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INTRODUCTION

The Feminine Side of Women on Trial

This study of women on trial for homicide examines newspaper coverage of these proceedings and the constructions of their attorneys in California cases, 1870–1958. Our focus is on the representations of women, case by case, in the newspapers and in trial-court settings, and the rhetoric of attorneys. We make comparisons over time and place to ferret out the nuances of gender, femininity, and the law. We cover almost a century of cases in a single state, giving this work a unique legal focus.[1] We explore trial tactics as well as public relations with the press. In our nineteenth-century cases, we ask whether the all-male juries exhibited the anxiety so frequently ascribed to men in the era.[2] We pay particular attention to how law-enforcement personnel, prosecutors, and defense attorneys portrayed women caught up in the criminal-justice system. In terms of the law, we look at evidence offered at trial, judicial rulings on its admissibility, and the interpretations of the prosecution and the defense. In the mid-twentieth century, the role of the police and their relationship with the press emerged as a factor in the construction of gender, accusation, evidence, and trial strategy. Clearly, media were selective in the cases they covered, and police, lawyers, and judges learned how to manipulate the media. Newspapermen needed to sell copy. Lawyers wanted to advertise their wares and promote their client's interests. Judges knew they stood for election periodically and needed name recognition. All these concerns involved the construction of gender and justice in particular settings. In the end no simple theory covering gender, class, or race explains the behavior of people involved in murder trials. Often it is the law rather than the constructions that determine the verdict.

A focus on women who kill men is not new. Robert Ireland wrote pioneering articles in the late twentieth century about the "unwritten law" of the nineteenth century.[3] His 1992 article on women defendants scrutinizes the relationship of sexual dishonor and violence, femininity and insanity, and rage and law.[4] Based on a study of cases in 1843–96, Ireland found the invention of the unwritten law that exonerated men and women killers who avenged sexual dishonor. Ireland's trials exhibited an ideology arguing that men had a duty to protect women from "slimy, snake-like libertines" and punish "Eve-like women who too readily embraced those libertines."[5] At trial defense attorneys portrayed their female clients as "weak and hysterical, whose hysteria rendered them legally insane," and prosecutors painted them as "inherently licentious and the purveyors of social evil."[6] Theorists tied female insanity, in turn, to menstrual dysfunction and "an inherent condition of emotional instability."[7] Nineteenth-century physicians termed the problem dysmenorrhea, today known as postmenstrual syndrome, or PMS.[8] Popular paperbacks persisted in keeping the issue alive in a broad national setting.[9] Scholarly work focused on seduction litigation gave history another nuanced view of marriage, seduction, and violence.[10] In the twentieth century a new unwritten law emerged, which provided women the right to use deadly force to resist an abusive husband. The defense couched this unwritten law in terms of self-defense precipitated by wife beating.[11] As an example of the effects of this unwritten law's application, in Cook County, Illinois, juries convicted only 16 of 103 women who had killed men, and 9 of these defendants were African American.[12] Christopher Waldrep, reflecting on the work of Richard Hamm on honor and homicide in the South, concludes, "By the end of the nineteenth century, Americans widely understood that an unwritten law existed off the books allowing men to slay the seducers of 'their' women."[13] Looking at a national trend in historical interest in single cases, Waldrep further notes, "The appearance of so many historical crime stories from major, well-established, elite scholars writing for the top publishers, authors that used to write very different books, brings new gravitas to this line of inquiry."[14] Our inquiry goes beyond the single crime story to look at several women from different classes and social situations. Further, we focus on the construction of gender and ask different questions of the print evidence in each of the cases.

Historians have also explored race, violence, and immigrant status. Clare V. McKanna Jr. found that cultural conflict, transient populations, western boomtown attitudes, and the easy availability of firearms and alcohol created a climate of violence in Douglas County, Nebraska; Las Animas County, Colorado; and Gila County, Arizona.[15] McKanna also ascertained that American Indians were the least likely to receive justice in the American court system.[16] Kevin J. Mullen detected violence patterns inherent in immigrant communities that traveled to the urban West.[17] The relationship of crime, the police, and ethnic communities had a profound impact on Mexican American communities in Los Angeles.[18] In Chicago African American women who killed were not afforded use of the unwritten law because juries considered that defense "subversive and dangerous."[19] Anne M. Butler's work on women of various races in penitentiaries extends inquiry beyond the conclusion of a criminal proceeding and examines violence in prison.[20] David Peterson del Mar focuses on violence against women, particularly wife beating. His outstanding studies use a wide variety of primary sources for Oregon, Washington, and British Columbia. Wife beating was the "white noise" in society until the violence escalated into savage acts or death.[21] In some cases we address the significance of race and immigrant or ethnic status. However, most of our cases involve white women killing white men.

Our study is part of a broader interest in California criminal-justice history. Stanford law professor Lawrence M. Friedman and University of Maryland law professor Robert Percival's *Roots of Justice* remains the most important study of the system. In addition to providing an overview of the criminal-justice system and criminal statistics, the authors consider the problems of criminal evidence and the jury system. Termed "a giant cardhouse of rules," California law gave the jury great power but erected a complicated rulebook "to make sure that jurymen eat nothing but the safest, softest Pablum of evidence." The rules in law books had "exceptions, and exceptions to exceptions; and these in turn have exceptions."[22] Long trials with skilled defense attorneys put judges at risk of making errors that were grounds for appeal. The two most frequent grounds asserted on appeal reflected errors in the charge to the jury or on evidence. Evidence error questioned whether the judge permitted evidence testimony or physical evidence deemed "incompetent, irrelevant and immaterial."[23] Lawyers in the nineteenth century in particular made their reputations as attorneys in court performing before a judge, jury, and audience composed of members of the bar, the press, and the public.[24]

In twentieth-century Los Angeles, Earl Andrus Rogers won over seventy murder trials before Los Angeles juries, took advantage of ballistics and medical forensic science in trial, popularized the use of blackboards and charts, and created novel defenses such as "alcoholic insanity."[25] One of those cases details the successful defense of Gabrielle Dardley, who shot Leonard Topp, a bartender, on January 1, 1915.[26] Two days later Dardley "was unable to recall any incidents relative to the shooting."[27] Two weeks hence conflicting testimony claimed Topp beat Dardley before or after the fatal shot rang out.[28] By the time Dardley stood trial, the defendant admitted the killing but asserted a reason, "something betwixt emotion insanity and the unwritten law."[29] Trial testimony painted Topp as a sadistic opportunist who beat Gabrielle Dardley frequently and extorted money from her. Dardley asserted that during Topp's last attack the gun secured in her muff discharged accidentally or, in the alternative version, in self-defense.[30] Rogers, a skilled defense attorney, created numerous defenses painting Dardley as the victim. The jury further noted that the accidental killing saved society and this bride-to-be from a monster. As the cases unfold in the mid-twentieth century, lawyers on both sides of the aisle became increasingly talented in trying the case in the press and in court. Lawyers constructed legal narratives that "mirrored the accepted version of woman's role in society" and "what a society considers important public values."[31] Newspapers frequently printed a lawyer's speech and slanted it for the reading public's insatiable consumption.[32]

Crime news riveted 1770s America with crime pamphlets reporting on murders, murder trials, and anything shocking in nature.[33] By the early nineteenth century, lengthy pamphlets shaped by journalists, printers, and attorneys eclipsed scintillating tales of violence carrying a moral message molded by the clergy. The prurient subject matter focused on victims, the act of murder, and the dreaded discovery of homicide, mangled bodies, and the twisted motives of monsters afoot in society.[34] By the 1830s journalists turned to erotic themes as the murder of Helen Jewett in New York fed the lust for such entertainment. Helen Jewett practiced the world's oldest profession. The perpetrator hacked her to death in her bed with a hatchet. All of this "deepened the connections between titillating eroticism and titillating horror."[35] The five-day trial of the man charged in the case, Richard P. Robinson, also know as Frank Rivers, drew a flood of newspaper coverage. In the end, each of the five lawyers involved in the case created a theater spectacle. Their speeches contained powerful emotions, a logical train of reason, rhetorical flourishes, and direct engagement with their audiences, the jury, and the press.[36] The trial judge, also caught up in the drama, delivered a spirited monologue in the form of jury instructions. The jury deliberated only fifteen minutes to arrive at a verdict, but the newspapers provided readers far more than a quarter hour of riveting reading on the closing arguments and the verdict.

Journalistic interest in murder, crime, and sensationalism was not solely an American idiosyncrasy. English journalists also frequently ventured into the sensational. “Storylines featuring crime and bad behavior, often accompanied by scaremongering rhetoric, were a major feature of the Victorian press.”[37] Regardless of the form or substance of this crime news, wrongdoing and its perpetrators sold well on both sides of the Atlantic. The alleged “criminal conversation” suit (a nineteenth-century cause of action for adultery and a substitute for the duel to satisfy sexual dishonor) involving Henry Ward Beecher, pastor of Brooklyn’s Plymouth Church, Elizabeth Tilton, and Theodore Tilton similarly spilled gallons of journalistic ink. Further, the lawsuit and the audience, including Victoria Woodhull, Susan B. Anthony, and Elizabeth Cady Stanton, painted a feminist and suffragist border on the scandal. It became an irresistible mystery for the curious reading public, and it increased newspaper circulation in 1874–75.[38] Further, in that Beecher was a clerical celebrity, the press recounted stories that were “shocking and entertaining revelations of family disintegration and clerical shenanigans.”[39] The *San Francisco Chronicle* sent a female reporter to New York in 1875 on the heels of the 1870 Laura Fair trial in San Francisco, which generated record newspaper sales.[40] In addition to twenty-nine days of testimony, numerous letters were admitted into evidence, giving readers and attorneys plenty of nuanced language to dispute.[41] In the end lawyers appealed to the jury to render the only verdict that would save civilization from the cultural crisis the case revealed. Thus the lawyers indulged in storytelling just like their witnesses.[42]

Robert A. Ferguson’s *Trial in American Life* (2007) studies “high-profile” trials and calls them “a distinct phenomenon at the nexus of the legal system and public life.”[43] Such trials are episodic but aid our interpretation of history and culture.

In these trials "participants turn into celebrities through prolonged exposure and speculation about their integrity in conflict."[44] In cases such as that of Mary Surratt, charged with conspiring to assassinate President Lincoln, the nature of her womanhood was at stake. Both the defense and the prosecution questioned her place in American culture's domestic sphere.[45] Although Ferguson's observations are apt for the trials he studied and most of the works cited in this introduction, not all our trials are high profile. Further, questions of gender and image extended beyond the coverage of high-profile cases. Although Laura Fair's trial was clearly high profile, other trials made varying impressions in the public sphere.

Moving west to Chicago and decades in time to the 1890s, we find that the arrest and trial of Adolph Luetgert for the murder of his wife, Louise, in 1897 generated similar newspaper coverage. Journalists printed all kinds of sensational stories because the police never located Louise's body. The public, aided by the press, speculated that Adolph, a sausage-plant owner, simply disposed of Louise's body by running it through the grinder and into the matrix of German sausage. Lawyers concocted tales about Louise's family involving insanity and strange disappearances. In the end the newspapers prospered, some of Adolph's attorneys became wealthy, and the Luetgert sausage business filed for bankruptcy.[46]

In Virginia after 1865, the press focused on northern violence and the virtues of southern honor. When covering local murder trials, journalists often cited regional standards of law and custom in the text or subtext of news. Murder gave writers the perfect venue "to explore the interplay of society, law, and the press."[47] One trial of national interest to the press in the 1930s involved Edith Maxwell, accused of killing her father. Importantly, by the 1930s the New South entrepreneurs and politicians steered the public away from old-fashioned honor. Equally significant was the changing role of women in the region. Women joined reform organizations, entered professions, and participated in politics.[48] Maxwell gained national celebrity status, and the National Woman's Party appropriated her as a victim of hillbilly culture.[49] Her first all-male jury convicted her of first-degree murder, but the Virginia Supreme Court ordered a new trial. The second all-male jury also convicted Maxwell, this time of second-degree murder, making her a "feminist martyr."[50] Hollywood produced two movies based on her trial, and Chicago's *Actual Detective Stories* magazine began running her saga in 1937. The press made "people care, setting the agenda through relentless, sensational, one-sided coverage."[51] Thus Maxwell's story meant more than the trial in the hands of a media eager for sensation and sales. Eastern papers campaigned for Edith Maxwell's acquittal, and southern newspapers championed the rule of law and justice in the South.

Rocky Mountain newspapers supported similar values when covering crime stories. Editors thought it their duty to fight injustice and elevate the moral tone of their communities by promoting the rule of law.[52] Many of these editors eschewed the post-1865 trend of the "penny press," yellow journalism that sensationalized crime stories to target a mass market.[53] Rather they advocated law and order to build up their communities and reviled wife-beating husbands as enemy deviants.[54]

One area where the law of evidence and journalistic interest merged involved love letters. Prosecutors often offered love letters as evidence because love letters were private expressions of deeply held emotion intended only for the eyes of the author's beloved. Prosecutors culled love letters in most cases and included passages touching on motive or the violation of cultural norms. They did so to influence juries filled with individuals who believed in the veracity of love letters. Newspapers, although they edited out explicit sexual content, printed the letters because their voyeuristic readers viewed love letters as expressing sexuality as well as the tender emotions associated with romantic prose.[55]

Enemy deviants of their time and place, women convicted of crime in Illinois, for example, were "whores and thieves of the worst kind."[56] Women who poisoned their men were deemed "horrific" because they "represented a perversion of woman's domestic image as loving spouse and nurturing homemaker."[57] Women who killed often presented "themselves as the long-suffering victims of their husbands' abuse, alcoholism, or marital infidelities."[58] One battered woman in 1888 poured kerosene over a man whom the judge termed "a brutal worthless fellow" and torched him. She entered a plea bargain of manslaughter, but after sentencing, the judge and her neighbors petitioned the governor to pardon her. She claimed temporary insanity, and the governor concurred.[59] Another abused woman who "accidentally" killed her husband with a shotgun blast while he slept won exoneration from a Chicago coroner's jury in 1936. A "score of women neighbors" applauded the verdict when issued.[60] The press noted with approval both the verdict and the acclaim of the audience of women. In fact, between 1913 and 1925 not a single white woman was convicted of manslaughter in forty-three prosecutions, and only 5 of 208 white women were convicted of murder in Chicago. For African American women defendants, 18 of 92 were convicted of murder. Race mattered.[61]

In the American West race also mattered. African Americans were quickly identified as enemy deviants and too often rushed to judgment and the gallows.[62] Anne M. Butler found this particularly evident in the lives of African American women. She asserts, "Race and class imperative deepened the formal response of society and burdened women of color with more frequent arrest and longer penitentiary time."[63] Kali N. Gross determined that "systemic biases in the courts, in policing practices, and in the minds of everyday citizens" played a "fundamental role" in the perception of African American women involved in crime or violence.[64] Again race clearly mattered.

Finally, in addition to newspaper coverage of women killers, fiction writers identified a reading public hungry for Gothic horror. In nineteenth-century ink, women were fallen angels as convicted criminals and monstrosities when murderous in fiction.[65] Twentieth-century noir fiction made crime entertaining and instructive for readers.[66] Movies moved women's violence to a larger audience albeit "cinema lag[ged] behind society."[67] Some of our cases inspired screenplays thus adding another dimension to the representations of women in trouble with the law. One of the most studied, stylized, and commercialized trials of the nineteenth century was that of Lizzie Borden. Tiffany Johnson Bilder's analysis of the evidence resonates with our account of many trials.[68] She found that the illustrations of Borden sketched during the trial depicted "muscular passivity as an assurance of emotional passivity and femininity."[69] Borden's demeanor during the trial manipulated the "politics of visibility and invisibility," portraying "her good breeding."[70] In terms of the political economy of consumption, Lizzie's home environment suggested "the notion of a woman driven mad by her interior surroundings," much like Charlotte Perkins Gilman's "Yellow Wallpaper," a fictional account of a woman's decline into insanity.[71] This narrative of feminine "breakdown" generated jury sympathy.[72] Borden's jury put steadfast faith in her outward appearance of femininity and "good breeding" equated with internal innocence and moral virtue. As one reporter of the trial observed, "She makes an exceedingly favorable impression."[73] Lizzie was dressed in middle-class fashion, carried flowers in the courtroom, and coded herself as feminine and aligned with nineteenth-century female domesticity. In Massachusetts in 1892 it was enough for an acquittal. The trial and the popular and scholarly attention that endures until today must be explained in terms of gender.[74]

As we move from the nineteenth century into the twentieth century, we note a decline in misogynistic language in the press and an increase in women both sitting on juries and constructing with their attorneys new images within a criminal-justice system slowly providing more procedural protection to the criminally accused. Our analytic narrative is not the familiar one of *Law and Order* or the fantastic one of the departed *L.A. Law*. Rather it is our attempt to tease out the nuanced nature of gender and law in California culture.

In the process we explore a variety of legal strategies. Love letters frequently appear in trials or in the media. As noted previously, attorneys often turned to such letters for evidence of a motive. In the Laura Fair case, attorneys on both sides made very different inferences from the evidence. The prosecution saw a heartless, degraded, and infamous woman in the letters. The defense found the despicable decedent to be a perfect example of male deceit, a man who deserved killing.