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Mysteries of Violence and Self-Defense: Myths for Men, Cautionary Tales for Women

Marianne Wesson*  

When Voltaire was asked why no woman has ever written a tolerable tragedy, 'Ah (said the Patriarch) the composition of a tragedy requires testicles.'  

In the manner of the classical detective novel, this article describes a mystery by narrating some of the events that give rise to it. Then a solution or explanation is proposed, and evidence in support of that solution is mustered. The mystery is this: why are...
juries more likely to convict a woman for a violent crime than a man, even when the woman's violence seems more justifiable or excusable than the man's? The proposed solution is simple: courts and jurors discriminate in this manner because violence is culturally less acceptable, and hence perceived as less justifiable or excusable, when committed by a woman than by a man (other circumstances notwithstanding). Male violence is, at least sometimes, mythic, tragic, or heroic; female violence is almost always monstrous and unnatural. The evidence for this proposition is provided by an examination of several aspects of American culture, particularly some examples from recent American crime fiction. Hence "mysteries" may help explain the mystery, although if the solution is convincing, the reader ought to be not satisfied, but disturbed.

The mystery is best described by beginning, as much crime fiction does, with an actual or attempted killing—with several of them in fact.

I. The Urban Male Myth

About one o'clock in the afternoon on the Saturday before Christmas 1984 a New Yorker named Bernhard Goetz got onto the IRT subway near his apartment and sat down near four young black men. One of the young men approached Goetz and asked him, "How are ya?", then one or two of them asked Goetz for five dollars. When Goetz responded by asking what they wanted, one of the youths repeated "Give me five dollars." Goetz pulled a five-shot Smith & Wesson .38 caliber revolver out of his pocket and fired a shot at each of the four men. According to Goetz' own confession, he then walked over to one of the four, Darrell Cabey, who was still sitting, said "You seem to be all right; here's another," and fired a fifth shot at him. This bullet severed Darrell Cabey's spinal cord, leaving him permanently paralyzed. Someone stopped the subway, and when a conductor approached Goetz to ask him whether he was a cop, Goetz said "[t]hey tried to rip me off," refused to hand over

3. Id.
4. Id. Two versions of this statement appear in Goetz' two confessions. The other is "You seem to be doing all right; here's another." Id. at 219 n.2.
his gun, quietly walked off the subway, jumped onto the track, and disappeared.\(^5\)

After turning himself in on December 31st in Concord, New Hampshire, Goetz gave several lengthy confessions, one of which was audiotaped and another videotaped. In one of the statements Goetz said that he did not regard it as a threat for the first youth to approach him and ask for five dollars. Nor did he think it a threat for another to create the appearance that he had a weapon in his pocket.\(^6\) Of his purpose toward the four young men, Goetz said that he had an "intention . . . to murder them, to hurt them, to make them suffer as much as possible."\(^7\)

A nationwide poll taken in March of 1985 showed that 57% of the American population supported Goetz' conduct.\(^8\) After extended, complex, and controversial pretrial proceedings (revolving principally around the issue of whether the measure of self-defense is the actual perception of the defendant, or the perception of a hypothetical "reasonable" person)\(^9\) Goetz was tried in 1987. The charges included two counts of possessing weapons without a permit (once on the occasion of the shooting, and once on a previous occasion when, according to testimony, he asked a friend to keep two unlicensed firearms for him); four counts of attempted murder (one for each victim); four counts of assault (again one for each victim); and one count of endangering others. The trial was lengthy and contentious; during the trial, the jury heard all of Goetz' confession. At the end, the jury voted to acquit Goetz of all charges except for illegal possession of a firearm on the day of the shooting; they even refused to convict on the other firearms charge, professing to disbelieve the uncontradicted testimony of the woman whom he had asked to keep his other two guns.

Later interviews with the jurors revealed that the jury did not even reach the issue of self-defense on the attempted murder charges; it concluded that Goetz did not "intend to kill" his victims.

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5. Id. at 2.
6. Id. at 118-19. In fact, two of the victims had screwdrivers in their pockets, but Goetz never claimed to have seen these implements, id. at 26, 95, and there was evidence that the victims used the screwdrivers to burglarize coin machines, which was their usual occupation; contrary to contemporaneous press reports, there was no evidence these screwdrivers were "sharpened" or altered in any way, id. at 3.
7. Id. at 119.
8. Id. at 157-58.
9. See id. at 39-62 (discussing generally the approaches to self-defense of the reasonable person standard and the subjective standard).
(despite his confession that he did) because they did not believe his "motive" was "revenge." At least some of the jurors were offended by the prosecution’s argument that Goetz had an obligation to get off the subway if he felt threatened, rather than stay and defend his ground with deadly force. One juror remarked later that the prosecutor was "insulting my intelligence." In acquitting Goetz of assaulting the four young men, the jury was apparently influenced by the trial judge’s decision to "capitulate" to the defense’s insistence that he modify his original instruction that Goetz would not be entitled to acquittal on the ground of self-defense if he "reasonably believed . . . that he could have repelled any threat without firing his gun, for example, by drawing and displaying his weapon." Reinstructing the jury after it expressed some confusion about the instructions, the judge did not repeat the language about "drawing and displaying the weapon," but instead commended to the jury’s attention the testimony of a defense psychiatrist who had never examined Goetz but who testified that on some stressful occasions activity of the "autonomic nervous system" could lead to a person’s firing a gun suddenly and without reflection.

After the acquittal, a Gallup poll indicated that a vast majority of the residents of New York City approved of the verdict. A song called "Subway Vigilante" by Ronny and the Urban Watchdogs enjoyed a brief burst of popularity. Its lyrics went, in part:

He’s the subway vigilante
The brave subway vigilante
Where law and order can’t
He showed us how to take a stand
He had enough and came out fightin’
Drove the rats back into hidin’
Let’s cheer the subway vigilante

10. Id. at 186-88. Hence all of the laborious pretrial argument about subjective versus objective theories of self-defense turned out to have been, as far as the attempted murder charges were concerned, entirely irrelevant to the jury’s decision. The hard-won efforts of the District Attorney’s Office to establish during the pretrial appellate litigation that the right to self-defense is governed by a reasonable person standard, rather than by an individual’s eccentric perceptions, mattered little. The jury’s conceptualization of the case reinserted the question of Goetz’s subjective mental state about his need for self-protection where it unquestionably did not belong: into the necessary but uncomplicated question of whether he intended to kill. Id.

11. Id. at 179.

12. This was the judge’s own word. Id. at 189 (citing Record at 9374, People v. Goetz).

13. Id. at 189.

14. Id. at 199. The support was, not surprisingly, stratified by the race of the respondents; the approval rating among whites was 83%, among Hispanics 78%, and among blacks 45%. Id. But Fletcher notes that "among blacks who supported the verdict, the degree of support was often intense." Id.
He's one special kind of man.\textsuperscript{15} At the hearing to sentence Goetz for the illegal firearms conviction, his lawyer argued that a sentence to incarceration would "break the heart of New York."\textsuperscript{16} Goetz was sentenced to six months of jail, four and a half years of probation, and a fine.\textsuperscript{17}

II. The Western Male Myth

In 1985 Governor Richard Lamm of Colorado signed into law legislation popularly known as the "Make My Day" law. The law affords an "immunity" from prosecution to any occupant of a dwelling who uses force, including deadly force, against an intruder into the dwelling if the occupant reasonably believes that the intruder has committed or intends to commit a crime within, including a property offense, and reasonably believes the intruder might use physical force, no matter how slight, against an occupant.\textsuperscript{18} The law's nickname reflects a recognition that an affronted homeowner, under the right circumstances, is entitled to kill an intruder at least as much for the pleasure of revenge as for the preservation of innocent life.\textsuperscript{19}

Among the defendants who invoked the "Make My Day" law during the first year of its existence was David Guenther, a man "obsessed with order and cleanliness,"\textsuperscript{20} who posted a sign on the front door of his house in a working-class suburban Denver neighborhood: "THE OWNER OF THIS PROPERTY IS ARMED AND PREPARED TO PROTECT LIFE, LIBERTY AND PROPERTY FROM CRIMINAL ATTACK."\textsuperscript{21} One night Guenther's wife Pamela and a neighbor Michael Volosin had a confrontation on the front porch of the Guenther residence after the Guenthers had called

\textsuperscript{15} Id. at 201.  
\textsuperscript{16} Id. at 215.  
\textsuperscript{17} Id. at 216.  
\textsuperscript{18} COLO. REV. STAT. § 18-1-704.5 (1986). As I have noted in another context, "Under the statute, a homeowner who discovers an intruder on his way out of the house with a silver (or plastic) teaspoon belonging to the owner and who believes there is some chance the intruder might push him aside on his way out the door, is apparently entitled to shoot the intruder dead." MARIANNE WESSON, CRIMES AND DEFENSES IN COLORADO 217 (1989).  
\textsuperscript{19} One observer has suggested that the nickname was attached to the bill originally as a form of ridicule, but that in the end the nickname made the bill more popular, and hence the political necessity of supporting it even greater for legislators. WILLIAM WILBANKS, THE MAKE MY DAY LAW: COLORADO'S EXPERIMENT IN HOME PROTECTION 1 (1990).  
\textsuperscript{20} Id. at 119.  
\textsuperscript{21} Id. at 120.
the police to complain about the loud partying and harassment by certain neighbors, including Volosin. When Guenther heard his wife call for help, he took his .357 Magnum handgun, ran outside in the direction of her call, and started shooting into the darkened yard. Meanwhile, Pamela Guenther had fallen or been pushed into the bushes. Guenther wounded Volosin and another neighbor, and killed Volosin’s wife Josslyn Volosin. 22 None of the victims was in the Guenther house or on the porch at the time he shot; Michael Volosin was the only one of the three who might have been in the house at any point. 23 David Guenther later told the Rocky Mountain News that he “eliminated everybody in the yard who shouldn’t have been out there.” 24 After protracted pretrial proceedings, David Guenther was tried for one count of second degree murder and two counts of first degree assault. He was acquitted of all charges. 25

A researcher later interviewed six of the jurors who acquitted Guenther in the shootings. The researcher reported that the jurors were “greatly influenced” by their belief that the neighbors “started it” by harassing the Guenthers and being noisy and drunken; 26 several indicated their belief that Michael Volosin bore more responsibility for the tragedy than did David Guenther. 27 Several

22. People v. Guenther, 740 P.2d 971, 973 (Colo. 1987); Wilbanks, supra note 19, at 122-23.
23. Volosin testified that he only knocked on the door of the house. Pamela Guenther testified that he came into the front hall and began to assault her. Wilbanks, supra note 19, at 97; 740 P.2d at 973. It developed later that Pamela Guenther was almost certainly, at the time of her testimony, a classic battered wife. See infra note 25.
24. Wilbanks, supra note 19, at 124. Of the Make My Day Law, Guenther also told the reporter that he “want[ed] people out there to know it’s a good law.” Id.
25. David Guenther was first acquitted by the trial judge before trial, on the basis of the “Make My Day” law. Following his release after this acquittal, David was said by Pamela Guenther to have talked constantly about the shooting and to be angry that he had been jailed and made to face trial for simply “protecting his family.” About ten months after the “Make My Day” shootings, after confiding in friends that David had beaten and abused her for years, Pamela Guenther filed for divorce and obtained a restraining order barring David Guenther from their home. Twelve days later he forced his way into the house and held her hostage at gunpoint for five hours. After being persuaded to surrender, he was arrested and released on bail. One week after the hostage incident, while still out on bail, David Guenther ambushed Pamela Guenther in the parking lot of the donut shop where she worked and shot her to death in the presence of her children. He also critically wounded her male companion. Guenther fled but was finally apprehended after a five-day nationwide hunt. Shortly after his conviction on murder charges in Pamela’s death, Guenther learned that the Colorado Supreme Court had reversed the trial judge’s acquittal of him on the earlier “Make My Day” shooting charges, and had ordered a jury trial on those charges. Wilbanks, supra note 19, at 128-36; People v. Guenther, 740 P.2d 971 (Colo. 1987). It was this trial, which took place after his conviction for killing Pamela, that led to Guenther’s acquittal by a jury for the death and wounding of his neighbors.
26. Wilbanks, supra note 19, at 144.
27. Id. at 145. Others blamed another neighbor, Roger Judd, who had led a group of noisy neighbors to let the air out of Guenther’s tires and yell taunts at his house earlier on the evening of the shooting. Although no witness placed Judd at the scene of the shooting, one juror reported that he was “sick” that Judd had not been tried for the murders. Id. at 148.
jurors are also reported to have believed that Guenther had given his neighbors "fair warning" in the form of the notice posted on the front door to his home. Some jurors stated that they were reluctant to "second guess" the actions of a man who had to make a decision very fast, and that they believed the judge's requirement that they be convinced beyond a reasonable doubt before convicting forbade such a course, in any event. Many, if not all, of the jurors were aware that David Guenther later murdered the woman that he claimed to have been protecting on the night he shot three of his unarmed neighbors.

III. Cautionary Tales for Women

A. Hazel Kontos

In January of 1976 Hazel Kontos of Alabama, fifty-six years old, recently widowed, and lonely, married James Cooner. Later, two of Cooner's former wives would testify to his reputation for "violence, bloodthirstiness, and dangerousness," and psychiatrists would opine that he suffered from paranoid delusions. Hazel Kontos soon had experience of her own with Cooner's violent propensities. She divorced Cooner in July after six months of marriage, but he continued to harass and threaten her. He sometimes called and threatened to kill her, and on one occasion he tried to break down the door to her house with an ax after she refused to admit him. He apparently knew or suspected that money left to Kontos by her first husband was hidden in the house. She had given Cooner approximately twenty thousand dollars during and after their marriage. Shortly before his death she paid him eighteen hundred dollars more, telling him to leave her alone. On November 12, 1976, Cooner came to the beauty shop where Kontos worked and threatened her, telling her that he was going to "perform kidney surgery" that night, and then go to Hawaii and never have to work

28. Id. at 144.
29. Id. at 146.
30. Id. at 136.
32. Id.
33. Id. at 1032.
34. Id. at 1030.
again.\textsuperscript{35} That night Cooner came to Kontos' house after she had retired for the night and terrorized her for two hours, slapping her and pointing a cocked pistol at her throat and threatening to kill her. Finally, he took the pistol into the bedroom and lay down with it. Hazel Kontos took another gun from a drawer, crept into the bedroom, and shot James Cooner in the head.\textsuperscript{36} She was tried for first degree murder; at her trial she pleaded self-defense. She was convicted and sentenced to life imprisonment.\textsuperscript{37}

\section*{B. Betty Hundley}

During the ten years Betty Hundley was married to Carl Hundley, he had broken her nose at least five times, her ribs several times, knocked out some of her teeth, and threatened to cut her eyeballs out and her head off.\textsuperscript{38} He had hidden or diluted the insulin she used to treat her diabetes; on some of these occasions she had suffered diabetic coma. He had beaten her before witnesses, including her sister, badly enough to require stitches.\textsuperscript{39} After one hospital stay occasioned by his violence, she had returned home only for him to beat her up again immediately; she finally moved to a motel where she lived for six weeks. During this time Carl telephoned her constantly and threatened to kill her and her entire family; she acquired a gun. One morning he threatened her with death, and that night he broke the lock on the door of her motel room and entered, hit and choked her, forced her into the shower, shaved off her pubic hair, raped her, and then stayed, continuing to threaten her. He picked up a beer bottle, which was a weapon he had often used to beat her in the past, and demanded that she go purchase cigarettes for him.\textsuperscript{40} Betty Hundley took the gun from her purse and insisted that he leave; by her account, he then reached for the beer bottle as though to use it against her and said, "You're dead now, bitch." She closed her eyes and pulled the trigger. Carl Hundley died.\textsuperscript{41} The trial court convicted Betty Hundley of

\begin{itemize}
\item 35. \textit{Id.} at 1031.
\item 36. \textit{Id.}
\item 37. \textit{Id.} at 1027. Her sentence was affirmed on appeal. \textit{Id.} at 1036.
\item 38. State v. Hundley, 693 P.2d 475, 475 (Kan. 1985).
\item 39. \textit{Id.} at 476.
\item 40. \textit{Id.} at 477.
\item 41. \textit{Id.} at 476.
\end{itemize}
involuntary manslaughter and sentenced her to two to five years in prison.\textsuperscript{42}

\textbf{C. Dathel Shipp}

Robert Shipp served twenty years in prison for killing his first wife; after his release, he recruited a young woman named Dathel\textsuperscript{43} to work for him as a prostitute, and when she tried to leave his employ he shot her three times, for which he served seven years for attempted murder. Despite this history, Dathel corresponded with Shipp and married him after his release.\textsuperscript{44} After their marriage, he beat her frequently and caused her to be hospitalized with broken ribs;\textsuperscript{45} eventually, she divorced him. After the divorce, he threatened her with guns, raped her, beat her face badly enough to scar it, threatened to cut her face with a knife, tried to force her into a car after threatening to cut her throat, and told her he would kill her if he ever caught her with another man.\textsuperscript{46} Many of these acts occurred after she had obtained a restraining order prohibiting him from contacting her.\textsuperscript{47} After one of the incidents, she obtained a revolver that she kept in her purse. On the day of his death in February of 1976 Robert Shipp broke into a room where Dathel Shipp was in bed with another man. Dathel picked up her gun, which she had placed on the dresser, and started reciting the terms of the restraining order to him. (The other man had hidden under the bed.)\textsuperscript{48} When Robert continued to advance toward Dathel with his hand in the pocket where he usually kept a knife or gun, she fired. Dathel squeezed off five shots, one of which severed Robert’s aorta and killed him.\textsuperscript{49} She was convicted of involuntary man-

\textsuperscript{42} Id. at 475. Hundley’s conviction was overturned on appeal. Id. at 480. Martha Mahoney has pointed out that in Hundley, as in most wife-beating cases, the assault on the woman takes place after separation or at a time when the woman is threatening separation. Martha R. Mahoney, \textit{Legal Images of Battered Women: Redefining the Issue of Separation}, 90 Mich. L. Rev. 1, 65, 88 (1991). Mahoney convincingly attributes this phenomenon, which she calls “separation assault,” to the male’s desperate efforts to maintain his failing control over the woman and the relationship. Id. at 65-66. Although I made no effort to select cases that displayed this feature, I noticed after reading Mahoney’s work that all three of the cases discussed in this section do so. See supra part III.A-C. In this they are not, if Mahoney’s work is believed, unusual.

\textsuperscript{43} People v. Shipp, 367 N.E.2d 966, 967 (Ill. App. Ct. 1977). Dathel’s surname before her marriage to Shipp is not given in the opinion from which this account is taken.

\textsuperscript{44} Id.

\textsuperscript{45} Id.

\textsuperscript{46} Id. at 968.

\textsuperscript{47} Id.

\textsuperscript{48} Id.

\textsuperscript{49} Id. at 969.
slaughter by the trial court, the prosecution having succeeded in convincing the jury that Dathel Shipp's belief that Robert—who had killed one woman and tried to kill her before—intended to cause her death or serious bodily harm was "unreasonable,"50 and that even if her fear was legitimate, she "overreacted" by shooting five times.51

IV. The Mystery Explored: Not Whodunit, but Why Is It Done?

The stories of Hazel Kontos, Betty Hundley, and Dathel Shipp could be multiplied by hundreds. Countless studies have documented the extraordinary prevalence of what is often called "domestic violence" in American life.52 Although children are often its

50. Id.
51. Id. at 971. Dathel Shipp's conviction was overturned by the Appellate Court of Illinois for insufficient evidence to disprove her claim of self-defense. Id.
52. Some estimates of the incidence of domestic violence are as high as 50%. See, e.g., LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 102 (1989) (suggesting that some kind of physical assault occurs in one-half of all American families). Other numbers are more conservative. For example, the estimate of researchers Richard Gelles, Murray Straus, and Suzanne Steinmetz, based on a 1976 survey is that a married person has one chance in four of being the victim of violence by his or her spouse during the marriage. RICHARD J. GELLES & MURRAY A. STRAUS, INTIMATE VIOLENCE 104 (1988). This estimate accounts for violence by wives as well as husbands, but the researchers concluded that in the vast majority of cases when husbands were attacked by wives, the wives were defending themselves from violence initiated by the husbands. Id. at 105. When it came to severe violence capable of producing an injury, these researchers found that about one woman in twenty-two is a victim each year, and each of these suffers such an attack an average of three times in a year. Id. at 104. Two wives in a thousand reported that husbands or partners had used knives or guns against them. Id. A follow-up study undertaken in 1985 suggested that the incidence of such violence had decreased in the intervening decade. Id. at 108-09. In 1989 the Justice Department estimated that one domestic violence-related attack occurs in the United States every fifteen seconds. Eric Schmitt, Family Violence: Protection Improves but Not Prevention, N.Y. TIMES, Jan. 17, 1989, at B1. The FBI and other law enforcement experts considers wife-beating "to be the most underreported crime in the country." Tendoyi Kumbula, Hearing Told Grim Data on Wife-Beating, L.A. TIMES, Mar. 5, 1978, at 1, 6.

Another figure of interest is the estimate that more than 50% of homicide deaths among women are caused by former male partners. WALKER, supra, at 62 (citing Angela Browne & Kirk R. Williams, Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides, 23 L. & SOC'Y REV. 75 (1989)). But see Angela Browne & Kirk R. Williams, supra, at 78 (noting that women are more likely to be assaulted, injured, raped, and killed by a male partner than by any other type of attacker). Another writer states that this figure is closer to three out of four. ANN JONES, WOMEN WHO KILL 319-20 (1980). FBI statistics place this percentage at 31% for the reporting year 1988. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS FOR THE UNITED STATES, CRIME IN THE UNITED STATES 13 (1988). An older study found that wives killed by their husbands made up 41% of all women killed, and husbands killed by their wives made up 11% of men killed. Marvin E. Wolfgang, A Sociological Analysis of Criminal Homicide, in STUDIES IN HOMICIDE 15, 23 (Marvin E. Wolfgang ed., 1967). The same study concluded that women who kill their husbands are 5.6 times more likely to have been acting in self-defense than men who killed their wives. Marvin E. Wolfgang, Victim-Precipitated Criminal Homicide, in STUDIES IN HOMICIDE, supra, at 72, 82. After adding the figures of those who were killed by either their spouse or non-marital sexual partner, the researcher's figures were 62% of all women killed and 17% of all men killed. MARVIN E. WOLFGANG, PATTERNS IN CRIMINAL HOMICIDE 207, 213 (1958).

For further statistical summaries see Phyllis L. Crocker, The Meaning of Equality for Battered Women Who Kill Men in Self-Defense, 8 HARV. WOMEN'S L.J. 121, 121 n.3 (1985) (noting that in 1982, 17% of all murders
victims, domestic violence terrorizes enormous numbers of adult women as well. Occasionally, women who have been, or claim to have been, victims of domestic violence respond by killing the man who has beaten, raped, or threatened them. Frequently, a woman who has killed her spouse or paramour is charged with a homicide offense.\(^5\) Often, she pleads self-defense. Usually, she is convicted of murder or manslaughter.\(^5\) What accounts for the remarkable unwillingness of juries to apply the law of self-defense in a manner

\(^5\) See Ewing, supra note 52, at 5 (describing the case of one woman charged with manslaughter as representative of other women who kill a spouse); Cynthia K. Gillespie, Justifiable Homicide,\(^5\) 19 (1989) (suggesting that in virtually all cases the woman is charged with either murder or at least manslaughter); Roberta K. Thyfault et al., When Battered Women Kill: Evaluation and Expert Witness Testimony Techniques, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 71, 72 (Daniel Jay Sonkin ed., 1987) (stating that fewer men are charged with murder for killing a woman they have known than women charged with murder in killings of men they have known).

A survey of only three books on the subject yielded the following names of women who were convicted of homicide offenses after killing men they had abused them and claiming self-defense (this list includes those whose convictions were overturned on appeal, but not those who pleaded guilty to a homicide offense or who were convicted of a crime less than homicide): Ada Violet Adams, Dorothy Barham, Donna Bechtel, Geraldine Borders, Edith Buhle, Leigh Guy Burton, Francis Cacavale, Deborah Dozier, Nancy Edwards, Leslie Ann Emick, Rita Felton, Karen Fenell, Pamela Fielder, Thelma Griffiths, Cathryn Hale, Betty Ann Harrison, Joyce Hawthorne, Pamela Heidmous, Joan Hodges, Barbara Hoy, Helen Jones, Shirley May Joelyn, Kathy Kaplan, Gladys Kelly, Rose Leaphart, Barbara Lefford, Janice Leidholm, Helen Martin, Carolyn McKenzie, Lorraine Meeks, Betty Moran, Elaine Mullis, Cecilia Necaise, Mary Louise Player, Barbara Reeves, Billie Shropshire, Josephine Smith, Laverne Strong, Shirley Terry, Gladys Thomas, Juunita Thomas, Toci Thompson, Dorothy White, Carol Ann Wilds, Jo Nell Wisecup, Mary Zenyuh, Ewing, supra note 52, at 99-142, Barbara Jean Gilbert, Patricia Hale, Lillian Quares, Roberta Shaffer, Claudia Thacker, Mary Runkle (jailed in 1847), Jones, supra note 52, Sherry Allery, Linda Anaya, Caroline Bowman, Loretta Branchal, Cynthia Brooks, Una Bush, Verna Chapman, Alene Collier, Emma Cotton, Sharon Crigler, Lillian Easterling, Carole Eberle, Stella Ford, Eleanor Fultz, Florence Grierson, Charlene Hale, Rosetta Harris, Beverly Ibo-Thomas, Euberta Jackson, Theressa Jones, Ivy Kelly, Elizabeth Knott, Sarah Lamb, Emelia Lenkovich, Rosa Lucas, Sheryl Lynch, Edna McGrady, Jeannette Minnis, Janice Painter, Bernadette Powell, Dorothy Savage, Kathy Thomas, Linda Thompson, Lucille Valentine, Barbara Watson, Odessa White, Helen Young, Gillespie, supra note 53.

A survey of men who have been convicted and acquitted under similar circumstances is more difficult to undertake, since I have located no specialized books on the subject, and acquittals are not officially reported in the appellate records. A report on the operation of the Colorado "Make My Day" law, see generally supra note 18 & accompanying text, indicates that of the first twenty-three cases in which the law was invoked, only two involved female defendants. Both of the female defendants went to trial and were convicted, one of manslaughter and the other (whose victim did not die) of second degree assault. Of the twenty-one male defendants, twelve went to trial: five were convicted by juries, six were acquitted by a jury or had the charges dismissed by a judge, one had a hung jury and was not retried. Of the remaining nine, six pled guilty, usually to lesser charges, and in three cases the prosecutor dropped charges or did not file them. Id. at 349-75.
that will acquit a woman who claims that she killed only to save herself from further violence at the hands of the dead man?

Critics of the law of homicide and self-defense often identify various aspects of the law's conception and definition of the crime and the defense as the source of its unequal treatment of women who claim to have killed in self-defense. In some ways, this critique is irrefutable. Use of the masculine pronoun in instructing the jury about the law of self-defense, as was done in State v. Wanrow, a case in which the only defendant was a woman, unquestionably suggested to the jury that the law of self-defense could be made available to the defendant only by a stretch, only by fitting her into a category into which she really did not belong. Instructions in battered-woman cases that stress the law's requirement that a threat must be "imminent" in order to justify self-defense, without the aid or qualification of expert testimony, may lead jurors to believe that they are not entitled to acquit a defendant who killed her partner while he was sleeping or inattentive. Guilty verdicts in those situations overlook the dynamics of battering, the possibility that the woman suffers from "learned helplessness," and often the

55. 559 P.2d 548, 558 (Wash. 1977).
56. Id. See Elizabeth M. Schneider & Susan B. Jordan, Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault, 4 WOMEN'S RTS. L. REP. 149, 156 (1978) ("The tone of the instruction and the persistent use of the masculine gender left the jury with the impression that the standard to be applied was that applicable to a fight between two men rather than a small woman facing a large man."); Schneider, supra note 52, at 641-42 ("The impression created—that a 5'4" woman with a cast on her leg and using a crutch must, under the law, somehow repel an assault by a 6'2" intoxicated man without employing weapons in her defense, unless the jury finds her determination of the degree of danger to be objectively reasonable—constitutes a separate and distinct misstatement of the law and, in the context of this case, violates the respondent's right to equal protection of the law."); State v. Wanrow, 559 P.2d 548, 558-59 (1977); Walker, supra note 52, at 262-63 ("[T]he Court recognized that using male standards, including the masculine pronoun, in a self-defense jury instruction could create a cognitive set in jurors' minds that might prove prejudicial to a woman defendant . . .").
57. See, e.g., State v. Stewart, 763 P.2d 572, 577 (Kan. 1988) ([In order to warrant the giving of a self-defense instruction, the facts of the case must still show that the spouse was in imminent danger close to the time of the killing.]; People v. Scott, 424 N.E.2d 70, 72 (Ill. App. 1981) ([T]here must be some evidence in the record revealing a subjective belief on the part of the defendant that the use of deadly force was necessary to prevent death or great bodily harm.); M. J. Willoughby, Comment, Rendering Each Woman Her Due: Can a Battered Woman Claim Self-Defense When She Kills Her Sleeping Batterer?, 38 KAN. L. REV. 169, 180 (1989) [hereinafter Rendering Each Woman] discussing State v. Stewart and stating that [t]he Stewart decision amounts to an abrupt halt, if not a reverse, of a recent trend in Kansas case law toward a more favorable treatment of the battered woman who kills]; Ewing, supra note 52, at 77 (describing current self-defense law which prohibits the use of deadly force unless death or serious bodily injury is imminent).
59. See Rendering Each Woman, supra note 57, at 183 ("The term 'Battered Woman Syndrome' refers to the conditions of 'learned helplessness' and low self-esteem that occur with repeated battering."); See Symposium,
differences in size and strength between defendant and victim. Instructions that emphasize the requirement that deadly force is available only to counter very serious threats to one’s person may be understood by jurors to compel a conviction when a male victim, however powerful, was not armed with a deadly weapon when the defendant resorted to violence. Similarly, peculiarities of the doctrine of "retreat," applied unevenly and varying from jurisdiction to jurisdiction, may lead to women’s having fewer rights of self-defense when in the home they share with an abusive partner than the rights commonly afforded to those who suffer threat or injury in homes they alone control.

These critiques, however, are not sufficient to explain many of the cases in which women who resort to violence in self-defense are nonetheless convicted of crimes. In particular, they cannot explain

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*Beyond the Juror’s Ken: Battered Women, 7 VT. L. REV. 1, 8 (1982) [hereinafter Juror’s Ken]* (discussing the theory of learned helplessness, in which the battered woman believes "that the batterer is omnipotent, that no one can help her, and thus she limits the number of responses she feels are possible or safe to make").

60. See Schneider, supra note 52, at 643 ("[T]here may be such a difference in the size of the parties involved or disparity in their ages or physical condition which would give the person assaulted by fists reasonable grounds to apprehend danger of great bodily harm and thus legally justified in repelling the assault by the use of a deadly weapon. It is conceivable that a man might be so brutal in striking a woman with his fists as to cause her death.") (quoting Easterling v. State, 267 P.2d 185, 188 (Okla. Crim. App. 1954)); Walker, supra note 52, at 30 ("[T]he violence these battered women endured was not the stereotypical stuff of movie scripts and teleplays, not a series of bouts between two trained contestants equal in physical strength. Most women are at a serious disadvantage when facing an attack from a man who is not only physically stronger but more ready and willing to fight.").

61. See, e.g., State v. Waronw, 559 P.2d at 555 n.7 ("To justify killing in self-defense, there need be no actual or real danger to the life or person of the party killing, but there must be, or reasonably appear to be, at or immediately before the killing, some overt act, or some circumstances which would reasonably indicate to the party killing that the person slain, is, at the time, endeavoring to kill him or inflict upon him great bodily harm.").

62. See Gillespie, supra note 53, at 55, 57-58; Schneider, supra note 52, at 633 ("Although she may have no alternative but to defend herself with a weapon, the traditional interpretation of the deadly force rule can render her use of a deadly weapon unreasonable."); Ewing, supra note 52, at 49-50.

63. See Gillespie, supra note 53, at 80 ("[A] woman's decision not to run out into the night—often with no money or clothes, leaving her children behind, with no place to go, and with a violent and possibly homicidal man in pursuit—is often the most reasonable one she could make. A rule of law that says that none of these circumstances matter—that despite everything, there was a door, and she didn't run out of it, and that is the only fact that counts—serves neither reason nor justice."); Walker, supra note 52, at 260 (arguing that the tradition of the American West converted the "duty to retreat" into a "duty to stand one's ground," but this duty or privilege did not apply to women); Juror's Ken, supra note 59, at 5 ("A few states have concluded that parties sharing a home are not using the domicile as a refuge from each other."); Rendering Each Woman, supra note 57, at 186-87 ("By implicitly blaming the battered woman for not having escaped the batterer . . ., traditional self-defense law may be imposing a duty on the battered woman to retreat from her own home, a duty not imposed upon other defenders."); Maria L. Marcus, Conjugal Violence: The Law of Force and the Force of Law, 69 CAL. L. REV. 1657, 1708 (1981) ("In those cases where the woman kills her batterer, the burden of proof usually falls on the woman to show why she could not leave or why leaving did not terminate the violence."). Compare the application of the "retreat" doctrine to require a woman to flee from violence in her own home to the reaction of a juror in the Goetz case who remarked that the suggestion that Goetz should have left the subway rather than shooting his victims was "insulting to his intelligence," see supra text accompanying note 11. In both urban (Goetz) and Western or rural (Guenther) settings, manliness calls for a resistance to another's efforts to displace one's physical self. 
why David Guenther and Bernhard Goetz should have been entitled to resort to force but Hazel Kontos, Betty Hundley, and Dathel Shipp should not. Why was Dathel Shipp condemned for shooting too many times, but Bernhard Goetz' multiple shots explained by a theory about the "autonomic nervous system?" Why did the jury blame David Guenther's victims for starting the dispute, but not Hazel Kontos'? Why did a jury find that Betty Hundley overreacted, but not Bernhard Goetz? Why were David Guenther's jurors reluctant to "second-guess" his reactions, but not Betty Hundley's? Why did the sign on David Guenther's front door give his victims "fair warning" to stay away, but not the restraining order Dathel Shipp obtained from a court? Most of all, why did nobody write a song to celebrate the courage of Hazel Kontos, Betty Hundley, or Dathel Shipp? These questions cannot be answered by pointing to flaws in the doctrine of self-defense. It is the thesis of this essay that the law of violence, self-defense, and defense of others is gendered in a more primitive and powerful way than these partial critiques acknowledge: women who resort to violence in self-defense are frequently convicted by a jury's unwillingness to grant women the same freedom to employ violence as is routinely granted to men. However the law of self-defense is explained, however the jury is instructed, many jurors will rest their votes on extra-legal and in many cases irrational factors. A woman's failure to conform to images of femininity is one of the most powerful of these unsanctioned factors. The law of self-defense, no matter how it is phrased or interpreted, inevitably reinscribes our community's grossly unequal views of how men and women are permitted to behave.

It is not a sufficient explanation to argue that the Kontos, Hundley, and Shipp killings were "domestic" situations, and that the Guenther and Goetz killings were not; it isn't true. Guenther was at home when he killed and he claimed the benefit of a law designed to allow homedwellers to protect their homes; what is such violence if not domestic? Dathel Shipp was not at home when she shot Robert Shipp, she was not married to him at the time, and the place he invaded to attack her was not a place that they shared, or ever had, as domestic partners. What is "domestic" about such an act? But even if it were so, a law of self-defense would be not even-handed, as this suggested explanation hints, but rather profoundly gendered, if it were applied in one manner in the "public" sphere, in subways and streets, and in another in the "private" sphere, the
home. Crimes of violence in general are predominantly a male phenomenon as regards both perpetrator and victim. Male homicide victims are much more likely to be killed in a non-"domestic" than in a "domestic" setting; women victims of homicide, on the other hand, are by most estimates more than half the time killed by their husbands or lovers, often at home or in other "domestic" settings. Explaining the Goetz outcome as proceeding from its setting in a public place, and Goetz's resulting hero status as flowing from public identification with one who sought to make public places safer for everyone, only recasts the inquiry: why is one who seeks to make public places safer a hero, but one who acts in desperation to secure the safety of a private place a criminal? It can only be that the latter is more likely to be a woman; moreover, when he is not, as in the Guenther case, the male actor's duty of protecting his home and property is perceived as sacred and inalienable. The inadequacy of other explanations provides some evidence that verdicts like those in Kontos, Hundley, and Shipp are influenced by gender discrimination by courts and juries. But there is other evidence as well, although one must leave the pages of law reports and look elsewhere to see it.

I hope to demonstrate that many characteristics of our common culture reflect and construct our image of womanhood, of what a woman is and can be, and of what a reasonable woman looks and acts like. We know that there are women who are aggressive and violent, but we also absorb the cultural knowledge that such women are aberrant, fringe characters with troubled gender identities, because to believe otherwise we would have to destroy and reconstruct our images of womanhood—too difficult a task. It would be remarkable indeed if jurors, ordinary people, were to transcend the atmosphere of disapproval that surrounds aggressive physical behavior by women, but the evidence is that they do not do so.

The opportunity for gender bias to infect jury deliberations is enlarged in self-defense cases because the central concept jurors are asked to apply in the law of self-defense is reasonableness. For all its centrality, this concept is seldom further defined. Jurors are

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64. In 1984, 86.7% of those arrested in the United States for homicide and 74.5% of homicide victims were male. Federal Bureau of Investigation, U.S. Dept of Justice, Uniform Crime Reports 8, 179 (1984). By contrast, only a small percentage of those arrested for all violent crimes in the United States are women. U.S. Dept of Justice, Report to the Nation on Crime and Justice: The Data 35 (1983).

65. See discussion supra note 52.
asked whether they believe that a woman who has used violence in self-defense has acted reasonably, on reasonable perceptions; if so they must acquit, but if not they may convict. Without further guidance about the content of this empty vessel of a concept, many jurors believe they are being asked whether they approve of the woman's behavior. Most of the time, their answer is no. It may be true, as some have suggested, that the law of self-defense is designed to force jurors to ask whether a woman behaved like a reasonable man, an inherently unjust inquiry. But it seems to me more likely, and even more unjust, that jurors believe they are asked to judge the behavior of a violent woman by the standards that govern the conduct of their idealized reasonable woman. To indicate approval of the woman's behavior, as the jurors believe they are being asked to do, would be to violate a profoundly rooted understanding about what it means for a woman to be reasonable, or to be a woman at all. Even when an empty concept like "reasonableness," which fairly invites the jurors to fill it up with the content of their choice, is not present in criminal cases, we know from empirical studies of rape prosecutions that jurors reward conventional and punish unconventional gender behavior in women. An examination of those studies provides convincing evidence that gendered expectations are powerful determinants of the outcome of litigation in which they have no just place.

66. See WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 457 (2d ed. 1986) [hereinafter LAFAVE & SCOTT] ("[T]he case law and statutory law on self-defense generally require that the defendant's belief in the necessity of using force to prevent harm to himself be a reasonable one, so that one who honestly though unreasonably believes in the necessity of using force in self-protection loses the defense.") LaFave and Scott go on to note that very few modern jurisdictions have adopted the Model Penal Code's provision that one may defend a crime of intention or knowledge with the claim of an honest but unreasonable belief in the need for self-defense. Id. at 458.

67. See GILLESPIE, supra note 53, at 93-94 (arguing that most jurors are persuaded by negative societal stereotypes about women who kill spouses and thus find her act unreasonable); Schneider, supra note 52, at 630 ("A defendant who claims self-defense asks the trier of fact to find that a homicide was justified. Justified behavior is correct and appropriate, not only tolerated by the law but encouraged.").

68. See, e.g., State v. Wanrow, 559 P.2d 548 (Wash. 1977); GILLESPIE, supra note 53, at 99-100 (pointing out the absurdity of treating a woman's behavior as reasonable only when she acts as a man would like); WALKER, supra note 52, at 188; Schneider, supra note 52, at 635 (Widespread adherence to the sex-biased "reasonable man" standard compounds women's problems: "in all that mass of authorities which bear upon this branch of the law [the reasonableness standard], there is no single mention of the reasonable woman.") (citing A. HERBERT, MISLEADING CASES IN THE COMMON LAW 18 (1930)).
V. Gender Expectations in Rape Prosecutions

Surmising that women who resort to violence are penalized in the justice system for their violation of gender expectations as much as for their violation of the criminal code requires a certain cynicism about the behavior of police officers, judges, prosecutors, and especially jurors. Is it possible that all of these actors are so infected with patriarchal bias that they cannot set it aside during the solemn business of deciding whether a woman has committed a crime? Evidence from an investigation of the workings of the justice system in another context suggests, unhappily, that cynicism on this point is realistic.

Professor Gary LaFree of the University of New Mexico and his associates examined a set of forcible sex offenses reported to the Indianapolis police during three years in the early 1970s, and also observed every forcible sex offense trial in Indianapolis during a later twenty-six month period.69 Their study documents that for police, judges, and especially jurors, the behavior of the victim of an alleged sex crime, particularly the degree to which she succeeded or failed in conforming to gender expectations, was an important determinant of their judgment as to whether she had been the victim of a crime.

For purposes of the first part of the study, LaFree defined "victim nonconformity" to include any of the following victim behaviors: hitchhiking, drinking at the time of the offense, being in a tavern or bar without a male escort, allegedly engaging in sex outside of marriage, and willingly entering the suspect’s car, house, or apartment.70 LaFree found that of any factor he identified, victim nonconformity was the most powerful negative predictor of a decision to arrest.71 The only more powerful predictors were the positive factors of suspect identification and victim willingness to testify.72 Victim nonconformity was slightly more powerful as a negative predictor than the defendant’s possession of a weapon was as a positive predictor of arrest.73 As an illustration of the

69. GARY D. LAFREE, RAPe AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT 53 (1989). The study excluded male victims (of which there were few) and nonforcible sex offenses like statutory rape. It considered only felony offenses. Id.
70. Id. at 73.
71. Id. at 75.
72. Id.
73. Id.
thinking that leads to such results, LaFree quotes from a case report that concluded a rape complaint was unfounded:

I interrogated the above alleged victim. . . . She stated that she ran away from home . . . and she met a girlfriend. I learned from her mother that the girl has run away from home five times. One time she slept and had intercourse with a Mexican about three months ago and had intercourse freely. . . . Girl seems to have mental problems and evidently likes to have sex.  

Another case report has a similar suggestion:

I received the above assignment to investigate a rape . . . and have been to the alleged victim's apartment on two occasions and couldn't get anyone to answer the door. I talked to other tenants in the building and they stated that [complainant] makes it a practice to take different men into her apartment at all times of day or night, drinks heavily and they do not believe that anyone would have to rape her.

LaFree also documented that such attitudes were quite resistant to change. In Indiana, a Sex Offenses Unit was formed halfway through the run of cases he investigated; its formation was accompanied by assigning more women officers to the investigation of sex crimes and by creating a victim assistance program, changes LaFree expected to find had a minimizing effect on the influence of victim nonconformity and other extralegal factors on the arrest decision. The data, however, suggested relatively small changes in most areas, and none at all in the effect of victim nonconformity.

The unfavorable relationship between victim nonconformity to gender expectations and a successful rape prosecution was not confined to the police decision whether to make an arrest or to "unfound" a case. If a crime were charged and the case reached the courts, almost all of the actors in the courtroom phases of the case were likely to harbor the same attitudes toward victim nonconformity as the police did. One judge who had presided over several of the rape trials LaFree studied said (on the record):

The typical rape case involves a tremendous amount of asking for it. The average rape is a girl, well-endowed . . . went to a tavern, drank all night, expected a sexual encounter and got

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74. Id. at 77.
75. Id. at 69.
76. Id. at 70-71.
raped—he used more force than she expected.\textsuperscript{77}

Both prosecutors and defense lawyers understood that once a case reached court, its outcome was likely to be influenced heavily by the victim's nonconformity to standards of ladylike behavior. One prosecutor complained:

It's tough . . . if the victim comes across as being loose, or if the victim has frequented bars. Also important is where she was when she was picked up and what time of night it occurred.\textsuperscript{78}

A defense attorney confided that rapists often choose their victims by finding a woman whose nonconforming behavior makes it unlikely that her charge of rape will be taken seriously.\textsuperscript{79}

As might be expected, the propensities of jurors in sex-offense prosecutions featuring nonconforming victims studied by LaFree mirrored, and probably created as well, the attitudes described above. For the juror portion of the study, LaFree and his associates used a slightly different list of "nonconforming" victim behavior.\textsuperscript{80} The indicators of "nonconformity" were: "(1) drinking, either in general or at the time of the incident, (2) using drugs in general or at the time of the incident, (3) engaging in sexual activity outside of marriage, (4) having illegitimate children, and (5) having a reputation as a 'partier,' a 'pleasure seeker,' or someone who stays out late at night."\textsuperscript{81} A trial was coded as including victim nonconformity if two independent courtroom observers found evidence from which a jury could conclude that one or more of these descriptions applied to the victim. Despite the existence of a rape-shield law, there was evidence of victim nonconformity presented to the jury in more than half (58.5\%) of the cases observed in the study.\textsuperscript{82} Although LaFree's analysis of the resulting data is complex and inventive, his findings may be summarized briefly. In the cases in which the defendant claimed either that he never had sex with the victim or that she consented to it, "[J]urors were less likely to believe in a

\textsuperscript{77} Id. at 95. LaFree also reports the remarks of another judge who had read feminist accounts of the phenomenon of rape, sympathized with victims, and reported that he shared their frustrations. Id. at 100.

\textsuperscript{78} Id. at 95. ("The girl most likely to be raped is a girl who he can probably get away with it on. If he plans carefully he can beat the case—that's not right, but it is a fact of life.")

\textsuperscript{79} Id. ("The girl most likely to be raped is a girl who he can probably get away with it on. If he plans carefully he can beat the case—that's not right, but it is a fact of life."")

\textsuperscript{80} In contrast to the studies of police decisionmaking, which were retrospective and relied on documents generated between 1970 and 1975, the study of juror behavior rested on observer attendance at every jury trial of forcible sexual assault case in Marion County, Indianapolis during a 26-month period. Id. at 154.

\textsuperscript{81} Id. at 201.

\textsuperscript{82} Id.
defendant’s guilt when the victim had reportedly engaged in sex outside marriage, drank or used drugs, or had been acquainted with the defendant—however briefly—prior to the assault.” Such evidence was a more powerful determinant of the outcome of a sexual-assault prosecution involving a no-sex or a consent defense than such other factors as whether the defendant had a weapon, whether the victim was injured, and whether there were eyewitnesses. None of these factors had a significant effect on verdicts in consent and no-sex cases. In fact, those other measures of the evidence were not significant at any statistically significant level, while the victim’s being perceived as sexually active outside of marriage correlated more highly (negatively) with conviction than almost any other factor.

In reaching their verdict, jurors often fastened onto factors having absolutely no legitimate relationship to the legal question before them in reaching their verdict. One woman juror voted to acquit in a case where there was evidence the victim was taking birth control pills. Another noted that the victim had been drinking and smoking marijuana on the occasion when she claimed to have been raped: he opined “I don’t think she was sober enough to care.” On the other hand, one juror was very favorably impressed by a victim who would not say the word "penis" in the courtroom, believing that this modesty was evidence of good moral character. Several jurors found evidence of consent in a victim’s trusting behavior toward the defendant, for example riding in his car or giving him a ride in hers. Such judgments about the character of the victim overrode even medical evidence and other evidence of injury to the victim in their importance in determining the outcome of the trial. Altogether, LaFree’s study provides an extremely convincing demonstration that jurors "punish" female litigants whose behavior does not conform to conservative gender role expectations. In

83. Id. at 217.
84. Id. at 216-17.
85. The sole exception was an unfavorable measure of "defendant character," which had a slightly higher (but positive) correlation. Id.
86. Id. at 217.
87. Id.
88. Id.
89. Id. at 218.
90. Id. at 216, 218.
sexual assault prosecutions, of course, this punishment takes the form of acquitting the defendant. Although a scientific study of the scope and complexity of LaFree’s has not been done in cases featuring women defendants charged with crimes of violence who claimed justification, there are many reasons to believe that such juror attitudes make themselves felt in those cases as well.¹ Such attitudes are the most convincing explanation of outcomes such as those in the Kontos, Hundley, and Shipp cases. Of course, the "gender nonconformity" in those cases consisted not of hitchhiking, sexual freedom (except possibly in Dathel Shipp’s case), or party-going, but of violence. But violence, as I hope to demonstrate further, is perhaps even more incompatible with prevailing cultural images of femininity than nonconformity to conservative sexual behavior.

VI. Clues from American Culture

Our culture teaches us very early to divide the world by gender, and to endow individuals with certain expectations according to their assigned gender.² Among the most persistent and inescapable of those expectations are the use of physical force and violence—properties and behavior permitted to males but forbidden, on the whole, to females. In general women are not trained, encouraged, or taught to fight, either aggressively or defensively. At the age when children are learning what their physical strength and agility can accomplish, girls are discouraged or prohibited from engaging in "contact sports," although they may be permitted to develop athletic ability in sports such as tennis, gymnastics, or track.³

¹. Of course, juror punishment of the defendant’s nonconformity is even more of a juggernaut when it is the woman who is defending against a charge of violent crime. Some rape victims are able to satisfy juror expectations of gender-conforming behavior. (Some decision-makers apparently will never be satisfied, however, as in the case of a judge who characterized a five-year-old victim as an "unusually promiscuous young lady." Lynn Hecht Schafran, Documenting Gender Bias in the Courts: The Task Force Approach, 70 JUDICATURE 280, 284 n.17 (1987), quoted in Debra L. Rhode, The 'No-Problem' Problem: Feminist Challenges and Cultural Change, 100 YALE L.J. 1731, 1777 (1991)). But a woman who has resorted to violence has, by hypothesis, sacrificed her opportunity to be regarded as a real woman.

². See, e.g., LENORE J. WIEZMAN, SEX ROLE SOCIALIZATION: A FOCUS ON WOMEN 38-39 (1979) (discussing how girls are expected to register for homemaking classes and precluded from enrolling in traditionally male vocational courses); BERNICE LOTT, BECOMING A WOMAN: THE SOCIALIZATION OF GENDER 35-76 (1981); JUDITH LONO LAWS, THE SECOND X: SEX ROLE AND SOCIAL ROLE 1 (1979) (tracing the "systematic consequences of being born female—that is, of bearing the second X on the genetic code").

³. Title IX of the Education Amendments of 1972, requiring "parity" of athletic opportunities for men and women in federally-funded educational programs, excludes "contact sports" from the list of those in which women must be given equal opportunities. 20 U.S.C. § 1681 (1988); 34 C.F.R. § 106.34(c), § 106.41(b) (1991).
Girls who want to compete in "rouglier" sports are often discouraged, hazed, or outright prohibited. As one observer describes it, "Socialization via sport contributes to the normative socially induced sex-role identification process. More specifically, children are prepared for the roles which society expects them to enact later in life by being involved or uninvolved in sport."

Women are permitted to enter the military now, but until very recently they were not authorized to participate in "combat"—although they were regularly exposed to danger and many have died in the course of military service. The exclusion of women from combat is defended by many military authorities with explicit reference to the urgency of preserving appropriate gender behavior:

War is man's work. Biological convergence on the battlefield would not only be dissatisfying in terms of what women could do, but it would be an enormous psychological distraction for the male who wants to think that he's fighting for that woman somewhere behind, not up there in the same foxhole with him. It tramples the male ego. When you get right down to it, you have to protect the manliness of war.

Such pronouncements mingle the protection of men (from women's presence) and the protection of women (from violence). But protecting women may be less significant to military policy than excluding them from positions in which their own violence would have to be accepted and encouraged. This point is illustrated by the way "combat" positions, from which women have until recently been altogether excluded, are defined: women are barred from assign-
ments that would require them to fire line-of-sight weapons, but assigned to positions in which they are exposed to the same danger as "combat" troops.99 In essence, "we allow women to be in positions where they can be killed by enemy fire, but we bar them from those positions where they can initiate attack."100 Although other considerations no doubt also contribute to the combat exclusion, part of its raison d'etre is avoiding the erosion of the womanly image that would be created by teaching and allowing women to shoot to kill.101 Military policymakers appear to worry that should a woman be or become violent, she will no longer truly be a woman. This fear is vividly illustrated by the extraordinary lengths to which military regulations go in requiring female enlistees to maintain a conventionally feminine appearance.102 On the other hand, some opponents of any role for women in the military actually claim that the only good female soldier is one who is virtually male.103 This odd admixture of regulations and attitudes is best explained by the perceived incompatibility of violence and women: soldiers are violent, women cannot be violent; therefore, women soldiers are, or are at risk of becoming, men.

Women in other professions, such as police work, also experience conflict between their gender identities and the work's requirement that they be prepared to use force and violence. According to


100. Id. Apparently even noncombatants are sometimes distinguished by gender when exigencies suggest that they should be armed. The story is told that during the Vietnam War, when one field hospital experienced small-arms attacks on occasion, the male nurses were issued .45s but the female nurses were not. HELEN ROGAN, MIXED COMPANY: WOMEN IN THE MODERN ARMY 274 (1981). See also Lori S. Kornblum, Women Warriors in a Men's World: The Combat Exclusion, 2 LAW & INEQ. J. 353, 397-99 (1984) (arguing that the combat exclusion does not protect women from violence).

101. At Congressional hearings concerning the wisdom of requiring women as well as men to register for the draft, Phyllis Schlafly testified that women should not be "taught to kill and to be brutal and victorious in combat..." because a better social order would keep women "... feminine and human enough to transform our servicemen into good husbands, fathers, and citizens upon their return from battle." Hearings on H.R. 6569: Registration of Women Before the Military Personnel Subcomm. of the Comm. on Armed Services, 96th Cong., 2d Sess. 103 (1980). See Kenneth Karst, The Pursuit of Manhood and the Desegregation of the Armed Forces, 38 U.C.L.A. L. REV. 499, 537 (1991) ("The combat exclusion’s main purpose is to express the gender line.").

102. CHRISTINE L. WILLIAMS, GENDER DIFFERENCES AT WORK: WOMEN AND MEN IN NONTRADITIONAL OCCUPATIONS 63 (1989) (noting that the basic training manual for women Marines requires recruits to wear makeup, at least lipstick and eye shadow).

103. BRIAN MITCHELL, WEAK LINK: THE FEMINIZATION OF THE AMERICAN MILITARY 181 (1989) (excoriating Congress, the service brass, and the service academies for trying to accommodate women in the military and ascribing this capitulation to a feminist plot. Mitchell observes that "lesbians are often [the] best female soldiers," and follows this observation with a caricatured description of lesbians: "Lesbians thrive in the military... because it allows and encourages them to act like men... They are more martial in their personal bearing, more athletically inclined, more accepting of the lot of soldiers or sailors, and often more committed to their jobs or careers. They never become pregnant and are rarely burdened with dependents.").
one observer, women who go into police work are faced at the outset of their police careers with a role choice: they can choose to be policewomen or policewomen.\textsuperscript{104} Policewomen identify with the predominant values and goals of their male colleagues, and regard a willingness to use force and violence—to get into a physical confrontation if necessary—as part of their professional obligation and their duty to their partner and co-workers. As one of them says: "You’ve got to be physical. Hit, kick, do what you can . . . and the person who doesn’t do that should be disciplined."\textsuperscript{105} The price policewomen pay for this choice is "defeminization." Although valued by their male colleagues and often comfortable with their work, they are regarded by the other group of women, the policewomen, as masculine and unattractive: "Some of them try to act like men on the street. They curse and talk and walk mannish. . . . The women on the street swear they are superwomen and they aren’t. There are things women can’t do."\textsuperscript{106} This assessment is often echoed by their male colleagues: "I kind of look down on any type of female who wants to do this job. I don’t think it’s a woman’s place."\textsuperscript{107} Similarly, a male police officer remarked:

Sure there’s some stuff that women can do like type, but they shouldn’t jump into fights or be on murders or cutting scenes with naked bodies and blood. . . . I don’t know how their husbands put up with it. It takes his masculinity away when a woman is trying to do a man’s job.\textsuperscript{108}

Women in the second group, policewomen, are less clearly committed to the traditional model of policing, and often enjoy the service aspects of the job more than the opportunity to exercise authority or use force. Many, in fact, wish they did not have to patrol and display little initiative or competence on patrol, often earning the distrust of their fellow officers.\textsuperscript{109} One of the reasons for this syndrome of underachievement seems to be the policewoman’s difficulty in reconciling her sense of womanhood with the occasionally violent requirements of her job. "It is not a womanly feeling to

\textsuperscript{104} SUSAN EHRHICH MARTIN, BREAKING AND ENTERING: POLICEWOMEN ON PATROL 185-203 (1980).
\textsuperscript{105} Id. at 189.
\textsuperscript{106} Id. at 198.
\textsuperscript{107} Id. at 93. See also Bruce L. Berg & Kimberly J. Budnick, Defeminization of Women in Law Enforcement: A New Twist in the Traditional Police Personality, 14 J. POLICE SCI. & ADMIN. 314, 317 (1986) (discussing how male officers often ridiculed defeminized female officers as "bitchy," "castrating," and "lesbian.").
\textsuperscript{108} MARTIN, supra note 104, at 93.
\textsuperscript{109} Id. at 196.
strap a gun on my hip. It’s an everyday battle to be feminine. You can’t be feminine on this job and be effective.\textsuperscript{110} Thus the policewoman adopts a strategy that protects her perceived womanhood but undermines her professional achievement: she is not defeminized but deprofessionalized.\textsuperscript{111} Of course, no individual is a perfect example of either extreme; most likely, each policewoman accommodates the conflict by locating herself somewhere on the continuum between the two extremes. But the conflict is real, and does not disappear. Policemen, on the other hand, generally find that police work enhances of their masculine identities; they only experience conflict when required to work with women, because the women they trust as partners they do not find attractive company, and vice versa.\textsuperscript{112} Thus both male and female police officers enact and perpetuate the immiscibility of womanhood and violence.

Far from the quotidian world of labor, the works of art that form our high culture also portray a version of normal femininity that is wholly incompatible with violence. Lady Macbeth, nerving herself up to encourage murder, prays to evil spirits that she may be relieved of the burden of womanhood, so as to be enabled to participate in violence:

\begin{quote}
Come, you spirits
That tend on mortal thoughts, unsex me here,
And fill me from the crown to the toe, top-full
Of direst cruelty! make thick my blood,
Stop up th'access and passage to remorse,
That no compunctious visitings of nature
Shake my fell purpose, nor keep peace between
Th'effect and it! Come to my woman's breasts,
And take my milk for gall, you murd'ring ministers,
Wherever in your sightless substances
You wait on nature's mischief!\textsuperscript{113}
\end{quote}

Two scenes later, Macbeth responds to his lady’s suggestion of murder with mixed horror and admiration:

\begin{quote}

\end{quote}
Bring forth men-children only!
For thy undaunted mettle should compose
Nothing but males.\textsuperscript{114}

Thus is the unnatural horror of a violent female, and the contrasting natural affinity of males and violence, inscribed.

In American literature, the central motif is said by some to be the struggle of the individual hero to free himself from the bonds of society and convention: a struggle that may be violent.\textsuperscript{115} The motif does not "work" when the hero is reimagined as a woman, in part because Woman is usually assigned the role of \textit{representing} conventional society in American mythology.\textsuperscript{116} Thus women are denied participation in the attractive myths that we tell about ourselves as a people, about our individuality, our heroism, and our unwillingness to tolerate any violations of our personal rights.\textsuperscript{117} Even some \textit{avant-garde} postmodern American critics equate masculinity, violence, and creativity\textsuperscript{118} in a manner that leaves no room for a "true" woman to participate in cultural creation or violent struggle, even to assert or preserve her personal freedom and boundaries.

On the rare occasions that different cultural messages are sent, they are received with indignation and rejection. For example, in the Ridley Scott film \textit{Thelma and Louise}, one of the protagonists Louise shoots and kills a man in the parking lot of a country-western bar after he has tried to rape Thelma.\textsuperscript{119} Although the moment Louise shoots him, the would-be rapist is no longer trying to rape anyone, he is thoroughly, vilely, and vocally unrepentant. Thelma and Louise go on the lam: they lock a cop who stops them in the trunk of his car (after shooting air holes into it so he will not

\begin{itemize}
\item \textsuperscript{114} Id. at act 1, sc. 7.
\item \textsuperscript{115} See Nina Baym, \textit{Melodramas of Best Manhood: How Theories of American Fiction Exclude Women Authors}, in \textit{The New Feminist Criticism: Essays on Women, Literature, and Theory} 63, 71 (Elaine Showalter ed., 1985) ("[T]he struggle of the individual against society became more and more central . . . .").
\item \textsuperscript{116} Id. at 72-73.
\item \textsuperscript{117} America is not the only society that mythologizes itself through images of the violent male hero. Robin Morgan traces the prevalence of this practice through an assortment of cultures in her book \textit{The Demon Lover}, and explains the function that hero mythology plays in legitimating violence. \textit{Robin Morgan, The Demon Lover} 56 (1989) ("Without the propaganda of the hero myth, murder is a sordid business. With the hero myth, any act of violence is made not only possible but inevitable: the rapist is transformed into the seducer, the tyrant rules by divine right, the terrorist reconstitutes the hero.").
\item \textsuperscript{118} See, e.g., Camille Paglia, \textit{Sexual Personae: Art and Decadence from Nefertiti to Emily Dickinson} 247 (1990) (proposing the by-now notorious hypothesis that "[t]here is no female Mozart because there is no female Jack the Ripper").
\item \textsuperscript{119} \textit{Thelma and Louise} (Percy Main Production 1991).
\end{itemize}
suffocate, and apologizing for the necessity of their behavior); they shoot out the tires of a trucker who has been harassing them and eventually fire shots into the tank he is hauling, causing it to explode (the truck is stopped, and the trucker is not in it and apparently is not injured); finally, surrounded by cops, Louise drives herself and Thelma and their turquoise convertible into the Grand Canyon to a spectacular and desperate end, reminiscent of the last moments of Butch Cassidy and the Sundance Kid.

The film might be thought to represent the freedom that women have to choose violent, outlaw identities, as have so many screen heroes—unless account is taken of the reaction the film provoked. Many reviews of Thelma and Louise were virulently negative. Among them was the review of John Leo of U.S. News and World Report, who pronounced the film "extremely toxic" because of the "nihilistic and self-destructive values" Thelma and Louise represent. The real landscape of the film, said Leo, is "that of Andrea Dworkin and the most alienated radical feminists."

What is Leo's description of the heart of the film's offense against life? That the women find that resort to violence (although terrifying, sickening, and in the end their undoing) makes them stronger, makes them "feel awake," transforms them. With this message, according to Leo, the film has "left Dworkin and entered a Mussolini speech."

But negative reaction to Thelma and Louise was not confined to male reviewers writing in business-oriented magazines. Self-proclaimed feminist Sheila Benson of the Los Angeles Times deplored the violence of the protagonists' adventures as "despicable." She insisted that nobody describe the film as "feminist": "As I understand it, feminism has to do with responsibility, equality, sensitivity, understanding—not revenge, retribution, or sadistic behavior." Other female reviewers of the film echoed Benson's opinion that women, to be acceptable film heroines, must be "better than" men, must be less violent, more forgiving, more compli-

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121. Id.
122. Id.
123. Sheila Benson, True or False: Thelma and Louise Just Good Ol' Boys?; For All Its Craftsmanship, the Ridley Scott Film Is Just a High-Toned 'Smoky and the Bandit' with a Downbeat Ending and a Woman at the Wheel, L.A. TIMES, May 31, 1991, at 1P.
124. Id.
Thus for both male and female observers, Thelma and Louise horrify because they find, as have hundreds or thousands of male screen characters before them, that a willingness to resort to violence expands one’s freedom. Of course, Louise was not entitled under conventional self-defense or defense-of-others law to shoot the would-be rapist when she did. But remarkably, the purely legal aspects of Louise’s decision to shoot received very little attention by the critics, their distaste had more to do with Thelma and Louise’s lack of crippling remorse, and their later crimes (all property offenses), than with any application of the law’s standards of self-defense or defense of another to their situation. Thelma and Louise violated unwritten rules about women and violence by being unrepentant, by enjoying the freedom their violence brings them, and in the end by refusing an offer of rescue from a good man. More than any violations of the law’s technical criteria, these were their crimes.

The reaction to Thelma and Louise recalls the public reaction during the nineteen-seventies when a few women were acquitted, either altogether or by reason of insanity, for killing battering spouses. The ubiquitous comment in those days was that it was now "open season on men" or, in a variation, "open season on husbands." One observer accounts for the reaction by noting that these women broke two unwritten rules: they fought back, and they claimed to be entirely justified in doing so. The first infraction may sometimes be forgiven; the second, never.

Unlike the occasional exception exemplified by Thelma and Louise, most works of popular culture reflect and reinforce the myths of acceptable male and unacceptable female violence. The

125. See, e.g., Kathleen Parker, Women Get Tough in Movies, DENVER POST, Aug. 14, 1991, at 2F.
126. Indeed, the generally sympathetic but lukewarm review by Terrence Rafferty in The New Yorker even misstates the facts, making it appear that there was a colorable legal justification for Louise’s shooting. He then derides the plot’s suggestion that the two women are afraid of what would be the legal consequences of the shooting if they stayed to face them; Rafferty intimates that the only barrier to a claim of justification would have been Thelma’s flirtation with the man inside the bar. It is almost as though Rafferty cannot allow himself to like Thelma and Louise as much as he does without making out a distorted case for their right to have killed the would-be rapist. Terrence Rafferty, The Current Cinema: Outlaw Princesses, THE NEW YORKER, June 3, 1991, at 86-87.
127. GILLESPIE, supra note 53, at 9.
128. Id. at 10. Among those who made this or similar comments were a friend of one of the dead men, JONES, supra note 52, at 290, a Berkeley law professor, id. at 291, a Florida district attorney, id. at 293, and many others, see, e.g., Schneider & Jordan, supra note 56, at 150 n.4 (listing the many references to this type of comment).
129. GILLESPIE, supra note 53, at 10-11.
remainder of this essay examines in detail one manifestation of popular culture—the American crime novel—for its teaching about gender and violence, and comes to an unsurprising conclusion: no matter how unconventional or subversive its intentions, crime fiction keeps these myths alive, in both predictable and unexpected ways.

VII. More Mysteries: Detective Stories, Gender, and Violence

Popular culture in general may be coming into its own as a source of enlightenment, insight, and evidence for observers of the legal process.130 Certainly the time when great literature and skilled thoughtful political writing played a large role in the transmission of cultural values is in the past. Those seeking evidence of what we believe about peace, or war, or poverty, or race, or gender do well to examine the offerings of television, film,131 popular music,132 best-selling novels,133 and other forms of mass entertainment, rather than turning to the pages of publications written by and for an intellectual elite. The particular cultural phenomenon examined here is the American crime novel, more particularly the hard-boiled private detective subgenre. Television and probably film reach a greater audience, and certainly each of those media offer a rich assortment of violent episodes that could be examined,134 but written texts have the advantage of

130. For an argument that the study of popular culture as it relates to law is the next frontier of legal scholarship, see Anthony Chase, Toward a Legal Theory of Popular Culture, 1986 Wis. L. Rev. 527.


133. Carol Sanger, in her review of Sue Miller's The Good Mother and Scott Turow's Presumed Innocent, suggests that those novels are important exemplars of popular images of lawyers and women. Carol Sanger, Seasoned to the Use, 87 Mich. L. Rev. 1335, 1345-46 (1989) (book review). In her words, borrowed from Frederick Barthelme, they give us a "whiff of what's out there." Id. at 1365. But they also instruct, or construct, images of womanhood; Sanger observes that those books teach the reader, among other things, that a woman will find it all but impossible to be single, sexually active, and a "real mother." Id. at 1360 n.92. Motherhood and sexuality may be incompatible in the same way as womanhood and violence.

134. A recent example of television's attitude toward female violence is provided by MTV. Feminists have long protested the ubiquity of violent sexual treatment of women on MTV, to no avail. Recently, however, MTV did decide to ban the video that it found offensive. The video was for Garth Brooks' country-western song "The Thunder Rolls," and it depicts a woman shooting her abusive, unfaithful husband when he turns his violence from the woman to a watching child. See Lenore E. Walker, What's this? MTV censors a video!, Colo. Woman News, July 1991, at 5 ("So, why all the furor over the Garth Brooks’ video? Could it be that the woman took the power this time? She shot and killed the man, protecting her child and ending his abusive, humiliating treatment of her and the girlfriend. Perhaps the role model of violence that MTV executives wanted to protect their
accessibility to the scholar as well as greater respectability. Moreover, although it is sometimes argued that television as a medium reflects more closely the sensibility of the post-World War II audience, I believe that the more conservative character of the printed media makes it more likely that they reflect and construct popular conceptions about the law—another conservative institution—and the individual's relationship to it, than do film or television.

Julian Symons, the well-known historian, crime novelist, and critic, argues in his volume of crime fiction criticism Bloody Murder that crime fiction, to a greater degree than other literature, can afford a mirror into popular attitudes.

When C. H. B. Kitchin suggested in one of his detective stories that 'a historian of the future will probably turn, not to blue books or statistics, but to detective stories if he wishes to study the manners of our age', he was writing just before World War II and was far from having Mike Hammer in mind, but what he said remains true. The crime story reflects the prevailing ethic of its period in the attitude adopted by its writers towards police and criminals, crime and punishment. Because crime literature is based on giving the public what it wants, crime writers are more than usually sensitive to shifts of taste. This sensitivity is mostly unconscious, they simply find themselves in tune with a considerable section of the reading public on any given subject.

At the same time, the case has been made that crime fiction also creates or constructs popular attitudes, even as it reflects them. Perhaps the most important aspect of reality that is constructed by crime fiction is the self-image of the reader as mediated by identification, or a failure to identify, with the protagonist. The

viewers from is the woman who finally says she is not going to take it anymore! And one must not forget that the phrase "make my day" comes from a film, Clint Eastwood's Dirty Harry, that seemed to embody the malo-vigilante myth almost perfectly, and may have inspired the importation of the myth into such lives as David Guenther's, see supra pages 5-7.


136. JULIAN SYMONS, BLOODY MURDER 161-62 (1972) (published in America as MORTAL CONSEQUENCES (1972)).

137. Catherine Bolsey, Constructing the Subject: Deconstructing the Text, in FEMINIST CRITICISM AND SOCIAL CHANGE 51 (Judith Newton & Deborah Rosenfelt eds., 1985) ("Literature as one of the most pervasive uses of language may have an important influence on the ways in which people grasp themselves and their relation to the real relations in which they live."). An admirer says that in the Lew Archer series, Ross Macdonald teaches us not only how to write and how to read, but "how to think about life, and, maybe, in some small, but mattering way, how to live." ROSS MACDONALD, THE GOODBYE LOOK (Bantam Books 1987) (1961) (quoting Robert B. Parker, back cover).

protagonist of private eye crime fiction is a sort of top-of-the-line Everyman (or Everyperson), an improved, idealized version of humanity, but still not lacking the common touch. One critic describes the character as follows:

The private eye is an archetypal hero who embodies certain basic features of the American character. Brave, courageous, resourceful, decisive, incorruptible, fiercely independent, he is a solitary individual, poor but honest, who follows the rigorous demands of his own personal code in fighting for truth, justice, and what is right. A doer not a thinker, an adventure hero rather than a puzzle solver, he willingly risks his life in championing justice, pursuing truth and upholding his principles. In short, he personifies the same qualities Americans admired in their earliest hero, the frontiersman. . . . [T]hough he can never perhaps fully restore justice and order to a corrupt society, his actions proclaim the value of honorable behavior in a world which too often rewards dishonorable activities.  

Hence the reader, if this romantic account is to be believed, scrutinizes the protagonist of crime fiction for clues as to how to be a good person, how to be courageous, incorruptible and honorable and, of course, how to be sexually attractive. For this reason, a comparison of the different careers of male and female protagonists in crime fiction is very instructive.

For aficionados of crime fiction, one of the most refreshing and stimulating developments of the last decade has been the creation of large numbers of convincing female protagonists. Every subgenre of crime fiction—the police procedural, the private eye novel, the novel of psychological suspense—has long had its occasional heroine, and of course women detectives have always dominated the domestic mystery (or "cozy," as it is known in the trade), but
now readers who wish to read about female protagonists have hundreds of titles to choose from representing all of the subgenres. Some, though not all, of this new production is explicitly or implicitly feminist in style, values, or theme. But irrespective of its political orientation, this outpouring of writing creates an opportunity for the reader to compare the adventures, failures, triumphs, and feelings of the female protagonist to those of the male protagonists of detective fiction, of both this and earlier ages. Such a comparison is particularly useful for our present purposes because crime fiction not only reflects and constructs our shared images of manhood and womanhood but in addition it offers the advantage of frequently depicting acts of personal violence and their consequences. Thus an examination of crime fiction offers the reader insights into a fictional but representative universe, where men and women sometimes use violence. Inquiry into the occasions and consequences that accompany a protagonist's use of violence may tell us much about what is, in our world, permitted and denied to men, and to women.

Even within the private-eye subgenre, crime fiction displays great variety. Some fictional detectives operate in a cosmos where the law seems to be a clean instrument of justice that can be counted on to generate a satisfying conclusion once the detective pieces together the clues and identifies the criminal. Others struggle to live their lives and do their work in a bleak and corrupt world, with only their own, often eccentric, sense of honor to consult about what to do next. And many live in worlds marked by features from each extreme—some cops are honest, some are corrupt; some crooks will tell the truth, some will not, and some would not know it if they heard it; some families are murderous, some are nurturing; some lovers are criminals, some lovers are true; and it is very, very hard to tell the difference. Sometimes fictional detectives are successful, but often they are not, or not entirely so. Occasionally the author even seems to be playing with the question of what constitutes a successful solution to a mystery, or a "case," for not all cases these days pose mysteries, at least not of the obvious whodunit

See, e.g., AMANDA CROSS, DEATH IN A TENURED POSITION (1981); AMANDA CROSS, POETIC JUSTICE (1970); AMANDA CROSS, THE JAMES JOYCE MURDER (1967).

service as a detective. Many of the academic detectives are female. The best of this subgenre are the Kate Fansler novels written by Amanda Cross, the pen name of Columbia University English professor Carolyn Heilbrun. See, e.g., AMANDA CROSS, DEATH IN A TENURED POSITION (1981); AMANDA CROSS, POETIC JUSTICE (1970); AMANDA CROSS, THE JAMES JOYCE MURDER (1967).

142. This timeless truth is characterized in a recent best-seller as follows: "Sometimes you get the bear, sometimes the bear gets you." SUE GRAPTON, "H" IS FOR HOMICIDE 62 (1991).
sort. But violence—its threat or its reality—transcends all of the
genres, and forms the dark core of all crime fiction, even the most
lighthearted.

For this inquiry, I have concentrated on recent works in the
hard-boiled, private-eye subgenre for two reasons. It is the subgenre
most likely to present characters resorting to violence in the course
of their investigative work, as they do less often in the "cozy," but
without the additional sanction that the law gives to the use of force
by peace officers, as it would to the acts of the protagonist in a
police procedural. It is the subgenre that probably reflects popular
culture more accurately than works in the subgenre of the academic
detective novel, which is written for a more academically-oriented
audience, and is more likely to be written by a moonlighting
academic-than those in the other subgenres. It is also the genre that
has produced the strongest, most original, and seemingly least
gender-bound female protagonists in crime fiction.

I have not read, and do not here discuss, every work of
American private-eye crime fiction; that would be the work of a
lifetime. I have instead chosen three commercially successful and
critically acclaimed series for detailed examination: the Lew Archer
novels of Ross Macdonald, the V.I. Warshawski series by Sara
Paretsky, and Sue Grafton's Kinsey Millhone books. I cannot claim
that the choices I made conform to some scientific protocol, but I do
not think them very susceptible to the charge that they were chosen
in a distorted way to illustrate my point. I chose two of the most
hard-boiled of the current crop of female protagonists; and, as will
be seen, I also chose a collection of works about a male detective
who has been characterized as the leading "compassionate eye." Nevertheless, in these assorted works the women have a significantly
more troubled relationship to personal violence than do the men.

VIII. The Male Detective, Violence, and Compassion

Male private-eye characters generally enjoy a relationship to vio-
lence that is confident, straightforward, and instrumental. This is
not to say that male protagonists enjoy getting beat up, or that they

143. See, e.g., id.; VALERIE MINER, MURDER IN THE ENGLISH DEPARTMENT (1982); AMANDA CROSS, THE
PLAYERS COME AGAIN (1990).
144. See infra text accompanying note 147.
never regret their own resort to violence; but neither he nor his acquaintances, lovers, nor for that matter his readers ever consider a male character to be less of a man because of his use of violence.

Of course, there was a time when there were no female protagonists in the hard-boiled subgenre, and when that subgenre was almost comically permeated by violence. A critic once summed up the violence in a book called No Orchids for Miss Blandish, written by hard-boiled master James Hadley Chase and published in 1939, as follows:

<table>
<thead>
<tr>
<th>Action</th>
<th>Count</th>
<th>Types</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guys rubbed out</td>
<td>22</td>
<td>(with a rod, 9; with a tommy-gun, 6; with a knife, 3; with a blackjack, 2; by kicking, 1; by suicide, 1)</td>
</tr>
<tr>
<td>Guys slugged bad</td>
<td>16</td>
<td>(in the face or head, 15; in the guts, 1)</td>
</tr>
<tr>
<td>Guys given a workover</td>
<td>5</td>
<td>(with blunt instruments, 3; with a knife, 1; with burning cigarettes, 1)</td>
</tr>
<tr>
<td>Dames laid</td>
<td>5</td>
<td>(willing, 3; paid, 1; raped, 1)</td>
</tr>
</tbody>
</table>

I have not chosen examples from this so-called "Golden Age" of crime fiction, because it is not recent enough to provide a fair picture of how we see and learn to see male violence in 1991. Instead, I turn to a crime novelist who wrote one of the lengthiest, and certainly most highly acclaimed, series of crime novels featuring a private detective in American literature. The eighteen Lew Archer novels by Ross Macdonald, published between 1949 and 1976, have been praised more than any other series since Dashiell Hammett's and Raymond Chandler's; some critics even believe his work to surpass theirs. Archer is no Neanderthal; he is a literate, sensitive, and extremely intelligent man. He is characterized in one recent study as the leader of a post-Hammett/Chandler breed of private eyes who go about their business "with compassion rather than savagery, mercy rather than vengeance." Nevertheless, he

145. SYMONS, supra note 136, at 161 (quoting critic John Mair).
147. GEHERIN, supra note 139, at 132.
reflects our culture and our construction of gender, in his relationship to violence as in other ways, even as he makes his contribution to that construction.\footnote{148}{See The Goodbye Look, supra note 137.}

Consider, for example, a scene from The Galton Case. The Galton Case is far from the most violence-ridden of the Archer series. Indeed, a critic who has studied the entire series remarks that this book marks a transformation in Archer's character: "With increasing urgency, Archer devotes his efforts to healing wounds, to bridging gaps between people, to mending fractures in relationships, to assisting the troubled to deeper self-knowledge."\footnote{149}{GEHEMUN, supra note 139, at 135.} Even so, Archer turns to violence casually and inconsequentially more than once in the course of the book. In one entirely routine scene, he menaces a hotel desk clerk out of information. When the clerk clumsily pulls out a gun, Archer tells us that he:

\begin{quote}
reached for his gun wrist, and twisted it until the gun dropped on the counter between us. It was a .32 revolver, a little nickel-plated suicide gun. I let go of Farnsworth and picked it up and pointed it at the knot of his tie. Without moving, he seemed to draw away from it. His eyes got closer together.\footnote{150}{Ross MACDONALD, THE GALTON CASE 110 (Bantam Books 1960) (1959).}
\end{quote}

Although by talking to Archer the desk clerk will probably put himself at risk of being hurt badly by gangsters, he spills the beans—all of them—before Archer leaves him alone.\footnote{151}{Id. at 111.} Archer is entirely untroubled by this episode, and indeed insofar as the reader can tell regards it as a complete success. Of course, he does not actually hurt the clerk, except by exposing him to retaliation, but his serenity affords a marked contrast to V.I. Warshawski's agonized self-criticism when she behaves in a similar way.\footnote{152}{See infra text accompanying notes 215-18.} Later in The Galton Case, Archer takes a swing at a man who has been involved in the crimes Archer is investigating. The man stole Archer's car at gunpoint much earlier in the book but is not at the moment menacing him in any way; in fact, he has one injured arm in a sling. "Without giving the matter any advance thought, I set myself on my heels and hit him with all my force on the point of the jaw. He went down and stayed."\footnote{153}{THE GALTON CASE, supra note 150, at 155.} When the man's brother protests,
Archer is at first unrepentant: "Sure, I'm unfair to organized crime." Yet a moment later, he acknowledges that his reaction might have been unjust: "I knew my bitterness wasn't all for Tommy Lemberg. When I hit him I was lashing out at the other boy, too, reacting to a world of treacherous little hustlers that wouldn't let a man believe in it." But when the man Tommy regains his senses, the brother tells him he had it coming. The two brothers then cooperate with Archer and finally tell him the truth, leading him to the final solution to the puzzle, and Tommy consents to go to the police and face the proverbial music. This unremarkable scene contains the elements that mark violence as a standard event in the Archer novels: Archer uses violence illegally, displays his sensitivity by examining his motives, enjoys the quite satisfactory results of his violence, and suffers no further qualms. The reader is not at all repelled or confused by Archer's behavior; violence, like intelligence and wit, is simply one of the tools that make him an effective investigator. None of the occasions when Archer is violent takes away from his literary reputation as a "man of uncommon decency, compassion, and understanding."

Archer's use of violence is not always as minimal as threats and punches. Sometimes Archer kills, and when he does his killings seldom are shown to have any legal, emotional, or moral consequences. In *The Moving Target* (the first Archer novel) a gangster has told his minion, a dim-witted character named Puddler, to take Archer away and keep him quiet until others in the gang have carried out some business. (It's unclear exactly what the business will be; it's certainly not legal, but it's not necessarily murder.) Archer tells the reader that as he is being driven away by Puddler, half-conscious from a beating Puddler has given him, he is "planning to kill a man." His plan works: he taunts the mentally deficient Puddler into removing the ropes that bind him, then attacks him with a file, and the two men grapple and roll into the ocean, where Archer holds Puddler under water until he drowns. It's clear that Archer is not in any immediate danger from Puddler; he has

154. *Id.*
155. *Id.* at 156.
156. GEHRIN, supra note 139, at 137.
158. *Id.* at 127. At first it seems Archer might have suffered immediate remorse, because he says that after surfacing for breath he "went down after him [Puddler]" six times before giving up, but then he explains: "The key to my car was in his trousers pocket." *Id.*
even taunted Puddler by saying that Puddler does not dare hurt him because he has been instructed to keep him safe.\textsuperscript{159} It is also implausible that Archer can claim a need to free himself for the defense of another as his excuse for Puddler’s death: although the other gang members are torturing a woman for information when he catches up with them, they are only aware that she has something they want because Archer has told them so.\textsuperscript{160} Archer’s entire scheme, including giving the gang the information that leads them to the woman, is directed at eventually securing the return of a kidnap victim whose wife is Archer’s client. But the reader does not think of these nuances, nor does Archer. On reading these adventures, one is left with nothing but admiration for Archer’s cunning, strength, and loyalty to his client. Because Puddler is so unsympathetic—he is portrayed as almost subhuman, he has beaten Archer brutally, he works for a repellent thug—and because Archer is so attractive and his goals so just, we not only accept Archer’s unlawful use of violence, we almost fail to notice it.

Archer is not haunted by Puddler’s death, but he does not forget about it completely. In \textit{The Wycherly Woman}, Archer mentions Puddler’s death briefly when asked if he has ever killed anyone; on that occasion he implies, misleadingly, that Puddler tried to kill him first.\textsuperscript{161} In \textit{The Blue Hammer}, Macdonald’s last Archer book, Archer prevents a thug named Rico, with whom he has just had a fight, from staggering into the water and drowning. Archer goes after Rico at first with only a dim sense that it is important to him that "Rico shouldn’t make it into the black water."\textsuperscript{162} After saving him, Archer understands that his urge was related to Puddler: "Twenty-odd years ago, near an oil-stained pier like this, I had fought in the water with a man named Puddler and drowned him. Rico, whatever his sins, had served as an equalizer for one of mine."\textsuperscript{163} Archer here displays the properties that make him a decent, admirable man, and shows that he retains a memory of Puddler’s death even twenty years after the fact. But in the sixteen Archer novels between \textit{The Moving Target} and \textit{The Blue Hammer}, Archer has not been consumed with guilt over Puddler’s death, and

\begin{itemize}
\item \textsuperscript{159} \textit{Id.} at 126.
\item \textsuperscript{160} \textit{Id.} at 122, 156.
\item \textsuperscript{161} R\texttsc{OSS} MACD\textsc{ONALD}, \textit{THE WYCHERLY WOMAN} 92 (Warner Books 1990) (1961).
\item \textsuperscript{162} R\texttsc{OSS} MACD\textsc{ONALD}, \textit{THE BLUE HAMMER} 183 (Bantam Books 1977) (1976).
\item \textsuperscript{163} \textit{Id.}
\end{itemize}
on one occasion he has misdescribed the circumstances of the killing. This misdescription is particularly striking because Archer is in general quite averse to lying.

Archer's killings are sometimes even less justified, and less regretted, than Puddler's drowning. A pair of killings committed by Archer and his confederate in *Find a Victim* are illustrative. Archer is trying to unravel a case involving bank robbery, murder, and a truckload of hijacked liquor in a little California desert town named Las Cruces. He believes that local law enforcement is in league with the criminals or has been bought off. Toward the end of the book, Archer and an old man he has pressed into service as his assistant are driving up to a deserted mining town where they expect to find the hijacked liquor and the hijackers. Archer suspects the hijacking gang of involvement in three murders as well, but he has no proof, and as it turns out he is quite wrong about the murders. On their way up a dilapidated road to the mining town, Archer and the old man encounter the old man's granddaughter coming down the road in a car, distraught and injured. She tells them that the men are in the town, and that they have raped her. Archer drives the trio back to the ghost town, where he and the old man pick off two of the gang in an ambush. The third hijacker escapes in the truck but dies in a poetically justified crash when the truck encounters the granddaughter's abandoned car on the treacherous downhill road. Although Archer and his confederate have nothing even close to a legal privilege to use deadly force in this situation, there is not a hint in the book that their action has any legal consequences. Nor does Archer express or seem to feel any remorse for the deaths, even after he learns that the dead men were, as far as is known, thieves and rapists but not murderers. Yet, as in many other instances, the reader feels no revulsion toward Archer, nor any

165. Id. at 157.
166. In many places a citizen's privilege to use force to apprehend a criminal is limited to the apprehension of those who have committed a crime in the citizen's presence, see, e.g., Colo. Rev. Stat. § 18-1-707(7) (1986) ("A private person acting on his own account is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest, or to prevent the escape from custody of an arrested person who has committed an offense in his presence. . . ."). LAFAYE & SCOTT, supra note 66, at 474-75 (One who reasonably believes that a felony, or a misdemeanor amounting to a breach of the peace, is being committed, or is about to be committed, in his presence may use reasonable force to terminate or prevent it."). Moreover, in almost all jurisdictions, deadly force cannot be used for this purpose unless it is otherwise justified, as for example by the self-defense doctrine. See, e.g., MODEL PENAL CODE § 3.07(2)(b)(6) (1962) (using deadly force is not justifiable unless the actor is "authorized to act as a peace officer" or is assisting such a person).
curiosity about why he was allowed to escape any penalty for killing two men without justification or excuse. The events are presented so naturally, so nearly nonchalantly, that the massive violence of the event goes unremarked. The same book shows Archer elsewhere occupying his usual sensitive good-man persona: feeling guilty about giving five marijuana cigarettes to a drug-addicted young woman to induce her to talk to him,\textsuperscript{167} and comparing himself unfavorably to a rat when he breaks into a missing woman's cottage to look for clues to her whereabouts.\textsuperscript{168} It is plain that Archer is a thoroughly scrupulous human being, almost morbidly self-critical on occasion. But the two murders—for that is what they were—seem to weigh on his conscience not at all.\textsuperscript{169} The despicable gang-rape committed by the dead men, Archer's belief that the local law is not up to the task of cleaning up Las Cruces, and Archer's unselfish motives give his vigilantism a mythic, unassailable quality. Bernhard Goetz and his jurors may have been influenced by this myth, as may David Guenther and his—if not by reading Archer's exploits, by absorbing the myth in other culturally available forms.

Macdonald's critical biographer Jerry Speir recognizes the tie between violence and maleness in the Archer series. Describing a scene at the end of \textit{The Drowning Pool} in which Archer and a man who has been both his antagonist and partner in unraveling the mystery engage in a physical fight, Speir sees that the scene portrays maleness and violence as inseparable. Archer, in retelling the fight as narrator, says that "[i]t was a long hard fight, and a useless one. Still it had to be fought through."\textsuperscript{170} Speir reflects that "[i]t is a part of the masculine mystique, grown out of war and ages of cultural conditioning, that men resolve their problems and effect a catharsis of their frustrations through physical violence."\textsuperscript{171} The scene is remarkably similar to another,\textsuperscript{172} in \textit{Find a Victim}, in

\textsuperscript{167} \textit{Find a Victim}, supra note 164, at 60. Others have noted Macdonald's peculiar portrayal of marijuana as a deadly drug. Peter Wolfe, \textit{Dreamers Who Live Their Dreams: The World of Ross Macdonald's Novels} 147-48 (1976). But Archer even feels remorse about feeding liquor to an alcoholic to get her to give him information in \textit{The Moving Target}. \textit{The Moving Target}, supra note 157, at 40-41.

\textsuperscript{168} \textit{Find a Victim}, supra note 164, at 44.

\textsuperscript{169} Indeed, he seems not even to remember them when later, in \textit{The Wychery Woman}, he is asked if he has ever killed anyone. He mentions Puddler but not those killings. See supra note 161 and accompanying text.


\textsuperscript{172} As many have noted, repetition is one of the most consistent elements of the Archer series. It is not unusual for variations of a particular scene to be found in several of the novels, especially if the elements of the scene are crucial to Macdonald's conception of Archer or of the world.
which Archer picks a physical fight with the sheriff, a man whose stubbornness rankles him. In the course of the fight, Archer predicts "One of us was going to have to kill the other." But both men survive, and as in *The Drowning Pool*, the two men whose antagonism makes it impossible for either to relate to the other without trying to hurt him physically are reconciled before the book ends.

Macdonald seems to trace this masculine predilection for violence at least in part to the experience of war. In the earlier Archer novels, Archer and many of the other male characters are only a few years from participation in World War II. Twice in *The Moving Target*, a character muses that some men may have been unable to make the transition from the violent life of a warrior to the life of a man in peacetime. Archer describes the face of a man who is holding a gun on him as follows:

> Now that the gun was in his hand, ready for violence, his face was smooth and relaxed. It was the face of a new kind of man, calm and unfrightened, because he laid no special value on human life. Boyish and rather innocent, because he could do evil almost without knowing it. He was the kind of man who had grown up and found himself in war.

Archer does not say whether he recognizes himself in this description.

Although violence committed by other men is sometimes condemned in the Archer series, especially if they kill for greed or to conceal other crimes, it is not always so. Sometimes the violence of other men is portrayed as understandable, moral, worthy of protection. The best example is found in *The Barbarous Coast*. At the climax of that book, a decent old man named Tony Torres murders another man for revenge after discovering that he was responsible for the murder of Tony's daughter two years before. Archer acts without hesitation: he takes a gun and places it next to the dead man's outflung hand. As Archer explains to an observer, "It's Tony's justifiable-homicide plea." The last sentence in the book is Archer's confident prediction: "Their ballistics experts would

173. *Find a Victim*, supra note 164, at 125.
174. *The Moving Target*, supra note 157, at 139 (This assessment is echoed by another character a few pages later: "I've seen this same thing happen to other boys... They went out of high school into the Army or the Air Corps and made good in a big way... War was their element, and when the war was finished, they were finished." *Id.* at 142.).
do the rest." Archer thus covers up, without a qualm, a revenge killing. The ending is satisfying precisely because the reader is expected to, and does, agree that Tony's rage and murder are manifestations of his manly urge to protect his (dead) daughter, and that prosecuting him for murder would be a grave injustice.

A capacity for violence at least occasionally exercised is essential to the male spirit in Archer's world, but in that universe the female spirit, especially its sexual allure, is destroyed by violence. Archer's killers are often female, but much of the time they are shown as having somehow never occupied fully the female role, making their resort to violence comprehensible, or as having fallen from a state of female grace by resorting to violence. Early in The Zebra-Striped Hearse, the reader is introduced to Harriet Blackwell, a young woman Archer describes as follows:

She whipped off her glasses, revealing a black scowl, and something else. I saw why her father couldn't believe that any man would love her truly or permanently. She looked a little too much like him. . . . Her silver-tipped fingers . . . couldn't smooth away the harsh bone that rose in a ridge above her eyes and made her not pretty.

We learn later that Harriet's father "conceived the grand idea of turning her into a sort of boy-girl who would make everything come out right in the end for him. He taught her to shoot and climb mountains and play polo. He even took to calling her Harry." The faithful reader of Macdonald knows that any young woman so masculinized, and so lacking in the normal feminine qualities and attractions, stands an excellent chance of being a murderer, and so Harriet Blackwell proves to be. A more grotesque example is provided in The Ivory Grin, whose opening sentence introduces a character of whom we know we can expect nothing good:

I found her waiting at the door of my office. She was a stocky woman of less than medium height, wearing a blue slack suit over a blue turtleneck sweater, and a blue mink stole that failed to soften her outlines. Her face was squarish and deeply

176. Id.
177. This event is echoed with a vengeance in a more recent work by another author, in which the protagonist acquiesces at the climax in an unspeakably gruesome and sadistic revenge murder by a man enraged by the murder of his daughters. BENJAMIN M. SCHUTZ, EMBRACE THE WOLF (1985).
179. Id. at 176.
tanned, its boyish quality confirmed by dark hair cut short at the
nape.180

This woman, whose name is Una, is later described with the
following vivid words: "less like a woman than a sexless imp who
had grown old in hell"; "a mean little mannish doll."181 Una turns
out to be, of course, a killer. Moreover, Archer kills Una, after
seeing her kill another woman, and his killing arguably lacks
justification. Although the other woman is dead and Archer has no
particular reason to think that Una will kill him, he pulls his gun,
and as he tells it: "I shot to kill. Una died on her feet . . . ."182
Archer does not mourn the death of Una or his part in it; a woman
"unsexed," like Lady Macbeth wished her self to be, Una neither
deserves nor gets sympathy from Archer (although other killers often
do),183 nor is the reader likely to regret her death.

Galatea Lawrence Tarantine of The Way Some People Die does
not come in for much sympathy either. Galley Tarantine is
described in the early parts of the book as beautiful, "perhaps the
most beautiful woman in the canon."184 But when Galley confesses
two murders to Archer while holding a gun on him, she suddenly
becomes repellant: "Her face seemed to narrow and lengthen. I had
never seen her look ugly before. An ugly woman with a gun is a
terrible thing."185 Archer cannot resist telling Galley what vio-
lence is doing to her appearance: "You're losing your looks . . . .
Murders take it out of a woman. You pay so much for them that
they're never the bargain they seem to be."186 To complete the
loss-of-womanhood theme, it is hinted that Galley (like Una in The
Ivory Grin) may be a lesbian: "Only the female sex was human in
her eyes, and she was its only important member."187 Other

181. Id. at 59, 219.
182. Id. at 241.
183. See, e.g., THE DROWNING POOL, supra note 170, at 214-5 (absolving Cathy of her guilt for killing her
grandmother); FIND A VICTIM, supra note 164, at 153 (demonstrating sympathy for a temporarily blinded killer);
The Barbarous Coast, supra note 175, at 182-3 (arranging a defense out of sympathy for Toey).
184. WOLFE, supra note 167, at 127; see ROSS MACDONALD, THE WAY SOME PEOPLE DIE 6 (Bantam Books
1971) (1951) ("Pretty was hardly the word.").
185. THE WAY SOME PEOPLE DIE, supra note 184, at 173. Compare GILLESPIE, supra note 53, at 12. ("A
woman who wields a deadly weapon . . . presents a deeply disturbing image.").
186. THE WAY SOME PEOPLE DIE, supra note 184, at 173. Young men, on the other hand, may acquire their
manhood through exposure to violence in Archer's world. Both Alex Kincaid and Roy Braddock lose some of
their boyish qualities and become more mature men after seeing the results of violence in The Chill. WOLFE, supra
note 167, at 243.
187. THE WAY SOME PEOPLE DIE, supra note 184, at 173.
female killers in the canon are also described as inadequate to normal heterosexuality: Elaine Hillman of The Far Side of the Dollar, whose "deathliness fuses with her anti-sexuality"; Tish Macready Bradshaw of The Chill, an older woman trying hard to keep her younger husband and made to seem grotesque because of it; and Hilda Church of Find a Victim, whose three killings are described as a result of her not being "able to love." There are few exceptions: a disturbed teenaged girl, for example, in The Drowning Pool, or the "borderline schizophrenic" Mildred Hallman of The Doomsters. But exceptions aside (and the exceptions are for the most part disturbed or crazy) the theme is repeated again and again in the Archer series: real women do not kill; females who kill are not real women, but monsters. Of course, the Archer series does not, and cannot, confront the question of what happens when the detective is a woman; that question remained to be explored later, by other writers.

IX. The Female Detective, Violence, and Remorse

Two of the most successful of the recent wave of female protagonists are Sue Grafton’s Kinsey Millhone and Sara Paretsky’s V.I. Warshawski. They are also among the few women protagonists who are private detectives rather than police officers or amateurs. Both Kinsey and V.I. are private detectives, each is an orphan, and each once had an official position in the criminal justice system (Kinsey was a cop and V.I. was a public defender) before striking out on her own. More strikingly, for readers who first encountered Kinsey and V.I. in the mid-1980s, they do not enjoy

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188. WOLFE, supra note 167, at 256.
189. FIND A VICTIM, supra note 164, at 182.
191. Another female P.I. with a distinctive personality and revealing adventures is Liza Cody’s Anna Lee. I have not discussed the Lee series in this work because she (and her inventor) are English, and hence represent a different, although in many respects similar, popular culture. In Under Contract, for example, Cody creates—as an aside, rather than as the main story—a singularly powerful account of what it feels like to be a female professional trying to do one’s job under conditions of sexual harassment. See also LIZA CODY, UNDER CONTRACT (1986); LIZA CODY, BAD COMPANY (1982); LIZA CODY, DUPE (1981). There are also interesting series featuring lesbian detectives, for example Barbara Wilson’s books, including The Dog-Collar Murders and Sisters of the Road. They are not considered here because they are self-consciously written outside of mainstream publishing, are difficult to obtain, and reflect a counterculture and its values more accurately than mainstream popular culture; moreover, Wilson’s Pam Nilsen is not a professional detective, but an amateur, as are most of the protagonists in this genre. But see KATHERINE V. FORREST, THE BEVERLY MALIBU (1989) (protagonist Kate Delasfield of this series is a lesbian police officer); DAVID GALLOWAY, LAMAAR RANSOM: PRIVATE EYE (1979) (protagonist is a lesbian private detective).
any immunity from the violence that male detectives have always encountered. Each is beaten, shot at, injured. And each turns, from time to time, to the use of violence herself.

A. V.I. Warshawski: Excessive Pleasure, Insufficient Remorse

In Paretsky’s first V.I. Warshawski book, Indemnity Only, V.I. is kidnapped and taken to have a "talk" with a Chicago hoodlum; she gets beaten up when she tries to fight back against her kidnappers, but is beaten worse when, just like a tough-guy male private dick, she mouths off to the hood. In her later adventures, V.I. is almost drowned, has acid thrown at her face, is knocked unconscious and left locked in a building that is set afire, has her face cut up by a hood’s knife. For the female reader, the first encounter with a heroine who is treated violently and does not shrink, or scream for a rescuer, or collapse into a helpless heap, is like a shot of raw whiskey—both shocking and bracing. The episode in Indemnity Only when V.I. talks back to the hood, knowing that she is likely to get hit if she does, is for the woman reader almost unreadable; this character is about to be the victim of a violent crime, but her psychology is about as far from a victim’s psychology as we can imagine. V.I. moves in a very violent world, but she does not ask for any sympathy or understanding; she only expects adequate medical care to restore her to health, and the right to take care of herself.

And yet V.I.’s efforts to take care of herself and to protect her clients and those she cares about from the violence around them inevitably land her in trouble. This pattern represents, of course, a convention of male private-eye fiction as well; the homicide lieutenant is always complaining about the detective’s interference with his investigation, reminding him that the law does not protect the confidentiality of his client’s confidences, and threatening to put him in jail for obstruction of justice. But V.I. gets into more and different trouble precisely because she is a woman. V.I.’s deceased father was a cop, and one of his old friends Bobby Mallory is still

on the force. Bobby is never happy when he learns that V.I. is working on a new case. The first time we meet him, in *Indemnity Only*, he brings another cop to V.I.’s apartment to warn her against working on a case. He begins by criticizing the untidiness of her apartment; when she defends herself, he lets her know what’s really on his mind: "You know, if Tony had turned you over his knee more often instead of spoiling you rotten, you’d be a happy housewife now, instead of playing at detective and making it harder for us to get our job done." Mallory turns up again in later novels, always bitching about V.I.’s choice of career, and often enough obstructing her efforts. In *Burn Marks*, his refusal to believe in V.I.’s competence nearly costs her her life. Even the hoods V.I. encounters are offended as much by her gender as by her efforts to uncover their crimes. And her best friend, physician, and substitute mother Lotty Herschel finally loses patience with her by her sixth adventure, *Burn Marks*, and remarks coolly that she does not know why she even bothers to take care of V.I. after she has been beaten to unconsciousness three times, a record that is likely to lead to premature Alzheimer’s or Parkinson’s disease.

Next to Lotty’s disapproval, the censure that V.I. finds most painful is that of her lovers. Ralph, her beau in *Indemnity Only*, is horrified when she reveals she has been in a physical altercation (in which she tried to fight off two large men who eventually kidnapped her), asking her "Do you do this kind of thing often?" and urging her from time to time throughout the book to let the police handle things. At the end, he breaks off the romance, saying "I’ve been falling in love with you, Vic, but you don’t need me." In *Killing Orders*, while V.I. is staying with her English boyfriend Roger because her apartment has been destroyed by arson, he objects when she keeps some details of her investigation from him, asking her how he can protect her if she does not keep him in the picture. When V.I. resists Roger’s efforts at protection, he asks her to stay somewhere else; he cannot handle her insistence on making her own judgments about danger and protecting herself as

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198. Id. at 53.
199. *Burn Marks*, supra note 195, at 188.
200. *Indemnity Only*, supra note 192, at 70.
201. Id. at 62, 71.
202. Id. at 208.
well as she can.\textsuperscript{203} Altogether, there is nobody but V.I. who approves of her chosen profession. Everyone agrees that being a private detective is (in the words of another author's title) an unsuitable job for a woman.\textsuperscript{204}

V.I.'s apparent insouciance about her encounters with physical danger does not, however, exempt her from complex and ambivalent feelings on the occasions when she herself resorts to violence. Even her relationship to firearms is complicated. The reader learns in \textit{Indemnity Only} that her father Tony, who was a cop for his entire adult life but also a "dreamer, an idealist," never even wounded a man with his gun.\textsuperscript{205} V.I. gave Tony's gun to Mallory after Tony died, and seemingly never needs another until about the middle of \textit{Indemnity Only}, when she goes to buy one after being beaten up by gangsters. (The gun store owner, noticing her bruises, is reluctant to sell to her until she convinces him that she is not a battered wife looking for revenge.\textsuperscript{206}) In \textit{Killing Orders}, suburban police who arrest V.I. after she summons them to the apartment of an injured man take her gun away from her, telling her it's "not really a lady's weapon."\textsuperscript{207} Later, after the arrest results in no charges being filed, Bobby Mallory has to return the gun to V.I., an act that she tells us "hurt [him] physically."\textsuperscript{208} Circumstances seem to conspire to separate V.I. from her firearm, or constrain her from using it, far more often than is the case with fictional male private detectives.\textsuperscript{209} Even when there is no external barrier, V.I. is not fond of carrying her gun around. She tells us in \textit{Blood Shot}, "I don't make a habit of carrying a gun—if you do, you get dependent on them and your wits slow down."\textsuperscript{210} (I cannot recall any fictional male private eye equating the carrying of a gun with a loss of wit.) V.I.'s belief is compatible with the gender stereotype that permits men to resort to violence, and in general to be prepared at any time to do so, but requires women to exhaust other alternatives (for

\begin{itemize}
  \item \textsuperscript{203} \textit{Killing Orders}, supra note 194, at 176-77.
  \item \textsuperscript{204} P.D. JAMES, AN UNSUITABLE JOB FOR A WOMAN (1972).
  \item \textsuperscript{205} \textit{Indemnity Only}, supra note 192, at 212.
  \item \textsuperscript{206} Id. at 81.
  \item \textsuperscript{207} \textit{Killing Orders}, supra note 194, at 168.
  \item \textsuperscript{208} Id. at 211.
  \item \textsuperscript{209} See SARA PARETSKY, DEADLOCK 155 (Ballantine Books 1985) (1984). V.I.'s gun disappears by sliding into the grain-laden hold of a Great Lakes ship that is destroyed in an explosion while passing through a lock—surely one of the more spectacular episodes of firearm deprivation in crime fiction.
  \item \textsuperscript{210} \textit{Blood Shot}, supra note 193, at 128.
\end{itemize}
example, their "wits") before their use of violence can possibly be perceived as acceptable. 211

Despite the violence she encounters in her work, V.I. is repelled by women who are casual users of violence. Thrown into jail with a group of prostitutes in Killing Orders, she cannot endanger her investigation by telling them the truth about why she was jailed; she lies and tells them that she killed her "old man" when he tried to burn her. 212 (She shows them the burns she got on her arm when the criminal she is investigating hired a man to throw acid in her face.) The prostitutes respond sympathetically and begin to describe what they have done or would do to their men if the men tried to hurt them, but V.I. is not cheered by their solidarity. She tells the reader that as "each tried to outdo the other with tales of male violence and bravado in handling it. The stories made my skin crawl."

As one might expect, then, V.I. seldom resorts to personal violence other than to protect herself, and when she does it causes her the gravest emotional distress. Toward the end of Killing Orders, V.I. has wounded a Mafia thug who has been hired to kill her, and he is lying in the snow outside a classy North Shore house. The police will arrive soon to take him away. V.I. is desperate to link the chief villain to the attempt on her life as well as on an old man's, and she resorts to threatening the thug, as he lies wounded in the snow, that she will shoot him in the kneecap if he does not agree to testify against the man who hired him. 214 He tells her she would not do it, and she reflects, "He was probably right; my stomach was churning as it was. What kind of person kneels in the snow threatening to destroy the leg of an injured man? Not anyone I wanted to know." 215 Nevertheless, V.I. "pull[s] the hammer back with a loud click and point[s] the gun at his left leg," 216 but further coercion is unnecessary: the man agrees to testify. A few minutes later, the police on the way, V.I. feels "[f]atigue. Nausea

211. Indeed, V.I. herself recognizes the link between firearms and self-conscious masculinity, and taunts one thug with it. "You big he-men really impress the shit out of me... Why do you think the boy carries a gun? He can't get it up, never could, so he has a big old penis he carries around in his hand." INDEMNITY ONLY, supra note 192, at 203.
213. Id.
214. Id. at 236-237.
215. Id. at 237.
216. Id.
at the depths of my own rage. How like a mobster I had behaved—torture, threats. I don’t believe the end justifies the means." V.I.’s regret contrasts strikingly to Lew Archer’s confident lack of it in a similar situation.Outside the mythic Chicago in which V.I. Warshawski pursues her unsuitable profession, many readers and critics seem to share, if not Bobby Mallory’s opinion of V.I.’s style, at least some disquiet with it. Maureen Reddy, author of *Sisters in Crime: Feminism and the Crime Novel*, is generally admiring of V.I., but has some reservations about the few occasions when she "takes some pleasure in beating up a male antagonist." It should be noted that V.I. never beats up any one except to defend herself or another; Reddy’s disapproval seems to pertain to V.I.’s experience of the pleasure of mastery through violence, not to any lack of justification, and thus to reiterate the "lack of remorse" theme that often appears in discussions of women who use violence. The authors of another work surveying crime novels by women are even less fond of V.I.: "Warshawski, with her anger and her aggressive pugnacity, is one of the least attractive heroes we’ve recently encountered. She may have a sense of justice, but it seems self-serving at best." In a summing-up remarkably similar to the later critical response to *Thelma and Louise*, two authors tell us their real objection to Warshawski:

These readers think that the world really does not need any more stereotypical, hard-boiled private eyes. The mean streets aren’t going to get any nicer unless those who have elected themselves private guardians rise above the dregs of humanity. In these books, those qualities such as tenderness, empathy, and

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217. *Id.* at 239.
218. *See supra* notes 150-52 and accompanying text. Also compare this scene to a similar one in the much-praised James Crumley novel *The Last Good Kiss*, in which protagonist C.W. Sughrue (male), seeking information about the location of a kidnapped woman, coolly places the foot of a gangster on a telephone book, waits until a plane passes overhead to mask the noise, and then shoots two rounds into the foot. JAMES CRUMLEY, *THE LAST GOOD KISS* 177 (Vintage Contemporaries 1988) (1978). When one of C.W.’s confederates objects that he did not have to shoot the gangster twice, C.W. replies that the first time was to get his attention and let him know he was serious. *Id.* Later, after leaving him locked in a car trunk for several hours, C.W. and his assistants drop the object of this treatment off at the hospital. *Id.* at 193. As the gangster limps away to the emergency room entrance, C.W. calls out that he’s sorry, but the man merely "waved his hand without turning around, as if to say it was all in a day’s work." *Id.* As in many hardboiled detective novels, violence is not only casual, it is often not very consequential.
nurturing are often set aside in favor of a macha bravada we find detrimental and counterproductive not only in the cause of feminism but humanism as well.\(^{221}\)

Sara Paretsky, V.I. Warshawski’s creator, is aware of the criticisms of her character for being too tough, too mean, and too violent. In an interview, Paretsky disclosed that she tried taking V.I.’s gun away from her altogether in the second book of the series, *Deadlock*, but that she could not write a plausible story about a woman in a violent world without arming her.\(^{222}\) She makes some concessions to tenderness, however: "When I started out, she never shot at anyone to kill them, and she still would prefer never to kill—in fact, I won’t let anyone she shoots die."\(^{223}\) Thus Paretsky ensures that V.I. does not lose her audience altogether by becoming a killer, for a likeable or admirable female killer is oxymoronic both in life and in literature. In fact, the only way a woman can kill and retain her admirers, apparently, is to suffer terribly for having killed. Sue Grafton’s Kinsey Millhone shows us how this is done.

**B. Kinsey Millhone: The Wages of Remorse**

In different mythical territory, the fictional Southern California town of Santa Teresa, Sue Grafton’s Kinsey Millhone introduces herself to us abruptly, in the opening paragraph of "*A* is for Alibi", with the disclosure that she has just killed someone. "My name is Kinsey Millhone. I’m a private investigator, licensed by the state of California. I’m thirty-two years old, twice divorced, no kids. The day before yesterday I killed someone and the fact weighs heavily on my mind."\(^{224}\) Thus Kinsey lets us know right away that she has

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221. *Id.* Even less polite is a male reviewer’s bottom line on V.I.: “V.I. Warshawski [is] one of the nastiest bits of goods ever to pose as a heroine. She’s way beyond tough or realistic or even violent. She is . . . pure anger posing as righteous wrath.” Jon Carroll, *Hello, Rewrite, Get me Sweetheart*, S.F. CHRON., June 1, 1990, at E18.

222. Laura Shapiro, *Sara Paretsky, Ms.*., Jan. 1988, at 66, 92. Paretsky does, however, cause V.I.’s firearm to disappear into the grain-laden hold of a Great Lakes ship in *Deadlock*, thereby depriving her of it during the deadly confrontation with the villain that happens at the end. See supra note 209.

223. Shapiro, supra note 222, at 92. This resolution leads to some results that strain credibility a bit, as when in *Blood Shot* V.I. shoots two gangsters in the chest, one of them twice, and each lives to tell the tale. *Blood Shot*, supra note 193, at 240-41, 246. Toward the end of 1990s in *Burn Marks*, however, V.I. apparently does kill a man, although thoroughly in self-defense and defense of another. Curiously, very little is made of this death, although Paretsky readers may hear about it again in later Warshawski books. *Burn Marks*, supra note 195, at 323.

used violence, but also that she suffers great remorse for having done so. Kinsey's remorse about this killing pervades the rest of the series. As the story unfolds in "A" is for Alibi, we learn that Kinsey has fallen very hard for a charismatic man named Charlie Scorsoni, while investigating the eight-year old murder of Charlie's law partner. At the end, as her investigation leads her straight to the inescapable conclusion that Charlie is a killer, Kinsey finds herself trapped on a deserted beach at night with Charlie pursuing her in the dark. She has her gun with her (unlike V.I. Warshawski, Kinsey is seldom harassed about owning a gun), but she is running frantically, trying to escape. Finally, she hides in a trash dumpster. Charlie finds her, opens the dumpster, and is holding a ten-inch butcher knife. Kinsey, to use her words, "blew him away." A more justified killing can scarcely be imagined, but Kinsey is scarred. She writes in her final report "The shooting disturbs me still. It has moved me into the same camp with soldiers and maniacs. I never set out to kill anyone. . . . I'll recover, of course. . . . but I'll never be the same." Kinsey's killing of Charlie thus frames the book, and in large part sets the tone for the entire series, a bitter-sweet treatise on the life of an independent woman who has chosen autonomy rather than the protection of men and the price she pays for her choice.

Kinsey does not in general have the troubled relationship to firearms that V.I. Warshawski experiences, but Grafton (as Paretsky says she attempted to do in the second Warshawski novel) divests Kinsey of her gun for the crucial climax of Kinsey's second adventure, "B" is for Burglar. This divestiture is accomplished by the plot device of having things happen so fast at the end of the case that Kinsey has no chance to get her gun from her office; she finds herself hiding, completely unarmed except for her car keys, in the basement of a burned-out house while a crazed sociopath and her husband-accomplice search for her. In the final confrontation, Kinsey gets the better of the woman in a hand-to-hand battle in the dark, but in the end it is the husband, trying to intervene, who shoots the woman by accident. A few minutes later, Kinsey overcomes the husband as well, and is able to disarm him.

225. Id. at 214.
226. Id. at 215.
The turn of events would be laughable without the unlikely assistance of the husband’s wild shot disabling his wife, and the entire scenario is improbable in a way that most events in the Kinsey Millhone books are not. This observation suggests that it must have been very important for Grafton to soften Kinsey’s image as a killer after her deadly debut. Indeed, Kinsey is haunted throughout “B” is for Burglar by the memory of killing Charlie, most memorably in a scene where she tries to talk out her confused feelings with her friend and landlord Henry. They argue back and forth, Kinsey declaring defiantly at first that she would do it again and that she is just tired of being a victim, Henry advising her "You don’t have to justify yourself to me. You just did what you did. . . . It’s not a platform for a political campaign and it’s not a turning point in your intellectual life.” But Kinsey needs a different kind of reassurance:

I smiled at him tentatively. "I’m still a good person, aren’t I?" I didn’t like the wistful tone. I meant to show him I was a grown-up, coping with the truth. Until the words came out of my mouth, I hadn’t even known I felt so unsure.

Kinsey, like V.I. Warshawski, is fundamentally averse to violence even as she reaffirms at every juncture her commitment to a profession and a life in which she will inevitably encounter it. Moreover, she knows that encountering violence, much less dealing it out, is a masculine activity; she will always be an outsider, at a bit of a loss, in a world in which violence is commonplace. When she encounters an old flame who remarks that he has heard she got shot, Kinsey makes an attempt at bravado that ends with a wry acknowledgement, "A mere .22, which hardly counts. I got beat up too, and that’s what hurt. I don’t know how guys put up with that shit.”

Kinsey also admits more than once that she cries when she is frightened. This realistic fear of violence contrasts markedly to the stoicism expected of the male private eye. Women are shocking not only when they deal out violence, but even when they
receive it, as V.I. learns from her boyfriends. Thus fear is doubled; a woman must fear not only the physical pain of getting hurt by another, but the emotional pain of others' disapproval of her for having put herself in a violent situation.

But even more troubled is Kinsey's connection to the violence in her own past, the killing of Charlie. The most remarkable evidence of her overactive feelings of guilt about this event is encountered by the reader of "D is for Deadbeat," in which Kinsey discovers toward the end that the killer she is looking for is a disturbed teenage boy who has murdered the man who killed his parents and brother in a drunk-driving accident, and then killed a second time to cover up the first murder. Kinsey, having learned his secret, follows the distraught boy to the top of a building, where he perches on the edge preparing to jump to his own death. In an effort to prevent his suicide, Kinsey tries to comfort him and relieve him of some of his guilt:

"I killed a man once," I said. I meant to say more, but that's all I could get out. I clamped my teeth together, trying to force the feelings back down where I'd been keeping them. It surprised me that after all this time, it was still so painful to think about.

"On purpose?"

I shook my head. "Self-defense, but dead is dead." 233

Thus Kinsey demonstrates a genuine confusion of the moral quality of her act (killing Charlie in self-defense), with that of a boy's who killed once for revenge and again to conceal his first crime. Even more disturbing, Kinsey speculates later that the drunk driver who was the boy's first victim might have permitted the boy Tony to kill him without resistance because of his feelings of guilt, and she wonders whether by comparison she might be carrying around some kind of unexpiated cosmic debt:

Maybe he felt he owed Tony that last sacrifice. I'll never know, but it makes more sense to me that way. Some debts of the human soul are so enormous only life itself is sufficient forfeit. Perhaps in this case, all of the accounts are now paid in full . . . except mine. 234

234. Id. at 240.
It is telling to contrast Kinsey's chronic agonizing over Charlie's death with Archer's confidence that by saving Rico's life twenty years later, he has fully atoned for Puddler's death. Kinsey has by this point in the series saved several lives, but it never occurs to her to consider that these deeds might mitigate her (fully justified) "crime" to any degree.

Between "B" is for Burglar and "H" is for Homicide, Kinsey does not kill again. In "E" is for Evidence, Kinsey tells us that her ears still (literally, but perhaps also symbolically) ring from the sound of her shot reverberating through the trash bin when she killed Charlie. Although she is trapped by the villain at the end of "E" is for Evidence and shoots at him in an effort to escape from the fate he has planned for her—to be blown up by a bomb that is ticking away—it is clear that he is killed in the end not by her shot but by the bomb, literally hoist by his own petard. (Kinsey is, of course, saved, barely, by her own ingenuity and intrepidity.) In "C" is for Corpse, the final confrontation features Kinsey fighting off a needle-and-syringe toting mad doctor who has locked her into an empty hospital. Grafton allows her a two-by-four as a weapon. It is as though Sue Grafton cannot bear to permit Kinsey to kill again, just as Sara Paretsky once resolved never to permit V.I. Warshawski to kill. Is it because Kinsey is too fragile for her creator to test her strength against the aftermath of another killing? Or is it, rather, that Grafton cannot trust Kinsey's readers to continue to sympathize with and admire her if she were to be responsible for another death?

There may be one exception to the rule that women killers must be unsexed, masculinized. The exception is illustrated in Grafton's "G" is for Gumshoe, which climaxes in a woman's shooting of her ex-husband on the tarmac of a small airport. The exception, which also appears in other popular cultural forms, might be called the mommy track: women are permitted to be violent, even to kill, to defend children—especially their own—from harm. Indeed, this kind

235. See supra text accompanying note 163.
237. Id. at 197-99.
238. "C" IS FOR CORPSE, supra note 230, at 212.
239. See supra text accompanying note 223.
240. Consider, for example, the films TERMINATOR II and ALIENS, in which Linda Hamilton and Sigourney Weaver, respectively, portray impressively physical women who are capable of great and deadly violence, in defense of a child or child-figure. TERMINATOR II (Orion Pictures 1991); ALIENS (20th Century Fox 1986).
of maternal ferocity is not only permitted, it is expected241 and admired. Thus Rochelle Messinger in "G" is for Gumshoe is allowed to be pretty, even fragile (Kinsey says that in Rochelle’s presence, she feels "as dainty and feminine as a side of beef"),242 and to kill—not because Eric has tried several times to kill Kinsey, and appears to be about to succeed—but because he is about to take his and Rochelle’s small son off with him.243 In Kinsey’s characteristic epilogue, she wraps up the histories of several of the book’s characters but does not mention Rochelle,244 suggesting that there were no legal consequences to her killing of Eric. Thus the exception proves the rule, for in virtually no other episode in Grafton, Paretsky, or Archer does a woman kill without later taking her own life or being called to answer by the law.

Paretsky and Grafton, and all authors of hardboiled crime fiction featuring female protagonists, are both prisoner and exploiter of a central paradox: the genre is violent, the central character is female, and violence is incompatible with being a real woman. As Maureen Reddy explains the problem:

Much in the way that they revise hard-boiled fiction’s insistence on the isolation of the hero, so do women writers revise the meaning of violence. Placing the hero in physical danger is a convention of the genre, but a convention whose meaning is entirely changed when the detective is a woman. A male detective who uses his wits and his fists to fight his way out of a dangerous situation is acting within gender role expectations, but a woman who performs the same feat is not; whereas the male detective proves his masculinity through bloodying his opponents and emerging triumphant from the contest, a woman doing the same thing calls her femininity into question.245

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241. After the notorious case of Lisa Steinberg's murder, there was widespread public revulsion toward the child's mother-figure, Hedda Nussbaum, because of her failure to protect the child from the brutal behavior of her husband Joel Steinberg. In some quarters, she was judged more harshly than he. See Nadine Brozan, Unresolved Issue: Is Nussbaum Culpable?, N.Y. TIMES, Jan. 24, 1989, at B1, B4 ("But some women cannot suppress their anger of Ms. Nussbaum’s failure, voluntary or not, to protect the two children she had in her care."); Joyce Johnson, What Lisa Knew: The Truths and Lies of the Steinberg Case (1990).


243. As one would expect, reports suggest that cases in which women kill men in situations in which the protection of a child is an issue, rather than only self-defense, a judge or jury is likely to be sympathetic and to acquit or to mitigate the punishment for the killing. See, e.g., Walker, supra note 52, at 138-39, 143-45, 154-57.

244. "G" is for Gumshoe, supra note 242, at 261.

245. Reddy, supra note 219, at 112-13 (citation omitted).
The optimistic note in this account is struck by its claim that books like the Warshawski series "revise the meaning of violence." An even more optimistic account would hope that such works succeed in revising the meaning of "femininity." But there is little ground for believing, even given the success of Paretsky's and Grafton's heroines, that either concept stands substantially revised in the minds of their readers. A truer, more despairing account does not take for granted that the tension between "woman" and "detective" will be resolved by an alteration in the boundaries of either term. This tension could give rise to a creative reassessment of the conventions, both literary and social, that create it, but most often, even in the work of Grafton and Paretsky, this opportunity is missed. As one observer notes:

"detective fiction with a professional woman protagonist is almost always a kind of parody, for even while it reproduces the form of the original, this new version deliberately alters the essential element—the detective hero himself. As the protagonist is not simply a man but the glorification of masculine traits, the substitution of a woman with her own feminine virtues or incompletely assumed masculine ones leaves the novel without its center. But, it is not the decentered genre which is mocked. Rather, it is the deficient hero/ine. A conflation of literary, economic, and political motives have led authors to reduce her to less heroic, more manageable and familiar terms." 

Like a science fiction series that plays variations of the theme of the hopelessness of love between residents of different planets, the Warshawski and Millhone series explore the impossibility of resolving the tension between violence and womanhood—and it is that tension, never to be resolved, that gives the works much of their power and their lasting appeal. If books construct our reality, readers of the series will come away with the belief that an extraordinary woman may be permitted to fight for a place in American subcultures where violence is part of everyday life; but nothing in these works will encourage the reader to believe that this fight has been, or ever can be, won, or that the fight may be carried on without grave cost to the struggler.

246. Id.
247. KLEIN, supra note 138, at 224.
248. See id. at 170 ("For readers ... confused by society's changing views of women, the message of these novels seems remarkably clear: when women try to share men's freedom of choice in public and private lives,
X. Conclusion: Myths and Cautionary Tales

As may be seen in the Lew Archer series, male violence in literature often has an heroic, mythic quality. Outside of literature, men who do violent acts often seem to be able to take advantage, in the minds of jurors and other actors in the criminal justice system, of the sympathetic myths that we tell, read, and follow about men and violence. The result, as in the Goetz and Guenther cases, as well as unknowable numbers of others, is a verdict that represents a determination that a man may sometimes, in order to be a man, ignore the strict boundaries of the law. And in countless cases that never reach a courtroom, male violence is invisible because it is so deeply embedded in our constructions of maleness.

No such heroic narratives connect women and violence. Indeed, running deep through popular as well as classical literature is a structure of horror and remorse that attends the violence of women. In many literary portrayals, violence either denatures a woman or reflects her already denatured essence; one of the few escapes from monstrosity available to a woman who has been violent is massive, perhaps even crippling, remorse. Because we tell and believe and live by these cautionary tales as well, we are likely to judge harshly a woman who has been violent, doubly so if she refuses the mitigation of remorse and insists that she was justified.

Lawyers are not ordinarily the mythmakers of our culture; we tend to leave the mythmaking to novelists, film makers, and writers of popular songs. But as custodians of the processes that lead to the unjust condemnation and punishment of some women because they are women, we cannot ignore the importation of certain myths into the decisions of courts and juries. Reform of the legal doctrines surrounding violence, self-defense, and defense of others, while laudable, cannot change the largely unexamined beliefs, reflective of our culture's bias, that judges bring to the courtroom and jurors to the jury room when they pass judgment on women who have used violence. We need to read and watch and listen with awakened awareness of what those around us are absorbing and enacting; we need to support those who challenge the prevailing cultural icons, as critics by exposing hidden patriarchal bias or as artists by the
creation of counter-myths and counter-narratives. Women whose lives intersect with violence will not encounter justice unless we undertake the lengthy and challenging project of revising and retelling our myths for men and cautionary tales for women, until they teach us that personal violence is equally acceptable, and unacceptable, for all.