

2010

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Recommended Citation

On Death and Magic: Law, Necromancy, and the Great Beyond, in *Law and Magic: A Collection of Essays* (Christine A. Corcos, ed., Carolina Academic Press 2010)

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On Death and Magic: Law, Necromancy, and the Great Beyond

Eric J. Gouvin*

Throughout history humans have been fascinated by the ultimate mystery of life and death. Beliefs about what lies beyond the grave are at the core of many religious practices and some magical practices as well. Magicians have long been involved with spirits, ghosts, and the dead, sometimes as trusted intermediaries between the world of the living and the spirit realm and sometimes as mere entertainers.¹ The branch of magic that seeks communion with the dead is known as necromancy.² This essay examines instances where the legal system encounters necromancy itself and other necromantic situations (i.e., interactions involving ghosts, the dead, or the spirit world). What we'll see is that

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1. See EUGENE BURGER, *SPIRIT THEATER: REFLECTIONS ON THE HISTORY AND PERFORMANCE OF SEANCES* (1986) (providing a history of the invocation of spirits); for a more accessible account of magicians and ghosts, see TOM OGDEN, *THE COMPLETE IDIOT'S GUIDE TO GHOSTS AND HAUNTINGS* 317–332 (2nd ed., 2004). Necromantic magic such as the reanimation of a corpse is very impressive and can capture the public imagination. See SUSANNA CLARKE, *JONATHAN STRANGE & MR NORRELL: A NOVEL* (2006) (bestselling novel about Mr. Norrell's attempt to bring practical magic back to England; the act that catapults him to fame and influence is the reanimation of a corpse).

2. A precise definition of necromancy eludes scholars. See Maxwell Teitel-Paule, Abstract, *Re-defining Necromancy*, for conference entitled "Per Purum Tonans: Aspects of the Natural and the Supernatural in Antiquity" at the University of Virginia, March 24, 2007, available at <http://www.virginia.edu/classics/colloquium2007/index.html> (last visited Sept. 10, 2007) ("If you were to ask the ten most preeminent scholars of ancient magic to define necromancy, you would receive ten different answers"). As a baseline, however, necromancy would certainly include communication with the dead, especially when those dead communicants are delivering prophecies to the necromancer. See DANIEL OGDEN, *GREEK AND ROMAN NECROMANCY*, xix (2001) (defining "necromancy proper," as "communication with the dead in order to receive prophecy from them"). This essay employs a more inclusive and more colloquial use of the term, encompassing not only the narrow scholarly definition of necromancy but also any other interaction between the world of the living and the ghostly realms.

the legal system generally—but not completely—dismisses interactions with the spirit world. The ambivalence with which the legal system treats ghosts and attempts to communicate with spirits mirrors the ambivalence of society at large about those topics.

Society's ambivalence may be rooted in a conflict between orthodox religious teachings and widely held personal beliefs. The vast majority of Americans believe in God,³ and most of those believers identify themselves as Christians.⁴ The Old Testament of the Christian Bible, however, prohibits interaction with the world of ghosts and spirits.⁵ Even so, a significant percentage of Americans also believe in ghosts,⁶ including, according to

3. An opinion poll conducted by the Harris Organization in 2003 showed that 90% of adult Americans believe in God. Humphrey Taylor, "The Religious and Other Beliefs of Americans 2003," Harris Poll #11, Feb. 26, 2003, available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=359 (last visited Sept. 10, 2007) [hereinafter 2003 Harris Poll]; subsequent polls by Harris in 2005 and 2006 show belief in God to be held by 82% and 79%, respectively, see "The Religious and Other Beliefs of Americans 2005," The Harris Poll #90, Dec. 14, 2005 available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=618 (last visited Sept. 10, 2007) [hereinafter 2005 Harris Poll]; and "While Most U.S. Adults Believe in God, Only 58 Percent are 'Absolutely Certain,'" The Harris Poll #80, October 31, 2006 available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=707 (last visited Sept. 10, 2007). In any event, belief in God appears to be a widespread phenomenon in the United States.

4. See BARRY A. KOSMIN, EGON MAYER & ARIELA KEYSAR, *AMERICAN RELIGIOUS IDENTIFICATION SURVEY 12* (2001) (The Graduate Center of the City University of New York, 2001) available at <http://www.gc.cuny.edu/faculty/research/briefs/aris.pdf> (last visited Sept. 10, 2007) (showing 76.5% of Americans believe in Christianity). Of course, the label "Christian" covers a wide variety of sects and it would be impossible to articulate a hard and fast rule about ghosts that applies to all of them, but they all look to the Bible as a source. The references in this essay to Biblical passages are true regardless of how particular sects interpret them.

5. The God of the Old Testament found necromancy to be an abhorrence. *Deuteronomy* 18:10–12 ("10There shall not be found among you any one that maketh his son or his daughter to pass through the fire, or that useth divination, or an observer of times, or an enchanter, or a witch. 11Or a charmer, or a consulter with familiar spirits, or a wizard, or a necromancer. 12For all that do these things are an abomination unto the LORD: and because of these abominations the LORD thy God doth drive them out from before thee."). Mosaic law forbade the practice of consulting wizards or those that "have familiar spirits." *Leviticus* 19:31 ("Regard not them that have familiar spirits, neither seek after wizards, to be defiled by them: I am the LORD your God."); and *Leviticus* 20:6 ("And the soul that turneth after such as have familiar spirits, and after wizards, to go a whoring after them, I will even set my face against that soul, and will cut him off from among his people."). Indeed, the Old Testament viewed the practice as so reprehensible that it is punishable by death. *Leviticus* 20:27 ("A man also or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death: they shall stone them with stones: their blood shall be upon them.").

6. The percentage of Americans reporting a belief in ghosts varies from one poll to the next, but the number is always substantial, hovering in the range of 30%–50%. See 2003 Harris Poll *supra* note 4 (showing that 51% of Americans believe in ghosts); 2005 Harris Poll *supra* note 4 (showing 40% of Americans believe in ghosts, 22% are not sure whether they believe or not, and 39% do not believe in ghosts); CBS News, "Poll: Majority Believe in Ghosts," Oct. 30, 2005, available at <http://www.cbsnews.com/stories/2005/10/29/opinion/polls/main994766.shtml> [hereinafter CBS Poll] (noting that 48% of all respondents believe in ghosts and 22% of all respondents claim to have seen or felt the presence of a ghost); and Robert Roy Britt, *Higher Education Fuels Stronger Belief in Ghosts*, available at http://www.livescience.com/strangenews/060121_paranormal_poll.html (reporting the results of a poll of college students conducted for *Skeptical Inquirer* magazine showing that 40% believed that houses can be haunted, while another 25% were not sure whether houses could be haunted; 39% reported a belief that ghosts or spirits could come back in certain places and situations, and another 27% were unsure on that point; only 16% of the respondents stated, however, that they believed people could hear from or communicate mentally with someone who had died, with 29% not sure on that point and 54% saying they did not believe that was possible; similarly, only 10% professed a belief in 'channeling' or the ability of a spirit being to temporarily assume control of a human dur-

one poll, 50% of Christians.⁷ The widespread Christian belief in ghosts might be a reflection of the more ambiguous attitude displayed in the New Testament to necromantic themes like life after death and the resurrection of the dead.⁸ While belief in ghosts is far from universal, the belief that the soul continues to have an existence after death or that there is some form of life after death is very widely held among Americans, with between 70% and 84% of adults subscribing to that notion.⁹ The dichotomy between the New Testament's flirtation with necromantic themes and the Old Testament's prohibition on contacts with the dead could create confusion for believers. While the overarching theme of Christianity is that true believers can attain eternal life and that death does not conquer the soul, certain passages from the New Testament might also leave true believers with the impression that death does not really conquer the physical body either, as there is a possibility of being physically brought back from the dead by a holy person. To the extent the law is informed by the prevailing values of the population, it is not surprising then to find a somewhat ambivalent approach in the law toward necromancy and other interactions with the dead.

In our pluralistic society, we strive to respect the sincerely held religious beliefs of individuals and do not subject them to rigorous rational analysis.¹⁰ We seem to have a tacit agreement not to judge a religion by the rigor of its tenets, perhaps because so few of them can withstand close rational scrutiny.¹¹ In other words, religious truth is very much in the eye of the beholder.

ing a trance, while 29% were not sure about that and 61% stating that they did not believe in channeling).

7. See 2003 Harris Poll, *supra* note 4 (showing that 51% of poll respondents believed in ghosts and that 50% of Christians believed, while 48% of non-Christians believed).

8. In the New Testament, the boundary between the living and the dead is not necessarily off limits. Jesus could bring the dead back to life; *Luke* 7:11–15 (the widow's son at Nain), *Mark* 5:21–43 (Jai'rus' daughter), and *John* 11:1–54 (Lazarus); as could some of his apostles, *Acts* 9:36–41 (Peter resurrects Dorcas of Joppa), and *Acts* 20:9–12 (Paul brings Eu'tychus of Troas back to life). In addition to these several examples of these holy men reanimating corpses, the central story of the New Testament, the death and resurrection of Jesus, has obvious necromantic themes.

9. See 2003 Harris Poll, *supra* note 4 (showing 84% of respondents believed in the survival of the soul after death); 2005 Harris Poll, *supra* note 4 (showing 70% of respondents believed in the survival of the soul after death, while 18% were not sure and 12% did not so believe); and CBS Poll, *supra* note 7 (reporting that 78% of respondents believed in life after death).

10. H.L. Mencken summarized the general level of deference when he said: "We must respect the other fellow's religion, but only in the sense and to the extent that we respect his theory that his wife is beautiful and his children are smart." *YALE BOOK OF QUOTATIONS* 513 (Fred R. Shapiro, ed., 2006), quoting from *MINORITY REPORT: H.L. MENCKEN'S NOTEBOOKS* (1956).

11. In *Altman v. Bedford Central School District*, 245 F.3d 49 (2d. Cir., 2001), *cert. denied* as *Dibari v. Bedford Cent. School Dist.*, 534 U.S. 827, 122 S.Ct. 68 (Mem) (U.S., 2001), a group of devoutly Catholic parents challenged certain aspects of the school's curriculum, alleging, among other things, that making their children participate in Earth Day observances, the D.A.R.E. program, and the reading of a Shel Silverstein poem called "Ma and God" violated their children's civil rights and exposed impressionable children to activities that plaintiffs characterized as: (a) The promotion of satanism and occultism, pagan religions and "New Age spirituality", the latter being a religion which promotes as the goal of spiritual progress the full actualization of the human person as the godhead; (b) Instruction in techniques of meditation, yoga, guided-imagery and self-hypnosis; "crystal power", use of the "right-brain" and other "self-realization" techniques; ... [and] (d) Instruction in "decision-making" by which matters of morality are reduced to a process of choosing options divorced from objective moral norms, in which process the child, not the parents or God, is the final arbiter of what is right or wrong conduct in a given situation ..."

Although the court did not engage in a rigorous analysis of the parents' underlying religious beliefs

Belief in ghosts and spirits and our ability to communicate with them, however, seems to be a special case. Since the rise of the Judeo-Christian norm, necromancy has become a fringe practice, demoted to mere "magic" or worse, superstition.¹² This demotion may be rooted in the Old Testament's prohibitions on interactions with the spirit world. Not surprisingly, in many places the practice of necromancy has been outlawed by statute.¹³ Necromancy's fall in status is so complete that a professed belief in ghosts or the ability to communicate with ghosts *qua* ghosts is frequently seen as an indicator of mental illness,¹⁴ even though a belief in a "Holy Ghost" is not so viewed.¹⁵

with an eye to whether they were rational or irrational, the court did find that the concerns raised by the parents in connection with these educational practices, especially Earth Day, did not rise to the level of a First Amendment violation. As one reads the opinion, however, it is hard to ignore its pervading tone, which seems to be quite dismissive of the parents' concerns apparently because to a reasonable person the objections seem so irrational.

12. See *Altman v. Bedford Cent. School Dist.*, 45 F.Supp.2d 368, 378, n.6 (S.D.N.Y., 1999) (listing necromancy in the dictionary definition of "superstition", quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2296 (1993)), reversed in part on other grounds, *Altman v. Bedford Cent. School Dist.*, 245 F.3d 49 (2d Cir (N.Y.), 2001), cert. denied as *Dibari v. Bedford Cent. School Dist.*, 534 U.S. 827, 122 S.Ct. 68 (Mem) (U.S., 2001).

13. See, e.g. *Milwaukee Ordinance § 106-16*, quoted in *Rushman v. City of Milwaukee*, 959 F. Supp. 1040, 1045, app., 1997 U.S. Dist. LEXIS 4053 (E.D. WI, 1997). The case declared the following municipal ordinance to be unconstitutional on First Amendment grounds:

106-16. **Fortune Telling. 1. PROHIBITED.** No person shall advertise by sign, circular handbill, or in any newspaper, periodical or other publication, or by any other means, to tell fortunes, to overcome evil influences and bad luck ... by means of occult or psychic powers, faculties or forces, clairvoyance, psychology, psychometry, spirits, mediumship, seer-ship, prophecy, astrology, palmistry, *necromancy*, or other craft, science, cards, talismans, charms, potions, magnetism, or magnetized articles or substances, oriental mysteries, or magic of any kind, or numerology, or engage in or carry on any business the advertisement of which is prohibited by this section. (emphasis added).

In the United Kingdom, mediums were being prosecuted under the Witchcraft Act of 1735 at least through 1945, see B. Addy Collins, *Spiritualism and the Law*, 8 MOD. L. REV. 158 (1945). The Witchcraft Act of 1735 was repealed in 1951 and was replaced by the Fraudulent Mediums Act, see RAYMOND BUCKLAND, *BUCKLAND'S BOOK OF SPIRIT COMMUNICATIONS* 217, Appendix A (2004) [hereinafter BUCKLAND].

14. See, e.g., *In re F.M.*, 183 S.W.3d 489, 499 (2005) (delusional thoughts such as talking to ghosts are evidence of mental illness, but do not justify a commitment order); *Board of Education of Montgomery County v. S.G.*, Not Reported in F.Supp.2d, 2006 WL 544529, D.Md., March 06, 2006 (NO. CIV.A. DKC 2005-0323) (in an effort to establish a child's mental illness it was noted that "N.G. testified that S.G. told her daily that she was hearing voices, said she saw ghosts..."); and *In re Welfare of T.R.K.*, Not Reported in N.W.2d, 2007 WL 333130 (Minn.App., 2007) (family became concerned for woman's sanity when, among other things, she "claimed to see ghosts in the cupboards"); but see *State v. Williams*, Not Reported in So.2d, 2006 WL 3804627, 2006-1207 (La.App. 1 Cir. 12/28/06) (La.App. 1 Cir., Dec 28, 2006) (NO. 2006 KA 1207) (doctor testified that seeing visions of ghosts or spirits is rarely ever seen in true schizophrenia); and *Lacy-Curry v. Alameda County Social Services Agency*, Not Reported in F.Supp.2d, 2005 WL 3324556 (N.D.Cal.) (court-appointed psychiatrist opined that "seeing ghosts is normal and not regarded as a symptom of psychosis").

15. In the case of *Judicial Inquiry and Review Board v. Fink*, 516 Pa. 208, 532 A.2d 358 (1987), a judge (Fink) had won a seat on the bench in a vicious campaign against the incumbent, Patterson. Five years later, Patterson's son appeared in Fink's court on criminal charges and moved for Fink's recusal on the matter, given the intense election and the personal animosity between Fink and Patterson. Fink, however, denied the request, explaining that he bore the defendant's father no ill will because "The Holy Ghost came down on my shoulder and cleansed me of all those feelings." In a proceeding stemming from this incident, the Supreme Court of Pennsylvania held that Judge Fink's refusal to recuse himself violated the Code of Judicial Conduct. Holy Ghost or not, under the circumstances, a reasonable person would question the judge's impartiality in hearing the case. Although the invocation of the Holy Ghost did not exonerate Judge Fink, it did not impugn his sanity. See also *State of Wisconsin v. Gattie*, 289 Wis.2d 549, 710 N.W.2d 726 (Table), 2006 WL 119860 (Wis.App.),

Despite being outlawed, throughout the centuries the practice of necromancy has remained a source of fascination for many people. In the nineteenth century the Spiritualist movement openly embraced the notion that the living could communicate with the dead.¹⁶ As the Spiritualist movement gained popularity some early scientific investigators sought an empirical understanding of ghosts.¹⁷ At the dawn of the twentieth century, popular fascination with the possibility of communication beyond the grave remained strong.¹⁸ Even Thomas Edison reportedly harbored some hope of building a machine that would be able to communicate with the dead.¹⁹

Our legal system, however, requires that cases be supported by credible and relevant evidence. Although investigators of the paranormal have tried to make a case for the existence of ghosts,²⁰ the proof has not yet risen to the level of rigor necessary to settle the issue. Despite the best efforts of paranormal investigators, the scientific community dismisses ghosts because their existence cannot be proven.²¹ Phenomena that are not susceptible to scientific proof do not serve well as evidence in our legal tradition. Given the legal system's insistence on "hard evidence" it should not be surprising that the law shows little respect for the idea that the living can have any interaction with the dead.²² In its current

2006 WI App 31 Unpublished Disposition (sentencing judge referred to his religious training where he "learned about the gifts of the Holy Ghost and the fruits of the Holy Spirit. . . ." nevertheless, those references did not render the sentence he handed down invalid). The status of the Holy Ghost as a specially protected spirit is evidenced by laws still on the books in several states making it a minor crime to blaspheme against the "Holy Ghost." See MASS.GEN.LAWS ANN. ch.272, §36 (2000); MICH.COMP.LAWS ANN. §750.103 (2004); and OKLA. STAT. ANN. tit. 21, §901-905 (2002).

16. For a quick introduction to Spiritualism, see BUCKLAND, *supra* note 14 at 21–47; for more information on Spiritualism, see the website of the National Spiritualist Association of Churches at <http://www.nsac.org/> (last visited Sept. 20, 2007).

17. A mainstream scientific approach to the problems of paranormal phenomena was championed by pioneering psychologist William James and others at the end of the nineteenth century and the beginning of the twentieth century, but was largely dismissed by the scientific community. For an account of James' efforts and those of his contemporaries, see DEBORAH BLUM, *GHOST HUNTERS: WILLIAM JAMES AND THE SEARCH FOR SCIENTIFIC PROOF OF LIFE AFTER DEATH* (2006).

18. See JEFF BELANGER, *COMMUNICATING WITH THE DEAD: REACH BEYOND THE GRAVE* (2005) (chronicling the various techniques of interacting with the spirit world, such as Ouija boards, tarot cards, and automatic writing that have been used by people in modern times to communicate with the dead.).

19. *Id.* at 93–105.

20. See, e.g. J. ALLAN DANELEK, *THE CASE FOR GHOSTS* (2006) (marshaling the evidence for the existence of ghosts).

21. A tidy expression of this view can be found in the essay contributed by Peter William Atkins, a Fellow and Professor of Chemistry at Lincoln College, Oxford, to the "Templeton Conversation" Series on the topic "Does the Universe Have a Purpose?" His response begins with the assertion that "[i]n the absence of evidence, the only reason to suppose that it does is sentimental wishful thinking and sentimental wishful thinking, which underlies all religion, is an unreliable tool for the discovery of truth of any kind." He goes on to say "Theologians typically focus on questions that they have invented for their own puzzlement. Some theologians are perplexed by the nature of life after death, a notion they have invented without a scrap of evidence." See Peter William Atkins, *No*, available at http://www.templeton.org/questions/purpose/essay_atkins.html.

22. In fact, the United States Supreme Court used "astrology and necromancy" as examples of the kinds of fringe fields of "expertise" where even practices that are generally accepted by expert practitioners are nevertheless inadmissible as evidence because the fields themselves are so inherently unreliable. *Kumho Tire Company v. Carmichael*, 526 U.S. 137, 151; 119 S. Ct. 1167, 1175; 143 L. Ed. 2d 238, 252; (1999). Despite the law's low opinion of necromancy, however, it is possible for a medium to successfully plead a case of libel when depicted visually in a false or defamatory way, see *Buller v. The Pulitzer Publishing Co.*, 684 S.W.2d 473, 479; 1984 Mo. App. LEXIS 4283; 52 A.L.R.4th 403; 11 Media L. Rep. 1289 (1984).

state, therefore, necromancy is not considered a relevant field for interaction with the law, and instead has become a sort of shorthand for “quackery” or worse, fraud.²³

That being said, judging by the number of television programs featuring psychics,²⁴ especially psychics helping to solve crimes,²⁵ one might nevertheless think that necromancy is alive and well as an important law enforcement tool. In the popular view, difficult cases such as serial murders and missing persons are solved in part through the use of information gleaned from psychics.²⁶ The truth of the matter is, however, psychics are more likely to contact the police than the other way around and usually the information they provide is not useful.²⁷

Still, the idea that communication with the dead is possible holds particular power over many people. The law recognizes that interactions with ghosts and the spirit world might be quite important to some people and might influence, for instance, how jurors view a defendant. In *North Carolina v. Kimbrell*,²⁸ the defendant was on trial for being an accessory to second-degree murder. The prosecution asked questions, over the defendant’s objection, about the defendant’s participation in, among other things, séances.

23. The modern poster child for necromancers as frauds undoubtedly is “Miss Cleo,” the queen of late-night psychic infomercials, who convinced untold thousands of overly trusting seekers to give over their credit card information in exchange for a psychic reading. Miss Cleo held herself out to be a “renowned psychic” from Jamaica, but it turned out she was just an out of work actress from Los Angeles. She was exposed in 2002 by the press and state attorneys general and was the focal point of various lawsuits. See Mitch Lipka, *Jamaican’ Miss Cleo Is Really from Los Angeles, State Claims*, SOUTH FLORIDA SUN-SENTINEL, Mar. 14, 2002 at 1B. She and the companies for which she served as a spokesperson were the subject of a lawsuit from the Federal Trade Commission alleging unfair and deceptive trade practices. *FTC v. Access Resource Services, Inc. et al.* (Southern District of Florida) FTC File No. 012 3084. That lawsuit was eventually settled for over 500 million dollars, although the defendants maintained they had broken no laws. See David Ho, *‘Miss Cleo’ settles FTC deception case Two companies that ran the psychic hotline agreed to cancel half a billion dollars in charges to callers*, PHILADELPHIA INQUIRER, Nov. 15, 2002 at C03.

24. John Edward is a popular psychic on television, although certainly there are many examples of psychic-themed entertainment in various media. See Deborah Hornblow, *In the Comfort of Dead People on Screen and Stage, Dearly Departed Offer Reassurance and Protection*, HARTFORD COURANT, Jan. 12, 2005 at D1. Television has been an especially fertile ground for psychic-themed programming, even extending to psychics for pets. See Anita Gates, *They See Dead People (And Animals) on TV*, N.Y. TIMES, Mar. 23, 2003 at 224. While it is easy to dismiss such programs as gimmickry, they have their ardent fans, and not all of them are gullible marks. See Linda Stasi, *Cross to Bare—Talking to Dead People from the Road*, N.Y. POST, Mar. 17, 2006 at 131 (well-educated, skeptical journalist confessing to a fascination with, and belief in, the power of John Edward to “cross over” to the spirit world).

25. Over the years there have been quite a few programs that centered around psychics and law enforcement, such as *Psychic Detectives* on CourtTV, *Psychic Witness* on the TLC/Discovery network, *Psychic Investigators* on the Biography Channel, *Medium* on NBC, *Ghost Whisperer* on CBS, *Haunting Evidence* on CourtTV, the *4400* on the USA Network, *The Dead Zone* on the USA Network and *Profiler* on NBC. For a convenient listing of TV shows featuring psychic crime fighters, see <http://www.psychic-experiences.com/psychic-television-shows.php> (Last visited Sept. 22, 2007).

26. Katherine Ramsland, *Seeing the Future?*, in CourtTV Crime Library, available at http://www.crimelibrary.com/criminal_mind/forensics/psychics/11.html (last visited Sept. 22, 2007).

27. See George Royal, *Psychic Detectives and Psychic Investigators*, at ourforge.com, available at <http://www.ourforge.com/2007072819506/Astrology/Psychic-Detectives-and-Psychic-Investigations.html> (last visited Dec. 17, 2007) (noting that psychics’ contributions to investigations are almost always voluntary and many departments ignore them); see also Katherine Ramsland, *Do the Police Really Use Psychics?*, in CourtTV Crime Library, available at http://www.crimelibrary.com/criminal_mind/forensics/psychics/11.html (last visited Sept. 22, 2007); and Clint Van Zandt, *Shoe Leather, not Sixth Sense, Breaks Cases Open* at MSNBC.com, available at <http://www.msnbc.msn.com/id/7320305/> (last visited Sept. 23, 2007).

28. 320 N.C. 762, 360 S.E.2d 691 (1987).

Even though the defendant essentially denied the prosecution's questions, the North Carolina Supreme Court found reversible error, saying "[t]he real effect of questions about devil worship, satanic bibles, graveyard séances, and the like, which in this particular case had little or no probative value, can only have been to arouse the passion and prejudice of the jury."²⁹ This case evidences the ambivalence in the law about contacts with the Great Beyond—if attempts to interact with the spirit world really are silly and should be accorded no respect, why do we worry that juries will have their “passion and prejudice” aroused when presented with evidence suggesting a defendant's involvement with those practices?

Similarly, if séances are silly, superstitious exercises then one would expect a defense attorney's reliance on a séance in formulating a defense strategy to be a *per se* case of ineffective assistance of counsel. Yet in *Idaho v. Charboneau*,³⁰ a capital murder case, the defendant's legal counsel received a letter from his niece, who was a psychic. The niece had made contact with the murder victim through a séance and had been told that the defendant was not the murderer, but rather the victim's daughter was (and, in any event, she forgave them both). The defense lawyer proceeded on this theory for a while but was unable to get the case dismissed. The defendant then fired the attorney and was given a public defender. After being convicted of first degree murder and sentenced to death, the defendant filed for post conviction relief, claiming, among other things, ineffective assistance of counsel. Ultimately the defendant was given life imprisonment rather than the death sentence.³¹ A vigorous dissent expressed incredulity that the defense attorney's reliance on a séance was not enough to get the defendant a new trial. An excerpt gives the flavor of the dissenting opinion:

... defense counsel's first strategic tactic was to utilize the results of a SEANCE conducted by a spiritualist; from the report of this séance counsel unquestionably believed that he had received the “true facts” concerning the homicide. . . . Armed with the “true facts,” counsel then devoted his talents toward convincing the prosecutors that the real culprit was not defendant, but the deceased's daughter. Having wholly succumbed to relying entirely on that hypothesis, counsel not only forewent making any of the ordinary preparations for a defense, but, even more damaging to the defendant, exposed him for uncounseled interrogation by prosecuting authorities . . . if Charboneau's then counsel was rendering “effective assistance of counsel,” as the majority today holds, then the sixth amendment's guarantee of right to counsel has flown the coop.³²

Nevertheless, the majority did not find the initial lawyer's use of a séance to be fatal and refused to “second guess counsel's strategic and tactical choices.”³³ Far from dismissing counsel's “strategic and tactical” choice to use a séance as irrational on its face, the majority deferred to the lawyer's approach, especially because in their view it made no difference in the outcome of the case.

While giving approval to a defense attorney to employ a séance in discovery may strike the modern sensibility as odd, it is not entirely inconsistent with our legal tradition. The law has in the past turned to the dead to provide some assistance in resolving cases. In

29. *Id.* at 768, 694.

30. 116 Idaho 129, 774 P.2d 299 (1989).

31. *Idaho v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989).

32. *Idaho v. Charboneau*, 116 Idaho 129, 162, 774 P.2d 299, 333 (Bistline, dissenting) (1989).

33. *Id.* at 138, 308. The defendant twice appealed his sentencing during 1993. In both appeals, the court concluded that the sentencing was adequate. *Idaho v. Charboneau*, 124 Idaho 217, 1993 and *Idaho v. Charboneau*, 124 Idaho 497, 1993.

the 1600s, English courts sometimes employed the “ordeal” in which suspected murderers were required to touch the corpse to see if the dead body made an indication of who killed it.³⁴ And even though conventional wisdom holds that dead men tell no tales, there are times when the law wants to examine a dead body to determine if it can shed any light on a case. In those situations, however, we do not treat the dead body as just another piece of physical evidence. We have a strong presumption against disturbing the body³⁵ and the person who wishes to disturb the body must get appropriate legal permission to do so.³⁶ In our society the physical well-being of dead bodies matters to people. In particular, family members care about where their loved ones are buried and frequently desire to have family members buried in close physical proximity to one another.³⁷ While our tradition respects the dead, we are a bit leery of them as well. Historically, the law has also expressed some concern about the extracurricular activities of dead bodies. That is, the law has not always assumed the dead would rest in peace. As an example, in England, suicide was a crime for which the punishment was forfeiture of the deceased’s property to the state. In addition to the legal ramifications of suicide, the English also subscribed to cultural norms about what happened to the spirits of suicide victims. To wit:

English common law reflected the ancient fear that the spirit of someone who ended his own life would return to haunt the living. Accordingly, the traditional practice was to bury the body at a crossroads—either so the suicide could not find his way home or so that the frequency of travelers would keep his spirit from rising. As added insurance, a stake was driven through the body.³⁸

There are cases from colonial America where the suicide’s corpse received the traditional ignominious burial treatment.³⁹

Similarly, throughout history there have been cases of dead bodies being exhumed in order to be tried or to receive punishment. Perhaps the most famous of these macabre pro-

34. See Edward Burnett Tylor, *Ordeal*, in *Encyclopedia Britannica* (1902 ed.) available online at <http://www.1902encyclopedia.com/O/ORD/ordeal.html> (last visited Sept. 22, 2007) (“At Hertford as-sizes ... the deposition was taken as to certain suspected murderers being required to touch the corpse, when the murdered woman thrust out the ring finger three times and it dropped blood on the grass ...”).

35. See *Yome v. Gorman*, 242 N.Y. 395, 152 N.E. 126, 128–29 (1926) (Justice Cardozo stated the presumption as follows: “Only some rare emergency could move a court of equity to take a body from its grave in consecrated ground ... The dead are to rest where they have been laid unless reason of substance is brought forward for disturbing their repose.”).

36. See, e.g., IOWA CODE ANN. § 144.34 (2005) (requiring either a permit from a state official or a court order to exhume a body and specifying the grounds under which an order might issue); CONN. GEN. STAT. ANN. § 19a-413 (2003) (requiring a court order before exhumation).

37. See, e.g., *Stark v. Stark*, 738 N.W.2d 625 (Iowa, 2007) (second wife petitioned court for permission to move remains of husband from plot near his first wife to a different cemetery and children of first wife objected); and *Dougherty v. Mercantile Safe Deposit & Trust Company*, 282 Md. 617, 387 A.2d 244 (1978) (widow brought action out of fear that her father-in-law would not let her be buried next to her husband in family plot).

38. Footnote omitted, *Compassion in Dying v. State of Washington*, 79 F.3d 790, 809 (9th Cir., 1996), citing 4 William Blackstone, *Commentaries* 190 (noting that people who committed suicide were subject to “an ignominious burial in the highway, with a stake driven through the body”).

39. See Thomas J. Marzen, et al., *Suicide: A Constitutional Right?*, 24 DUQ. L. REV. 1, 25, 64–65 (1985) (reporting that in 1661 a Virginia coroner’s jury found a man guilty of suicide and “caused him to be buried at the next cross path as the Law Requires with a stake driven though the middle of him in his grave.” citing A. SCOTT, *CRIMINAL LAW IN COLONIAL VIRGINIA* at 198–199 & n. 16 (1930), and also reporting “ignominious burial” practices in Massachusetts and Connecticut during colonial times. *Id.*).

ceedings was the case of Lord Protector Oliver Cromwell. In the fall of 1660 Parliament ordered his body to be exhumed and executed. A body that was reputedly Cromwell's was conveyed to Tyburn, where it was hanged and then decapitated in January 1661.⁴⁰ That the government would take action to punish the physical body even after it had obviously "given up the ghost" reflects our law's odd relationship with dead bodies and the spirits that once inhabited them. While Cromwell's corpse was clearly dead, it symbolized the political scapegoat needed to usher in the Restoration. The legal process the corpse received was equally symbolic, designed not to mete out justice or to arrive at the truth, but rather to provide a cathartic outlet for people wrestling with large forces beyond their control.⁴¹

The need to find a scapegoat is strong, and this ancient human impulse also appears in modern times. In 1892 in Rhode Island a suspected vampire was exhumed and punished. Nineteen-year-old Mercy Brown died of consumption on her family's farm in Exeter, Rhode Island in 1892. She was the third member of the family to die of tuberculosis and shortly after her funeral her younger brother became ill and speedily declined in health. Mercy's father suspected evil afoot and, together with other members of the community, concluded that Mercy Brown may have been a vampire. Her body was exhumed and her organs were removed. Her body still contained some liquid blood, which the people took as a sign she was among the undead. They removed her heart, burned it, and fed the ashes to the ill younger brother. He nevertheless died two months later.⁴²

The Mercy Brown case is odd for a couple of reasons. First, it happened only a little over a hundred years ago, when the prevailing modern sensibility should have swayed the people away from a belief in vampires (although the need to find a scapegoat for inexplicable bad tidings is always strong). And second, the parties involved desecrated a corpse, which violates a strong cultural taboo. We usually treat dead bodies with great care, as there are strong legal and cultural rules mandating respect for the dead.

Our treatment of dead bodies is yet another example where law and religion overlap. In *Kohn v. U.S.*,⁴³ the court, citing religious authorities, noted that:

[m]ost religions in the world hold that the remains of a deceased must be treated with honor and respect. Judaism believes in the principle that body and soul are sacred because both are the handiwork of God and hence are entitled to reverence. . . . In accordance with this premise Jewish law teaches that the whole body should be buried, and that if parts have been removed, for examination or otherwise, they must be returned and buried with the rest of the body. . . . Physical

40. See ANTONIA FRASER, CROMWELL THE LORD PROTECTOR 691–93 (1973) (recounting Parliament's act and the exhumation of Cromwell and other regicides); and H.F. McMAINS, THE DEATH OF OLIVER CROMWELL 127–157 (2000) (providing a more detailed account and suggesting that Cromwell's body was not actually exhumed, but some other body was sent in its stead).

41. Cromwell's "execution" is evocative of the trials that have been recorded throughout history in which inanimate objects or animals were the defendants. One way to understand these odd jurisprudential exercises is to appreciate that legal processes have a larger social function in creating community narratives that are necessary to maintaining a culture. For an insightful article articulating this position, see Paul Schiff Berman, Note, *Rats, Pigs and Statues on Trial: The Creation of Cultural Narratives in the Prosecution of Animal and Inanimate Objects*, 69 N.Y.U. L. REV. 288 (1994).

42. See Jeff Belanger, *Mercy Brown, the Rhode Island Vampire*, at Ghostvillage.com, available at http://www.ghostvillage.com/legends/2003/legends20_06142003.shtml (last visited Sept. 22, 2007).

43. 591 F.Supp. 568 (D.C.N.Y., 1984).

mutilation of the remains may be expected to distress the next of kin. But where they believe that that treatment will affect the afterlife of the deceased, the impact inevitably is greater.”⁴⁴

The court’s acknowledgment of the sincerely held belief that links the physical body of the deceased with the afterlife the deceased person will enjoy highlights the dilemma the law faces in this area. While courts may be skeptical of ghosts and the afterlife as scientifically provable phenomena, the parties appearing before them hold those beliefs and those beliefs deserve respect, even if they are irrational.⁴⁵

While necromancy, séances, and messages from beyond the grave do not show up in modern cases very often, the word “ghost” does appear with surprising frequency. If you search the Westlaw “allcases” database for the word “ghost” you will get over 2,700 documents, although most of them will use the term metaphorically, as in “he was scared and angry ‘like if he had seen a ghost.’”⁴⁶ More than a few people mentioned in reported cases have the nickname “Ghost.”⁴⁷ The cases are full of “ghost writers,”⁴⁸ “ghost employees,”⁴⁹ “ghost payroll,”⁵⁰ “ghost agents,”⁵¹ “ghost companies,”⁵² and even the “Holy Ghost,”⁵³ but literal references to phantoms are few and far between.

44. *Id.* at 572–73.

45. *See, e.g.,* *In re Kidd’s Estate*, 106 Ariz. 554, 479 P.2d 697 (1971) (court respected testator’s wish that his estate be given to “research or some scientific proof of a soul of the human body which leaves at death” *Id.* at 555, 698. The court added the following remarkable editorial comment: “Kidd’s will clearly evidences his belief in the basic elements of historic Christianity—a belief in human responsibility, in a transcendent God, and in human survival of bodily death. Kidd was not deluded by modern secularism into assuming that the Christian view of the world is so dull and pointless that it is not worth investigating. The affirmation of God as taught by the Christian Creed—the Communion of Saints, the Resurrection of the Body, and the Life Everlasting—is more satisfying to the intellect and more enriching to the human personality than its etiolated substitute, scientific humanism, the pursuit of which has led to materialism and the lack of moral responsibility.” *Id.* at 558, 701. *See also* *Reiche v. Williams*, 183 S.W. 2d 587 (1944) (fact that testatrix was known to talk to the spirit of her deceased husband did not render her of “unsound mind.”).

46. *See, e.g.,* *Moncada v. Brown*, 202 S.W.3d 794 at 801 (Tex. App., 2006).

47. *See, e.g.,* *People v. Porter*, Not Reported in Cal.Rptr.3d, 2006 WL 1331231, Cal.App. 2 Dist., 2006, May 17, 2006 (Defendant was charged in the information with murder along with ... John “Ghost” Lambertson).

48. *See* *Boston v. State*, 341 Ark. 370, 16 S.W.3d 239 (Ark., 2000) (ghost writing attorneys seeking share of attorney fees award).

49. *See* *Sanders v. District of Columbia*, 16 F.Supp.2d 10 (D.D.C., 1998) (public employee’s refusal to follow instructions to carry “ghost” employee on payroll qualified as speech on a matter of public concern for purposes of determining whether objecting employee’s civil rights were violated).

50. *See, e.g.,* *In re Martinez-Fraticelli*, 221 Ill.2d 255, 302 Ill. Dec. 718 Ill., 2006.

51. A “ghost agent” or “ghost officer” is part of an undercover police back-up team, often in a drug bust, who makes an arrest after the crime has been committed. *See, e.g.,* *Smith v. Hollins*, 448 F.3d 533, 535 (2d Cir., 2006). “A ghost is charged with following the primary officer at some distance, transmitting information about the primary’s location and activities to the rest of the team, and ensuring that the primary is safe during the course of the operation.” *See* *Baskerville v. Dennison*, Not Reported in F.Supp.2d, 2005 WL 3535067 at 2, S.D.N.Y., 2005, Dec 27, 2005.

52. *See* *Cleveland Trencher Co. v. C.I.R.*, T.C. Memo. 1996-489, 1996 WL 626336 (U.S. Tax Ct., 1996) (in which plaintiff alleges that a “Turkish business entity, of unspecified nature” operated as defendant’s agent as a ghost company).

53. This usage occurs typically as a name of one of the parties, *e.g.,* *Murphy v. Duquesne Univ. of the Holy Ghost*, 565 Pa. 571, 777 A.2d 418 (2001), although in one very sad case a victim of child abuse had the courage to tell on her molester because she was “filled with the Holy Ghost.” *People v. Lungberg*, Not Reported in Cal.Rptr.3d, 2006 WL 1087110 at 2 Cal.App. 4 Dist., 2006 Apr 25, 2006.

Occasionally, the appearance of a ghost might be used as evidence that a party is suffering mental anguish that could form the basis of a recovery in tort.⁵⁴ Not infrequently, ghosts are brought into a legal proceeding as a way to impeach the credibility of a witness.⁵⁵ At other times, the mere idea that the court might interact with the world of ghosts is treated as silly.⁵⁶ Sometimes the invocation of “ghosts” is to show that a particular point is absurd.⁵⁷

The unwillingness of the judiciary to acknowledge ghosts is inconsistent with the widespread popular belief in ghosts⁵⁸ and in the surprisingly frequent interaction of ghosts with the living.⁵⁹ Nevertheless, while ghosts may be very real to the people who believe in them and purport to interact with them, they are not real enough for a court to, say, shift culpability for criminal acts from a human defendant to a ghostly instigator.⁶⁰

While ghosts are unlikely to take the fall for the criminal acts of the living, there are some celebrated cases from real estate law where ghosts do affect the rights and duties of the living. Although the most celebrated modern cases are less than twenty years old,⁶¹ the historical record on haunted real estate stretches back at least two thousand years. Prob-

54. *Dammarell v. Islamic Republic of Iran*, Slip Copy, 2006 WL 2382704 at 93, D.D.C., 2006. Aug 17, 2006 (“Ms. Votaw testified that . . . [I] had a visitation from my father one night, and he appeared as a, you know, sort of a ghost which was very unnerving. And after that . . . I started basically becoming depressed to the point where I was suicidal.”).

55. See *State of North Carolina v. Whaley*, 631 S.E.2d 893, 2006 WL 1984424 (N.C.App.No. COA05-948, July 18, 2006, unpublished opinion) (defendant objected to the trial court’s exclusion of evidence that the witness had stated, among other things, that she had “seen a lady dressed in white in her apartment, possibly a ghost . . . talking to her about her aura.” The Court of Appeals agreed with the trial court’s exclusion of the evidence, stating the judge allowed the jury to hear testimony from the victim that she visited a mental health institution, but was unwilling to allow the defendant “to put on a series of questions about odd behavior or unconventional experiences without the additional support of a mental health professional to opine on the witness’s mental capacity and ability to be a credible witness”). This case is slightly at odds with *State of Tennessee v. Hudson*, unreported decision, Slip Copy, 2007 WL 1237791 (Tenn.Crim.App., 2007) (permitting a jury to draw conclusions about credibility from the testimony of an eight-year old rape victim who claimed to have seen ghosts). In both cases, however, the courts implicitly found that claiming to see ghosts did not render a witness unreliable as a matter of law. Seeing ghosts may be relevant to credibility because many times they tend to appear to people who abuse drugs or alcohol, see *State of Connecticut v. Lakhmir Dullat*, (unpublished opinion, WESTLAW Conn.Super.No. CR04121615, March 27, 2007 (defendant in arson case claims he lighted fire to defend himself against the “ghost lady” that was trying to get him. In appeal to shorten his sentence, the court discusses the defendant’s serious alcohol problem at length).

56. See *Benson & Hedges (Canada) Inc. v. Ross*, 1986 Carswell PEI 26, 18 C.P.C. (2d) 266, 58 Nfld. & P.E.I.R. 38, 174 A.P.R. 38 (PEI Sup. Ct., 1986) at Paragraph 12 (“Clearly, one cannot bring, or continue, an action against the ghost of a deceased defendant. One very practical difficulty immediately presents itself; through what means (medium?) might a solicitor receive instructions?”).

57. In *re Baby Boy V.*, 140 Cal.App.4th 1108, 1113, 45 Cal.Rptr.3d 198, Cal.App. 2 Dist., 2006 (“You know, Casper the Friendly Ghost, identity unknown, does not have standing. . . . There’s no real person.” Quotation from a lower court dismissing notice procedure irregularities in a paternity case).

58. See *supra* note 7 (reporting poll results of popular belief in ghosts).

59. See CBS Poll, *supra* note 7 (reporting that 22% of poll respondents had interacted with a ghost).

60. In the odd case of Mark Eugene Weyand, the defendant claimed that three ghosts and a talking rose had egged him on to commit the murder of which he was convicted. The court stated that “[the defendant’s] bizarre statements about ghosts and a talking rose do not demonstrate provocation that would negate the mental state required for first degree premeditated murder.” *People v. Weyand*, Not Reported in Cal.Rptr.3d, 2005 WL 3150672 (Cal.App. 2 Dist.) at 12.

61. See *infra* text accompanying notes 69–76 discussing the cases of *Reed v. King* and *Stambovsky v. Ackley*.

ably the most famous case of haunted real estate from antiquity is recorded in a letter from Pliny the Younger concerning a haunted house in Athens:

In the dead of the night a noise ... was frequently heard ... like the rattling of chains ... a spectre appeared in the form of an old man ... rattling the chains on his feet and hands... The distressed occupants meanwhile passed their wakeful nights under the most dreadful terrors imaginable... Consequently the house was at length deserted...

However, in hopes that some tenant might be found who was ignorant of this very alarming circumstance, a bill was put up, giving notice that it was either to be let or sold. It happened that Athenodorus the philosopher came to Athens at this time, and, reading the bill, enquired the price. The extraordinary cheapness raised his suspicion; nevertheless, when he heard the whole story, he was so far from being discouraged that he was more strongly inclined to hire it, and, in short, actually did so. [Athenodorus moved into the house and on the first night there] a clanking of iron and rattling of chains was heard... He looked up, saw, and recognized the ghost exactly as it had been described to him: it stood before him, beckoning with the finger ... [Athenodorus followed it.] The ghost slowly stalked along, as if encumbered with its chains, and, turning into the area of the house, suddenly vanished. Athenodorus ... made a mark with some grass and leaves on the spot where the spirit left him. The next day he gave information to the magistrates, and advised them to order that spot to be dug up. This was accordingly done, and the skeleton of a man in chains was found there... [The bones] were publicly buried, and thus after the ghost was appeased by the proper ceremonies, the house was haunted no more...⁶²

In an historical treatment of haunted houses, Enzo Nardi chronicles hauntings from Roman times to the mid-twentieth century.⁶³ He relates an account of a haunting in Corinth where Tibio, the philosopher, lived. A horrible ghost attacked the habitants and killed them. The ghost appeared during the night swearing and changing his appearance from a dog to a lion and pushing Tibio towards a corner of the house where eventually human bones were discovered. After the bones were properly buried, the hauntings stopped.⁶⁴ Nardi provides accounts of hauntings from several authors and priests and sets out a classification scheme of subjective and objective hauntings.

Italian law makers responded to the problem of haunted houses by including in *Codice Civile Italiano* of 1865 a disclosure requirement by which the seller of a house had to guarantee the buyer that the house was either free of hauntings or, alternatively, had to disclose the existence of ghosts on the premises and permit the buyer to receive restitution or a reduction in the price. If the seller did not make the disclosure and the buyer later found the premises to be haunted, the seller would be liable for all fees

62. From Pliny the Younger (A.D. 62?–c.A.D. 113). Letters. The Harvard Classics. 1909–14, LXXXIII. To Sura, found online at Bartelby.com, <http://www.bartleby.com/9/4/1083.html#txt1> (last visited June 15, 2007).

63. Enzo Nardi, *“infestate da spiriti” e diritto romano e moderno* (1960) (original in Italian, Latin and Greek, Italian excerpts translated by Lucia Milbier, copies of translated portions on file with author). Special thanks to Prof. Bruce W. Frier of the University of Michigan Law School for bringing this book to the attention of the AALS Contract listserv in a discussion about “Ghosts and Impracticability,” Sept. 13, 2005.

64. *Id.* at 112–13.

and damages caused.⁶⁵ The *Codice Civile* of 1942 continued and enhanced the haunting disclosure rules.⁶⁶

While it might be tempting to dismiss Nardi's research as a quaint chronicle of the superstitions of old Europe, an unreported case from Connecticut shows that haunted houses are modern phenomena as well. In the account provided by self-proclaimed ghost hunter Ed Warren:

We proved in a court of law in 1989 that a woman and her young child driven out of her house by ghosts. She lived in Hebron, Connecticut. . . . The Realtor that leased her the house was suing her for \$2,000. She begged us to go into the house and to get some evidence that would prove that there really were ghosts.

Now, you don't walk into a court of law and saw, "Well judge, there was ghosts there."— You have to have evidence. In any court of law they use photographs, recordings and credible witnesses as evidence—that's what we use. We won the case, we set a precedent here in the United States.⁶⁷

Of course, Mr. Warren overstates the case considerably, as an unreported case does not serve as a precedent. Indeed, when it comes to ghosts there is little binding precedent in this still-evolving area of the law.

In general, in real estate transactions the law of *caveat emptor* continues to apply. Buyers need to exercise due diligence to discover problems with the property and to negotiate an appropriate price taking those problems into account. This is relatively noncontroversial for things that a diligent buyer can discover by inspection or by hiring professional help, such as termite infestation. The law does get somewhat controversial, however, in those situations where the defect is known to the seller but is not easily discoverable by the buyer. In the case of these "latent" defects, courts are increasingly willing to impose on sellers a duty to disclose.

The challenge for a court then becomes to determine what kinds of things constitute latent defects that ought to be disclosed. In the case of *Reed v. King*,⁶⁸ the purchaser of a house sued the seller and his real estate agents seeking rescission and damages. The purchaser had discovered that a gruesome murder involving a woman and her four children had taken place in the home ten years earlier. The lawsuit alleged that both the owner and the real estate agents knew about the murders and also knew that the crimes had a significant adverse effect on the market value of the house, but they did not disclose the murders to the purchaser. The trial court sustained defendant's demurrers to the complaint and the plaintiff appealed. The Court of Appeal reversed, finding that the complaint did state a cause of action. In the court's view, the murders were sufficiently material and difficult for the purchaser to discover to impose a duty on the seller and his agents to disclose them. Even though the murders caused no physical damage to the property, the court found them to be material, saying:

Reputation and history can have a significant effect on the value of realty. "George Washington slept here" is worth something, however physically inconsequential that consideration may be. Ill-repute or "bad will" conversely may depress the value

65. *Id.* at 211–12.

66. *Id.* at 225–26.

67. Jeff Belanger, *50 Years of Ghost Hunting and Research With the Warrens*, available at <http://www.ghostvillage.com/legends/warrens.shtml> (last visited Dec. 17, 2007).

68. 145 Cal. App. 3d 261 (1983).

of property. Failure to disclose such a negative fact where it will have a foreseeably depressing effect on income expected to be generated by a business is tortious.⁶⁹

While the *Reed* Court acknowledged that the murders had saddled the property with a stigma that made it much less attractive to buyers,⁷⁰ it did not venture an explanation about *why* such a terrible event would render the premises less attractive to buyers. It is not much of a stretch to articulate the unstated assumption that the spirit of the place had been damaged—perhaps the premises were even haunted, if by nothing more than scary memories or conjecture about what might have transpired there.

In *Stambovsky v. Ackley*,⁷¹ the plaintiff signed a contract to buy a house and later discovered that the house had a reputation for being possessed by poltergeist. The plaintiff tried to rescind the contract and recover the \$32,000 deposit. The trial court dismissed, but the buyer prevailed on appeal. The Appellate Division concluded that due to the defendant's own reports of the haunting in national and local publications,⁷² she was estopped to deny the poltergeists' existence and thus, as the court stated, "as a matter of law, the house [was] haunted."⁷³ The court then went on to say that the haunting did lower the value of the house, and while *caveat emptor* meant that there could be no action for damages, there could still be an equitable remedy of rescission.⁷⁴ Rescission was available because the defendant had taken unfair advantage of plaintiff's ignorance as to the house's reputation and the defendant was the one who had created and perpetuated that reputation. The court stated that the impact of the haunted property's reputation struck at "the very essence of the bargain between the parties, impairing both the value of the property and its potential for resale."⁷⁵

In light of its unusual facts, the *Stambovsky* case generated a lot of attention in articles⁷⁶ and was, frankly, regarded as a joke by some observers.⁷⁷ But real estate professionals did not find the way the law was developing to be very funny at all. In response to the psychologically impacted property concept as it evolved in the courts,⁷⁸ the legislatures in

69. *Id.* at 267.

70. *Id.* ("The murder of innocents is highly unusual in its potential for so disturbing buyers they may be unable to reside in a home where it has occurred.")

71. 169 A.D.2d 254, 572 N.Y.S. 2d 672 (1991).

72. Articles about the hauntings had appeared in local newspapers and also in the Reader's Digest. Helen Herdman Ackley, *Our Haunted House on the Hudson*, READER'S DIGEST, May 1977 at 217 (describing the Ackley family's interactions with the ghosts in the Nyack house).

73. 169 A.D.2d 254, 256, 572 N.Y.S. 2d 672, 674 (1991). Whether the house was in fact haunted is an entirely different inquiry. There was no factual finding on the matter. A book written a couple of years after the case purports to have contacted the spirit of "Sir George," the shade who inhabited the house, through the means of a medium who used a spirit guide named Moses to interact with the world of the dead. BILL MERRILL AND GLENN JOHNSON, SIR GEORGE, THE GHOST OF NYACK (1995).

74. *Id.* at 256, 675 (Stating that although plaintiff's fraudulent misrepresentation claim against the seller "hasn't a ghost of a chance, I am nevertheless moved by the spirit of equity to allow the buyer to seek rescission of the contract of sale and recovery of his down payment.")

75. *Id.* at 256, 674.

76. See, e.g., Paula C. Murray, *AIDS, Ghosts, Murder: Must Real Estate Brokers and Seller Disclose?*, 27 WAKE FOREST L. REV. 689 (1992) [hereinafter Murray]; Daniel M. Warner, *Caveat Spiritus: a Jurisprudential Reflection upon the Law of Haunted Houses and Ghosts*, 28 VAL. U. L. REV. 207 (1993) [hereinafter Warner]; and Sharlene A. McEvoy, *Stigmatized Property: What a Buyer Should Know*, 48 J. MO. B. ASS'N 57 (1992).

77. See Marianne M. Jennings, *Buying Property from the Addams Family*, 22 REAL EST. L.J. 43 (1993) (providing a tongue-in-cheek look at the case).

78. The California legislature specifically referred to the *Reed* case in the legislative findings supporting the enactment of the legislation in that state: "The Legislature hereby finds and declares all of the following:

twenty-eight states and the District of Columbia enacted statutes setting out rules about how sellers and brokers were to deal with property stigmatized by disease, criminal act, or other psychological impact.⁷⁹

In general, these laws create regimes that exonerate brokers and/or sellers for failure to disclose information about certain events that have occurred on the property.⁸⁰

Interestingly, while most states provide that the occurrence of a murder or suicide on the premises at some point in the past is not a material fact that must be disclosed, only a handful of states specify that more nebulous phenomena, including possible hauntings, qualify as immaterial facts that do not need to be disclosed.⁸¹ Iowa is a bit of an outlier

... (e) The applicability of cases such as *Reed v. King*, 145 CA 3d 261, which deals with the obligation of a seller of real property to disclose facts materially affecting the value or desirability of the property, is not clear as to situations where previous owners or inhabitants of real property have been afflicted with AIDS. The Legislature intends to clarify this situation by the enactment of this act." 1986 Cal. Stat. C. 498.

79. CAL. CIV. CODE § 1710.2 (West 1998); COLO. REV. STAT. ANN. § 38-35.5-101 (West 2007); CONN. GEN. STAT. § 20-329cc-20-329ee (West 1999 & Supp. 2007); DEL. CODE ANN. tit. 24 § 2930 (2005); D.C. CODE ANN. § 47-2853.198 (2004); FLA. STAT. ANN. § 689.25 (West 1994 & Supp. 2007); GA CODE ANN. § 44-1-16(a) (1) (1991 & Supp. 2007); HAW. REV. STAT. ANN. § 467-14 (18) (Michie 2005); IDAHO CODE §§ 55-2801-55-2803 (Michie 2007); 225 ILL. COMP. STAT. ANN. 454/15-20 (West 2007); IOWA CODE ANN. § 543B.56 (West 1997); KY. REV. STAT. ANN. § 207.250 (Michie 2007); LA. REV. STAT. ANN. § 37:1468 (West 2007); MD CODE ANN REAL PROP. § 2-120 (2003); MASS. GEN. LAWS ANN. ch. 93 § 114 (West 2006); MO. ANN STAT. § 442.600 (West 2000); N.M. STAT. ANN. § 47-13-2 (Michie 2003); N.C. GEN. STAT. § 39-50 (2005); OHIO REV. CODE ANN. § 5302.30 (West 1995 & Supp. 2007); OKLA. STAT. ANN. tit. 59 § 858-513 (West 2000); OR. REV. STAT. § 93.275 (2005); R.I. GEN. LAWS § 5-20.8-6 (2004); S.C. CODE ANN. § 40-57-180 (E) (Law Co-op. 2001 & Cum. Supp. 2006); S.D. CODIFIED LAWS § 43-4-44 (Michie 2004 & Supp. 2007); TENN. CODE ANN. § 66-5-207 (2004); TEX. PROP. CODE ANN. § 5.008 (c) (Vernon 2004 & Supp. 2006); UTAH CODE ANN. §§ 57-1-1 (4), 57-1-37 (2000 & Supp. 2007); VA CODE ANN. § 55-524 (Michie 2003 & Supp. 2007); and WIS. STAT. ANN. § 452.23 (West 2006).

80. Most of the statutes work the same way, by defining certain "psychological impacts" on the property to be immaterial and then reinforcing the common law rule that there is no liability for failure to disclose immaterial facts. The range of events that are considered immaterial varies from state to state, but almost every state that has enacted this type of legislation specifies that a prior occupant's infection with HIV/AIDS or a similar disease is a non-material fact about the property that does not need to be disclosed. For a tidy summary of these types of statutes, see Marc Ben-Extra and Asher Perlin, *Stigma Busters: A Primer on Selling Haunted Houses and Other Stigmatized Property*, PROB. & PROP., May/June 2005 at 59. The passage of these statutes was due in no small part to concern about the AIDS crisis and the effect unfounded concerns about contagion would have on the prices of homes occupied by persons afflicted with the disease. There are several excellent treatments of this development, see, e.g., Ross R. Hartog, Note, *the Psychological Impact of Aids on Real Property and a Real Estate Broker's Duty to Disclose*, 36 ARIZ. L. REV. 757 (1994) (providing a survey of laws affecting disclosure of impacts on real property with special attention to Arizona law).

81. See, e.g., 225 ILL. COMP. STAT. ANN. 454/15-20 (West 2007) (providing no cause of action for failure to disclose "that the property was the site of an act or occurrence that had no effect on the physical condition of the property or its environment or the structures located thereon"); MASS. GEN. LAWS ANN. ch. 93 § 114 (West 2006) (including in the definition of "psychologically impacted" those situations where "the real property has been the site of an alleged parapsychological or supernatural phenomenon" and providing an exclusion from liability for failure to disclose that information); OR. REV. STAT. § 93.275(b) (2005) (defining as immaterial, and therefore not a basis on which to impose liability, "The fact or suspicion that the real property or a neighboring property was the site of a crime, political activity, religious activity or any other act or occurrence that does not adversely affect the physical condition of or title to real property"); S.C. CODE ANN. § 40-57-180 (E) (Law Co-op. 2001 & Cum. Supp. 2006) (no need to disclose "psychological impact that has no material impact on the physical condition of the property."); Tenn. Code Ann. § 66-5-207 (2004) (providing an exception from the duty to disclose for "An act or occurrence which had no effect on the physical structure of the real property, its physical environment or the improvements located thereon"); VA Code Ann § 55-524.A.1 (Michie 2003 & Supp. 2007) (language identical to Tennessee law) and WIS. STAT. ANN.

in that it requires a real estate licensee to disclose all material facts to the parties.⁸² While other states adopt a required disclosure approach as well, few are as open-ended as Iowa law, instead addressing the issue by mandating a form of disclosure by the seller in residential real estate transactions.⁸³ To the extent these statutes do not specifically require disclosure of paranormal impacts on the property, it is an open question as to how those matters will be treated.

Ohio's mandated seller disclosure form requires disclosure of "known material defects," which are defined to "include any non-observable physical condition existing on the property that could be dangerous to anyone occupying the property or any non-observable physical condition that could inhibit a person's use of the property."⁸⁴ This language could pick up psychological impacts on the property if they have a "physical condition" (blood stains? oozing ectoplasm?), and if it does not pick up psychological impacts generally, the statute makes clear that the required disclosure form does preclude or excuse the disclosure of other information that would be required under statute or common law.⁸⁵ In Ohio, the case law already imposes a duty to disclose on sellers of stigmatized property.⁸⁶ In jurisdictions with no specific statute, the common law would continue to apply. In light of the way the law of *caveat emptor* has evolved in the latter half of the twentieth century, a seller would be well-advised to keep in mind that "[t]he tendency of the more recent cases is to restrict rather than to extend the doctrine ... [the cases appear] to be working toward the ultimate conclusion that full disclosure of all material facts must be made whenever elementary fair conduct demands it."⁸⁷ In other words, whether you believe in ghosts or not, disclosure is the best policy.

Some legal commentators have not supported the *Stambovsky* decision on the grounds that it is too subjective and places too great a burden on sellers and their agents to recognize psychological impacts and disclose them. The criticism is nicely summarized by Prof. Paula Murray as follows:

The decision to purchase residential real estate may not always be a rational one. The broker and seller, however, should not be legally required to disclose information based on irrational and scientifically unproven fears. Latent defects which affect the property's physical characteristics should continue to be disclosed. While *caveat emptor* must not return, disclosure must focus only on the property itself and not on a buyer's peculiarities, sensitivities, and prejudices.⁸⁸

The criticism misses the point. The test is not purely subjective; it requires an understanding of materiality, which is measured against the reasonable person's views. Assess-

§ 452.23 (West 2006) (no need to disclose "That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.").

82. Iowa Code Ann. § 543B.56 (1)(c) (West 1997).

83. See, e.g. TEX. PROP. CODE ANN. § 5.008 (c) (Vernon 2004 & Supp. 2006).

84. Form available at <http://www.com.state.oh.us/real/documents/respropdiscform.eff2007-01-01.pdf> (last visited Dec. 17, 2007).

85. OHIO REV. CODE ANN. § 5302.30(J) (West 1995 & Supp. 2007) ("This section does not limit or abridge, and shall not be construed as limiting or abridging, any obligation to disclose an item of information that is created by any other provision of the Revised Code or the common law of this state or that may exist in order to preclude fraud, either by misrepresentation, concealment, or nondisclosure in a transaction involving the transfer of residential real property.").

86. *Van Camp v. Bradford*, 63 Ohio Misc.2d 245, 623 N.E.2d 731 (1993) (rapes that occurred on the premises were in the nature of a latent defect and should have been disclosed by seller, especially in light of alleged inquiry by buyer about the safety of the neighborhood).

87. *Johnson v. Davis*, 480 So. 2d 625, 628 (Fla. 1985).

88. Murray, *supra* note 77 at 708.

ing materiality requires an appreciation of the hows and whys of the impact and an understanding of how that impact is generally perceived. In neither *Reed* nor *Stambovsky* could the sellers have plausibly argued that they did not know of the impact or that the impact was generally perceived as a negative aspect of the property.

All property exists within a historical and cultural setting. For most property that setting is not very interesting, but for some pieces of property that background is absolutely material. In 1994, the Disney Corporation found itself in the middle of a public relations maelstrom when it proposed building a theme park devoted to American history in northern Virginia, not far from the Manassas Battlefield.⁸⁹ After massive protests, outcry by historians, and even action in the U.S. Senate, Disney decided to scrap the plan.⁹⁰ Why the brouhaha over a site that was not even on the hallowed ground of the battlefield? Because most people would agree that the Manassas Battlefield should be treated as sacred ground by Americans. We care about the context of the property and the surrounding environs within a larger world view. It's not just that thousands of people died there—it's how they died and why they died that makes the place special.

Contrast the Disney project with a single family home in which an elderly resident passed away quietly in his sleep one night. Should a reasonable buyer care about that? If so, many, many houses across the country would have serious problems. Before modern times most people died at home, and even today about one in four deaths happen in the home.⁹¹ We generally do not inquire about past deaths in a given house, however, because ordinarily we do not care—it is not material. In between these two extremes are the difficult cases. *Reed* and *Stambovsky* seem to be on the disclosure end of the scale, but finding a hard and fast line between those gruesome facts and another case might be tricky, although not impossible.

Even if we do not always care about where people died, we do like to keep track of dead bodies. For instance, the law recognizes that graveyards are special places deserving of respect.⁹² The law also recognizes that homeowners deserve to know whether their home has been built on a gravesite. In the case of *Haney v. Purcell*,⁹³ the Texas Supreme Court allowed homeowners to proceed against the successor of the developer who sold them a house which had two graves on the property.⁹⁴ The plaintiffs discovered the graves when they began excavation to install a swimming pool. The discovery of the graves, they alleged during the trial, caused them to lose weight, lose sleep and otherwise changed their lives.⁹⁵ The parallels to the 1982 movie *Poltergeist*⁹⁶ are inescapable and were not lost

89. Michael Wines, *A Disneyland of History Next to the Real Thing*, N.Y. TIMES, Nov. 12, 1993, at A14 (discussing the proposal for a history-themed Disney attraction).

90. Richard Perez-Pena, *Disney Drops Plan for History Theme Park in Virginia*, N.Y. TIMES, Sept. 29, 1994, at B11 (providing an account of the termination of the park proposal).

91. See "USA and State Statistics" in the Brown Atlas of Dying, located at: <http://www.chcr.brown.edu/dying/USASTATISTICS.HTM> (last visited Sept. 10, 2007) (data compiled by Brown Medical School showing modern trends in at-home deaths and breaking down place of death by home, hospital or nursing home).

92. See *Diffendall v. Diffendall*, 239 Md. 32, 209 A.2d 914, 915–16 (MD. 1965) ("through the ages, all civilized peoples have considered the final resting place of their dead as hallowed and sacred ground").

93. 770 S.W.2d 566 (Tex., 1989).

94. *Id.*

95. Gary Taylor, *Ghostly Gander into Court*, NAT'L L.J., June 5, 1989 (col. 3) (discussing the trial evidence).

96. For a synopsis of this minor classic, see <http://www.rottentomatoes.com/m/poltergeist/> (last visited Dec. 17, 2007).

on plaintiff's counsel, who apparently brought a copy of the movie to the settlement conference.⁹⁷ Ultimately, the plaintiffs did not recover because they were deemed to have been on notice of the graves, but the case does show that having dead bodies on the premises matters to people.

In a Maryland case, homeowners discovered that their house was built on a cemetery and brought suit on a number of theories. The Maryland Court of Appeals allowed the case to proceed over defendant's argument that it was barred by the statute of limitations.⁹⁸ The plaintiffs claimed they had suffered economically (i.e. diminished the value of their property) and emotionally (i.e. subjecting the family to paranormal experiences such as seeing ghosts and smelling odd smells) from the concealed fact.⁹⁹ A truly rational, skeptical, scientifically-minded person, for example, Mr. Spock from the *Star Trek*TM television show, would not care that his or her house was built on a graveyard or that a murder had taken place on the premises or that ghosts were reputed to reside there, but that Spock-like person is quite rare. Most ordinary, normal, emotional humans do care about these things. So when a commentator levels criticism at the *Reed* and *Stambovsky* cases saying they are bad law because they promote the belief in superstition,¹⁰⁰ one must wonder whether the law is supposed to serve the people or serve some Platonic ideal of rationality as understood by some all-knowing philosopher guardian who can reliably steer the people through policy choices that are fraught with religious and cultural significance, such as whether ghosts exist or whether there is an afterlife.

The fact is, psychological impacts have serious consequences for the owners of real property. When stigma attaches to real property the price goes down and the time on the market goes up.¹⁰¹ The stigma may persist for years after the stigmatizing event is over.¹⁰² The negative impact from owning a stigmatized property comes not just from the general creepiness of knowing what happened there, but also from the unwanted celebrity that the property may enjoy after the event, which could attract a lot of gawkers and tourists and lower the quality of life for the owners.¹⁰³ On the other hand, although most people will discount the value of a haunted house, there also appear to be at least some buyers

97. *Haney v. Purcell Co., Inc.*, 796 S.W.2d 782 (Tex.App., 1990) (on remand, discussing the implications for allowing evidence that the lawyer brought the movie to the settlement conference).

98. *Hickman, ex rel. Hickman v. Carven*, 366 Md. 362, 784 A.2d 31 (Md., 2001).

99. See Margaret Cronin Fisk, *Haunting Case Is Resurrected Md. Couple Can't Sell House Allegedly Built on a Graveyard*, NAT'L L. J., Jan. 22, 2001 at A12.

100. See Warner, *supra* note 77 at 211 ("Irrational beliefs, those not subject to reasonably universal verification, should not be the foundation of law ...").

101. See James E. Larsen and Joseph W. Coleman, *Psychologically Impacted Houses: Broker Disclosure Behavior and Perceived Market Effects in an Unregulated Environment*, 4 J. REAL EST. PRACT & EDU. 1 (2001) (reporting on a study that a "well-publicized murder can lower a house's value by from 15% to 35% and that it takes five to seven years for the effect to fade." *Id.* at 4, also reporting the results of their study in Ohio across a range of impacts, which showed that the selling price of an impacted home was 3% lower than an unimpacted home and that the impacted property stayed on the market 45% longer than unimpacted property. *Id.* at 10–11).

102. See Carole Fleck, *Stigma or Superstition? Appraisers Weigh Diminished Value of Tainted Properties*, REALTOR MAG. ONLINE, available at <http://www.realtor.org/rmomag.nsf/pages/StigmaorSuCarArchive1997May?OpenDocument> (last visited Sept. 24, 2007) (noting that a stigmatized property experiences a 15% to 25% diminution in value for two to three years after the fact and that over time the stigma evaporates, but that it takes from 10–25 years for the stigma to go away entirely.).

103. See, e.g., Renee Graham, *Fur Store, Quiet Street Are Now Macabre Meccas*, BOSTON GLOBE, Jan. 16, 1990 at 20 (reporting on how the various significant locations in a notorious Boston-area murder/suicide have been frequented by curiosity seekers).

in the market who actually desire an authentically haunted house,¹⁰⁴ and there are some websites devoted to listing haunted houses that are for sale.¹⁰⁵

On a practical note, if we are to take psychologically impacted property seriously, how will we be able to tell whether there is anything real behind the stigma or whether it is merely irrational fear or even an intentional hoax? There have been some amazing hoax hauntings throughout history. In 1762 there was a notorious haunting in London known as the “Cock Lane Ghost.” It turned out to be an elaborate conspiracy to defame a Mr. Kent by having a ghost accuse him of murder, but it convinced many people.¹⁰⁶ Fraudulent hauntings have occurred in modern times as well. Probably the most notorious haunting of the late twentieth century was the “Amityville Horror,” which, despite being a successful book that was made into several successful movies, was likely a hoax created by the owners of the house and the former lawyer of one of the prior residents.¹⁰⁷

Even a merely reputed spook can, however, affect property values. Just the perception that a property is haunted may be enough to depress its value. In a case decided by the Canadian Supreme Court one hundred years ago, a paper that published an account of a haunted house was held liable for slander of title.¹⁰⁸ The owner of the alleged haunted house was near to a sale at the time the story was published and the deal fell through in light of the story.¹⁰⁹ Eventually, the owner did sell the house, but for a price substantially lower than the originally negotiated price. When the owner brought suit against the newspaper for slander of title, the case was dismissed by the trial court. On appeal the plaintiff was successful and a verdict was entered in his favor in the amount of \$1,000.¹¹⁰ On further appeal to the Supreme Court of Canada, the plaintiff’s position was upheld.

104. James Barron, *Phones Ringing (Eerily?) For Nyack Spook Home*, N. Y. TIMES, Mar. 20, 1990 at B2 (describing the efforts of the “Amazing Kreskin” to acquire a truly haunted house and his potential interest in the house at issue in *Stamovsky v. Ackley*).

105. See, e.g., http://www.sdparanormal.com/Haunted_House_Listings.html (last visited Dec. 17, 2007).

106. The story of the Cock Lane Ghost is included as an Appendix to *The Newgate Calendar*, a book popular in English homes during the eighteenth and nineteenth centuries which contained popular accounts of notorious crimes and criminals. It is available online at: <http://www.exclassics.com/newgate/ng652.htm>.

107. The Amityville Horror case is widely believed to be a concoction. The allegedly haunted house was the scene of a ghastly multiple murder where Ronald DeFeo, Jr. killed his parents and four siblings. The home was purchased by the Lutz family, who lived there for a very short time before moving out and hiring a writer to piece together the Amityville book. The lawyer for Ronald DeFeo, William Weber, admitted in 1988 to the television program *A Current Affair*, that the horror story was a hoax concocted by himself and the Lutzes. See Diana Jean Schemo, *‘Amityville’ Prisoner Says Movie Money Tainted Defense*, N. Y. TIMES, June 25, 1992 at B6. Investigative journalists have found numerous holes in the story told by the Lutzes casting doubt on its authenticity and tending to support Weber’s claim of fraud. See STEPHEN KAPLAN AND ROXANNE SALCH KAPLAN, *THE AMITYVILLE HORROR CONSPIRACY* (1995).

108. *Manitoba Free Press v. Nagy*, [1907] 39 S.C.R. 340. In that case, the Manitoba Free Press ran the following story: “A NORTH END GHOST. There is a ghost in the north end of the city that is causing a lot of trouble to the inhabitants. His chief haunt is in a vacant house on St. John Avenue, near to Main (meaning thereby the property of the plaintiff so described as aforesaid). He appears late at night and performs strange antics, so that timid people give the place a wide berth. A number of men have lately made a stand against ghosts in general, and at night they rendezvous in the basement and close around the haunted house (meaning thereby the said property of the plaintiff so described as aforesaid) to await his ghostship, but so far he still remains at large.” *Id.* at para. 15.

109. *Id.* at para 16.

110. *Id.* at para. 14.

The Supreme Court's opinion focused on the intent element necessary for slander of property, but the opinions did mention that the other essential element of the action—that the statement be false—was shown, although we do not know what evidence was produced to demonstrate the falsity of the story.¹¹¹ The case illustrates how even if there are objectively no such things as ghosts, the fact that people believe in ghosts might nevertheless cause damage to the value of “haunted” real estate.

The law has an uneasy relationship with ghosts, the dead, and the spirit world. Although our rational selves and perhaps our religiously orthodox selves want to dismiss all of those things as nonsense, our emotional and intuitive selves want to believe. Like many forbidden things, the dwellers in the afterlife are repellent and fascinating at the same time.

As first year law students quickly learn, the law is not always coldly rational. It responds to cultural norms and human concerns. We live in a world where educated, everyday people are still plagued by ghosts (or believe themselves to be), be it in New York,¹¹² Orlando,¹¹³ Wichita, Kansas,¹¹⁴ or Sydney, Australia.¹¹⁵ Until we either figure out what ghosts are or become a lot more stoic, the law will have to continue its ambivalent balancing act and we'll continue to make accommodations for gruesome crimes and ghosts that impact real property, all the while telling ourselves “there's no such thing as ghosts, there's no such things as ghosts....”

111. Justice Davies in his opinion states “the evidence only admits of one conclusion and that is that the article complained of was false,” *id.* at para. 10, while Justice Idington's concurring opinion states “the falsity of the publication is proven so far as that can be shewn in any such case.” *Id.* at para. 19.

112. See Susan Millar Perry, *A New Home, Not Quite Vacated*, N.Y. TIMES, Oct. 30, 2005 at Sec. 11, p. 1 (relating the story of a haunted apartment on the upper west side); see also Tracie Rozhon, *Turf; Cleaning Out Those Pesky Old Poltergeists in the Closets*, N.Y. TIMES, Oct. 30, 1997 at F15 (describing the practice in New York City of hiring “smudgers”—shamans with exorcizing powers—to cleanse evil spirits from real estate that is not selling).

113. See Bob Mervine, *Spirited Dispute: Tenant Claims Church Street is Haunted*, ORLANDO BUS. J., Sept. 2, 2005, online at <http://www.bizjournals.com/orlando/stories/2005/09/05/story1.html> (last visited Sept. 24, 2007) (reporting on the lawsuit where a tenant refused to move into the Church Street Station complex because it was haunted and his Jehovah's Witness faith strictly prohibits interacting with spirits).

114. See Michael Wilson, *Shadows at Home: Living Where B.T.K. Killed*, N.Y. TIMES, June 29, 2005 at A1 (reporting on the outrage of buyers who unsuspectingly purchased homes in the Kansas City area in which the notorious B.T.K. murders had taken place); see also comments on this article on the Freakonomics blog: Stephen J. Dubner, *Not to Kick Realtors When They're Down, But...*, available at <http://freakonomics.blogs.nytimes.com/2005/06/30/not-to-kick-realtors-when-theyre-down-but/> (last visited Sept. 24, 2007) (comments on blog reflecting the range of opinion about stigmatized property, including some people who have first hand experience).

115. See *Murder home fine appealed*, Feb. 6, 2006 available at <http://www.news.com.au/story/0,10117,18059303-29277,00.html> (last visited Sept. 24, 2007) (describing the fines levied on real estate agents in Sydney who failed to disclose the facts of a triple murder in a house that was sold to an unsuspecting buyer).