkable aspect of this case is that the defendant—charged in the Youngstown, Ohio Municipal Court with one count of assault and one count of criminal damaging—was a female. As explained by the appellate court:

On June 18, 1998, appellant [Karen D. Jones] was involved in a “road rage” incident with Walter and Tiffany Labozan in which appellant retrieved a golf club from the trunk of her car and used it to inflict physical harm upon Walter Labozan and damage to a car belonging to Tiffany Labozan. . . .²⁵⁰

4. 2000

During the first six months of 2000, seven judicial opinions deployed the road rage lexeme; of this number, two opinions deserve extensive commentary.²⁵¹

In *State v. Garcia*²⁵² the Supreme Court of Rhode Island affirmed the conviction of the defendant for arson, conspiracy to commit arson, and felony murder in connection with the burning of an apartment

248. *Id.*

249. 1999 WL 1279170 (Ohio Ct. App. Dec. 20, 1999).

250. *Id.* (citations omitted).

251. The other five opinions decided during the first six months of 2000 are as follows: *Freeman v. Schointuck*, 192 F.R.D. 187, 188-89 (D.N.J. 2000) (assessing sanctions against a defendant’s counsel “for his unprofessional conduct” during the deposition of plaintiff’s medical expert; the magistrate noted that while “[n]o one expects the deposition of a key witness in a hotly contested case to be a non-stop exchange of pleasantries,” nevertheless, “it must not be allowed to become an excuse for counsel to engage in acts of rhetorical road rage against a deponent and opposing counsel”); *Mitchum v. Friend*, 705 N.Y.S.2d 152 (N.Y. App. Div. 2000) (reversing summary judgment in favor of two drivers who “had stopped their vehicles to argue with one another in an apparent case of road rage,” and who had obstructed traffic arguably causing the plaintiff to sustain damages from a rear-end collision when plaintiff was stopped in traffic); *City of Milwaukee v. Meredith*, 2000 WL 343594 (Wis. Ct. App. Apr. 4, 2000) (affirming lower court order denying defendant’s motion to suppress a breathalyzer test; defendant came to the attention of the arresting officer when another motorist, with whom defendant was involved in an ongoing road rage incident entailing speeding and swerving at each other, stopped and informed the officer about the road rage incident); *State v. Morris*, 2000 WL 381641 (Iowa Ct. App. Apr. 12, 2000) (affirming jury verdict finding defendant guilty of first degree murder; ruling that trial court properly excluded defendant’s attempt to show evidence of the victim’s character including an alleged road rage incident involving the victim and a third party); *State v. Bodden*, 756 So. 2d 1111 (Fla. Dist. Ct. App. 2000) (affirming trial court’s order of a new trial for a defendant facing charges of second degree murder and two counts of aggravated assault with a firearm arising from what the court characterized as a case of “road rage” outside a Denny’s restaurant involving the obstruction of traffic by the victim’s stalled vehicle, victim’s request of defendant for jumper cables, and defendant’s shooting the victim seven times).

252. 743 A.2d 1038 (R.I. 2000).

building after a road rage incident that had angered him. The pertinent facts leading to the road rage confrontation involved the defendant's intentional burning down of an apartment building as an act of revenge against another motorist.²⁵³ But, "[a]s fate would have it," the two "intended targets of defendant's revenge" did not live in the apartment building. Rather, a family of six—a mother, a father and their four children—perished in the blaze.²⁵⁴

The second remarkable case involving judicial deployment of road rage parlance, *Lewis v. Wilson*,²⁵⁵ was a constitutional challenge by a Missouri motorist against the state's Director of Revenue. Ms. Lewis challenged the Missouri statute regulating vanity plates, contending that the defendant denied her First Amendment rights under the Constitution by denying her application for a personalized vanity automobile license plate with the letters and number, "ARYAN-1."²⁵⁶ The Missouri government defendant initially argued that the "plate violated a state regulation that no plate would be issued that was profane, obscene, inflammatory or patently offensive or otherwise conflicting with an overriding public policy."²⁵⁷ In this regard, the government official argued that:

"ARYAN" had been utilized by Adolph Hitler and the German Nazis during World War II to describe a so-called "master race" and to justify the extermination of a frighteningly large percentage of the world's Jewish population. For that reason, the [Missouri official] argued, that [vanity license plate] conflicted with an overriding public policy.²⁵⁸

After a state court challenge, the Missouri State Legislature amended the language of the enabling statute to read that "[n]o personalized license plates shall be issued containing any letters, numbers or combination of letters and numbers which are obscene, profane, inflammatory, or contrary to public policy."²⁵⁹ The State contended that the "ARYAN-1" license plate was "contrary to public policy"—not because it espoused "a viewpoint that is contrary to public policy, but rather that the words may incite other drivers on the highway to commit acts of retribution or so-called 'road rage.'"²⁶⁰ United States District Court Judge Limbaugh considered the message of the vanity plate to be constitutionally protected speech and the "contrary to public policy" statutory language in the state vanity plate license

253. *See id.* at 1042.

254. *See id.*

255. 89 F. Supp. 2d 1082 (E.D. Mo. 2000).

256. *See id.* at 1084-85.

257. *Id.* at 1086.

258. *Id.*

259. *Id.* (quoting Mo. REV. STAT. § 301.144.2 (West 1999)) (internal quotation marks omitted).

260. *Id.* at 1086 n.3 (internal quotation marks omitted).

statute to be “an unreasonable restriction on free speech.”²⁶¹ According to Judge Limbaugh’s reasoning:

[The state statute] lacks sufficient specificity to provide the government officials charged with applying it any guidance. Instead, those officials are left with the discretion to make ad hoc determinations based on subjective and undefined principles which could change from one day to the next.²⁶²

V. CONCLUSION

The term “road rage” has evolved in the course of a little over a decade from a nonce to a neologism.²⁶³ Driving this linguistic change has been what Professor Richard K. Sherwin describes in his recent book, *When Law Goes Pop*,²⁶⁴ as legal culture and popular culture dissolving into each other. The popular antecedents of the emergence of what I have referred to as road rage parlance were probably Hollywood films that glamorized violence²⁶⁵ and automobiles: films like *The Untouchables*, *They Live By Night*, *Bonnie and Clyde*, *Bullit*, *Pulp Fiction*, *Good Fellas*, and *The Godfather*.²⁶⁶ Popularized by newspaper reporters and editorial writers who felt need to describe what they viewed as increasing incidents of aggressive and violent behavior in and around automobiles on our increasingly congested roadways, the road rage lexeme was transferred to the legal press and, ultimately, to legal analysts in legislatures, academia, and courts. These analysts used it to explain—in a short-cut, simple phrase—multiple and complicated human frustrations, reactions, encounters, invasions, and bloodshed on America’s highways, street corners, and

261. *Id.* at 1091.

262. *Id.*

263. A nonce word is a lexeme “created for temporary use, to solve an immediate problem of communication.” A neologism “stays new until people start to use it without thinking, or alternatively until it falls out of fashion, and they stop using it altogether.” LANGUAGE, *supra* note 5, at 863.

264. RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* (2000).

265. Professor Sherwin’s explanation of popular culture’s recent estheticizing of violence is a compelling one. He notes:

This hyper-estheticized and radically amoral perspective has been championed in recent times . . . I believe that it is the dominant esthetic of those who assume the posture of skeptical postmodernism—people like Pulp Fiction filmmaker Quentin Tarentino, for example. These are people that inhabit Gorgias’ world—a world where knowledge is deemed to be impossible. Everything thus comes to be seen as an image within a vast flux of multiple, disparate images, a surface upon which our gaze falls seeking a response to the central reality-defining query: how does it make me feel? This is the image as commodity. If I consume it, what is its payoff? In short, the sensations it offers is its own reward. And in that reward lies the only truth we may cling to.

Id. at 224-25 (footnote omitted).

266. See generally, THE BFI COMPANION TO CRIME (Phil Hardy ed. 1997); ALAIN SILVER & JAMES URSINI, *THE NOIR STYLE* (1999).

parking lots. While legal analysts have attempted to define road rage, the meaning of the phrase remains amorphous and unbounded.

It is interesting that "law's stories and images and characters leach back into the culture at large" with law, therefore, becoming "a co-producer of popular culture."²⁶⁷ This is happening as television shows like *The Simpsons* feature episodes involving the legal consequences of road rage.

The legal community needs to be careful in deploying road rage parlance in new statutes, judicial opinions, and law review articles. The lexeme, as a cultural construct, has the potential of infusing law with the postmodern malady of subjectivity run rampant. As explained in general terms by Professor Sherwin, in a fitting end to this article:

Of particular concern in this respect are: the increasing conflation of truth and fiction; the image-based manipulation of irrational desire, prejudice, and popular passions; and the concerted effort to deliberately construct preferred versions of (and judgments about) self and social reality. These and other meaning-making practices are displacing what, in earlier times, once might more readily (albeit naively) have referred to as the search for "objective" truth and "universal" justice through law.²⁶⁸

"Road rage" may be a convenient legal handle; but it is a lexeme fraught with danger because it has the tendency to be so general and subjective as to border on the meaningless.

267. SHERWIN, *supra* note 265, at 7.

268. *Id.*