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THELMA AND LOUISE AND BONNIE AND JEAN: IMAGES OF WOMEN AS CRIMINALS

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As a child, I was fascinated by “Wanted” posters. Waiting for my mother to finish her errands at our local post office, I studied the notices on the bulletin board, peering into the full face and profile photos for evidence of criminal disposition. I looked at each poster to see whether any of last week’s “Most Wanted” had been apprehended, whether I would be able to recognize the suspects’ features if I saw them on the street, and whether the crimes listed were truly horrifying. (The crime was usually bank robbery because the post office concerned itself with federal crime and the FBI most wanted list.) Then I looked at all of the posters together to confirm that, once again, there were no women.

I was not sure how I felt about the fact that women did not seem to rob banks. I vacillated between feeling proud of my gender for avoiding violent, deviant acts (just as I was completely certain that if women ruled the world, war would end), and feeling slightly embarrassed at belonging to a gender of people too timid to take what they wanted in the same way that men did. As I grew older, I also wondered whether the growing women’s movement would somehow lead women to take their place in the wanted posters as well as in the Senate and the Stock Exchange.

I did not grow up to even the score by robbing banks myself. Instead, I teach Criminal Law, using casebooks which do not portray many more women criminals than the wanted posters.¹ There are predictable explanations for the casebooks’ focus on the crimes of men. Men commit more crimes than women, and the crimes that they commit

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1. In recent studies, Nancy Erickson and Mary Ann Lamanna concluded that gender bias is widespread in the teaching of criminal law and its popular casebooks. See Nancy S. Erickson &

are more varied.² Furthermore, casebooks select cases because they are legally interesting, not because they are representative. But these are the types of explanations feminists have learned to examine more closely. Are the crimes committed by women really of marginal legal interest, or is the focus on male offenders attributable to the fact that the editors of the casebooks are almost exclusively men? Does the fact that women commit certain crimes less often than men justify presenting a distorted picture of the crimes women do commit?³

Thinking about whether to supplement the casebook with more cases involving women defendants, I consider what image of the female criminal offender I would present. The casebook's most prominent cases portraying women defendants are cases about self-defense, telling stories of women who have reacted to being victimized. I feel my old wanted poster ambivalence about presenting my students, half of whom are women, with pictures of a world in which women are always the victims, even when they are the protagonists. Unquestionably, the picture of victimized women presented by these cases is all too real. But do these

Mary Ann Lamanna, *Sex-Bias Topics in the Criminal Law Course: A Survey of Criminal Law Professors*, 24 MICH. J. L. REFORM 189 (1990). See also Nancy S. Erickson, *Final Report: "Sex Bias in the Teaching of Criminal Law"*, 42 RUTGERS L. REV. 309 (1990).

One of Erickson's chief complaints about the criminal law casebooks surveyed was that they do not sufficiently address criminal law issues of particular concern to women, such as conjugal assault and battered spouses. See *id.* at 327-28. See also Mary Irene Coombs, *Crime in the Stacks, or a Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988) (criticizing CRIMINAL LAW (Rollin M. Perkins & Ronald N. Boyce eds., 1982) for deep and pervasive misogyny, based on its treatment of rape issues and use of exclusively male pronouns throughout). The casebook that I use, SANFORD H. KADISH & STEPHEN J. SCHULHOFER, *CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS* (1989) is less subject to this charge than many others, as it includes some discussion of battered women defendants and women's perspectives on self-defense law. *Id.* at 851-74. The section on rape is relatively substantial, *id.* at 365-44, and includes discussion of the marital exemption in rape law. *Id.* at 391-99. But attention to women and the criminal law is ghettoized in these two sections. There is scarcely a case involving a woman defendant outside of what one might call the "women's pages," giving the impression that the role that women play in crime is virtually always that of victim. The exceptions, which usually involve the liability of women for failing to care for children (see *Pope v. State*, 396 A.2d 1054 (Md. App. 1979) discussed *id.* at 198-202; *Jones v. State*, 308 F.2d 307 (D.C. Cir. 1962) discussed *id.* at 207-08), do little to dispel the prevalent but inaccurate stereotypes of women offenders which I discuss in this essay. It is also worth noting that it is not always evident whether cases outside the women's pages involve female defendants. The case titles use only last names, and the opinions themselves are edited in a manner which often omits any mention of defendant's gender and all telltale pronouns.

2. According to recent statistics, the only offenses for which women are arrested more frequently than men are prostitution and "runaway." See U.S. DEPARTMENT OF JUSTICE, *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1990*, Table 4.7, at 422 (Kathleen Maguire et al. eds, 1991) [hereinafter *SOURCEBOOK—1990*]. In most other crime categories, men comprised over 80% or even over 90% of all persons arrested for the offense in question. See *id.*

3. For a discussion of the range of crimes women actually commit, see *infra* notes 32-55 and accompanying text.

cases accurately represent criminality in women? What kinds of crimes do women commit outside of the casebooks?

I have tried to answer that question in two different ways and have gotten two intriguingly different answers. When I considered our prototypes of women who commit crimes, either real women who have achieved celebrity status by committing actual crimes, or fictional women criminals in movies, novels and other forms of popular culture, I found that these fall into a very small number of categories and present a fairly consistent picture of women as criminals, with the exception of *Thelma & Louise*.⁴ Women who commit crimes, whether real or fictional, are portrayed as madwomen, victims, or tag-alongs to male criminals. The crime they are most often shown committing is homicide, usually of a husband or lover. The motivation ascribed to women who commit crimes invariably arises from the woman's emotional relationship with a man: jealousy of a man, desire to please a man, fear of a man.

Statistics and writings of criminologists who have studied women and crime for the past two decades present a completely different picture of women as criminals. The crimes that real, unpublicized women commit are primarily property offenses.⁵ Homicides bring down the average percentage of offenses committed by women.⁶ Women commit more robberies today than the old wanted posters or contemporary representations of criminals would lead us to believe.⁷ Overwhelmingly, women's crimes have more to do with poverty than with passion. What I want to talk about in this essay is the discrepancy between these two sets of images and the reasons for that discrepancy.

I want to start by talking about well-known portrayals of women criminals in fiction and in the news media, because in many respects I think that these are the most influential sources of our views about gender and crime. Playwright David Mamet has described theatre as our "national dream life."⁸ The stories of theatre and film (and perhaps even the docudramas of the evening news) are successful, in Mamet's view, to the extent that they resemble dreams. The best stories enable us to identify with protagonists who grapple with some aspect of issues which

4. *THELMA & LOUISE* (MGM/Pathé Communications Co., 1991).

5. See *infra* notes 32-40 and accompanying text.

6. In 1989, the last year for which complete studies are available, women are credited with committing 18.1% of all crimes but only 11.9% of all homicides. U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 189 (1989).

7. See *infra* note 9.

8. DAVID MAMET, *WRITING IN RESTAURANTS* 8-11 (1986).

engage us, but which are too complex and difficult for reason to solve in any straightforward way.

Mamet's metaphor may explain why, in the past several years, there has been such a remarkable number of movies about mobs, gangs, and organized crime.⁹ These films seem to provide an opportunity for a large audience to work through what must be very compelling issues, in the manner of dreams—some complex combination of sublimation, fantasy, projection, and experimentation.

We have all read reviews or critiques deploring these films and stories about crime on the ground that they are a bad influence on the audience. The hypothesis of these critiques is that Warren Beatty's performance as Bugsy will provide a well-dressed role model for impressionable audiences who will flock to emulate Beatty's character, bringing his on-screen criminal activities to the real world. This hypothesis is certainly unproven and probably wrong. I suspect that, as Mamet's metaphor suggests, an audience's response to stories about crime is far more complex than that. Watching films about organized crime might, for all we know, reduce actual criminal behavior by allowing audience members an outlet or a means of sublimating their attraction to outlawry. It is also possible that audiences read broader messages into films about organized crime. Perhaps these stories are appealing because they pose questions about more general issues like the relative importance of material well-being and self-gratification as compared with the importance of following rules, or the satisfactions and dangers of belonging to a close-knit group with its own private, unorthodox code of conduct. For some audiences, these films may comment on the economic roller coaster of the past few decades, business ethics, or the excesses of capitalism. My assumption is that if so many people want to see these films, they must be addressing significant issues even if we cannot consciously identify what they are. Although these films may be unattractive to some, they are an important part of our national dream life. Nightmares are also dreams.

But where are the women in these films about organized crime? They are in the bedroom or the kitchen, if they are there at all. Few films allow women to explore issues about crime, or the broader issues raised by these crime movies, in terms of their own gender because cinematic portraits of women as criminals are limited, unrealistic, and generally

9. Some of the major motion pictures I recall seeing advertised recently are *GOODFELLAS*, *BUGSY*, *MILLER'S CROSSING*, *THE UNTOUCHABLES*, *MOBSTERS*, and recent additions to *THE GODFATHER* series. I do not follow this genre carefully enough to attempt a comprehensive list.

more useful to men than to women—with the exception of *Thelma & Louise*.

I. THELMA AND LOUISE AND THEIR COUNTERPARTS

Thelma & Louise, better than any other factual or fictional portrayal of crime, raises questions not just about why women commit crimes, but about why we *think* women commit crimes. The critical and popular reactions to *Thelma & Louise* were astonishing in their diversity and their vehemence. Some viewers have seen Thelma and Louise as victims, others as vigilantes. Thelma and Louise have been cheered and reviled, feared and envied. It is the first portrayal of women criminals, real or imagined, which does not loudly tell its audience what to think about women who commit crimes, but instead, poses the very questions feminist criminologists have been asking. This may be the first film to allow ambivalence about women and crime in the way that mob movies foster ambivalence about group criminality among men, and the first film to combat earlier stereotypes about women criminals in a way that warrants entry into the national dream life of women.

Thelma & Louise is a film about two women who go away for a weekend and end up as candidates for the most wanted list. There is no neutral way to tell this story, as I learned when I read reviews and discussed what I thought I had seen with other moviegoers. This is my version.

Louise, a waitress living in Arkansas, has a friend who has offered her the use of a cabin in the mountains for the weekend. Louise, who needs a vacation, invites her friend Thelma, who also needs a vacation, to come with her. Thelma is what is sometimes described as a “full-time homemaker” with a husband who is a caricature of pre-feminist man. Completely without redeeming features, he gives Thelma no satisfaction of any sort—no respect, no sexual satisfaction, not even fidelity. In one telling scene, after Thelma and Louise have become fugitives, Louise instructs Thelma to call home and to hang up quickly if she senses any abnormality that suggests that law enforcement agents have gotten to her husband and that the call might be traced. When Thelma calls, her husband greets her warmly. She promptly hangs up.

Thelma is unable to get her husband’s permission to go away for the weekend with Louise, so she leaves him a note in the microwave, on top of the dinner she has prepared. The film records the two women’s very different reactions to the prospect of a bit of freedom. Thelma, perhaps

insecure about being on her own, packs a gun her husband once had given her. During a stop at a roadside bar, Thelma has too much to drink and dances and flirts with a man who approaches her. Louise reacts more sedately, by overtipping the waitress.

When Thelma's dance partner leads her into the parking lot and tries to rape her, Louise comes to Thelma's rescue by pulling out the gun and warning the man to leave Thelma alone. When the man lets go of Thelma, but continues to be verbally abusive and threatening (at least to Louise who, we are led to believe, has been a rape victim herself), Louise shoots and kills him. One reviewer (male) found it unrealistic that Thelma and Louise then decide to flee rather than turn themselves in to the police.¹⁰ I found the reviewer's surprise unrealistic. Thelma and Louise speculate, probably correctly, that after Thelma's flirtatious behavior in the bar, her claim of attempted rape would not be taken seriously. They also fear, probably correctly, that Louise would be unable to defend herself by establishing any state of mind the law would understand or excuse.¹¹ Interestingly, the women never seriously consider making up a better story, even though, as Thelma later mentions, no one else saw what happened.

In the course of fleeing, Thelma and Louise are drawn further and further into a brief life of crime. Louise arranges for her boyfriend to withdraw her life savings so that she and Thelma can finance their escape to Mexico. Thelma seduces and is seduced by a young man who turns out to be a robber and, true to his trade, steals all of Louise's money. Feeling responsible for the loss of their money, Thelma uses what she has learned from this outlaw to rob a convenience store. When a state

10. Terrence Rafferty, *The Current Cinema: Outlaw Princesses*, NEW YORKER, June 3, 1991, at 86.

11. Under Arkansas law, Louise could have argued that she was guilty only of manslaughter and not of murder on the basis that she was acting under the influence of "extreme emotional disturbance." ARK. CODE ANN. § 5-10-104(a)(1) (Michie 1987). She would have had to establish, however, that there was a "reasonable excuse" for her extreme emotional disturbance, and the reasonableness of her excuse would be judged "from the viewpoint of a person in the defendant's situation under the circumstances as he [sic] believes them to be." *Id.* This statute could allow Louise to present to the jury the facts of her experience in Texas which apparently contributed to her becoming unusually disturbed by the would-be rapist's conduct. *See, e.g.,* *People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986) (allowing evidence of defendant's prior experience as a mugging victim to be considered to evaluate the reasonableness of his belief that deadly force was necessary to prevent a robbery or serious physical injury, on the basis that reasonableness is judged in light of defendant's "situation").

Extreme emotional disturbance could also have served as a mitigating factor that might have helped Louise to avoid a capital conviction, *see* ARK. CODE ANN. § 5-4-605 (Michie 1987). Arkansas law does not seem to allow Louise any defense to a manslaughter prosecution.

trooper later stops the women for speeding on their way to Mexico, Thelma pulls a gun on the trooper and locks him in the trunk of his car so that they will not be apprehended.

As I have described the crimes committed so far, the plot takes place in a Hitchcockian world where innocent, well-meaning people are sucked into a vortex of evil beyond their control and react in logical ways which they fear anyone outside their situation would not understand. Up to this point, *Thelma & Louise* is not a vigilante movie, but a film about the extreme circumstances—past and present—that might lead any law abiding person to break the law. After the shooting of the would-be rapist in the parking lot, Thelma and Louise do not hurt anybody. These women can be characterized as victims not only of the events portrayed in the movie, but of a lifetime of ill treatment by a hostile world dominated by hostile men.

There is, however, room for another version of at least part of Thelma and Louise's criminal career. Thelma delights in her newfound skill at robbery: "I finally found something I'm good at," she tells Louise. Freed from their former lives, the two women relax and enjoy themselves—driving too fast, singing along with the radio. In one of the movie's most powerful scenes, Thelma and Louise take revenge on a fuel truck driver who has been harassing them by blowing up his rig, creating a screen-filling explosion. (The truck driver, who was not in the truck, is unharmed.) The audience's reactions to this scene were more diverse than at any other point in the movie. Some cheered as Thelma and Louise broke free not only from their lives, but from their roles as victims, while others were horrified by the destruction and danger. I was tempted, a few sentences ago, to describe the truck explosion as "gorgeous." I excused myself for feeling that the truck driver looked silly running around with his hands flailing as he watched his truck erupt by assuming that the film had led me to that point of view. When I found out that not everyone reacted that way, I began to wonder how much of that point of view belonged to the film at all. There were more questions here than answers, and more than enough to dream about.

In my own, not entirely random, sample of reactions to this movie, I found a reasonably high correlation between the gender of the viewer and whether that viewer's overall reaction to Thelma and Louise was sympathetic or censorious. The reviewers and moviegoers who were upset by the incineration of the truck, who were not inclined to be understanding of Louise's reasons for shooting the would-be rapist, and who were quick to characterize Thelma and Louise as vigilantes run amok, tended to be

men.¹² Those who identified with Thelma and Louise and cheered them in their flight tended to be women.¹³ The movie is not kind to men. The only understanding man in the movie is the detective who only wants to cage Thelma and Louise. Many of the issues about women and crime that trouble men are raised in a manner not, for once, completely sympathetic to a male point of view. The man who tries to rape Thelma dies for his crime. The victim and those in the audience who sympathize with him would explain his death as attributable to the overreaction of a woman.¹⁴ He might even describe his actions as less than an attempted rape because Thelma had led him on. To the truck driver whose truck is blown up, Thelma and Louise suddenly and inexplicably erupted into a hysterical fit of violence. But this film does not, for once, endorse these views. There is another perspective commanding our attention too. By shooting a man that she perceived as a threatening rapist, Louise poses many of the issues presented when victims, often women victims, fight back. As in the cases involving battered women, we are led to ask how the situation looked to Louise, and whether her past experiences should be factored into our determination of whether she acted reasonably in the situation as she understood or experienced it.¹⁵ Men who identify with the deceased or the truck driver are left discomfited because they are not reassured that Thelma and Louise will be unequivocally condemned for their acts. Women who identify with Louise are allowed to hope for understanding from others in the audience, even if not from the law.

In some respects this movie is unkind to women too. Thelma and Louise are not portrayed as altogether competent or intelligent; many viewers blame them for getting themselves into trouble through their own naivete. Viewers are left with no doubt that the legal price for such uppity behavior is a high one.

12. See, e.g., Stanley Kauffman, *Thelma and Louise: Movie Reviews*, NEW REPUBLIC, July 1, 1991, at 28 (finding the plot contrived and the motivating force of the movie to be women's anger toward men); Jack Mathews, *On the Run with "Thelma, Louise,"* NEWSDAY, May 24, 1991, at 87 (describing the truck explosion as cartoon-like revenge). See Richard Schickel, *Gender Bender: A White-Hot Debate Rages Over Whether Thelma & Louise Celebrates Liberated Females, Male Bashers—or Outlaws*, TIME, June 24, 1991, at 52.

13. In a short review of the film on its release as a videotape, Janet Maslin described Thelma and Louise's crime-filled flight as "an exuberant cross-country breakout from monotony." *New Video Releases: Thelma and Louise*, N.Y. TIMES, Jan. 2, 1992, at C20. For a fuller elaboration of this view, see Janet Maslin, *Film View: Lay Off "Thelma and Louise"*, N.Y. TIMES, June 16, 1991, at 11.

14. Rape, he might argue, is not a capital offense. See *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (the death penalty is "grossly disproportionate" for the crime of rape and, therefore, is prohibited by the Eighth Amendment's cruel and unusual punishment clause).

15. See *supra* text accompanying note 11.

I have been trying to avoid affiliating myself with a strictly pro or con view about whether these women are heroes or dupes, because what I enjoyed most about this film was its ambiguity. This movie, unlike most others, gives women the opportunity to identify with the protagonists and to disagree with the opinions of the men in the film and in the audience. A woman's view of the truck explosion, for example, could focus on the fact that in this scene, women victims are finally transformed into actors unafraid to flout social convention and popular opinion candidates for the most wanted list. A woman who has suffered the harassment Thelma and Louise suffered from the truckdriver might wonder why Thelma and Louise (or she herself) took so long to react in this way; or that same woman could be put off by the violence. A viewer could empathize with Thelma and Louise for finding themselves in trouble, be angry at them for having gotten themselves there, or simply be confused by thinking a little of each of these thoughts.

One interesting feature of *Thelma & Louise*, as compared to other fugitive movies, is that public reaction to the fugitives within the movie does not exist. This film does not use the familiar convention of the voice on the radio, the glimpsed newspaper article, or the comments of men and women in the neighborhood which would have told us whether Thelma and Louise had become folk heroes, or whether their escapades were even being reported in a way that would have allowed anyone within the world of the film to judge their actions. Because the movie deprives us of internal public reaction and because Thelma and Louise are never put on trial, the movie does not tell its viewers how to react. We are invited to formulate our own subjective viewpoints, just as Spike Lee invited us to decide for ourselves what we think is the right thing. We can choose to enshrine Thelma and Louise as feminist heroines, to condemn them as scatterbrains, or, as I prefer, to be confused by them.¹⁶

This ambiguity, this lack of prepackaged judgment about who women criminals are, this invitation to identify with the protagonists if we wish to, or to cheer them on, may be unprecedented. Women who

16. Callie Khouri, author of *THELMA & LOUISE*, said in an interview after the release of the film, "There's so much talk about whether it's a feminist screenplay, whether it's a male-bashing movie. It's none of those things. . . . [Thelma and Louise] were never intended as role models, for God's sake." Larry Rohter, *The Third Woman of "Thelma and Louise"*, N.Y. TIMES, June 5, 1991, at C21. She continued, ". . . I also wanted, as a woman, to walk out of the theater not feeling dirty and worthless, for a change. . . . So many times you go to the movies, and what woman up there would you want to be? None of them." *Id.* at C24.

commit crimes usually come clearly labeled. Women who commit fictional crimes of violence are usually presented as hysterics, like the villain of *Fatal Attraction* and several of the women in *Basic Instinct*, as well as most of the women who are remembered in connection with actual crimes, like Lizzie Borden¹⁷ or Jean Harris.¹⁸ Prior to their sudden explosion into violence they are perfectly ordinary, well-adjusted women. But then strong emotions get the better of them, and they react to a difficult romantic or family situation by killing or attempting to kill someone they love.¹⁹ These are horror stories for men and cautionary tales for women. Men can get a good scare from the thought that the compliant woman next door, or even next to them in bed, might suddenly metamorphose into the archetypal madwoman.²⁰ The vengeful and irrational Queen of the Night was once a trusted wife and mother; the first Mrs. Rochester, the classic madwoman in the attic, was once charming and tractable.²¹ These stories can cause men to search the faces of the women around them, as I searched the wanted posters, trying to recognize the dangerous women, the women who might crack.²²

17. The woman from Fall River who lives in legend for having given her parents "forty whacks" is the subject of renewed interest. See Mary Cantwell, *Lizzie Borden Took an Ax*, N.Y. TIMES MAG., July 26, 1992, at 19 (discussing the case against Borden, other theories for who might have been responsible for the ax murders, and reactions to Borden's acquittal).

18. Harris, who was convicted of murdering her lover, Scarsdale Diet Doctor, Herman Tarnower, continued to be a public presence after her imprisonment because she wrote about her experiences in life and in prison. She was later found to be covered by the New York "Son of Sam" law, which required that an accused or convicted criminal's income from works describing his or her crime be deposited into an escrow account for victims of the crime or to other creditors. This silencing law was recently held unconstitutional by the Supreme Court. See *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board*, 112 S. Ct. 501 (1991). Perhaps now Harris will continue to write about her experiences and add new facets to our image of women who kill their lovers.

19. Some of these stories, like that of Madeleine Smith, who was acquitted at trial in Edinburgh in 1857 of charges that she had poisoned her lover, also function on a "whodunit" level, as real life mysteries. Whether Smith was actually guilty of the homicide (the jury found that she was "not proven" guilty) has been debated ever since. See F. Tennyson Jesse, *Madeleine Smith 1857, in FAMOUS TRIALS 133* (Harry Hodge & James H. Hodge eds., 1984). The lesson that an apparently ordinary woman may actually be a murderess is underscored by the fact that sometimes, even after the crime, we cannot be sure whether the woman suspected actually committed the crime.

20. The madwoman has long been a literary convention for a set of circumscribed attitudes toward women. See SANDRA M. GILBERT & SUSAN GUBAR, *THE MADWOMAN IN THE ATTIC: THE WOMAN WRITER AND THE NINETEENTH-CENTURY LITERARY IMAGINATION* (1979).

21. This was the account of Jean Rhys, in *WIDE SARGASSO SEA* (1966), her sequel to *JANE EYRE*.

22. Foucault points out that one of the central themes of our system of punishment is the attempt to brand and isolate criminals in order to reassure ourselves that we, and the people surrounding us, are different and distinguishable. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 272* (Alan Sheridan trans., 1977).

For women, these stories are useful only in a limited way. They warn about what can happen to the powerless or to those who allow themselves to lose control. These are not protagonists who invite identification by women. They are images of women created by men for their own purposes and out of narrow perceptions about how women behave.²³ They are pre-feminist women, the women Freud did not understand, whose crimes are dictated by the peculiarly emotional nature of their gender.²⁴ They are the aberrations, the exceptions, the madwomen who are displayed (usually by men) to help other women stay on track. The stories, like criminal statutes themselves, serve as a form of social control, not as a source of dreams. (Is it a coincidence that *Thelma & Louise* was written by a woman?²⁵ Even without investigating, I am willing to wager that the mob films that I mentioned earlier were all written by men.)

Battered women who kill represent an important variation on this category of women who commit acts of violence. A great deal of important legal, sociological and psychological work has established that some women defendants are also victims.²⁶ Rather than viewing all women who attack men as madwomen, a growing percentage of the public can now recognize some acts of violence by women as understandable reactions to a pattern of psychological and physical violence directed against them. This counterimage is useful in introducing the public to the idea that violent acts by women are not always irrational. But the battered woman is hardly a suitable counterpart to Warren Beatty's *Bugsy*. Neither hysterics nor battered women would be eligible for the most

23. See MOLLY HASKELL, *FROM REVERENCE TO RAPE: THE TREATMENT OF WOMEN IN THE MOVIES* 363 (1974) (characterizing most images of women in film as being rooted in nineteenth century attitudes about women and dedicated to reinforcing those views. "The closer women come to claiming their rights and achieving independence in real life, the more loudly and stridently films tell us it's a man's world.")

24. See Dorie Klein, *The Etiology of Female Crime: A Review of the Literature*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN* (Barbara Raffel Price & Natalie J. Sokoloff eds., 1982) (describing traditional male criminological research as having been based on stereotypical notions that crimes committed by women are determined by women's physiological and psychological nature). See also Christine E. Rasche, *Early Models for Contemporary Thought on Domestic Violence and Women Who Kill Their Mates: A Review of the Literature from 1895 to 1970*, 1 *WOMEN & CRIM. JUST.* 31, 49 (1990) (describing a crime of passion outburst model as one of six etiologies explaining women's criminality).

25. Callie Khouri, the author of *THELMA & LOUISE*, has said that she wrote the story because she perceived that there was a dearth of movies about independent women outlaws, rather than women playing "sex-object roles." See June Sawyers, *Callie Khouri Answers Critics of "Thelma & Louise"*, *CHICAGO TRIBUNE*, July 7, 1991, at CNI.

26. See, e.g., Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 *WOMEN'S RTS. L. REP.* 195 (1986).

wanted list.²⁷ Are there any women, fictional or real, who offer women their own glamorous version of the career criminal? Bonnie Parker, famous for her affiliation with Clyde Barrows and for being portrayed on the screen by Faye Dunaway, might have made it onto the list and might even make it into a woman's dreams. Portrayed as sexy, amoral, and wild, Bonnie committed the crimes that men usually commit and enjoyed herself while doing so. Neither hysterical nor abused, Bonnie represents another standard category of pre-feminist women criminals: the molls—subservient help-mates to their male criminal partners. In her case, as in others, the character based on Bonnie Parker, has become more important than the actual person. To explore whether Bonnie was just a tag-along, I would start by looking at what was shown in the film, not at what the real Bonnie Parker may have done. The many fictional and real examples of women who become involved in a criminal enterprise in a wifely way, because it is their man's career, are unlikely feminist heroes. Thelma and Louise, at least, acted for themselves.

One fictional woman career criminal who acted independently before Thelma and Louise, and who was at least as amoral and sexy as Bonnie Parker is Irene Walker, the character created by Kathleen Turner in the film *Prizzi's Honor*. This film had the distinction of creating the need for the gender neutral term, Mafia hitperson. Turner plays a contract killer who has persuaded the Mafia to become an equal opportunity employer.²⁸ But while Faye Dunaway's version of Bonnie Parker made me worry about whether it was alright to admire that freedom just a little bit, *Prizzi's Honor* made me uncomfortable. Perhaps this character was too much too soon—a *reductio ad absurdum* of the idea that as women's role in society changes, so will women's role in crime.²⁹ If there are real life counterparts for this character, I have not heard of them and I don't think I want to. This story takes me beyond the point where equality is my paramount value. But it may be that *Prizzi's Honor* worked for other women whose confusion about the competing demands of morality and equality takes a different form from mine. The extremes of Turner's character help me to empathize with those viewers who found *Thelma & Louise* more offensive than ambiguous.

27. To be eligible for the most wanted list, one must commit a crime like bank robbery or crimes of violence beyond a single crime of passion or self-defense.

28. Freda Adler predicted women's emergence into the Mafia as a logical outgrowth of women's expanding horizons in criminality. See FREDA ADLER, *SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL* 14-15 (1975).

29. See *id.* and sources discussed *infra* note 50.

Another cinematic woman criminal who does not fall precisely into any of the above categories is the protagonist of the recent French film *La Femme Nikita*. Nikita, who begins as a wild and anti-social figure, is caged for a prolonged period of time and trained, against her will, to function as a hired assassin by a man who seems to be a modern version of Petruccio. Nikita is glamorous and competent, but is quite literally controlled by a master. Not a traditional moll, but even more overtly male-dominated, Nikita may be the Bonnie Parker of the 90's. This thought is not encouraging.

I think that the names mentioned here compose a reasonably accurate picture of the range of female criminality as it is presented to the public in fiction as well as in the news.³⁰ The image of the madwoman who kills for reasons comprehensible only to her own warped mind has been tempered by the image of the battered woman whose violent reaction is easier to understand. The overall picture of women as criminals is a narrow one;³¹ the crimes are motivated by the desire to please or punish a man. This insinuating picture, however, does not correspond to recent information about the crimes women actually commit.

II. CRIMINOLOGISTS AND THE REAL WORLD

Over the past few decades, women in the real world have been committing a steadily increasing number of crimes. According to statistics compiled by the FBI, women were charged with 11.4% of all serious

30. News stories tend to fit and sometimes follow the pattern set by fiction. The trial of a Westchester woman who had an affair with a married man and then allegedly killed his wife was widely dubbed the "fatal attraction" case by the press.

Susan Faludi has identified the "fatal attraction" portrait of the vindictive woman scorned as part of the anti-feminist backlash she describes in her book, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* 119 (1991). In Faludi's view, the press seeks to report carefully chosen and narrated stories about real women in order to lend credibility to the fictional portrayals. *Id.*

31. Generalized statements like this, of course, invite counter examples. I have vague memories of a few women criminals in pre-*THELMA & LOUISE* films who may have been more complex and ambiguous figures: perhaps Melina Mercouri in *TOPKAPI*, Bette Davis in *THE LETTER*, and the gamine in *TO CATCH A THIEF*. Molly Haskell points to the movies of the 1930's as an exception to the general Hollywood treatment of women—women in movies of that era often projected an image of competence and strength as well as glamour. See HASKELL, *supra* note 23. At least one of those 1930's heroines, perhaps Joan Crawford, must have broken some fairly substantial laws and killed at least once during her on-screen career.

But such films are exceptions to what I think is a fairly clear rule of one-dimensionality. And the fact that it is plausible to list the notable women criminals in movies (how about Susan Hayward?) underscores the infrequency of these portrayals. Who would ever attempt to list all the movies about male criminals?

crimes in 1963³² and with 18.1% of serious crimes in 1989.³³ The percentage of property crimes³⁴ with which women rather than men were charged rose from 12.0% in 1963³⁵ to 24.0% in 1989.³⁶ That category includes fraud, where 45.7% of those charged were women³⁷ and embezzlement, where 38.8% of those charged were women.³⁸ The number of women arrested has also increased dramatically, particularly with respect to property crimes;³⁹ although in the last two years for which data are available, there was also a noticeable increase in the number of crimes of violence with which women were charged.⁴⁰

One problem with using these figures as a basis for exploring the relationship between gender and crime is that the data reflect the number of arrests or charges made rather than the actual number of crimes committed.⁴¹ The slippage between the number of crimes actually committed and the number of crimes for which suspects are arrested or charged may be greater for women than for men.⁴² Some students of gender bias in the criminal justice system have identified what they term a "chivalry

32. See U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES (1983) [hereinafter UNIFORM CRIME REPORTS]. The growth during this period was fairly even. See *id.*

33. 1989 is the last year for which data are available. See SOURCEBOOK—1990, *supra* note 2, Table 4.2, at 422. The population on July 1, 1989, is estimated by the U.S. Bureau of the Census to have been 51.3% female and 48.7% male. FREDERICK W. HOLLMAN, U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, U.S. POPULATION ESTIMATES, BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1989 312 (1990).

34. Property crimes are currently defined to include burglary, larceny, theft, motor vehicle theft, and arson.

35. See *supra* note 2, at 422.

36. *Id.*

37. *Id.*

38. *Id.* Other than prostitution, where 69% of those charged were women and "runaways," where 56% charged were women, see *id.*, these are the crimes where women's violation rates are closest to being commensurate with their representation in the population as a whole.

39. In 1963, women were arrested for 68,448 property crimes, see UNIFORM CRIME REPORTS, *supra* note 32. In 1989, the comparable figure was 104,938 (I have subtracted the statistics on arrests for arson, since arson was added to the property crime category only in 1979). SOURCEBOOK—1990, *supra* note 2.

40. The number of women arrested for violent crime rose 8.8 percent between 1988 and 1989. The figure includes a 12.3 percent increase in the number of robberies for which women were arrested, an 8.4 percent increase in aggravated assault arrests, and an 8.8 percent increase in burglary arrests. SOURCEBOOK—1990, *supra* note 2, at 423.

41. More direct sources about crimes committed include self-report studies, victimization surveys, or attitudinal studies. See Nicolette Parisi, *Exploring Female Crime Patterns: Problems and Prospects*, in JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES, AND CRIMINAL JUSTICE 111, 112-13 (Nicole Hahn Rafter & Elizabeth Anne Stanko eds., 1982). These studies, however, are less comprehensive than arrest data and, therefore, are no more definitive.

42. See, e.g., Christy A. Visher, *Gender, Police Arrest Decisions, and Notions of Chivalry*, 21 CRIMINOLOGY 5, 26-28 (1983), for a bibliography of references on this topic.

factor"—reluctance by police, prosecutors, and judges to treat female criminality as seriously as male criminality.⁴³ Others observe that this phenomenon is limited to a chivalrous reaction to white middle and upper class women⁴⁴ or limited to certain types of offenses.⁴⁵ The number of women arrested and prosecuted for drug offenses⁴⁶ or for weapon possession,⁴⁷ for example, might be disproportionate to the number of women who actually commit these offenses due to "chivalry" on the part of the police or prosecutors,⁴⁸ even if there is no corresponding disproportion in prosecution for offenses such as homicide.

Even though the available figures may only reflect the nature of crimes being charged rather than the nature of crimes being committed, they are still instructive because the statistics demonstrate that the portrait of the woman criminal we derive from the movies and the news does not correspond to the portrait we would get in the criminal courts. I can think of several reasons why we do not get a complete picture of the crimes women actually commit from film or the news media. To begin with, embezzlement may not seem as juicy a topic as a *Fatal Attraction* homicide. Moreover, even if filmmakers wanted to be representative, it is not clear what picture they should convey of the contemporary woman criminal. While significant changes in the nature and volume of crime committed by women seem to be taking place, even criminologists who specialize in women's crime⁴⁹ cannot agree on what is happening or why. For example, Rita Simon projected in 1975 that as more women left

43. See, e.g., Debra A. Curran, *Judicial Discretion and Defendant's Sex*, 21 CRIMINOLOGY 41, 54 (1983) (data reflect more lenient dispositions for women defendants at sentencing). *But see* Carolyn Engel Temin, *Discriminatory Sentencing of Women Offenders: The Argument for ERA in a Nutshell*, 11 AM. CRIM. L. REV. 355, 355-58 (1973) (hypothesizing that sentencing judges are actually more punitive to women defendants than male defendants for comparable crimes).

44. CLARICE FEINMAN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM* 32 (1986); Visher, *supra* note 42, at 19-20.

45. See Visher, *supra* note 42, at 19-20.

46. In 1989, women were arrested for 16.3% of drug abuse arrests. See SOURCEBOOK—1990, *supra* note 2, at 422.

47. In 1989, women were arrested for 7.8% of weapons offenses (including carrying and possession). *Id.* at 422.

48. "Chivalry" could also take the form of seeking the cooperation of women implicated in crimes in order to convict men who are also implicated. The only woman I noticed who was a potential defendant for bank robbery in the KADISH & SCHULHOFER casebook was Vanessa Hodges, who apparently escaped prosecution for bank robbery by cooperating with the government. See discussion of *United States v. Jackson*, 560 F.2d 112 (2d Cir. 1977), in KADISH & SCHULHOFER, *supra* note 1, at 647-51.

49. Studies of crime are no longer uniformly studies of male criminality. LADY BARBARA WOOTTON, *SOCIAL SCIENCE AND SOCIAL PATHOLOGY* 318 (1959); see also Kathleen Daly & Meda Chesney-Lind, *Feminism and Criminology*, 5 JUST. Q. 497 (1988) (noting that criminology, like other social sciences, centers on male subjects). See generally ALLISON MORRIS, *WOMEN, CRIME*

home to enter the workplace, women would have a greater opportunity to commit property crimes, and therefore, would do so.⁵⁰ Although property crime did increase, not everyone agrees with Simon's explanation. Other criminologists attribute this phenomenon to the feminization of poverty, citing an increasing absence of economic opportunity for women.⁵¹ Writing during the same year as Simon, Freda Adler hypothesized that as the position of women in society approximated that of men, so would the frequency and type of women's criminality.⁵² In her view, women would strive for complete equality in crime as in other areas and would not be hampered by innate gender differences.⁵³ (She probably would have enjoyed *Prizzi's Honor*, and felt less ambivalence than I do at the prospect of coed wanted posters.) The 1991 edition of Rita Simon's book claimed victory for her opportunity thesis—that women's property crime would increase while violent crime was likely to decline because women's frustration level would subside—based on statistics through 1987.⁵⁴ However, the 1988 and 1989 statistics show an increase in the number of robberies committed by women, as well as an increase in property crimes. Simon's thesis does not explain this, and while Adler's thesis⁵⁵ would explain the increase in number of robberies, it would not account for the relative constancy in other categories of crime.

This welter of facts and theories makes it difficult to construct an accurate picture of women who commit crimes. In light of the statistics and the competing theories to explain them, which picture would most accurately represent the crimes women really commit: a female Ivan Boesky committing securities fraud, an economically marginal bank

AND CRIMINAL JUSTICE (1987) (charging that patriarchal ideology is so deeply rooted that even recent studies that strive for gender neutrality do not succeed in extirpating highly gendered views).

50. RITA JAMES SIMON, *WOMEN AND CRIME* 1-2 (1975). This view has been described as the "opportunity thesis," emphasizing the objective factor of opportunity to commit certain crimes. See RITA J. SIMON & JEAN LANDIS, *THE CRIMES WOMEN COMMIT, THE PUNISHMENTS THEY RECEIVE* 3-9 (1991). Simon and Landis also speculated that as women experience greater satisfaction in their jobs and their lives, their frustration level will decrease and cause the number of violent crimes committed by women to decrease as well. *Id.* at 12.

51. See FEINMAN, *supra* note 44, at 24-28 (finding that poverty and drugs determine female criminality and that the women's movement had no noticeable impact); CAROL SMART, *WOMEN, CRIME AND CRIMINOLOGY: A FEMINIST CRITIQUE* (1976); Meda Chesney-Lind, *Women and Crime: The Female Offender*, 12 *SIGNS* 78 (1986) (suggesting that women have not experienced enhanced economic opportunities and that those who commit property crimes are the same poor women who traditionally have been prosecuted for petty theft and prostitution).

52. ADLER, *supra* note 28.

53. The work of Carol Gilligan, for example, would suggest that women would not be likely to commit the same crimes as men or to commit crimes for the same reasons. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

54. SIMON & LANDIS, *supra* note 50.

55. This idea is referred to by Simon and Landis as the "masculinity" thesis. *Id.* at 1-2.

teller embezzling a small amount of money, or an indigent woman doctoring the numbers on a welfare check? This is a more urgent question for those of us who want to supplement criminal law casebooks than for people who want to make movies. Movies do not need to be accurate; they need to be useful as dreams and commercial ventures. In fact, our lack of a clear understanding of the reality makes it more necessary for us to have fictional contexts in which to explore what are obviously timely and important issues about women and criminality. The barrage of movies about men in organized crime does not seem to represent the reality of male criminality any better, but men who find their own concerns about crime unaddressed by the mob movies have other cinematic accounts of criminality in men to consider, from the gentle, convivial thieves of *The Lavendar Hill Mob* to the steely vigilantes of Charles Bronson and Clint Eastwood.

I suspect that the true reason producers make few movies that show women engaging in organized crime, bank robbery or even embezzlement has more to do with economics than with realism. It is likely the same reason that the stars of Saturday morning children's cartoons are almost always male. I read recently that producers explain and defend their decision to star male characters in virtually all of their cartoons on the basis that studies show that girls will watch cartoons that star male characters but boys will not watch cartoons that star female characters.

Speaking for myself, I am no more likely to watch movies about male mobsters than I am to watch cartoons about male Smurfs or Ninja Turtles. The need to which those crime movies respond is not my need. I want to continue to ponder whether we should be pleased to see women on the wall of the post office. So I am waiting for *Thelma & Louise II*.

