

# Either Way it Goes Down...

America's 54 Women on Death Row in the Context of  
Patriarchy.

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Comprehensive Paper

# **Either Way it Goes Down...<sup>1</sup>**

## **America's 54 Women on Death Row in the Context of Patriarchy<sup>2</sup>**

Women on death row are a rare breed. Of the 3,711 inmates currently on death row in the United States, only 54 are women, a mere 1.46%.<sup>3</sup> Women who have actually been executed are even rarer; in the modern era of the death penalty,<sup>4</sup> only eight of 749 executed, or 1.07%, have been women<sup>5</sup>.

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<sup>1</sup> The title is taken from the song "Faye Tucker" written by Amy Ray and performed by the Indigo Girls. Copyright 1999 EMI Virgin Songs, Inc./Goodhap Music (BMI).

"Roll out the head of Faye Tucker  
And never you mind what they say  
You may be reborn but it's all just for scorn  
And that's what you'll take to the grave

"Well the minister wants you to live now  
And the Governor wants you to fry  
And whatever it was that you thought might occur  
They got something else in their minds

"If you live they gonna make you a campaigner  
If you die they gonna make you a grave  
Either way it goes down  
Well your life's not your own  
And that's why killin' don't pay."

<sup>2</sup> Olsen, Kristin, *Women and the Law*, Spring Semester 2002.

<sup>3</sup> Fins, Deborah; Death Row U.S.A. Winter 2002, a quarterly report by the Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc. pp. 3 Current as of January 1, 2002.

<sup>4</sup> The "modern era" of the death penalty refers to dates after 1976. In 1976 the United States Supreme Court effectively reinstated the death penalty by upholding Georgia's revamped capital punishment scheme in Gregg v. Georgia, 428 U.S. 153 (1976).

<sup>5</sup> Death Row U.S.A. at 8.

Women account for about 13% of all murder arrests.<sup>6</sup> Yet, they only occupy 1.46% of the cells on America's death row. Women and men are clearly not sentenced to die at the same rate. Only 16 of the 40 jurisdictions<sup>7</sup> that exercise capital punishment have women "on the row."<sup>8</sup> There must be something special about the rare woman who is sentenced to die. What is it?

Traditionally, there are two ways of thinking about how our criminal justice system treats women. The outcome of a given case involving a woman defendant is typically justified by either the "Chivalry Theory" or the "Evil Woman Theory".<sup>9</sup> If the woman receives seemingly lenient treatment, it is because the system was "chivalrous" in their dealings with her. If the woman is dealt with harshly, it is because she is an "evil woman." In this paper I contend that this model of our criminal justice system, as illustrated by the women who are currently under a sentence of death, does not adequately describe women's experience in our criminal justice system.

This begs the question, though, why does it matter that we have described the problems facing women in our criminal justice system properly? When we are careful with terminology, we focus the lens through which we are

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<sup>6</sup> Streib, Victor; "Sentencing Women to Death," 16-SPG Crim. Just. 24

<sup>7</sup> Alabama (3 women), Arizona (2), California (12), Florida (3), Georgia (1), Idaho (1), Illinois (4), Indiana (1), Kentucky (1), Louisiana (1), Mississippi (2), Nevada (1), New Jersey (1), North Carolina (6), Pennsylvania (6), Tennessee (2), Texas (7). See Appendix A.

<sup>8</sup> Death Row U.S.A. at 8 and

<sup>9</sup> See, e.g. Keitner, Chimene; "Victim or Vamp? Images of Violent Women in the Criminal Justice System", 11 Colum. J. Gender & Law 38 (2002); Rapaport, Elizabeth, "Staying Alive: Executive Clemency, Equal Protection, and the Politics of Gender in Women's Capital Cases," 4 Buff. Crim. L. Rev. 967 (2001); O'Neil, Melinda E; "Gender Gap Argument: Exploring the Disparity of

viewing women's experiences. In looking at the experience of women in the criminal justice system with the appropriate focus and talking about it using precise terminology, we begin to see that often, sex-role stereotyping prevails over context-specific reasoning in the criminal justice system. The application of justice for women is skewed.

This skewing of justice occurs at all levels of the criminal justice system and at all levels of women's lives. One of the easiest places to see this is in the population of women on death row.

## **I. Traditional Ways of Looking at Women in the Criminal Justice System**

### *The Chivalry Theory*

"Lizzie Borden took an axe and gave her parents 40 whacks!"<sup>10</sup>

On August 4, 1892, the body of Andrew Borden was discovered in his home in Fall River, Massachusetts by his daughter, Lizzie Andrew Borden.<sup>11</sup> He had received 10 blows of a hatchet to his face.<sup>12</sup> A neighbor, Adelaide Churchill, came to Lizzie's aid and discovered the body of Abby Borden, Lizzie's

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Sentencing Women to Death," 25 New Eng. J. on Crim. & Civ. Confinement 213 (1999); and others.

<sup>10</sup> Thanks to Professor Leslie Harris for reminding me of this child's rhyme.

<sup>11</sup> The story of Lizzie Andrew Borden is compiled from several sources: Jones, Ann; Women Who Kill, pp. 209-237; Robertson, Cara W. "Representing 'Miss Lizzie': Cultural Convictions in the Trial of Lizzie Borden," 8 Yale J.L. & Human. 351 (1996); Herman, Susan N. "Thelma and Louise and Bonnie and Jean: Images of Women as Criminals," 2 S. Cal. Rev. L. & Women's Stud. 53 (1992); and Uelmen, Gerald F. "Leaks, Gags and Shields: Taking Responsibility," 37 Santa Clara L. Rev. 943 (1997).

<sup>12</sup> Jones, Ann, Women who Kill, pp. 212

stepmother, lying in the guest bedroom.<sup>13</sup> Only two people had been seen in the house that day: Bridget Sullivan, the Borden's domestic servant, and Lizzie Borden.<sup>14</sup>

Abby Borden had asked Bridget Sullivan<sup>15</sup> to wash the windows outside that morning while she changed the sheets in the guest bedroom. By 9:30 am, Abby Borden was struck down by 19 hatchet blows to the back of her head.<sup>16</sup> Andrew Borden returned home from his business quite unexpectedly about 10:45 am. Bridget Sullivan opened the door for him—it had been bolted from the inside.<sup>17</sup> Lizzie told him Abby had gone visiting in response to a note from a sick friend.<sup>18</sup> Andrew Borden lay down to take a nap on the sofa. Sometime between 10:45 and 11:05, he was killed.<sup>19</sup>

The investigation by the police began by rounding up the “usual suspects.”<sup>20</sup> Lizzie reported that her father had quarreled with laborers at his farm and also with a prospective tenant.<sup>21</sup> The police questioned several working-class immigrant men about the murder, including several who had

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<sup>13</sup> Robertson, Cara W. “Representing ‘Miss Lizzie’: Cultural Convictions in the Trial of Lizzie Borden,” 8 Yale J.L. & Human. 351, 359 (1996).

<sup>14</sup> Robertson, 8 Yale J.L. & Human. at 357.

<sup>15</sup> According to Cara Robertson, Emma and Lizzie Borden called Bridget Sullivan, “Maggie,” the name of their previous domestic servant’s name. Robertson, 8 Yale J.L.& Human. at 357.

<sup>16</sup> Robertson, 8 Yale J.L. & Human. at 357.

<sup>17</sup> Id.

<sup>18</sup> Jones, Women Who Kill at 219.

<sup>19</sup> Robertson, 8 Yale J.L. & Human. at 358.

<sup>20</sup> Robertson, 8 Yale J.L. & Human. at 359.

worked for Andrew Borden. All proved to have iron-clad alibis.<sup>22</sup> Popular opinion favored John V. Morse, the brother of Andrew Borden's first wife and Lizzie's uncle—he had been visiting the Bordens shortly before the murders. His alibi was also perfect.<sup>23</sup>

None of the suspects outside of the family could possibly have committed the murders. The police's investigation turned to the members of the family.<sup>24</sup> Lizzie's sister, Emma, was staying with friends in Fairhaven, Massachusetts on the day of the murder—she could not possibly have killed her parents.<sup>25</sup> Bridget Sullivan, the domestic, was originally considered a suspect. She was saved, however, by Lizzie's own versions of the events, eliminating her as a suspect.<sup>26</sup>

Lizzie's account of her whereabouts during the murder of her father and stepmother was tenuous, at best. She claimed to have gone to the barn to find a weight for a fishing line, even though 32-year-old Lizzie had not gone fishing in years.<sup>27</sup> She stated at separate times that she had been in the barn for 20 minutes, or 15 minutes, or 10 minutes.<sup>28</sup> By her own account, she had not felt well that morning but she was able to eat two or three windfall pears that she

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<sup>21</sup> Jones, Women Who Kill at 213.

<sup>22</sup> Robertson, 8 Yale J.L. & Human. at 359.

<sup>23</sup> Id.

<sup>24</sup> Robertson, 8 Yale J.L. & Human. at 360.

<sup>25</sup> Robertson 8 Yale J.L. & Human. at 357.

<sup>26</sup> Robertson 8 Yale J.L. & Human. at 360.

<sup>27</sup> Jones, Women Who Kill at 212.

<sup>28</sup> Id.

found in the barn. She either looked out the window and saw nothing unusual, or she never glanced out of the window—her story changed with the audience.<sup>29</sup>

Two days after the murders, while Lizzie attended the funerals of her parents, the police searched her closet for a bloody dress.<sup>30</sup> The mayor of Fall River paid a condolence call that evening and told Lizzie she was a suspect. The very next day, Lizzie’s best friend entered the Borden home to find Lizzie and Emma Borden burning a dress in the kitchen stove; Lizzie claimed it was stained with red paint.<sup>31</sup>

On August 11, 1892, Lizzie was arrested for the murders of her father and stepmother.<sup>32</sup> She remained held in the county jail at Taunton, Massachusetts until the beginning of her trial almost a year later on June 5, 1893.<sup>33</sup> While she remained incarcerated, Lizzie Borden enjoyed special privileges such as meals delivered from the local hotel.<sup>34</sup>

All the clues pointed to Lizzie. Her quarrels with her father over money were well known.<sup>35</sup> She hated her stepmother—Lizzie addressed her stepmother of 25 years as “Mrs. Borden.”<sup>36</sup> Lizzie claimed not to notice the body

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Jones, Women Who Kill at 214.

<sup>33</sup> Robertson, 8 Yale J.L. & Human. at 360.

<sup>34</sup> Id.

<sup>35</sup> Jones, Women Who Kill at 210.

<sup>36</sup> While I can find no account of any sexual abuse in the Borden family, there are several things about the story that are odd. Lizzie was the youngest of the two Borden girls, both were

of her stepmother lying just inside the open door to the guest room for several hours.<sup>37</sup> Only Lizzie had seen the small boy who had come to the house to deliver a message to Abby Borden asking her to visit a sick friend. Neither the boy, the sick friend, nor the note was ever found.<sup>38</sup> Lizzie had no blood spatters on her; someone who had bludgeoned another to death with a hatchet would have been covered from head to toe in blood. Lizzie was extremely clean and so was the house. There was no blood found on the walls or the floor of either the guest bedroom, where Abby was found, or the sitting room, where Andrew was found.<sup>39</sup> Under a bench in the cellar, investigators found a bucket of bloody towels, perhaps they may have been used to clean up the mess?

After a trial and despite all of the evidence against her, Lizzie Borden was acquitted. The manner in which she was acquitted illustrates the core principles of the “Chivalry Theory.”

The prosecution had a simple theory of the case. Lizzie’s hatred of Abby made her pre-disposed to kill her step-mother. Her father had been unlucky enough to come home unexpectedly, before Lizzie could concoct an alibi; he was murdered to cover up for the murder of Abby.<sup>40</sup> Lizzie’s behavior since the

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unmarried well into their thirties. Andrew Borden reportedly wore a ring that had been Lizzie’s as a child and “doted” on Lizzie. He also tightly controlled the family assets—although Andrew Borden was wealthy, the family lived in extremely austere conditions. Lizzie addressed her stepmother of 25 years as “Mrs. Borden.” The stories point to a family that was highly dysfunctional, at the very least.

<sup>37</sup> Robertson, 8 Yale J.L. & Human. at 358.

<sup>38</sup> Jones, Women Who Kill at 213.

<sup>39</sup> Jones, Women Who Kill at 220.

<sup>40</sup> Robertson, 8 Yale J.L. & Human. at 361.

time of the crimes proved that she had committed the murders—she had been stoic and hadn't cried a single tear, not even upon the discovery of her father's body.<sup>41</sup>

The prosecution did not offer other possible motives for the murders.<sup>42</sup> The prosecution did not argue that Lizzie killed her father because she hated him—they argued merely that he was in the wrong place at the wrong time. Neither did the prosecution argue that she killed her father for his fortune. The only motive offered by the prosecution for the murders was the animosity between Lizzie and Abby Borden.<sup>43</sup> Lizzie Borden was portrayed by the prosecution as cold—a woman who vindictively hated the stepmother who raised her.<sup>44</sup> Her unfeminine coldness helped to prove, to the prosecution, Lizzie's guilt.<sup>45</sup>

The defense's strategy was even simpler. They offered no alternative theory of the crimes.<sup>46</sup> Lizzie's defense team focused, instead, on her character, on the father-daughter relationship, and on the lack of a motive for Lizzie to have killed either of her parents.<sup>47</sup>

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<sup>41</sup> Jones, Women Who Kill at 216.

<sup>42</sup> Robertson, 8 Yale J.L. & Human. at 361

<sup>43</sup> Id.

<sup>44</sup> Robinson, 8 Yale J.L. & Human. at 394.

<sup>45</sup> Robinson, 8 Yale J.L. & Human at 398.

<sup>46</sup> Of course, the defense in a criminal prosecution is not required to present an alternative theory, it is the burden of the prosecution to prove their case beyond a reasonable doubt. In re: Winship, 397 U.S. 358 (1970).

<sup>47</sup> Jones, Women Who Kill at 218.

The defense team relied upon Lizzie's character as a Christian lady. She volunteered as a Sunday school teacher from time to time at the Central Congregational Church and she was the secretary-treasurer of the local Christian Endeavor Society.<sup>48</sup> She was the second daughter of a respected and wealthy family.<sup>49</sup> And, as icing on the cake, Lizzie's stoicism ended on the second day of her trial; she burst into tears following a hotly contested hearing on an evidentiary issue, establishing her as a lady.<sup>50</sup>

The defense made certain that there were several fathers with daughters Lizzie's age on the jury.<sup>51</sup> Andrew Borden's love for his daughter was made much of by the defense. By all accounts, he doted on Lizzie—the evidence of Andrew's love for Lizzie was construed by both sides to mean that Lizzie must, therefore, have been fond of Andrew.<sup>52</sup> Lizzie's attorney, George D. Robinson, described the relationship by saying:

[Andrew Borden] was a man that wore nothing in the way of ornament, of jewelry but one ring, and that ring was Lizzie's. It had been put on many years ago when Lizzie was a little girl, and the old man wore it and it lies buried with him in the cemetery. He liked Lizzie, did he not? He loved her as his child; and the ring that stands as the pledge of plighted faith and love, that typifies and symbolizes the dearest relation that is ever created in life, that ring was the bond of union between the father and daughter. No man should be heard to say that she murdered the man *that so loved her*.<sup>53</sup>

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<sup>48</sup> Jones, Women Who Kill at 220; Robinson, 8 Yale J.L. & Human. at 361.

<sup>49</sup> Jones, Women Who Kill at 210.

<sup>50</sup> Jones, Women Who Kill at 216.

<sup>51</sup> Jones, Women Who Kill at 218.

<sup>52</sup> Id.

<sup>53</sup> Quoted in Jones, Women Who Kill at 218 (emphasis added).

Lizzie could not possibly have killed a man who loved her so much. It was absolutely unthinkable that she did not return that love.

Along with her sister, her stepmother, and Bridget Sullivan, Lizzie faithfully kept house for her father, helping to prepare his meals, do his laundry, and clean the small house.<sup>54</sup> If Lizzie could have killed a father who loved her so very much and who she took care of so faithfully, perhaps the domestic tranquility of the all-male jury was at risk as well. Her defense team actually argued this point during summation. George Robinson addressed the jury by saying, “You are out of families, you come from firesides, you are members of households, you have wives and daughters and sisters and you have had mothers.”<sup>55</sup> Were *any* men safe in their own homes if Lizzie Borden had murdered her own father?

To further dispel any notions that Lizzie had a motive to kill her father, the defense called Emma Borden, Lizzie’s older sister, to testify that Lizzie had money of her own—almost \$3,000 in several bank accounts throughout the town of Fall River.<sup>56</sup> This money was evidence that Lizzie had all that a woman could possibly need,<sup>57</sup> and it was gently suggested that if Lizzie wanted more money, all she would have to do was wait for her father to die.<sup>58</sup> Andrew Borden’s estate was almost three-quarters of a million dollars—quite a sum in 1892, enough to

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<sup>54</sup> Jones, Women Who Kill at 218.

<sup>55</sup> Quoted in Jones, Women Who Kill at 218.

<sup>56</sup> Jones, Women Who Kill at 219.

<sup>57</sup> Id.

<sup>58</sup> Of course, if Andrew had died before Abby, she would have been entitled to a widow’s dower and Lizzie’s share of the Borden estate would have been diminished.

give the two spinster Borden sisters complete independence. This was not enough of a motive in the eyes of either the defense or the prosecution to warrant murder<sup>59</sup>—the idea that a lady would care enough about money to murder was unthinkable.

So, Lizzie could not have had a motive to kill her father in either her anger or her wish for more money. As Lizzie’s pastor, The Reverend W. Walker Jubb of the Central Congregational Church said from the pulpit, “When men resort to crime it is for plunder, for gain, from enmity, in sudden anger or for revenge. Strangely, nothing of this nature enters into this case, and again, I ask—what was the motive?”<sup>60</sup> These motives are ones that men have, but women do not.

No blood spatters were found in either the guest room or the sitting room as would be expected in a hatchet murder—leaving the conclusion that the blood must have been cleaned up by someone.<sup>61</sup> However, the obvious evidence of that cleaning, the blood-soaked rags that were found in the cellar, were mostly ignored during trial.<sup>62</sup> Lizzie reported that her period had just ended and the rags had been used as sanitary products. Therefore, by agreement neither the prosecution nor the defense mentioned the bucket of bloody rags.<sup>63</sup> Because menstruation was one thing that was not discussed in mixed company, the rags were never an issue at the trial. Lizzie was a lady and ladies never mentioned

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<sup>59</sup> Jones, Women Who Kill at 219.

<sup>60</sup> Id.

<sup>61</sup> Jones, Women Who Kill at 220.

<sup>62</sup> Id.

such things—it was pretended that they didn't even really know about them. As a woman, Lizzie was used to disposing of bloody cloths, as a lady, bloody cloths were not discussed.

The press painted Lizzie as the perfect lady with perfect woman-like qualities.<sup>64</sup> Her church work and faithfulness to her family were seen as proof of her womanly nature. She dressed like a lady, and her clothes were discussed extensively by the press.<sup>65</sup> She carried flowers to court.<sup>66</sup> As further proof of her feminine nature, she often cried quietly in court—at one point she even fainted. The newspapers reported that Lizzie would hide her face in her hands when the prosecution would mention blood but would look interested and bright when blood was mentioned by her own attorneys.<sup>67</sup> This dissembling was deemed proof of her feminine nature, and the newspapers lauded her for it. Lizzie was trying to use her feminine wiles. But, the poor dear wasn't very good at it, evidentially, as the newspaper reporters were able to catch her.

Ultimately, the all-male, all-white jury couldn't convict a rich, white lady. Even though she was a spinster, Lizzie Borden was all that a woman should be. She was a woman of the church. In lieu of a marriage, she kept house for her

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<sup>63</sup> Id.

<sup>64</sup> Uelmen, Gerald F. "Leaks, Gags and Shields: Taking Responsibility." 37 Santa Clara L. Rev. 943, 947.

<sup>65</sup> Jones, Women Who Kill at 223.

<sup>66</sup> Id.

<sup>67</sup> Id.

father who loved her. She dressed nicely. She spoke nicely. She was from one of the most respected families in Fall River.

The jury in the Borden case, acted in accordance with the “chivalry theory.” There was a general inability to believe that a “real” woman could be capable of horrible, violent acts.<sup>68</sup> Lizzie Borden could not have taken her father’s life because she acted as a woman at all times.

The “chivalry theory” seems to have grown out of Justice Thurgood Marshall’s dissent in *Furman v. Georgia*,<sup>69</sup> the Supreme Court case that, for a short time, halted the imposition of the death penalty in American courts.<sup>70</sup> Justice Marshall noted that the death penalty was statistically imposed more often against men than against women.<sup>71</sup> He wondered, “why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes.”<sup>72</sup>

In the view of chivalry theorists, “real” women are spared from harsh treatment by our criminal justice system due to their perceived feminine nature. Women are less responsible for their actions, in this view, and therefore, less culpable and less likely to pose a continuing danger to society.<sup>73</sup> “Real” women

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<sup>68</sup> Rapaport, Elizabeth N. “Some Questions About Gender and the Death Penalty,” 20 Golden Gate U. L. Rev. 501, 504 (1990).

<sup>69</sup> Furman v. Georgia, 408 U.S. 238 (1973)

<sup>70</sup> Rapaport, 20 Golden Gate U.L. Rev. at 509.

<sup>71</sup> Furman at 365.

<sup>72</sup> Id.

<sup>73</sup> Rapaport, 20 Golden Gate U.L. Rev. at 512.

are hysterical, childlike, weak, and delicate. They are white and they are rich. True ladies—idle, respectable, proper, and useless—can not murder.<sup>74</sup> They are wholly dependant upon men<sup>75</sup> and they are victims totally subsumed by male domination. They are naturally timid, fit only for the domestic sphere.<sup>76</sup> They are fit only for the role of wife and mother.<sup>77</sup> If a man won't marry them, these women may still behave with propriety, but it must be in the service of a man. "Real" women don't kill.

When women accused of violent crime are seen as "real" women, they are acquitted, like Lizzie, or given sentences that are relatively light.<sup>78</sup> Even if the jury had believed that Lizzie killed her parents, the perceived weak and passive nature of women make them less culpable for any violent crimes they have committed. In the view of the chivalry theory, Lizzie Borden was acquitted because as a woman she was weak, submissive, dependent and passive.<sup>79</sup>

Although Lizzie Borden was acquitted on June 20, 1893, her life did not end happily.<sup>80</sup> After the acquittal, Lizzie thanked the jury and posed for a

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<sup>74</sup> MacKinnon, Catherine, Book Review: "Toward Feminist Jurisprudence," 34 Stan. L. Rev. 703, 709 (1982).

<sup>75</sup> Illinois v. Bradwell, 83 U.S. 446 (1872) Bradley, J. Concurring.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> O'Neil, Melinda E. The Gender Gap Argument: Exploring the Disparity of Sentencing Women to Death, 25 New Eng. J. on Crim. & Civ. Confinement 213, 218 (1999).

<sup>79</sup> Id.

<sup>80</sup> Robertson, 8 Yale J.L. & Human. at 362.

photograph with them.<sup>81</sup> Emma and Lizzie Borden promptly sold their father's house and bought a large home they called *Maplecroft* in the most fashionable neighborhood in Fall River.<sup>82</sup> Lizzie changed her name to Lisbeth.<sup>83</sup> With a change in her name came a change in her behavior.<sup>84</sup> She began attending the theatre in Boston, dropped out of her Christian charities, and held lavish parties.<sup>85</sup> After one such party, in which large amounts of champagne was served, belying her former temperance work, her sister, Emma moved out and never spoke to her again.<sup>86</sup> Lizzie Borden continued to live at *Maplecroft* until her death in 1927 at the age of 66.<sup>87</sup> She left most of her fortune to the Animal Rescue League.<sup>88</sup>

### *The "Evil Woman" Theory*

Alice Crimmins' children, Missy and Eddie, disappeared from her Queens, New York apartment in July, 1965.<sup>89</sup> According to Alice, she fed the children

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<sup>81</sup> Id.

<sup>82</sup> Jones, Women Who Kill at 233.

<sup>83</sup> Id.

<sup>84</sup> Robertson, 8 Yale J.L. & Human. at 362.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Jones, Women Who Kill at 233.

<sup>88</sup> Id.

<sup>89</sup> The sources for the story of Alice Crimmins is Jones, Ann, Women who Kill, pp.272 to 280 and the appellate record in her case: People v. Crimmins, 307 N.Y. S. 2d 81 (1969); People v. Crimmins, 310 N.Y. S. 2d 300 (1970); People v. Crimmins 367 N.Y. S. 2d 213 (1975); People v. Crimmins, 367 N.Y. S. 2d 532 (1975); People v. Crimmins 381 N.Y. S. 2d 1 (1975).

supper on the evening of July 13, 1965 and then put them to bed.<sup>90</sup> When she went to get them out of bed the next morning, the children had disappeared.<sup>91</sup> She called her estranged husband, Edmund, who, in turn, reported the disappearance to the police.<sup>92</sup> The responding detective reportedly took one look at Alice and did not like her. She did not look like “mother” to him.<sup>93</sup> She was a working class housewife who had separated from her husband. She wore treader pants, had teased and sprayed hair, and carefully applied makeup.<sup>94</sup> The police immediately focused on Alice as the cause of her children’s disappearance.<sup>95</sup>

Missy’s body was found the day after her disappearance.<sup>96</sup> Alice was taken to see the body.<sup>97</sup> It was crawling with flies, and Missy’s pajama top was knotted around her neck.<sup>98</sup> Alice reportedly swooned into the arms of a nearby detective but did not cry. Her reaction was too theatrical for the lead investigator

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<sup>90</sup> People v. Crimmins, 310 N.Y. S. 2d. 300, 301 (1970).

<sup>91</sup> Jones, Ann, Women Who Kill at 272.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> People v. Crimmins, 310 N.Y. S. 2d. 300, 301 (1970).

<sup>97</sup> Eddie’s body was found about 5 days later. Jones, Women Who Kill at 277.

<sup>98</sup> Jones, Women Who Kill at 273.

and, for him; her failure to cry meant he had his killer.<sup>99</sup> The press were told, “the bitch killed her kids.”<sup>100</sup>

The police had a small problem. They had no evidence linking Alice to the murder of her children. Alice’s apartment was bugged for almost three years during which time no incriminating evidence was discovered.<sup>101</sup> The police resorted to harassment of Alice Crimmins. When Alice had sex with other men in her apartment, the police would call her estranged husband to tell him.<sup>102</sup> When Alice found jobs as an executive secretary under her maiden name, evidentially a job she performed extremely well, the police would visit her employer and tell them who she was and what she had, in their view, done.<sup>103</sup>

The bugs placed in Alice’s apartment revealed no admissible evidence that she had murdered her children.<sup>104</sup> The press was told that the police had overheard information proving Alice had killed her kids.<sup>105</sup> By 1967 it was “common knowledge” that Alice had committed the crimes and deserved to go to prison.<sup>106</sup>

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<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> Id.

<sup>105</sup> Id.

<sup>106</sup> Id.

Alice was charged with the murder of her daughter, Missy, in 1967.<sup>107</sup> At trial, the prosecution presented no physical evidence, only the recollection of the lead detective regarding what he had observed on the evening the Crimmins' children were reported missing.<sup>108</sup> He testified to dust on the window sill, indicating not only that the kids could not have been drug through the window as Alice contended,<sup>109</sup> but also that Alice was a poor housekeeper. He also testified to seeing a manicotti carton in the trash can, clearly indicating that Alice had fed her kids manicotti for supper and not veal as she contended.<sup>110</sup> The manicotti carton in the trash bolstered the lead detective's belief in Alice's guilt and the prosecution's case: what kind of mother doesn't remember what she fed her kids on the last night she saw them alive?

Only two witnesses other than the police officer testified for the prosecution.<sup>111</sup> Sophie Earomirski, a neighbor, testified that at about 2:00 A.M., on July 14, 1965, she saw Alice carrying a bundle and holding the hand of a little boy; she was accompanied by a man. The man took the bundle and threw it into an automobile, and Sophie, from her third floor window across the street, heard defendant say, "My God, don't do that to her."<sup>112</sup>

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<sup>107</sup> Id. I am unclear regarding the reasoning behind indicting Alice for Missy's death but not for Eddie's.

<sup>108</sup> Jones, Women Who Kill at 274.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> People v. Crimmins, 310 N.Y. S. 2d. 300, 301 (1970).

<sup>112</sup> Id.

Joseph Rorech, an angry ex-boyfriend, testified that he had helped Alice remove the children's bodies from the apartment.<sup>113</sup> He further stated that Missy was dead when he arrived that evening and that Alice had asked him to find a hit man to kill Eddie—he had witnessed his sister's murder.<sup>114</sup> He further testified that sometime after the children disappeared, Alice admitted to him, 'Joseph, please forgive me, I killed her.'<sup>115</sup> On cross-examination, the defense was barred from asking about a statement to a police inspector, in the presence of Alice, that she did not kill her daughter and was incapable of doing so.<sup>116</sup> This statement was made two months after Alice allegedly admitted to Joseph that she had committed the crime.<sup>117</sup>

Alice's defense team begged her to tone down her appearance.<sup>118</sup> They asked her to change her hair and her clothes. They also asked her to cry for the jury.<sup>119</sup> She refused to change anything about herself. When Alice testified in her own defense, she was angry.<sup>120</sup> She had been trailed for more than three years by the police who had bugged her apartment, called her ex-husband, called her bosses, harassed her about the men she slept with. Through it all,

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<sup>113</sup> Jones, Women Who Kill at 274.

<sup>114</sup> Id.

<sup>115</sup> People v. Crimmins, 310 N.Y. S. 2d. 300, 301 (1970)

<sup>116</sup> People v. Crimmins, 307 N.Y. S. 2d. 81, 82-83 (1969).

<sup>117</sup> Id.

<sup>118</sup> Jones, Women Who Kill at 275.

<sup>119</sup> Id.

<sup>120</sup> Jones, Women Who Kill at 274.

Alice had refused to change her lifestyle. She had sex with men and she refused to apologize for it or even to hide it.<sup>121</sup> The prosecution's cross-examination of Alice focused on her sex life and not on the facts of the case.<sup>122</sup>

Unlike Lizzie Borden, Alice Crimmins did not have the press on her side. Alice was decidedly not a lady. The press painted her as a "sexpot," a cocktail waitress.<sup>123</sup> They called her "curvy," "comely," "flame-haired," and "blonde."<sup>124</sup> A publication of the New York yellow press, *The New York Front Page Detective* called her "an erring wife, a Circe, an amoral woman whose many affairs appeared symptomatic of America's Sex Revolution."<sup>125</sup> *The New York Daily News* dubbed her "the Queens housewife with hamster morals."<sup>126</sup>

Alice Crimmins was convicted of the lesser-included charge of manslaughter on August 9, 1968.<sup>127</sup> Alice was the "Evil Woman." Women are evil because they are more cunning and deceitful than men. They are more capable of hiding their crimes, or they are more capable of convincing men that they have done nothing wrong. Further, the sexual nature of women makes them demonic. The evil woman kills like the preying mantis or the black widow

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<sup>121</sup> Jones, *Women Who Kill* at 275.

<sup>122</sup> *Id.*

<sup>123</sup> As if being a cocktail waitress was something to be ashamed of. At any rate, Alice had only held the job for a short time and usually worked as an executive secretary.

<sup>124</sup> Jones, *Women Who Kill* at 275.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* I can only assume that they were referring both to the sexual habits of a hamster and the fact that they occasionally eat their own young.

<sup>127</sup> *People v. Crimmins*, 307 N.Y. S. 2d. 81(1969).

kills—by luring men with sex to their untimely end, or the untimely end of those men care about. The woman who is not passive is evil.

Women who violate the traditional views of what women “are,” are evil. These women fall outside of what the criminal justice system describes as appropriately feminine and they offend society with their unfeminine behavior.<sup>128</sup> Men dominate, women submit.<sup>129</sup> In this view, for a woman to kill, she needs to be unnatural—she needs to emulate men.<sup>130</sup>

These women are not men, however. They are something other than men. They are women who, like Alice Crimmins, have strayed from their expected role in society.<sup>131</sup> But, by straying, they have not stepped into the role of men. They have become something other than women.<sup>132</sup>

Alice Crimmins refused to accept the five to twenty-year sentence handed down by the judge in the manslaughter conviction for the killing of Missy.<sup>133</sup> In 1969, the Appellate Division overturned Alice’s conviction on the grounds that three jurors had tainted the process by visiting the street outside of Sophie Earomirski’s apartment.<sup>134</sup> The state appealed the reversal and in 1970, the

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<sup>128</sup> Shapiro, Andrea, “Unequal Before the Law: Men, Women and the Death Penalty,” 8 Am. U. J. Gender Soc Pol’y & L. 427, 458 (2000).

<sup>129</sup> MacKinnon, Catherine, Feminism Unmodified (1987), pp. 3.

<sup>130</sup> MacKinnon, 34 Stan. L. Rev. at 708.

<sup>131</sup> Shapiro, 8 Am. U.J. Gender Soc. Pol’y & Law at 459.

<sup>132</sup> Keitner, Chimene I. “Victim or Vamp? Images of Violent Women in the Criminal Justice System,” 11 Colum. J. Gender & L. 38, 69 (2002).

<sup>133</sup> Jones, Women Who Kill at 275.

<sup>134</sup> People v. Crimmins, 307 N.Y. S. 2d. 81 (1969).

Court of Appeals of New York affirmed the Appellate Division's ruling and granted Alice a new trial.<sup>135</sup>

In July of 1970, Alice was indicted again, this time for the manslaughter death of her daughter and the murder of her son.<sup>136</sup> On March 1, 1971, a second trial commenced.<sup>137</sup> Alice was tried with much the same evidence, but this time, the defense presented testimony from Vincent Colabella, the alleged hit man hired by Eddie Rorech to kill Eddie.<sup>138</sup> Colabella testified that he had never seen Alice before.<sup>139</sup> On May 13, 1971, Alice Crimmins was convicted of first degree murder in the death of her son, and manslaughter in the death of her daughter.<sup>140</sup> She was again sentenced to serve five to twenty years on the manslaughter count and on the murder count, Alice was sentenced to life.<sup>141</sup> Again, the conviction was appealed. In 1973, the Appellate Division invalidated Alice's conviction for murder, ruling that the state had not established that Eddie's death had been the result of criminal activity.<sup>142</sup> Additionally, the manslaughter conviction was again overturned, this time on several grounds, including the inappropriateness of the prosecutor's statement in summation that

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<sup>135</sup> People v. Crimmins, 310 N.Y. S. 2d 300 (1970).

<sup>136</sup> Jones, Women Who Kill at 275,

<sup>137</sup> Id.

<sup>138</sup> People v. Crimmins, 343 N.Y. S.2d 203, 205 (1973).

<sup>139</sup> Jones, Women Who Kill at 275.

<sup>140</sup> People v. Crimmins, 343 N.Y. S.2d 203, 204 (1973)

<sup>141</sup> Id.

<sup>142</sup> Id.

Alice, “[didn’t] have the courage to stand up and tell the whole world she killed her daughter.”<sup>143</sup>

The state appealed the Appellate Division’s ruling.<sup>144</sup> The Court of Appeals agreed with the Appellate Division’s ruling regarding the Alice’s conviction on the murder count—the state had failed to present enough evidence to establish that Eddie’s death had been the result of criminal activity.<sup>145</sup> But, using a harmless error analysis, the Court reinstated the conviction for manslaughter of Missy.<sup>146</sup> Alice was sent to prison for the period of five to twenty years.<sup>147</sup>

## II. The Patriarchal Theory

Patriarchy is the proper lens through which to view the experience of women in the criminal justice system. The traditional dual model of viewing women in our criminal justice system illustrated above does not adequately describe what women experience or who women are. When we recognize that the dual model merely describes two ways in which the patriarchy manifests itself in the criminal justice system, we are one step closer to affecting real justice.

The traditional lenses through which the experience of women in the criminal justice system is viewed are fogged. It focuses on the woman herself

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<sup>143</sup> People v. Crimmins, 343 N.Y. S.2d 203, 205 (1973); the statement was inappropriate because it was the equivalent to the prosecutor’s comment on the ultimate issue—Alice’s guilt.

<sup>144</sup> People v. Crimmins, 356 N.Y. S.2d 213 (1975)

<sup>145</sup> People v. Crimmins, 356 N.Y. S.2d 213, 215 (1975)

<sup>146</sup> People v. Crimmins, 356 N.Y. S.2d 213, 216 (1975)

and not on the system. The patriarchal theory better describes how women who kill are portrayed and it can help us begin to focus on the question of why they are portrayed as they are.

The patriarchal theory focuses on how the woman is portrayed by the criminal justice system rather than on who the woman is perceived to be. It asks: “How did the prosecutor get the jury to believe this woman is beyond redemption?” and “What about that portrayal allowed the jury to find as it did?” The theory does not ask, “Does who this woman is fit into the chivalry theory or is she an evil woman?” The difference is subtle but important.

The patriarchal theory recognizes that sex-role stereotyping prevails over context-specific reasoning in our criminal justice system and the application of justice is therefore skewed. The application of the dual model makes it *appear* as if context-specific reasoning is being applied to women in the criminal justice system. By focusing on how the woman is perceived, we appear to be analyzing the facts of the specific woman’s life. Really, what we are looking at is how the patriarchal system of the law and the media describes these women. By not shifting focus to the system, we continue to interpret women’s lives through the veil of a patriarchal system. We are not allowing the women to determine who they are or explain why they murdered. We don’t even let these women say, “I don’t know why I did it. I had no good reason at all.”

When we compare the example of Lizzie Borden to that of Alice Crimmins, it is clear that the success or failure of the prosecutor in painting her

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<sup>147</sup> Id.

as someone who either did or did not conform to traditional sex-role stereotypes was indicative of the quality of the “justice” each woman received at the hands of the patriarchal system.

Women who are painted as conforming to traditional views of what women are and how they should behave receive chivalrous treatment, like Lizzie Borden. These women are “saved.” They are saved from themselves and from their feminine nature. They are saved by men. They are saved by the male-dominated criminal justice system.<sup>148</sup>

Women who are painted as not conforming to traditional views of what women are and how they should behave receive harsh, even cruel, treatment. These women get what they deserve, like Alice Crimmins. They bring the harsh treatment on themselves by refusing to be what women “are.” They threaten the patriarchy by refusing to conform to traditional sex-roles. It can even be said that these women aren’t really women. They are something other than women, but neither are they men.

The harsh treatment these women receive may or may not be harsh in comparison to the treatment that men who commit similar crimes receive. The patriarchal theory does not compare women’s experience to men’s experience. That would be comparing apples to oranges because what is expected of men and women is different in the context of patriarchy. We are not looking to see if

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<sup>148</sup> This prong of patriarchal treatment of women has interesting ramifications in my own career goals. Because I hope to be a criminal defense attorney, I will have to face the difficult questions: will I aid in the continuing problem of the manner in which my women clients are portrayed? Will I paint them as helpless, feminine victims of circumstance in order to get them lenient treatment or to keep them from death row? I think the answer is, rather unfortunately, “yes.” I will do what is necessary in the best interest of my client—even if it is not in the best interest of womankind.

women are dealt with equitably with men. We are looking to see if women are dealt with equitably among themselves.<sup>149</sup> We are also examining the cases to discover where sex-role stereotypes were allowed to prevail over relevant facts.

If justice was properly applied in either of the example cases above, maybe Lizzie Borden would have been imprisoned for the hatchet murders of her parents, and maybe Alice Crimmins would not have stood trial at all for the deaths of her children. We just don't know. What we would have known, however, was who these women were by their own determination. We would have known what they believed happened. Facts that were actually important to the determination of guilt or innocence would have been highlighted. The system would have looked beyond how these women dressed, who they slept with, what they carried to court, or how much money they had. Sex-role stereotypes would have taken a backseat to the facts of the cases. In looking at these cases using the theory of patriarchy, we see where justice was deficient.

### **III. The Patriarchal Theory and Women in the Context of Today's Capital Punishment Scheme**

This patriarchal theory is readily seen in the context of today's capital punishment scheme. When we view women on death row through the lens of patriarchy, we can see how who they are and what they are accused of doing

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<sup>149</sup> See Rapaport, Elizabeth, "Some Questions About Gender and the Death Penalty, 20 Golden Gate U. L. Rev. 501, 513 (1990). "I shared something of the intuition of those feminists who suspect that women killers, simply because they violate the gender tabu [sic] against violent aggression, might be susceptible to harsher treatment than men, whom we expect and sometimes oblige to use violence."

changes them in the eyes of the criminal justice system from women to something other than women.

I have done a cursory study of the women on death row. I was interested to see how these women were described. I was also interested in the types of crimes they were charged with. Whenever possible, I used appellate decisions to flesh out the details. I believe that the appellate courts' statement of facts describe who the woman was and what she had done with a minimum of sensationalism, yet reveal what caused the appellate court to leave her on "the row." Alternatively, I turned to newspaper reports written during the time of the trial and sentence. The problem with newspaper accounts is that they tend to sensationalize.<sup>150</sup>

As the statistics noted earlier show, women are rarely sentenced to die. There may be several reasons why death sentences are so rare for women who are arrested for killing. The prosecutors may look at the facts of the case and decide not to seek the death penalty, some women who kill are acting in classical self-defense against abusive men, and judges and juries, when presented with the prosecution and defense cases may refuse to impose the ultimate punishment. Unfortunately, those women who are currently serving time for murder, or who were never charged with murder are beyond the scope of this paper. Statistics reflecting the changes of a case between the arrest and charging decision are not readily available. Further, comprehensive lists of

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<sup>150</sup> I was distressed to find the number of women who are not the subject of reported appellate decisions. While I realize that the appellate process is an extremely slow one, I find myself wondering how many of these women have given up their appeals and have resigned themselves to a sentence of death.

women currently serving sentences for violent crime are too lengthy to examine in this project.<sup>151</sup>

The rarity of women on death row may come down to the powerlessness of women in the context of patriarchy. Men who are executed are powerful symbols of inhuman evil; they frighten the law-abiding public. In executing them, the public reclaims that power and banishes the fear. The victim becomes the victimizer. Executing women does not feel sufficiently powerful. It is impossible to regain power from someone who never had it in the first place.<sup>152</sup>

Women who receive the ultimate punishment are women who threaten the patriarchy, both in who they are perceived to be and the crimes they have committed. Indeed, these two things are inseparable. The women who are sentenced to die are the women who, like Alice Crimmins, do not conform to traditional views of what women are. These are the women who are “other” than women. Although being a woman is being “the other,” being other than woman does not make a man. It makes one the other “other.”

When a woman is “othered,” she becomes something that is not human. Women are “other” humans in our patriarchal system, and when who she is conflicts with the patriarchy’s definition of woman, she becomes much less than

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<sup>151</sup> These are really questions that interest me, though. In looking at cases from arrest through to disposition, how does the decision to charge a woman with capital murder differ from the decision to charge a man with capital murder? Is the conviction rate for women lower, higher, or about the same as the rate for men? Are the sentencing phases of capital trials largely the same for men as they are for women? How about the appeals process: are women’s death sentences reversed at a rate comparable to men’s and is there anything about women who’s sentences are overturned that is different from those who stay on “the row.” Is the rate of clemency for women higher than that of men and who are the women who receive gubernatorial clemency? These are questions that have yet to be answered and research that is yet to be done by anyone.

human.<sup>153</sup> When a woman is not human, she becomes something separate from the wives, mothers, and sisters that the patriarchy recognizes as “real” women. The “other” is not the nurturing female that “we” came out of. The “other” is an inhuman monster capable, if unchecked, of destroying the patriarchy and men along with it.

Many factors may contribute to the “othering” of these women. Generally, these are poor women, and they are disproportionately minorities. Forty-three percent of the women “on the row” are women of color.<sup>154</sup> These two factors, of course, are not limited to women. All inmates under a sentence of death are poor and a disproportionate number of them are racial minorities<sup>155</sup>. For a woman, being other than white and relatively well-off are strikes against her in conforming to what a “real” woman is.<sup>156</sup>

The woman may be a lesbian, whom patriarchy often defines as a man-hater.<sup>157</sup> The lesbian is, by rejecting heterosexuality, not a real woman.

Patriarchy fears her. A woman who does not need men is not a real woman.

Lesbians do not submit sexually to men, and therefore, their submission is

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<sup>152</sup> Howarth, Joan, “Feminism, Lawyering, and Death Row,” 2 S. Cal. Rev. L. & Women’s Stud. 401, 415 (1992).

<sup>153</sup> MacKinnon, Catherine, “Rape, Genocide, and Women’s Human Rights,” 17 Harv. Women’s L.J. 5 (1994).

<sup>154</sup> Statistics extrapolated from Death Row U.S.A., Winter 2002, see note 2.

<sup>155</sup> For men, 54.4% of death row inmates are men of color. Death Row U.S.A., Winter 2002, see note 2.

<sup>156</sup> Of course, this is true for men as well. The less like those who run the system one is; i.e. white, well-off, male; the less human one is.

<sup>157</sup> Statistics on sexual orientation of death row inmates are not available. In collecting women’s stories, I have noted sexual orientation when known. See appendix A.

meaningless elsewhere. A real woman must submit so that men may dominate.<sup>158</sup> A woman who refuses to be sexually dominated by men is not a real woman.

There are other factors related to how the woman is perceived as a person. A woman who is a mother might not have been “motherly” enough. She may be a drug addict, mentally ill, or mentally retarded. For the most part, the women on “the row” had no control over how they were perceived.<sup>159</sup> The prosecutor or the press described who and what she is. The woman’s voice is not heard in describing herself.

The types of homicides they have committed are not the type of crimes that are perceived as “womanly.” “Womanly” homicides<sup>160</sup> would include killings undertaken to protect the family, especially children. Women may kill when they are literally backed into a corner and it becomes a classic case of self-defense. Generally, the homicides for which women have been sentenced to die fall into four general categories: (1) murder for pecuniary gain, (2) murder involving sex, (3) murder for revenge, and (4) murders that simply fit into no category.<sup>161</sup> It is sufficient, I believe, to discuss the first three categories of crimes here.

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<sup>158</sup> MacKinnon, Catherine, Feminism Unmodified (1987), pp. 3

<sup>159</sup> If, indeed, women anywhere have much control over how we are perceived, but that is another paper.

<sup>160</sup> I have extrapolated this data based on homicides that women have not been sentenced to die for committing.

<sup>161</sup> See Appendix B, “Women on Death Row by Type of Crime.”

By far, the largest of these categories are women who are painted as killers for pecuniary gain.<sup>162</sup> This category accounts for fully one half of the population of women on death row.<sup>163</sup> There are three types of homicides committed by women convicted of killing for money. Women are often sent to “the row” for hiring hit men to kill someone (usually a husband) for the insurance money or the deceased’s estate. Some of these women have killed by their own hand to collect on an insurance policy. Finally, there are women who have been convicted of murder in the course of a robbery or burglary gone wrong.

The largest number of women on death row is the women who have been convicted of murder for hire. About 20.37% of the women awaiting a death sentence have hired someone to kill another. In nine of eleven cases, or 82% of the time, the victim was the defendant’s husband or boyfriend. Men who commit murder for hire tend to kill associates, friends, or strangers.<sup>164</sup>

These women are viewed as possessing all of the worst traits attributed to women. They are scheming, devious, and cunning. They think only of themselves and their own comfort. Worse yet, much like the black widow spider, they lure men into sexual relationships only to turn on them and take their money. Often, these women hired a boyfriend to kill her husband—in doing so, they had lured yet another man to his doom. There is a deep fear of the woman who would see men as nothing other than a meal ticket. These are women who

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<sup>162</sup> Id.

<sup>163</sup> Id.

<sup>164</sup> Rapaport, 20 Golden Gate U. L. Rev. 501, 510.

don't really love men; they love only men's money or the money they can get after men are dead. The homicides these women commit threaten the patriarchy; these women don't need men—only the money the men leave after they are dead.

Mary Ellen Samuels of California is one such woman. Styled “The Green Widow” by the press, in 1988, Ms. Samuels hired a hit-man to kill her estranged husband and then reportedly hired two more men to strangle the hit-man. Money was the only motive discussed at the trial.

After the hit man shot her husband in the back of the head, December 8, 1988, at his Northridge home, she spent the spoils—the entire \$500,000 inheritance—in less than a year. She traded in her black Mazda, with a license plate abbreviating “Nasty Vixen,” for a white Porsche. She bought furs in Vegas. She rented limousines for long nights of club hopping and vacationed in pricy resorts. She outfitted herself in slinky outfits from “Trashy Lingerie,” a Melrose boutique.<sup>165</sup>

Mary Ellen was also photographed by her lover in Cancun with \$20,000 in \$100 bills draped across her naked body.<sup>166</sup> Not the picture of a grieving widow.

Although Mary Ellen Samuels and her husband had been separated for three years, and he had agreed after a long struggle not to contest the finalization of their divorce, the press still painted Bob Samuels as a caring, hardworking, devoted husband.<sup>167</sup> He had struggled to give Mary Ellen the

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<sup>165</sup> “O.C. childhood crush ends in lavish spending, death row // CRIME: ‘Green widow’ sentenced to death for having her husband killed for insurance money.” LAURA SAARI: The Orange County Register, 9/18/94.

<sup>166</sup> Id.

<sup>167</sup> Id.

creature comforts she enjoyed and yet it was not enough for her. Mary Ellen was sexual, ungrateful, deceitful, conniving and evil.

Mary Ellen threatens the patriarchy—she saw her husband as a meal ticket and went about cashing in that meal ticket in a sneaky, deceitful, and underhanded manner. She seduced a man and won his love only to kill him when it appeared the well of his love was drying up. She is “other” than woman. She was a spider, a witch, the “green widow,” not a woman.

Mary Ellen Samuels did a horrible thing—she arranged for the death of another human being. In her trial, however, sex-role stereotyping clouded the application of justice. It would be easy to say, “Mary Ellen fit into the mold of an evil woman and this is why the jury was able to sentence her to die.” To say this would be to miss the role the patriarchy played in her trial and to shift the focus away from the sexism inherent in the system. The sex-role stereotypes here made Mary Ellen into a caricature and subtracted from the seriousness of the crimes and the tragedy of the death of her husband.

Patriarchy attributes some of these same traits to women who have killed by their own hands in order to collect on an insurance policy. Like hired killings, killing to collect on an insurance policy requires that the woman have planned the death of another, usually a husband or a child. The victims here are mostly family members, the people these women are supposed to care for. Patriarchy sees these women having lured men into sexual relationships and then pouncing, much like the women who have hired others to do their killing for them. Additionally, there is the added brutality of these women having done the killing

themselves. These women are scheming, devious and cunning and, therefore, deserving of death.

Robin Row had moved out of the family duplex in Boise, Idaho at the time the fire broke out. The duplex burned to the ground with her estranged husband and two young children inside.<sup>168</sup> Arson investigators discovered that the fire had two points of origin and that an accelerant had been used to start the fire. Also, the smoke detector had been disabled before the fire was started.<sup>169</sup> When the police searched Robin's car, storage unit, burned home, and the home of the friend she had been staying with, they discovered six insurance policies covering the three people who had died in the fire. Each policy named Robin as the beneficiary.<sup>170</sup>

The Idaho appellate court painted Robin as a scheming woman, someone who cared far more for her own comfort than she did for her family. Although the facts were immaterial to the determination that her conviction and sentence were constitutionally permissible, the appellate court found it necessary to note that two of Robin's children had died previously. One child had died of Sudden Infant Death Syndrome and the other child had died years earlier in a house fire in California.<sup>171</sup> There was no evidence that Robin had taken out insurance policies on either of these children, but the appellate court used these facts to

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<sup>168</sup> State v. Row, 955 P 2d 1082, 1085 (1998)

<sup>169</sup> Id.

<sup>170</sup> Id.

<sup>171</sup> Id.

paint Robin as a mother who failed to protect her young. Not a mother or a woman at all.

Robin Row and the women like her threaten the patriarchy in much the same manner as Mary Ellen Samuels does. She arranged the fiery deaths of her two children along with her estranged husband and she set the fire by her own hand. In the eyes of the patriarchy, Robin saw her entire family as a meal ticket. This was a way for her to get out from under irksome family obligations and get some money to live off of. Much like the case of Mary Ellen Samuels, we don't know if this is actually true. Since Robin's experience is filtered through the patriarchal criminal justice system, our perception of her experience is clouded. Further, the lives of the victims are cheapened—their experience is filtered through the same lens; sex-role stereotypes skew the application of justice to their lives as well.

A growing number of women on death row have killed during the course of a robbery or burglary.<sup>172</sup> About 18.5% of the women currently on death row have killed during the course of a robbery or burglary and drugs are often involved in these cases. About half of these women committed their crimes alone (six of ten) and about half of them were involved in a crime with a man (four of ten).

Here, the underlying crime was one for pecuniary gain—a robbery or a burglary gone wrong. The underlying crime was intended by the defendant, but the homicide was not. Generally, men are seen as the aggressive types, the

invaders of homes, and the terror of little old ladies. Indeed, the majority of men on death row are under a sentence of death for felony murder, many of which are exactly the types of crimes committed by the women who fall into this category.<sup>173</sup> These are women behaving most like men.

These crimes threaten the patriarchy not only in the type of crime, but also in the demographics of the women who have committed them. These are crimes of poverty and drug addiction. The vast majority of the women on “the row” for murder during a robbery are women of color: 80% are either Black or Latina and only 20% are white.<sup>174</sup> In comparison, as noted above, 43% of all women on death row are women of color. These women, therefore, already have struck three strikes against the patriarchy: they are poor, women of color, and very often addicts. They are not the white, middle class women that are recognized as “real” women by the patriarchy. The patriarchy is threatened in that there are women of color committing the crimes of aggression that are normally reserved for men. The case of Antoinette Frank illustrates this type of threat to the patriarchy:

Antoinette Frank, a former New Orleans police officer, was sentenced to die in Louisiana on March 4, 1995 for the deaths of three people during the early

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<sup>172</sup> U.S. Department of Justice, Bureau of Justice Statistics, found at <http://www.ojp.usdoj.gov/bjs/homicide>. Last visited 4/22/02.

<sup>173</sup> *Id.* Note: the statistics for men are not broken down into what the underlying crime is—the US Department of Justice counts rape/murders along with robbery/murders.

<sup>174</sup> See Appendix B

morning robbery of a restaurant.<sup>175</sup> Antoinette occasionally worked as a security guard at the restaurant. On the night of the murders, Antoinette visited the restaurant several times with Rogers Lacaze, a man she was involved with.<sup>176</sup> Just after closing time, Antoinette and Rogers came back one last time. Noticing Antoinette approaching the store and sensing something was wrong; one of the workers moved the cash from the register to the microwave in the kitchen.<sup>177</sup> Antoinette entered the restaurant using a stolen key and forced all the employees to the back of the store. Two employees hid in the walk-in cooler and heard several gunshots.<sup>178</sup> After Antoinette and Rogers left, the employees found 3 of their fellows dead.

When the police arrived, Antoinette again returned to the restaurant, this time as a police officer. She approached a restaurant employee and asked what had happened.<sup>179</sup> In the presence of several officers, the employee related what she had seen that night. Antoinette was arrested for robbery and murder on the spot.<sup>180</sup>

Antoinette Frank was a black woman who acted aggressively in the type of crime normally committed by men. Indeed, her partner in crime was a man, and there was no evidence that she took orders from him or acted in any manner

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<sup>175</sup> State v. Frank, 803 So.2d 1, 2 (La) (2001).

<sup>176</sup> Id.

<sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> Id.

<sup>180</sup> Id.

subservient to his wishes.<sup>181</sup> When women begin to take control and act aggressively in the manner normally reserved for men, they are no longer women. These women are treated severely by the criminal justice system.

The second main type of crime for which women are sentenced to die for are those murders that somehow involve sex. In one case the crime involves prostitution and in one case the crime involves the attempt to cover up the sexual assault of a child. In the vast majority of these cases, however, a man is involved and the woman either participates in the murder of the victim or is participating in the cover up of a sexual assault performed by a man.

Women who engage in these crimes are perceived as engaging in acts that are usually reserved for men. When women step into the sexually dominant role that belongs to men, the patriarchy is threatened. Although a close examination of the facts leads to the conclusion that most of these women were actually victims of sexual violence in their own right—often at the hands of the men who are also involved in the crime—they are not painted this way. These women are painted as either engaging in sexual aggression in their own right, definitely a realm reserved for men, or are painted as women who fail to protect those weaker than they—a crime against the “mothering” nature of women.

Latasha Pulliam<sup>182</sup> of Illinois was sentenced to die after the rape and strangulation death of a six-year-old girl.<sup>183</sup> At the insistence of a man who lived

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<sup>181</sup> Id.

<sup>182</sup> Latasha Pulliam is black and lived in the Chicago housing projects. It is interesting to note that while Illinois has six women on “the row” not a single one of those women is white.

<sup>183</sup> People v. Pulliam, 680 NE 2d 343, 348 (1997)

in the same apartment building, Latasha invited the young girl into the man's apartment. Latasha and the man sexually abused the young child.<sup>184</sup> The child promised not to tell anyone if Latasha and the man would just let her go unharmed. Latasha became concerned that because the girl knew who she was the child would be able to testify against her. So, Latasha strangled the little girl with an electrical cord and stuffed her body in a trash barrel.<sup>185</sup>

It is interesting to note that from the appellate record, it appears that Latasha didn't really understand that the child would die.<sup>186</sup> Latasha is mentally retarded with an I.Q. of 69.<sup>187</sup> Latasha was painted as a woman who participated in the sexual aggression of men. She aided in the sexual assault and then covered up the crime by killing the girl. Not only did she tread onto ground normally reserved for men, but she also failed to protect the child from the aggression. These acts made her less than a woman and mandated that she be dealt with harshly. She threatened the patriarchy in her sexual domination of others. This is a role reserved for men.<sup>188</sup> When women fail to accept their roles as the sexually dominated, the patriarchy may well crumble.

Women have also been sentenced to die for crimes involving revenge; this is a smaller percentage of women than the preceding categories, only about 10% of the women on death row have been sentenced for crimes involving

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<sup>184</sup> Id.

<sup>185</sup> Id.

<sup>186</sup> People v. Pulliam, at 349

<sup>187</sup> Id.

revenge. This is again a motive that is reserved for men. The aggression involved is very male. The reasoning is very much the same as the reasoning for women sentenced to die for crimes involving sex. Here, there are three types of revenge that women seem to engage in. First is revenge against a boyfriend or husband. Unlike the traditional “heat of passion” murders that involve the killing of an intimate in direct response to that person’s actions, this type of homicide harms the woman at least as much as the man. Tragically, this often involves a woman killing her children to hurt their father. Secondly, women are sentenced to die for crimes committed with boyfriends or husbands in which the motive for revenge is really the man’s motive. Finally, there is Aileen Wournos of Florida—she just may have killed in retaliation for a lifetime of harsh and abusive treatment at the hands of men.

Dora Buenrostro of California was sentenced to die after she killed her three children in an apparent fit of anger at the children’s father.<sup>189</sup> She reportedly wanted to hurt him as badly as he had hurt her.<sup>190</sup> Dora was painted as a vindictive woman, spiteful, hateful and uncaring. Even though the defense presented evidence of the abuse that Dora suffered at the hands of her husband, the jury was un-persuaded that there may have been other factors at

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<sup>188</sup> MacKinnon, Catherine, Feminism Unmodified (1987), pp. 3

<sup>189</sup> Generally, women are not sentenced to die for killing their own children. California is an exception to that rule. See Appendix A

<sup>190</sup> Smith, Raymond, “Mom to die for killing her 3 kids; The San Jacinto woman claims police framed her; the children’s father says justice prevailed.” Press-Enterprise, Riverside, California. Saturday, October 3, 1998.

play in the death of Dora's children.<sup>191</sup> In a letter to the editor of the *Riverside, California Press-Enterprise*, one of the jurors wrote that the prosecutors "did the job to convict this 'mother' who murdered her three children in cold blood."<sup>192</sup> By placing the word "mother" in quotation marks, this juror points out that Dora was not a mother by the time the trial was over, neither was she a woman.

The facts of Dora's abusive marriage are not readily available. The patriarchal system of the criminal justice system and the media didn't report on the facts of the alleged abuse, the system reports merely that she attempted to invoke "the abuse excuse" in her defense.<sup>193</sup> The allegation of domestic violence adds a new level to the story of Dora Buenrostro. Women who are victims of domestic violence are different than men who kill and they are different than other women who kill.<sup>194</sup> Dora and the women like her threaten the patriarchy by taking revenge in a seemingly irrational way. She struck directly against her husband by striking against his children. There may have been rationality to her

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<sup>191</sup> Id.

<sup>192</sup> "Duty of a Citizen" Letter by Gregory H. Gunn of Sun City, California; Press-Enterprise, Riverside, California, March 16, 1999. (It is interesting to note that Sun City is a planned Del Webb retirement community just outside the extremely conservative Riverside County city of Beaumont, California). Riverside County and neighboring San Bernardino County send more inmates to death row than any other area of California.

<sup>193</sup> Smith, Press-Enterprise, October 3, 1998.

<sup>194</sup> The patriarchal system deals with these women in one of two ways: (1) The system sees them as helpless victims of their own stupidity—the "why didn't you just leave?" question is asked. (2) The woman is simply not believed, or our collective eyes roll and the "abuse excuse" is complained about. The "battered woman syndrome" defense as it exists now is a problem for all women in the criminal justice system. Again, this is a topic beyond the scope of this paper, but one that is extremely interesting. How does a defense that allows a woman to be nothing more than a victim helpful to women in the criminal justice system? Yet, how do we recognize that sometimes killing their abuser (and sometimes their children) is the only option some women can see to end the abuse they suffer? Extraordinarily interesting—how can defense attorneys explain the realities their women clients face and still allow those women to be human?

actions in the context of her own abusive reality, but we don't get to hear what that rationality might be. The patriarchy silences her.

Aileen "Lee" Wuornos of Florida was a prostitute who worked the highways. She began her career as a prostitute at the age of 16 when she was turned out of her grandfather's home and forced to earn a living.<sup>195</sup> Her parents were divorced when she was born and her father hung himself in prison where he was serving a sentence for rape and kidnapping. Her mother abandoned her and she was adopted by her grandparents who were physically and verbally abusive.<sup>196</sup> At age 14, she was raped by a family friend and became pregnant; she was forced to carry the child to term and give it up for adoption.<sup>197</sup> Lee suffers from borderline personality disorder as a result of the abuse she suffered as a child.<sup>198</sup>

She is under six death sentences in the state of Florida for killing men who picked her up on the highways for sex.<sup>199</sup> All her victims were found near the highway with small caliber bullet wounds.<sup>200</sup> Their cars, wallets, and jewelry had all been stolen. Lee Wuornos has been celebrated as America's "first female serial killer."<sup>201</sup>

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<sup>195</sup> Keitner, 11 Colum. J. Gender & Law 38, 64.

<sup>196</sup> Id.

<sup>197</sup> Id.

<sup>198</sup> Wuornos v. State, 676 So. 2d 966, 969 (1995).

<sup>199</sup> Wuornos at 968.

<sup>200</sup> Wuornos at 968.

<sup>201</sup> Id.

The defense in Lee's case focused on the dangers of being a prostitute on the highways in Florida and on her tragic childhood. Lee testified that she carried a gun with her because she had been raped and beaten several times.<sup>202</sup> For all six murders, Lee claimed self defense, and in her five trials<sup>203</sup>, the jury didn't believe her.<sup>204</sup>

The prosecution painted this argument as a dispute over money and a matter of revenge.<sup>205</sup> To the prosecution, Lee was a woman, who, having had no control in her life, would now do anything to get it.<sup>206</sup> She lured men into her web with sex and then killed them. In his closing argument the prosecutor stated:

Aileen Wuornos has been portrayed as a victim by the Defense. She is not a victim in any sense of the word. She's not a victim because she's a prostitute. She has chosen to be a prostitute. Her reasons ultimately given was [sic] when she first started out, apparently a pretty young, young woman, was that she only made about seventy-five cents an hour working but she could make sixty to a hundred dollars at a time for sex. And she learned very quickly that was, for her, the preferred bay to make a living and that preference, that choice carried on throughout her lifetime... She indicated she likes sex. There's nothing wrong with that. But that's one of the reasons she was out there. She tried to push it off on the men, something to the effect, well, if they would keep their pants on, keep their wallets in their pocket, we wouldn't be out here.

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<sup>202</sup> Id.

<sup>203</sup> Lee pled guilty to killing Charles Carskaddon and received the death penalty for his murder. Wuornos at 967.

<sup>204</sup> Wuornos at 968.

<sup>205</sup> Keitner, 11 Colum. J. Gender & L. at 62

<sup>206</sup> Id.

I guess drug dealers would say the same thing...<sup>207</sup>

In presenting the case to a jury, the prosecution painted Lee as a spider with a choice. She was a woman who lured men into her web for sex and then destroyed them in retaliation for what other men had done to her. In the prosecution's view, as a sixteen-year-old girl, Lee *chose* to support herself by working as a prostitute. The pay was better than waiting tables. Here was the control that Lee had not been able to exercise in any other area of her life. By luring these men into her web, she was able to exercise control and dominion over them for the first time in her life. Cast over this need for control was Lee's sexual orientation. Because Lee was a lesbian, her hatred of men was complete. Lee was not a woman. She is a man-hating spider who killed repeatedly.

Lee Wuornos' power grab and search for revenge was particularly threatening to the patriarchy and she was dealt with in an extremely harsh manner. The sex-role stereotyping in her trial skewed the application of justice. In stating Lee was "not a victim because she was a prostitute," the prosecution encouraged the jury to buy into the patriarchal notion of "she asked for it." In comparing her to a drug pusher, he encouraged the jury to buy into the notion that men just can't help themselves. The patriarchal criminal justice system made it possible for the jury to see prostitution as a career move and not a desperate measure. Lee Wuornos is alone among serial killers. Most serial

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<sup>207</sup> Tanner, John W., "State's Closing Statement" at 2186, in 14 Transcript of Proceedings, Jan. 27, 1992. Quoted in Keitner, 11 Colum. J. Gender & L. at 62-63.

killers receive two or three sentences of death—she received six.<sup>208</sup> The patriarchal system dealt with her harshly, indeed.

#### **IV. Conclusion**

It is not my intention to excuse the actions of the women presented in this paper—justification is the bailiwick of their defense attorneys. The acts performed by these women are terrible ones, and the tragedies of their victims are very real. Rarely is anyone sentenced to die without having taken a life in a horrible act.<sup>209</sup> It has been my intention, rather, to present a new way of examining the experience of women in our criminal justice system; to focus the lens so we can see where the sex-role stereotype skews the application of justice—even when the prosecution got the right woman. It is important to see just *how* the prosecution got her.

By emphasizing what a “real” woman is over and above what the woman defendant is,<sup>210</sup> the patriarchal system allows us not to see the real women on trial. The system fails to define women as complex human beings. Instead they are a collection of characteristics that are better suited to cartoons or caricatures—not real people.

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<sup>208</sup> Wuornos at 967. I have always been astounded by multiple death sentences. I understand the reasoning behind piling on the sentences, but it’s not like the state can kill someone more than once.

<sup>209</sup> As of the writing of this paper, however, 100 men have been released from death row since 1976 because they were innocent of the crimes for which they were convicted.

<sup>210</sup> Or, even, in the cases of rape and domestic violence, who the victim is—but that, again, is beyond the scope of this project.

When our patriarchal system continues to emphasize sex-role stereotyping over facts that are relevant to determine a woman's guilt or innocence, the application of justice for all persons is skewed. Currently, traditional sex-roles take center stage over and above the facts relevant to determine guilt or innocence. The first step to changing a system is in recognizing its faults. If we begin to examine our criminal justice system with an eye to the notion that all characterizations of women are filtered through our patriarchal system, we can begin to see the problems and possibly how to fix them.