DEFENDING SURVIVORS: CASE STUDIES OF THE MICHIGAN WOMEN’S JUSTICE & CLEMENCY PROJECT

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In the United States, the pursuit of clemency in cases involving battered women who defended themselves against abusers and prisoners on death row has raised crucial legal questions about the flaws and failures of our criminal legal system and the critical role that clemency needs to play in an unjust, oppressive system. Amid the politicized, punitive landscape of recent decades, the widespread grassroots movement for clemency for battered women emerged from a larger feminist movement to challenge sexist laws, unfair trials, excessive sentences, and the denial of equal rights that results from systemic injustice on the basis of gender, race, or sexual bias. In a comprehensive review of the fifty-five cases that comprised the original caseload of the Michigan Women’s Justice & Clemency Project—most of them involving convictions for murder or manslaughter—this study categorizes and analyzes the cases and outcomes on the basis of types of confrontations and gender, race, and economic issues. In addition to reflecting upon the lessons and losses, accomplishments and failures, political strategies, and creative tools assembled in more than two decades of grassroots struggles for and with incarcerated women, the Article addresses some of the profoundly disturbing human rights abuses perpetrated against women within our current, punitive penal regime. By linking the battered women’s clemency movement with other growing movements such as the innocence, anti-death penalty, and prison abolition movements, the Article contributes to the growing body of research and advocacy that is changing public policies and implementing feminist change in the criminal processing arena.

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INTRODUCTION

“At the time of the trial I was not aware of any physical abuse to Ms. Hamilton or her children. . . . This case has troubled me over the years and is the only instance where I have requested commutation.”1

Letter from Judge Robert B. Webster supporting commutation in People v. Linda Hamilton.

“[T]he trial attorney did not bring out the lengthy history of domestic abuse [the defendant] had suffered at the hands of the victim . . . [including] severe burns to her torso, [and] upper legs. . . . Doreen Washington should not only be given a public hearing, but I would go so far as to recommend that she be paroled to live with her son upon release.”2

Letter from Judge Gershwyn Drain supporting commutation in People v. Doreen Washington.

1 Letter from Judge Robert B. Webster, Oakland County, Michigan, Circuit Court Judge, to Mich. Governor Jennifer Granholm (Apr. 6, 2004) (on file with the Labadie Collection, Hatcher Graduate Library, University of Michigan).

In the United States, gender-based violence against women, including homicide, is legitimized by deeply entrenched social, legal, and economic power structures. Thousands of women who appeal each year to police, courts, and social service agencies for protection from batterers receive too little, if any, effective aid. If they are forced to defend themselves alone, or to kill their abusers in self-defense, the response is very different. They must face the same gender-biased institutions, public officials, and laws that sustain the ideologies of women’s subjugation and produce ongoing violence. Biased interpretations of self-defense law, repudiations of women’s reasonable actions in the context of lethal violence, and refusals to follow the law or to change gender-biased interpretations of the law are all common means of denying women’s due process rights. Because of the refusal of courts to take violence against women seriously, many incarcerated women are convicted of crimes they committed only to survive. As rejected claims of self-defense, their cases are among the most challenging to overturn. While clemency may be an imperfect and inadequate tool for changing the system that denies due process to women, it is often the only mechanism that allows for the full circumstances of a case to be presented without the constraints of legal technicalities. As such, it represents the last hope for justice for many who are wrongfully convicted or sentenced and who are serving life sentences.

04en.pdf (“Violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world. It cuts across boundaries of wealth, race and culture. The power structures within society which perpetuate violence against women are deep-rooted and intransigent.”); see generally Nicole M. Quester, Refusing to Remove an Obstacle to the Remedy: The Supreme Court’s Decision in Town of Castle Rock v. Gonzales Continues to Deny Domestic Violence Victims Meaningful Recourse, 40 AKRON L. REV. 391 (2007) (arguing that violence against women has been a prevalent problem throughout time, and that American law has failed to protect against such abuses).


7 Id. at 144-47 (noting that post-conviction efforts are “notoriously difficult to win”); see also Marvin Zalman, An Integrated Justice Model of Wrongful Convictions, 74 ALB. L. REV. 1465, 1470-71 (2010) (“The most difficult cases . . . involve rejected claims of self-defense.”).

8 See generally Margaret Colgate Love, Of Pardons, Politics and Collar Buttons: Reflections on the President’s Duty to be Merciful, 27 FORDHAM URB. L.J. 1483, 1487-94 (2000) (discussing the historical context of the uses of the pardon power in the United States); see also SCHNEIDER, supra note 6, at 145 (“[C]lemency is necessary and will continue to be necessary so long as individual battered women are denied their rights to present an adequate defense at trial and until society responds adequately to the problem of woman abuse.”).
In the United States, clemency is a critical component in the constitutional system of checks and balances. It has traditionally been used to correct injustices or respond to systemic problems such as harsh or unjust sentences or other misapplications of the law. Vested in the head of state, the clemency power permits the remission of sentences, after conviction, by means of commutation, pardon, reprieve, or amnesty. Commutation may reduce a sentence, usually to time served, or may substitute a life sentence for a death sentence; a pardon erases a conviction; a reprieve intervenes in an execution; and amnesty releases a person convicted of a political offense. The U.S. Supreme Court has emphasized that clemency provides a “fail safe” to good government. However, the notion that clemency functions properly as a safety valve for justice creates the erroneous impression that those who do not receive relief deserve their punishment while legitimating the current oppressive criminal legal system. It has been primarily the exercise of clemency in cases of prisoners on death row, particularly for African American men and for battered women who defended themselves against abusers, that has illuminated significant flaws and failures in our criminal legal system and that, at the same time, has demonstrated clemency’s valuable role in moving us toward a more just and equitable process.

This Article presents an overview of the original caseload of the Michigan Women’s Justice & Clemency Project (“MWJCP” and the “Clemency Project”), an all-volunteer, grassroots effort working to free women prisoners who acted in self-defense against or because of abusers, but who did not receive fair trials based on the facts of their cases. This Article provides

9 See U.S. CONST. art. II, § 2, cl. 1.

10 See Ex parte Wells, 59 U.S. 307, 314-15 (1855) (holding that the U.S. Constitution gives the President broad authority to grant clemency in almost any form); see also Herrera v. Collins, 506 U.S. 390, 411-15 (1993), for a discussion on when granting clemency is appropriate and what factors must be considered.

11 Herrera, 506 U.S. at 415.

12 See Love, supra note 8, at 1501-1502. In this study, we have replaced the phrase “criminal justice” with Joanne Belknap’s terms, “criminal legal system” and “criminal processing,” because research indicates that the processing of women and girls, especially those of color, is anything but “just.” See JOANNE BELKNAP, THE INVISIBLE WOMAN: GENDER CRIME AND JUSTICE 1 (3d ed. 2007) (defining terms and discussing in extensive detail how the legal process marginalizes women). We have also replaced the phrase “female offender” with terms such as “women’s lawbreaker” to problematize language that predisposes women to punishment within “the patriarchal power circuits from the state to the home.” See ANGELA Y. DAVIS, Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 341-42 (1998).

13 The Clemency Project also defends human rights and pursues alternatives to incarceration for women. The four women who were represented by the Clemency Project whose sentences were commuted by Governor Jennifer Granholm were: Doreen Washington, who served twenty years for the death of her violent husband after he was shot by her foster son; Linda Hamilton, who served thirty-three years for the death of her husband after he raped her four-year-old daughter and then held her and the children hostage for two weeks; Minnie Booze, who served twenty-nine years for conspiring in the death of her abusive husband; and Levonne Roberts, who served twenty-five years for a murder committed by her abusive boyfriend. See H.R. 95-16, 95th Leg., Reg. Sess., at 237-38 (Mich. 2009) (commuting Doreen Washington’s and Minnie Booze’s sentences by a letter of the governor); H.R. 95-1, 95th Leg., Reg. Sess., at 5-6 (Mich. 2010) (commuting Linda Hamilton’s and Levonne Roberts’s sentences by a letter of the governor). All four women were serving non-parolable life sentences for first-degree murder when they received clemency.

The Clemency Project also supported several other women who were granted clemency based on their own applications. Additionally, the Clemency Project represented two women who received paroles from life sentences for second-degree murder: Mildred Perry and Barbara Anderson. See Women of the Clemency Project, MICH. WOMEN’S JUSTICE & CLEMENCY PROJECT, http://www.umich.edu/~clemency/women_sm/released/08_mildredperry.html (last visited Jan. 25, 2015); Women of the Clemency Project, MICH. WOMEN’S JUSTICE & CLEMENCY PROJECT,
opportunities to analyze this specific group of battered women’s cases in terms of their details, contexts, and outcomes over time as well as to reflect upon the lessons and losses, accomplishments and failures, political strategies and creative tools assembled in more than two decades of struggling for justice, decriminalization, and human rights with and for incarcerated women. Our goal is to contribute to the growing body of research and advocacy that is changing public policies and implementing long overdue feminist change in the criminal legal sphere.

We have divided the Article into six parts. Part I discusses the origins of the clemency movement for incarcerated battered women in the United States and Michigan. Part II presents the original caseload of the Clemency Project that began in 1990, and categorizes the cases by type of confrontation and offense for analysis on the basis of gender, race, and economic issues. Part III reviews the Project’s early strategies and presents case studies of our first two victories. Part IV examines women’s unequal treatment in the criminal processing system as well as in prison. Part V discusses the expanding public education and outreach work of the Clemency Project and analyzes the clemencies and paroles granted by Governor Jennifer Granholm during her final term in office, from 2007 through 2010. Finally, Part VI reflects upon some of the obstacles faced by the Clemency Project.

I. THE GRASSROOTS MOVEMENT FOR CLEMENCY FOR BATTERED WOMEN PRISONERS

A. Clemency Projects in the United States

Amid the politicized, punitive landscape of the 1980s that Susan Faludi dubbed the “backlash” decade, the clemency movement for battered women prisoners emerged from a larger battered women’s movement to challenge sexist laws and public perceptions of the “murderers” in our U.S. women’s prisons and to free unjustly incarcerated women. With so many women murdered by male partners each year, advocates were discovering that a large number of women who were serving time for murder were actually abused survivors who had defended themselves. Unlike men, most women who kill their partners do so in response to

14 See generally SUSAN FALUDI, BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN 59-72, 454 (1991) (discussing in detail the rationale for calling the 1980s the backlash decade).

15 SCHNEIDER, supra note 6, at 20-23. Most scholars define wrongful convictions not only in the factual sense, where the wrong person is convicted of a crime, or is convicted of a crime that did not occur, but also convictions marred by serious constitutional, procedural or due process errors. See generally SURVIVING JUSTICE: AMERICA’S WRONGFULLY CONVICTED AND EXONERATED 401-18 (Lola Vollen & Dave Eggers eds., 2005) (providing oral accounts from multiple exonerees about the criminal legal system’s flaws and how those flaws led to their wrongful convictions). Causes of wrongful convictions in the United States include: (1) deceptive interrogation practices by police, id. at 20; (2) suspects who waive their Miranda rights, id. at 212; (3) polygraph tests (which are only 50% correct, but are used to elicit confessions), id. at 92; (4) false confessions, id. at 20; (5) hysterical media coverage, id. at 186; (6) harsh interviews of victims, id. at 374; (7) police torture, id. at 112; (8) eyewitness misidentification, id. at 120; (9) ineffective counsel, id. at 326; (10) prosecutorial misconduct (which played a role in almost 50% of the first seventy wrongful convictions overturned because of DNA evidence), id. at 50; (11) perjured testimony by witnesses, id. at 218; (12) bad scientific evidence, id. at 290; (13) all-white juries, id. at 124; (14) increased suspicion in spousal murder cases, id. at 400; (15) too few Innocence Projects, id. at 256; (16) loss of DNA evidence, id. at 386; (17) wrongful convictions and death row, id. at 348; and (18) lack of retrospective review, id. at 198.

16 See SCHNEIDER, supra note 6, at 146 (“Of the nearly forty thousand women in prison in the United
violent assaults and have no history of criminal behavior.\textsuperscript{17} Despite these significant differences, the overwhelming majority of these women are convicted of murder or manslaughter and receive long, harsh sentences demonstrating the systemic denial of access to justice that feminist scholars cite as evidence of the implicit collusion between the legal system and abusers.\textsuperscript{18}

In December 1990, when Governor Richard F. Celeste of Ohio commuted the sentences of twenty-five women who had acted in self-defense against their batterers, it was the first mass clemency of incarcerated battered women in U.S. history.\textsuperscript{19} His act, assisted by a group of feminist activists led by Ohio First Lady Dagmar Celeste, brought widespread public attention to the emerging grassroots movement for battered women’s clemency across the United States and beyond, and pointed to the failure of the criminal legal system to process battered women’s self-defense cases fairly.\textsuperscript{20} In Maryland, advocates produced a short film entitled “A Plea for Justice,” narrated by four women prisoners.\textsuperscript{21} In 1991, Governor Schaefer responded to the film by

States, roughly two thousand are incarcerated for killing a husband, ex-husband, or boyfriend—a number that constitutes around one-third of all women in prison for homicide. Studies have concluded that at least 45 percent and perhaps as many as 97 percent of incarcerated women who killed a partner were abused by the person they killed.

See Paul Guercino et al., U.S. Dep’t of Justice, Bureau of Justice Statistics, Prisoners in 2010 2 (2011), available at http://www.bjs.gov/content/pub/pdf/p10.pdf; see also Jacquelyn C. Campbell et al., Assessing Risk Factors for Intimate Partner Homicides, 250 Nat’l Inst. Just. J. 14, 18 (2003). (“In 70 to 80% of intimate partner homicides, no matter which partner was killed, the man abused the woman before the murder.”) (citation omitted). An estimated 1,640 women were murdered by intimate partners in 2007; however, this figure is based on voluntary reports to the FBI by law enforcement agencies, and victim-offender relationship information is missing in about one in every three murders reported. Shannan Catalano et al., U.S. Dep’t of Justice, Bureau of Justice Statistics, Female Victims of Violence 3 (2009), available at http://www.bjs.gov/content/pub/pdf/fvv.pdf.

\textsuperscript{17} See Barbara Bloom et al., Nat’l Inst. of Corr., Gender-responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders 4, 8, 18 (2002) (“Most women offenders are nonviolent, and their crimes are typically less threatening to community safety than those of male offenders.”).

\textsuperscript{18} See Sarah M. Buel, Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct, 26 Harv. Women’s L.J. 217, 224, 234-35, 254-56, 265 (2003); Belknap, supra note 12, at 8 (noting that in the past, women typically received longer sentences than men for killing their spouse); id. at 143-70, 343-59 (discussing sex discrimination in criminal and sentencing laws and describing current gender differences in crime processing).


granting clemency to eight women.\textsuperscript{22} In 1992, while Governor Weld of Massachusetts was reviewing cases for clemency, another independent film, “Defending Our Lives,” won an Academy Award for best short documentary.\textsuperscript{23} It was narrated by a group of eight incarcerated battered women calling themselves “The Framingham Eight,” two of whom were later granted commutations by the governor.\textsuperscript{24} Arguing for women’s releases based on the failures of the criminal legal system to provide due process, coalitions of feminist lawyers, students, domestic violence professionals, artists, and former prisoners proceeded to press for changes in the criminal processes affecting battered women defendants and prisoners.\textsuperscript{25} They petitioned governors, courts, and legislators to permit expert testimony and other evidence of abuse at battered women’s trials and to allow incarcerated women to present evidence that had been disallowed or ineffectively presented in their applications for clemency or parole.\textsuperscript{26} Successes have been hard won and sporadic over the years, but advocates have persevered, knowing that the injustice of battered women’s murder convictions means the women could otherwise die in prison.\textsuperscript{27}

\section*{B. The Michigan Women’s Justice \& Clemency Project}

In January 1990, the Michigan Battered Women’s Clemency Project (later renamed the Michigan Women’s Justice \& Clemency Project) was founded by activist Susan Fair upon her release from prison. Fair had worked as a jailhouse lawyer in prison, researching and writing other prisoners’ appeals, lawsuits, and grievances. She was also a plaintiff or class representative in a number of class action lawsuits against the state involving equal educational and training opportunities, sexual assaults by guards, surveillance and punishment practices, and other human and civil rights issues.\textsuperscript{28} Her vocal advocacy brought a foundation grant and volunteers—attorneys, domestic violence professionals, students, and other citizens—together to launch the new Project.

\begin{footnotesize}
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\item[22] Id. at 232.
\item[23] Id. at 233.
\item[24] Id. at 233-34.
\item[25] See, e.g., id. at 234 (“[A]ctivists in California’s battered women’s movement decided to organize a large group of attorneys to prepare clemency petitions for all of the women incarcerated for killing their batterers.”).
\item[26] In Ohio, both the courts and the legislature had revised the laws to allow admission of expert testimony in trials of women who killed their abusers prior to Governor Celeste’s acts. Id. at 228. In California, advocates worked with lawmakers to amend the state \textit{habeas corpus} law (CAL. PENAL CODE \textsection 1473.5 (West 2014)) to allow for incarcerated battered women to apply for parole if they had evidence of abuse that was linked to their crime. See Erin Liotta, Comment, \textit{Double Victims: Ending the Incarceration of California’s Battered Women}, 26 BERKELEY J. GENDER L. \& JUST. 253, 255 (2011).
\item[27] Since 1990, when the Clemency Project was founded, the authors personally knew four women who participated and were represented by the Clemency Project who have died in prison: Connie Hanes, Kim Lundgren, Carla Ringleka, and Mary Nemore. See \textit{Women of the Clemency Project: In Memory}, MICH. WOMEN’S JUSTICE \& CLEMENCY PROJECT, http://www.umich.edu/~clemency/women_sm/in_memory.html (last visited Jan. 25, 2015).
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Methodology

With permission from the wardens of the two Michigan women’s prisons at the time, notices were posted on bulletin boards inviting applications for participation in the Clemency Project. The notices stated that convictions must be directly related to battering, sentences should be life or long-term, and all appeals should be exhausted. Applicants were asked to submit pre-sentence investigation reports, police reports, briefs on appeal, transcripts and prison records, and documentation or statements describing their abuse. Most women who are battered do not report incidents to police, due to factors including the fear of retaliations from their abuser, shame, protection of their batterer, protection for themselves or their family, underestimation of the danger they face, or knowledge that police will not help them. To determine the relationship between battering and each woman’s crime, we instead relied in many cases on the women’s own statements and written descriptions, on correspondence and conversations with family members, and on references to abuse in court files.

As applications arrived, they were organized into case files that totaled sixty-nine by December 1991. A large board of directors consisting of more than twenty attorneys and domestic violence professionals reviewed the files to make decisions and to lay the groundwork for clemency applications. Several board members contacted the governor’s office, while others met with volunteers to organize the first round of interviews with the prisoners. Pairs consisting of one domestic violence worker and one lawyer or law student were assigned to interview each woman prisoner selected. Two sets of questionnaires were compiled for the interviews: the first set addressed the domestic violence aspects of the case, and the second the legal issues. Twenty-five women were selected for the initial interviews based on: (1) the likelihood of a successful clemency petition given the facts of the case; (2) the length of time already served; and (3) the amount of time remaining on the sentence. Women who had pending appeals or too little time remaining on their sentences were placed on hold for possible later support or review.

By the second year, the reports of the interviews were in, but disagreements were splitting the board along several fault lines. One was strategic, based largely on professional differences. Most of the attorneys recommended that only a small number of cases—those of “perfect victims” who fit the strict paradigmatic model of a passive, dependent, battered woman—should be submitted for clemency, since they would be most sympathetic to the parole board and the governor, and because they had the greatest chance of setting a successful precedent for others to follow. By contrast, domestic violence professionals felt that all or most of the

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31 Law student volunteers came from the University of Michigan and Wayne State University. Domestic violence volunteers came from Safe House, Domestic Violence Center in Ann Arbor and First Step in Plymouth, Michigan.

32 SCHNEIDER, supra note 6, at 141 (“It is possible that those women who are unable to fit themselves within the stereotype of a victimized, passive, helpless, dependent, battered woman will not have their claims to self-defense fairly decided.”); BELKNAP, supra note 12, at 356-57 (“The most prominent feature of . . . [battered woman’s syndrome] is learned helplessness, most severely criticized by feminists because it perpetuates images of women as passive and weak. An adoption of this view stereotypes women who kill their abusers as abnormal, although their
cases should be represented. As other disagreements arose and compromises could not be reached, the Clemency Project lapsed into dormancy. It was a low point for the women who were waiting to hear that the Project would represent them with applications for clemency.

II. SUMMARIES OF THE ORIGINAL CASELOAD

A. Description of Cases, Categories and Findings

Of the sixty-nine women who applied to the Clemency Project, fifty-five cases fit most of the original requirements. (See Tables 1-6 in Appendix). Fourteen cases were set aside because the abuse was not directly related to the crime, appeals were in progress, or file materials were unavailable for a full investigation of the case. Over half of the fifty-five cases that comprised the original caseload involved women of color (twenty-six were black, one was Asian, and one Latina): a ratio closer to the racial quotient of the women’s prison population (roughly 61% women of color)\(^3\) than the state’s population in 1990 (approximately 15.8% persons of color). Thirty-nine women (71%) were represented by court-appointed attorneys; this was the only data available to determine economic status. Forty-six of the cases involved deaths: of those killed, thirty-eight were the abusers themselves, four were victims killed by abusers, and four were bystanders who were killed in abusive contexts. The following summaries categorize the original caseload in more detail.

1. Women Who Killed or Injured Batterers in Face-to-Face Confrontational Struggles

Consistent with findings by Holly Maguigan and other scholars, the largest percentage (38%) of the fifty-five cases in this study involved direct confrontations with abusers.\(^3\) In all of the direct confrontations, the women used weapons to defend themselves, and in all but one, the abusers were killed. (See Table 1 on pages 44-45). One problem for women in this scenario is the criminal legal system’s assumption that for a claim of self-defense a physical confrontation must be a “fair fight,” which can be negated by use of a weapon.\(^3\) The assumption ignores issues of gender, since approximately three-quarters of women who are assaulted by intimate partners are responses are quite normal compared to victims in similar situations.”).

\(^3\) See MICH. DEP’T OF CORR., 2009 STATISTICAL REPORT at B-5 (2009), http://www.michigan.gov/documents/corrections/2009_MDOC_STATISTICAL_REPORT_319907_7.pdf. This information is calculated by the approximate data points appearing on the chart on page B-5 for “Commitments by Race for Women, 1990-2009.” The chart shows that about 320 white women and 520 “non-white” women were incarcerated in 1990.


\(^3\) See Holly Maguigan, Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals, 140 U. PA. L. REV. 379, 382, 388-401 (1991) (finding empirical evidence that strongly suggests that most homicides by battered women involve confrontational situations); see also V.F. Nourse, Self-Defense and Subjectivity, 68 U. CHI. L. REV. 1235, 1252 (2001) (citing Maguigan’s “significant evidence that battered woman claims tend to be confrontational rather than nonconfrontational” and noting how those findings are “consistent with her conclusions”).

\(^3\) See CYNTHIA GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 61, 134-35 (1989); see also Victoria M. Mather, The Skeleton in the Closet: the Battered Woman Syndrome, Self-Defense, and Expert Testimony, 39 MERCER L. REV. 545, 569 (“The common law of self-defense developed a concept of self-defense that is based on male notions of a ‘fair fight,’ of courageousness and cowardice, and of danger and immediacy of harm.”).
injured by male physical force alone (e.g., fists, beatings, strangulation). All twenty-one women in this group were defending themselves, yet they were charged, prosecuted, and convicted of murder, manslaughter, or assault. Their sentences varied widely, from three years in prison to life without the possibility of parole.

The most significant factor in this category was that fifteen of the twenty-one (72%) were women of color, all but one black. Beth Richie has shown how the difficulties that self-defense law presents for white women are compounded for women of color. Violence against black women by their intimate partners plays a greater role in their lives than in the lives of white women, and is the second leading cause of death for black women between the ages of fifteen to twenty-five; still, as Richie notes, rather than protecting black women who experience violence, the criminal legal system criminalizes them. In one of the cases in this category that is discussed later, Juanita Thomas presented evidence of dozens of calls to police about her boyfriend’s assaults, yet when she was forced to defend herself, this evidence failed to persuade the all-white jury who convicted her of first-degree murder. Richie notes that an analysis of the regressive trends within legislative and criminal processing systems, which began in the 1980s and built our contemporary prison nation, is critical to an understanding of what happens to black women who experience male violence when justice is inaccessible because their experiences are inconsistent with the sociopolitical norm.

Another woman who was sentenced to life for killing her abuser during a physical confrontation was Karen Kantzler, who shot her violent husband, a physician, during a struggle in their bedroom. In addition to his assaults on Karen, her husband had been sued previously at least once for physically attacking a stranger. No relief has been granted in her case—despite numerous clemency petitions, a motion for modification of judgment of sentence, a three-year study that featured Karen’s case and showed higher conviction rates and longer sentences for battered women than all other homicide defendants in Oakland County, Michigan, and other efforts by the Clemency Project. Correspondence from a colleague of Karen Kantzler’s husband attesting to her husband’s history of violence and an affidavit, letters, and a motion supported by

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38 See generally BETH RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE AND AMERICA’S PRISON NATION (2012).

39 See id. at 26, 62.


41 RICHIE, supra note 38, at 99-124.


44 Carol Jacobsen, Kammy Mizga, & Lynn D’Orio, Battered Women, Homicide Convictions and Sentencing: The Case for Clemency, 18 HASTINGS WOMEN’S L.J. 31, 56-62 (2007). In 1993, Karen Kantzler won a resentencing thanks to the efforts of her trial judge and agreement by the successor judge, Barry L. Howard, who resentenced her. However, the new sentence was overturned on prosecutorial appeal. Id. at 60.
her sentencing judge, who publicly declared that he made “a serious and tragic error” in her case, have not succeeded either.45

The wide-ranging sentences in this group reflect issues of gender and race bias, but also the problem that all defendants face when they cannot afford to retain attorneys who can investigate and defend them effectively at trial, as well as the harsh sentencing laws that affect every criminal case.46 All four life sentences went to women who had trials, three of them with court-appointed attorneys. The average indeterminate sentence was 9.8 years with court-appointed attorneys, compared to 6 years for those who could afford to retain attorneys. These findings correspond to recent studies in Michigan by the American Civil Liberties Union and the National Legal Aid and Defender Association showing that defendants in Michigan who have court-appointed attorneys receive harsher sentences than the facts of their offenses warrant, and longer terms of incarceration than those who can afford to retain attorneys.47

2. Women Who Killed Batterers in Non-Confrontational Circumstances

Twelve of the women in the group killed batterers during a temporary respite from the violence, either while the abuser slept or his back was turned, because they feared for their lives due to escalating or prolonged violence. (See Table 2 on page 46). Six were white women, and six were black. White women received longer sentences in this category: two of the three life sentences and an average of 13 years for those who were given indeterminate sentences, while one black woman received life, and the rest an average sentence of 7.9 years. Those who accepted pleas or bench trials also received shorter sentences than those who had jury trials.

Women who strike out at times other than during an active assault are not seen as defending themselves from deadly threat, even when violence has just ended or is about to recur, or whether police have responded to past calls for help.48 In a majority of courts, instructions on self-defense are not allowed when a woman kills during a non-confrontational situation.49 Violet Allen, one of the women in this category whose case is discussed later, was convicted of first-degree murder and sentenced to life in prison in 1977 for shooting her abusive husband after he


47 See generally AM. CIVIL LIBERTIES UNION, supra note 46 (detailing the blunders and inadequacy of court-appointed attorneys that resulted in harsher and longer sentences to the defendants who were represented by the attorneys); see also NAT’L LEGAL AID AND DEFENDER ASS’N, supra note 46 (discussing the findings of inadequacy in a study on trial-level indigent defense systems in Michigan).

48 GILLESPIE, supra note 36, at 186-87; see also Nourse, supra note 35, at 1236-38, 1246-49.

threw their baby across the living room and went upstairs to bed. He then ran downstairs to the kitchen, and she shot him again. Her case could be said to involve both non-confrontational and confrontational situations. No evidence of abuse was presented in her defense.50

The second woman convicted of first-degree murder in this category retained her own attorney, and was released on a motion for relief from judgment after serving eighteen years.51 The third woman convicted of first-degree murder in this category, who shot her abusive husband in non-confrontational circumstances, suffered primarily sexual, emotional, and financial abuse—forms of violence that are rarely reported and largely discounted by courts.52 She remains in prison despite numerous petitions for clemency over the years by the Clemency Project, and one by the University of Michigan Law School. Other women in this category received indeterminate sentences ranging from 2.5 to 42 years.

3. Women Who Hired or Conspired to Kill Their Batterers

Seven women were convicted of hiring or conspiring with another person to kill their batterers out of desperation when police and other authorities failed to protect them. (See Table 3 on page 47). Six of the seven were white. This group was the most severely punished by the criminal system: all but one were sentenced to life in prison. No evidence of abuse was raised in most of the cases. Defense attorneys in several of the cases advised against raising it since it would provide a motive for murder, but in at least one case, the judge refused the request on the grounds that it would be more prejudicial than probative.53 This strategy left those women without a defense and vulnerable to prosecutors’ depictions of them as murderous vigilantes, either “mad or bad.”54

Doreen Washington, whose foster son shot her violent husband in an attempt to protect the family from further beatings, was prevented by her attorney from presenting evidence of abuse or telling her story to the court.55 In 2008, she was the first woman in the Clemency Project, and the first battered woman in Michigan to be granted clemency when Governor Granholm commuted her life sentence.56

Linda Hamilton was also freed through a clemency petition submitted on her behalf by the Clemency Project and granted by Governor Granholm in 2009.57 In 1976, Linda Hamilton had caught her husband in the act of raping her four-year-old daughter when she returned home from

50 Film: FROM ONE PRISON . . . (Carol Jacobsen, 1994) (on file with the Labadie Collection, Hatcher Graduate Library, University of Michigan). See Appendix, Table 2, Row 2.
51 See Appendix, Table 2, Row 1.
53 Rockwell v. Yukins, 341 F.3d 507, 511-12 (6th Cir. 2003).
54 SCHNEIDER, supra note 6, at 147; see id. at 113-14; Maguigan, supra note 35, at 384, 435; Carol Azizian, Showing Their Side, FLINT JOURNAL, Jan. 20, 1994, at B3.
57 H.R. 95-1, 95th Leg., Reg. Sess., at 5-6 (Mich. 2010). See Appendix, Table 3, Row 1.
She immediately took her daughter to the hospital and reported the incident to
her husband began holding her and the children hostage by removing the phone from
their isolated, rural home, and taking the alternator and other parts out of the car so she could not
drive away. When he brought in an army buddy to “keep an eye on her” so that he could report
doctor, she convinced the man to help her escape. She drove through blinding snow across
the country with her children to return to her family and friends in Michigan. After several months,
had been discharged for other military misconduct and followed her. When he
threatened to take her and the children out of the state again, she told a friend that she was
terrified for her children’s safety once again. The friend hired someone to shoot Linda’s husband,
and Linda was charged with first-degree murder. Her attorney advised her to deny all knowledge
of her husband’s death, and at trial, the attorney presented no evidence of the rape or other abuse.
She was found guilty of first-degree murder and sentenced to life in prison. The rape was later
raised at the trial of the alleged hired killer, and while he was acquitted of the murder, he was still
convicted of conspiracy to commit murder.

Two other women in this category were also freed through clemency petitions submitted
by the Clemency Project during Governor Granholm’s final term. Mildred Perry and Barbara
Anderson were among the five women who were paroled from life sentences for conspiracy or
second-degree murder. Both women hired someone to assault their husbands after calls to police
were ignored. In both situations, the abusers were killed. A fifth woman in this category, who
also represented by the Clemency Project, was convicted and sentenced to life in prison for
second-degree murder, plus fifty to seventy-five years for conspiracy to commit second-degree
murder. She was resentenced on appeal years later, and served twenty-six years in prison. The
last two women in this category were paroled after they had served sentences of twenty-two and
ten years, respectively.

58 Transcript of Public Hearing at 9-10, In re Linda Rose Hamilton, Inmate No. 157537 (G. Robert Cotton
59 Id. at 10-11.
60 Id. at 11.
61 Id. at 17-20.
62 Id. at 28-29.
63 Id. at 46-49.
64 Id. at 99-105.
66 Transcript of Public Hearing at 16, In re Barbara Anderson, Inmate No. 207759 (G. Robert Cotton
Facility Mich. 2009); Videotaped Interview by Carol Jacobsen with Mildred Perry at Florence Crane Women’s Prison
(Aug. 21, 1993) (on file with the Labadie Collection, Hatcher Graduate Library, University of Michigan). See Appendix,
Table 3, Rows 2 and 5.
of the Clemency Project: Releases, MICH. WOMEN’S JUSTICE & CLEMENCY PROJECT, http://www.umich.edu/~clemency/women_sm/releases.html (last visited Jan. 25, 2015). One of the authors (Carol Jacobsen) was present to greet
Mary D. Suchy at the prison gate the day she was released on May 3, 2008. See Appendix, Table 3, Row 3.
4. Women Forced to Participate in Crimes Committed by Batterers

Michigan law dictates that any person who participates in a crime is liable for the same conviction as the actual perpetrator and further prohibits introduction of a defense of duress against a charge of homicide, even if the person acts out of necessity and reasonable fear that she may be killed.\(^6\) Nine women were convicted as aiders and abettors of crimes committed by their abusive male co-defendants. (See Table 4 on page 48). This group of women was generally younger, the youngest only sixteen. All nine had court-appointed attorneys. Four cases involved a murder committed by the abuser. All four women had trials, with three of the four being convicted of murder and sentenced to life in prison, while the fourth was convicted of accessory to fraud for filing a false statement that her husband was dead. In the five cases that did not involve deaths, two women were sentenced to life, and one was sentenced to ten years in prison, in cases involving their abusers’ sexual abuse of their children, and two women were sentenced to forty months and twenty-two and a half years, respectively, for aiding their abusers in larcenies.

The youngest woman in this category was a sixteen-year-old runaway, who was represented by the Clemency Project.\(^6\) She and her two sisters had survived incest and beatings at home, and were unable to find protection from the social agencies they went to for help. She met an older boy at school who became her boyfriend. He was a drug addict who began beating and controlling her “like his slave.”\(^7\) She escaped and went to her sister’s home, but he followed her and threatened to hurt her sister’s children unless she came back with him. On the day of the crime, her boyfriend told her to lure a man for sex to the abandoned house where the couple was staying so he could rob the man and steal his car. Instead, to her horror, he killed the man. When the two were arrested, she asked for an attorney, but finally cooperated on the advice of her mother.\(^7\) She was tried as an adult and convicted of first-degree murder. Her case may finally have the opportunity to be reviewed as a result of the Supreme Court’s recent ruling that mandatory sentencing laws that condemn juveniles to die in prison without the possibility of parole are unconstitutional.\(^7\)

5. Women Forced by Batterers to Commit Nonviolent Crimes

Two women who survived years of beatings, rapes, and broken bones at the hands of their violent husbands were also forced by them to commit financial crimes. (See Table 5 on page

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\(^6\) See Mich. Comp. Laws Ann. § 767.39 (West 2014) (“Every person concerned in the commission of an offense . . . may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.”); see also People v. Lemons, 562 N.W.2d 447, 453 (Mich. 1997) (“Duress is a common-law affirmative defense . . . applicable in situations where the crime committed avoids a greater harm.”); but see People v. Dittis, 403 N.W.2d 94, 95 (Mich. 1987) (“[D]uress is not a valid defense to homicide in Michigan.”).

\(^6\) See Appendix, Table 4, Row 6.


\(^7\) Id.

6. Women Who Killed Bystanders or Were Involved in Deaths of Bystanders

While it is most often women and children who are murdered at the hands of violent men, bystanders not directly involved in abusive incidents are also sometimes tragically caught in the crossfire when women are being abused. All four battered women who were convicted of murder in the deaths of bystanders were convicted and sentenced to life in prison. (See Table 6 on page 49). They were all represented by court-appointed attorneys. Perhaps the greatest resistance to considering duress in battered women’s cases lies in the criminal legal system’s fear that evidence of abuse used as a mitigating factor may bring acquittal from a crime that victimizes a third party.

Machelle Pearson was a sixteen-year-old runaway from incest and beatings at home. In 1984, she accidentally shot a woman during a robbery set up by her abusive boyfriend. She has been represented by the Clemency Project through several clemency petitions, but remains in prison serving a life sentence. She, too, may receive a review by the parole board as a result of the unconstitutionality of Michigan’s juvenile lifer law, although a review does not guarantee parole. Two of the other women in this category killed a bystander during a confrontation with their abusers, and the third woman was with a relative who committed murder in a public place while she was meeting with her abusive husband. These last three women died tragically, two of them while still in prison.

B. Discussion

The fifty-five women who comprised the original caseload of the Clemency Project (and many who have been added since) are survivors: not only of violent batterers, but also of potentially lethal failures by the criminal legal system. In most of the cases, issues of domestic violence were not presented to the court at all, or if they were, such efforts proved ineffective because defense counsel failed to present letters, preliminary examination testimony, or other evidence of abuse. Thus, neither the professionals nor the juries processed the women’s actions as self-defense in the context of battering. Overall, 40% of the women received life sentences, three of them in non-homicide cases. Indeterminate sentences in the homicide cases averaged 8.1 years. Most (68%) of the life sentences were in cases involving a third person, either a co-defendant or a victim.

Only four female judges presided over the fifty-five cases, which is not surprising given that women represented only 18% of the lawyers licensed to practice law in the state, and only 12.6% of the judges in Michigan during the late 1980s. Although the number is too small to be
statistically relevant, and gender is not a guarantee of unbiased judgment, it is interesting to note that in the two homicide cases presided over by female judges, the sentences were among the lowest given for this crime: three and five years, respectively. Male judges sentenced almost half of the women—twenty-two, including two juveniles—to life in prison.

Significantly, in the current sample of cases, occurring in various counties across the state from 1969 to 1991, Oakland County judges handed out the highest number of life sentences to battered women defendants (six), as well as the longest indeterminate sentences (eleven years on average)—higher than any other county in Michigan. This pattern of harsher sentencing of battered women defendants by judges in Oakland County corresponds with a 2008 study conducted by the Clemency Project of all the homicides in Oakland County during the period from 1986 to 1988, inclusive. The 2008 study found that battered women defendants in Oakland County received higher conviction rates and longer sentences than all other male and female defendants charged with homicide, including men with violent criminal histories.

Women in the current study had the misfortune to be convicted during a period when harsher laws and sentencing practices were on the rise. In addition, they were serving their sentences during a period when the state was cancelling all disciplinary and good time ("early parole") credits, and the parole board was extending sentences through denials of parole to eligible prisoners. These factors resulted in women serving more time than their offenses deserved, and even more than their sentencing judges intended. And for those serving life sentences, even hope for a last chance at justice was taken away: as Margaret C. Love, the pardon attorney at the U.S. Department of Justice from 1990 to 1997, commented, "clemency has been taken hostage in the war on crime."

ON GENDER ISSUES IN THE COURTS (1989) (documenting gender bias at all levels of the Michigan court system, including responses to violence against women in issues of domestic and family relations—such as divorce, child support, and custody—in the treatment of women whether as litigants, witnesses, attorneys, judges, defendants, or court personnel, and in the status of women within the profession of law).

The total number of women members of the State Bar of Michigan as of September 15, 1989 was 4,760 out of a total membership of 26,861. Thus, women represented eighteen percent of the lawyers licensed to practice law in the state. . . . Eighteen percent is far from the fifty-one percent representing the state’s female population. . . . Of the 581 members of the Michigan judiciary, 73 are female (12.6%).


78 Jacobsen, Mizga, & D’Orio, supra note 44, at 32.
79 Id.
80 See Paul C. Louisell, Parole Board Interpretation of Lifer Law Unfair, Unwise, Unconstitutional, 1 MICH. CRIM. LAW ANN. J. 29, 29 (2003) (“As of October, 2001, 1,740 prisoners were serving ‘parolable’ life offenses in Michigan. Some of these prisoners need to be in prison. Many do not. Under current Parole Board policy, all are being treated as if they received non-parolable life sentences in apparent defiance of the legislative scheme and the intent of the sentencing judges.”) (citation omitted); Norman Sinclair, Michigan Pays Millions for Parole Delays—Board’s Reluctance to Release 17,000 Eligible Inmates Costs the State $497 Million a Year, DETROIT NEWS, Dec. 30, 2003.
III. STRATEGIZING FOR WOMEN'S FREEDOM AND TWO SUCCESSES

A. Rebooting the Clemency Project

In 1993, the Clemency Project was revived under new leadership. Lynn D’Orio was a volunteer law student working with the Clemency Project from the beginning in 1990. Carol Jacobsen joined the effort as a volunteer in 1991. Together with attorney Lore Rogers, the three of us agreed to restart the Clemency Project.

We began to gather files, found space for our meetings in attorneys’ offices and at the local domestic violence center, and gained additional support from the American Civil Liberties Union and the University of Michigan. We recruited attorneys and volunteers, several of whom had participated in the early years. Some of our early discussions centered on whether it would be better strategically to focus on one or two clemency petitions a year, or wait until we had a large set of petitions to submit together, as activists in Ohio had done. Ultimately, we decided to submit the petitions as they were completed, one or two at a time, since we were still collecting the files and were essentially starting over with limited knowledge of the cases and no experience in preparing clemency petitions.

The Michigan Department of Corrections commutation form was of little help. The form made only six inquiries: (1) prison identification, including name, prison number and location, date of birth and citizenship; (2) offense information, including name of offense, court, judge and sentence; (3) description of the circumstances of the crime; (4) statement of why commutation or pardon is requested; (5) statement of why a pardon or commutation should be granted; and (6) plans for home and job placement in the event of release.82

However, we felt it was important to give the full context of the crime, including the history and details of the abuse, failures of the defense and trial process, the rehabilitation efforts and accomplishments of the woman while in prison, and information about families and support systems. We also attached as much evidence of abuse as we could locate from the woman herself, from family members, police reports, hospital records, court records, affidavits and letters. We filed our first clemency petitions on behalf of Violet Allen and Delores Kapuscinski in 1995, and for Geraldene Gordon the following year. Also in 1995, a video installation featuring Violet Allen’s case was installed at the Detroit Institute of Art, where it remained on public view for three months. Museum visitors signed postcards addressed to the governor calling for Violet Allen’s release. It was the same year that “From One Prison . . .”—a film narrated by four of the women in the Project—premiered in Michigan and New York City, and then went on an international tour sponsored by Human Rights Watch.83

In 1997, Geraldene Gordon, who killed her husband in bed after he had brutally beaten her, was released on parole. The governor’s office informed us that our petition for clemency on her behalf had helped to gain her release, but this was not true. Geraldene Gordon had served her full sentence as a model prisoner.84 Her release was unusual only because it was granted on her

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83  FROM ONE PRISON . . . , supra note 50; WALTER READE THEATER PROGRAM, 1995 HUMAN RIGHTS WATCH INTERNATIONAL FILM FESTIVAL, June 1995 (on file with the author).

first eligibility, rather than the routine practice of the Michigan parole board to deny early parole, which forced many prisoners to serve more time than their earliest eligibility release date.  

One problem we encountered during the first decade was that most of the volunteer attorneys were not able to follow through on their commitments to write clemency petitions for the cases they were assigned. Instead, most of them returned files months or a year later unopened, with apologies. We realized that the problem was our fault as well as theirs. We were limited by time and experience and by our commitment to remain a small, grassroots project unencumbered by too many decision-makers or institutional limitations. In 1998, we published our clemency manual to share our experience and information and provide guidance for other advocates, attorneys and prisoners’ families elsewhere. We distributed it widely and later made it available on our website.  

We found that our volunteer attorneys were most helpful in three primary roles: (1) reviewing case files, (2) meeting with policymakers on our behalf, and (3) writing brief legal notes for the petitions, which the three of us then developed throughout the years. Occasionally, we were able to find attorneys to file or assist with motions in court, although in most cases the women we represented had already exhausted their appeals. Since each woman is allowed to submit a new petition every two years, provided it contains new evidence or qualitatively new materials, the job became compounded. As our caseload increased, so did the job of finding new materials and arguments to submit to the Governor and the parole board.  

We have since wondered whether submitting one or two petitions at a time in those early years was the best decision. Perhaps a larger group of petitions would have placed greater pressure on then-Governor John Engler to act. Some of our volunteer attorneys were in contact with the governor’s office and we felt pressure to keep a low profile in the media at the beginning. Later on, we decided that keeping a low profile would only serve the Governor’s political interests, not ours. Looking back, it is unlikely that either of these strategies made a difference. Governor Engler’s immediate denial of every submission—whether submitted individually or in a group, publicized or not—belied his message that he would give fair and careful consideration to our petitions.  

Near the end of his final term in 2002, we filed a group of thirteen petitions together, with plenty of public fanfare. Those, too, were denied at the speed of light.

B. Our First Successes: Two Case Studies

By 1997, our first clemency petitions had produced no concrete results, but we doggedly
continued to work on a few clemency petitions. At the same time, our volunteer attorneys filed motions for relief from judgment on behalf of two women: Juanita Thomas and Violet Allen. Some of our legal advisors warned that these one-time, last-ditch options devoured time and toil and would only prove fruitless in the end, since these motions are rarely granted. They require fresh evidence and strong arguments for new trials. However, the greatest obstacle is that the decision to pursue charges resides, for the most part, with prosecutors. Widely recognized as the most powerful officials in the criminal legal system, prosecutors have to answer for their decisions less frequently than any other government agent in the criminal legal system.89 Without judicial review, policies, laws or other enforceable oversight, prosecutorial misconduct is both rampant, and virtually immune to consequences or accountability.90 The result is a culture of careerism, hidden decisions, and winning at all costs, producing appalling disparities and injustices, particularly for women and people of color.91 As volunteer attorney, Andrea Lyon, noted, “I’ve tried 130 murder cases myself, [and] I can’t think of a single case where there hasn’t been some form of prosecutorial misconduct.”92

1. Juanita Thomas

In 1979, at the end of her three-week trial, Juanita Thomas was convicted of first-degree murder in the stabbing death of her abusive boyfriend. Jurors had heard witness after witness testify to the violent attacks against Juanita Thomas by her boyfriend.93 Ms. Thomas testified that she made over one hundred domestic violence calls to police in the three years immediately preceding her abuser’s death.94 She further testified that she acted in self-defense.95 Nevertheless,

89 See ANGELA J. DAVIS, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR 8 (2007) (“Just about every official who exercises power and discretion in the criminal legal system has been criticized, held accountable, and, in some instances, stripped of some of his or her power and discretion for making discretionary decisions that produce disparate or unfair results, with one exception—the prosecutor.”).

90 See generally James Vorenberg, Decent Restraint of Prosecutorial Power, 94 HARV. L. REV. 1521 (1981) (detailing the immense breadth of discretion that prosecutors have in the criminal legal system, and how such unwarranted discretion is inconsistent with fundamental principles of justice, basic notions of fair play, and efficient criminal administration, which is especially worrisome given the lack of transparency in the exercise of prosecutorial discretion).

91 Id. at 1555 (“Giving prosecutors the power to invoke or deny punishment at their discretion raises the prospect that society’s most fundamental sanctions will be imposed arbitrarily and capriciously and that the least favored members of the community—racial and ethnic minorities, social outcasts, the poor—will be treated most harshly.”); see also MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 112-116 (2010) (explaining how “few rules constrain the exercise of prosecutorial discretion” and that most “lack any manual or guidebook advising prosecutors how to make discretionary decisions” and that the current immunization against “claims of racial bias and failing to impose any meaningful check” on prosecutorial discretion “has created an environment in which conscious and unconscious biases are allowed to flourish”).


95 Id.
Juanita Thomas was charged with first-degree murder and prosecuted on the theory that the stabbing of her boyfriend was premeditated.\textsuperscript{96} In 1996, Andrea Lyon, then a clinical professor at the University of Michigan Law School, agreed to volunteer on Juanita Thomas’s case. Together with her students, Attorney Lyon conducted an investigation and filed a motion and brief in Ingham County Circuit Court in January of 1997.\textsuperscript{97} Because of deceptive tactics and misconduct by the prosecutor on the case that included hiding evidence such as photographs of the crime scene, the criminal record of the victim, and a window screen that established the position of the parties matching Juanita Thomas’s version of events, she was wrongly convicted. The missing evidence was proof that she was innocent by reason of self-defense.\textsuperscript{98} Another attorney volunteering with the Clemency Project, Jeanice Dagher Margosian, assisted on the case.\textsuperscript{99} At a motion hearing, a different prosecutor argued that Juanita Thomas had failed to raise issues of abuse and the missing evidence in her appeals.\textsuperscript{100} Attorney Lyon explained that Ms. Thomas could not have raised them because they were outside the record and could not have been properly placed before the appellate court.\textsuperscript{101} The judge took the case under advisement and finally, after a year had passed, the prosecutor offered to vacate the first-degree murder conviction in exchange for a guilty plea to second-degree murder.\textsuperscript{102} He insisted on no publicity about the case. Although a press release announcing her release might have encouraged other prosecutors to consider the same option, we knew the media coverage could also trigger a backlash that would jeopardize Juanita Thomas’s freedom. Instead, we informed the prosecutor we would see him again soon with another case.

On a cold autumn day, October 17, 1998, Juanita Thomas was handed twenty dollars and a bus ticket, and she became the first woman to be freed by the Clemency Project.\textsuperscript{103}

2. Violet Allen

After the success in Juanita Thomas’s case, we were anxious to file another, similar motion. Violet Allen had survived horrendous physical abuse inflicted by her mother, stepfather, and step-uncle growing up, as well as by her husband as soon as she was married.\textsuperscript{104} She was raped by her step-uncle when she was seven years old and then blamed and beaten for it by her mother and stepfather.\textsuperscript{105} Throughout her childhood, Violet Allen was frequently beaten, hung upside down by her feet, lashed to her crib or to a post as “discipline,” and deprived of food,

\textsuperscript{96} Id.
\textsuperscript{97} Lyon, \textit{supra} note 40, at 56.
\textsuperscript{98} Id. at 51-53.
\textsuperscript{99} Id. at 56-57.
\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{102} Id. at 57-58.
\textsuperscript{103} Juanita Thomas now lives with her daughter in Lansing, Michigan. Letter from Juanita Thomas to author, Carol Jacobsen (Apr. 18, 1999) (on file with author).
\textsuperscript{104} FROM ONE PRISON . . . , \textit{supra} note 50.
\textsuperscript{105} Id.
medical care, and education. At sixteen, she was married to a thirty-three-year-old man who began to physically beat her just two weeks after they wed. Violet Allen’s husband controlled the money, her ability to leave the house, what she wore, and when she could use the telephone. He punished her for any perceived “disobedience” and threatened her life by holding one of his many guns to her head while warning that “he wouldn’t feel nothing about taking [her] off the face of the earth.”

After the birth of her child, Violet Allen could no longer endure her husband’s violence when he started to sexually and physically assault their baby daughter. On March 7, 1977, he flew into a rage and threw the baby across the room. When he went upstairs to lie down, she followed and shot him. He chased her downstairs and she shot him again as he lunged at her in the kitchen. She was convicted of first-degree murder by a jury on October 14, 1977. Despite the fact that many witnesses and family members knew about the beatings, no evidence of the abuse, self-defense, or defense of her child was presented in her defense. Further, Violet Allen’s defense attorney convinced her that the trial was going well, and that she did not need to testify.

Judge Michael Harrison presided over Violet Allen’s trial. At the time, the famous “burning bed” case of Francine Hughes was also on Judge Harrison’s docket. Hughes’s attorney had been calling for the judge to step down for prejudging Francine Hughes’s guilt with a biased remark he made prior to trial: “What kind of a woman would do that kind of a thing anyway?” Judge Harrison denied both the statement and the motion, and refused to recuse himself. The two cases proceeded until Judge Harrison’s own court reporter stepped forward and reported that she overheard him make the statement, and he was finally forced to recuse himself from the Hughes case. However, he delayed action until October 13, 1977, the day that

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107 Id. FROM ONE PRISON . . . , supra note 50.
108 Id.
109 Id.
110 Id.
111 See Addendum to Petition for Pardon or Commutation of Sentence for Violet Allen, Inmate No. 150376, at 2-6 (Mar. 7, 1995); Application for Pardon or Commutation of Sentence, Inmate No. 150376 (Scott Correctional Facility) (Mar. 7, 1995).
112 Id.; FROM ONE PRISON . . . , supra note 50.
113 See FAITH MCNULTY, THE BURNING BED: THE TRUE STORY OF AN ABUSED WIFE 204 (1989) (“There were two murders reported in the Lansing newspaper the week that Mickey Hughes died. The second involved a woman who had shot her husband.”); see also Judge Withdraws from Hughes Case, LANSING ST. J., Oct. 14, 1977, at 1 (reporting that on the Thursday of the week of Oct. 14, 1977, Judge Michael Harrison disqualified himself from presiding over the case against Francine Hughes, charged with the murder of her ex-husband, due to fears that he might be biased against women beaten by their husbands); W. Kim Heron, Woman Convicted, LANSING ST. J., Oct. 14, 1977, B-2 (reporting that Violet Allen was found guilty on that same Thursday in a case presided by Judge Michael Harrison).
114 Id. supra note 113, at 213.
115 Id.
116 Id. at 217.
Violet Allen was convicted of first-degree murder in his courtroom. Francine Hughes’s acquittal became a cause célèbre for the emerging battered women’s movement, but Violet Allen, like most battered women who kill their abusers, was convicted of murder and served more than twenty years in prison.

In 1999, a motion for relief from judgment was filed on Violet Allen’s behalf by the Clemency Project’s legal director, and the co-author of this Article, Lynn D’Orio. Errors identified in Ms. Allen’s motion included the defense attorney’s failure to present evidence of abuse and the provocation he was apprised of, as well as his failure to object to inadmissible hearsay that prejudiced Violet Allen’s case. Also listed were Judge Harrison’s defective instructions to the jury, which further denied her right to due process.

The prosecutor gave the facts in Violet Allen’s case the same fair consideration that he had in Juanita Thomas’s case. Again, he agreed not to oppose our motion in exchange for a plea to second-degree murder, and a sentencing plan that would free her. On January 19, 1999, the court granted the motion, setting a new trial for Violet Allen. Because of the plea agreement, there was no trial, and she was resentenced. With the good time credits she had accumulated over the years, she was released from prison approximately three months after resentencing. The Clemency Project’s successes in these two cases gave us hope for this strategy, and we filed similar motions for several more women. Unfortunately, we have not had success with this approach more recently.

IV. WOMEN’S UNEQUAL TREATMENT BY THE LAW AND THE STATE

A. Gender and Race Discrimination Investigations in the Courts

During the 1980s, when most of the women in this study were facing trials, courts in at least thirty states across the country were launching gender bias task forces to investigate discrimination taking place in the state and federal courts, and making recommendations for improving the quality and equality of the criminal legal system. The task forces issued reports at the end of that decade, which were replete with findings of bias against women and people of color at all levels. In Michigan, the Supreme Court’s Task Force found prejudicial responses that harmed women in cases involving violence against them, in domestic and family relations (such as divorce, child support, and custody), in the treatment of women as litigants, witnesses, attorneys, judges, defendants, and court personnel, and in the status of women within the profession of law. Recommendations by the Task Force included ethical standards and

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117 See generally Heron, supra note 113, at B-2.
119 See Motion for Relief from Judgment, supra note 106.
120 Id. at 3.
121 Resentencing Hearing, at 3-4, 22-23, People v. Allen (Nov. 4, 1998) (No. 77-27943-FC).
123 See Schafran, Update: Gender Bias in the Courts, supra note 122.
disciplinary systems for attorneys and judges in matters related to discrimination and bias; ongoing gender and race/ethnic education for attorneys, the judiciary, courts, and their employees; inclusion of women and minorities on legal committees, and as speakers; and inclusion of women and minorities on faculty, in programs, and in instructional materials in law schools.\textsuperscript{125} The Task Force’s recommendations were to be implemented through a standing committee, established by the state supreme court, on racial/ethnic and gender issues in the courts to carry out monitoring, publicizing, reviews of appellate decisions, evaluations of progress, reviews of complaints, and identification of problems.\textsuperscript{126} However, changes were glacial for the women who came in contact with the courts as defendants or litigants in domestic, civil, or criminal cases. While some states established permanent committees to assure progress toward implementing gender bias task force recommendations and innovating recordkeeping and other improvements, Michigan implemented no such oversight committee.\textsuperscript{127} Finally, in 1996, the State Bar of Michigan began to take up the task of addressing the report’s recommendations.\textsuperscript{128}

\textbf{B. Battered Women and Self-Defense Laws}

In the United States, as in most countries around the world, self-defense law requires the reasonable belief that the danger of bodily harm is imminent and that force is necessary.\textsuperscript{129} In practice, litigators and scholars have found countless ways that self-defense law has failed to provide a viable defense for battered women charged with murder.\textsuperscript{130} The ideological bias that tends to blame women for their own abuse, and deny or trivialize battering, is pervasive in criminal legal responses to battered women’s cases, whether they are victims or defendants, and functions to protect institutional power and the ways the criminal processing system produces the subordination of women.\textsuperscript{131} Legal interpretations of objectivity, imminence, and reasonableness function with particular subjectivity and prejudice against women and other disenfranchised groups in court, but particularly in women’s claims of justifiable homicide.\textsuperscript{132} Not only is it

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\item \textsuperscript{125} \textit{Id.} at 127-28.
\item \textsuperscript{126} \textit{Id.} at 140.
\item \textsuperscript{129} \textit{BLACK’S LAW DICTIONARY} 1481 (9th ed. 2009) (“Generally, a person is justified in using a reasonable amount of force in self-defense if he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid this danger.”).
\item \textsuperscript{130} See \textit{SCHNEIDER}, supra note 6, at 117 (“[I]t is now generally acknowledged that women defendants face substantial hurdles in pleading self-defense. Battered women defendants experience serious problems in meeting the judicial application of the standard of reasonableness and elements of the law of self-defense.”); see also Buel, supra note 18, at 302-11 (explaining the hurdles battered women must overcome when asserting the defense of self-defense); \textit{BELKNAP}, supra note 12, at 354-57 (discussing the disparities in treatment by the criminal legal system between men who murder their wives as opposed to women who murder their husbands).
\item \textsuperscript{131} See \textit{BELKNAP}, supra note 12, at 298-99; see also \textit{SCHNEIDER}, supra note 6, at 74-78 (explaining how questioning why a woman remains in an abusive relationship “puts the women’s conduct under scrutiny, rather than placing the responsibility on the battering man”).
\item \textsuperscript{132} \textit{SCHNEIDER}, supra note 6, at 82-83; 138-42 (discussing reasonableness and how there is significant
impossible to detach emotion and subjectivity from the law, but such ideals are closely equated with male perceptions and whiteness. Elizabeth Schneider has described how the concept of reasonableness in self-defense law is biased against women by listing some of the particular problems they face in the criminal legal system:

[T]he prevalence of homicides committed by women in circumstances of male physical abuse or sexual assault; the different circumstances in which men and women kill; stereotypes and other misconceptions in the criminal justice system that brand women who kill as “crazy” or worse; the deeply ingrained problems of domestic violence, physical abuse, and sexual abuse of women and children; the physical and psychological barriers that prevent women from feeling capable of defending themselves; and stereotypes of women as unreasonable. Schneider further argues that in order to understand a battered woman’s act of self-defense, courts must be sensitive to both victimization and agency and must see a woman’s action as reasonable within the context of her victimization. Federal judge Nancy Gertner describes how the judicial practice of making what are meant to be objective, gender-neutral decisions fails to take into account the context of women’s subordinate roles in crimes committed by men and factors of abuse, coercion, and battering that heavily impact illegal activity by women. She argues that a host of judicial decisions, “though neutral on their face, have redounded to the detriment of women offenders.” The gender-blind language of courts and laws also obscures statistical evidence showing that domestic violence is a gendered crime in which women are the primary victims.

Requirements of imminence and necessity in self-defense law also discriminate against women in their dependency on gendered, social norms. Generally defined as a single, brief public resistance to the concept of a “reasonable woman” standard, and objectivity and how the objective reasonable-man standard has been criticized for failing to take account of complex social reality and for producing a bias against women; Nourse, supra note 35, at 1238-39, 1266, 1276-77 (discussing imminence and questioning whether the imminence standard can truly be objective).

Belknap, supra note 12, at 143-70 (discussing sex discrimination in criminal and sentencing laws and describing current gender differences in crime processing).

Schneider, supra note 6, at 31; see generally Chimène I. Keitner, Victim or Vamp? Images of Violent Women in the Criminal Justice System, 11 COLUM. J. GENDER & L. 38 (detailing the various invidious influences that sex-role stereotyping has on the criminal legal system).

Schneider, supra note 6, at 81 (“[D]efense lawyers must be sensitive to both victimization and agency; the woman’s action has to be put in the context of her own victimization.”).


Gertner, supra note 136, at 295.

See Catalano et al., supra note 16.

Schneider, supra note 6, at 112-147 (explaining how a “sex biased” criminal legal system hinders women’s access to justice); Gillespie, supra note 36, at 50 (detailing the ways that the law treats men and women
confrontation (for example, two men fighting in a bar), these requirements do not correlate to women’s experience of abuse.140 Batterers use many tactics to control women, including physical force, coercion, intimidation, and threats.141 As Allison Madden notes, the definition of imminence is nothing more than a judge-made rule that often protects the batterer while it ignores a woman’s history of abuse.142 In People v. Wanrow, for example, a trial court instructed the jury to consider only the circumstances “at or immediately before the killing” while evaluating the gravity of the danger the defendant, a battered woman, faced—denying her the right to present the full context of danger she was in and the reasonableness of her conduct.143 If anything, studies have shown that battered women do not overreact; a U.S. Department of Justice study found that almost half of women who were murdered by their male partners had underestimated the imminent threat to their lives.144 As Cynthia Gillespie observed, “In circumstances like these, it is not at all an exaggeration to say that the threat of death or serious injury is always imminent.”145

Women in violent and abusive relationships are rarely free to leave at will, and yet they do, repeatedly, and at great risk.146 Research has shown that battered women face the greatest danger when they are attempting to leave or have left the relationship, a phenomenon Professor Martha Mahoney termed “separation assault.”147 As a report by the U.S. Department of Justice differently, resulting in a criminal legal system in which “women are effectively deprived of the same right to self-defense that men have always had under the law”).

140 In her book, “Justifiable Homicide: Battered Women, Self-Defense, and the Law,” Cynthia Gillespie recounts the history of American self-defense law and explains how it developed a male-centric perspective. GILLESPIE, supra note 36, at 31-49. She describes how American law was developed “by male judges and male legislators” to account for frequent, and in fact, “ancient,” situations in which men often found themselves: “the sudden attack by a stranger” and “a chance medley’ or ordinary fist fight or brawl.” Id. at 38, 49. She goes on to describe how the law of self-defense may have become more “civilized,” but is “not in any way becoming more responsive to the circumstances faced by women who needed to defend themselves against violent husbands or lovers.” Id. at 49; see also Maguigan, supra note 35, at 414 n.199 (identifying that most states “use the term ‘immediate’ to reflect a preference for the narrower particular instant focus and ‘imminent’ to denominate a broader surrounding circumstances focus”); Nourse, supra note 35, at 1238 (“We do not ask of the man in the barroom brawl that he leave the bar before the occurrence of an anticipated fight, but we do ask the battered woman threatened with a gun why she did not leave the relationship.”).


142 Alison M. Madden, Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum, 4 HASTINGS WOMEN’S L.J. 1, 31 (1993) (“[T]he definition of imminence is nothing more than a judge-made rule of common law reflecting a policy determination regarding the right of self-defense.”) (citation omitted).

143 On appeal, the Wanrow conviction was reversed. See State v. Wanrow, 88 Wash.2d 221, 234 (Wash. 1977) (discussing the trial court’s error). The Washington Supreme Court held that the trial court’s instructions violated Washington law and that instructing the jurors to only consider “those acts and circumstances occurring ‘at or immediately before the killing’” was “not now, and never has been, the law of self-defense in Washington” and that on the contrary, “the justification of self-defense is to be evaluated in light of all the facts and circumstances known to the defendant, including those known substantially before the killing.” Id. See also SCHNEIDER, supra note 6, at 30-31 (discussing the Wanrow conviction and reversal).

144 Campbell, supra note 16, at 16.

145 GILLESPIE, supra note 36, at 68.


147 Mahoney, supra note 146, at 65.
states: “[A] battered woman’s fear that her abusive partner will escalate his violence toward her at the point she attempts to separate from or end the relationship with him is validated, generally, by homicide statistics.”¹⁴⁸ In some jurisdictions, including Michigan, there is no requirement that a person must retreat from an attack, if it occurs in one’s own home.¹⁴⁹ Yet the condemnation of a battered woman that is contained in the classic question—“Why didn’t she leave?”—attests to the failure of courts to make this legal point understood.¹⁵⁰ The question also shifts the blame to women, rather than to batterers or the criminal legal system’s failure to protect women. As Professor Nourse has observed, “[A] state that denies the opportunity for self-defense asks its citizens to die rather than protect themselves.”¹⁵¹

Another area of self-defense law that is misunderstood, if not largely ignored by courts, is the ways that duress and coercion affect women’s lawbreaking.¹⁵² The central desire of an abuser is to control and subjugate the victim-survivor.¹⁵³ Clinical research reveals that abusive men resort to strategies of control through manipulation, isolation, deception, retaliation, coercion, and threats.¹⁵⁴ Victims are frequently cornered in lose-lose situations with limited access to food, help, money, friends, family and children, work, and transportation, so that their everyday lives are cut off. Yet the laws in Michigan prohibit evidence of duress to be presented as a defense in cases of homicide.¹⁵⁵

In the early 1990s, legislatures and courts began to address the problem of battered women who kill their abusers by enacting laws or creating precedents on existing laws on “battered woman’s syndrome,” (“BWS”), “battered spouse syndrome,” “battering and its effects” or “family violence.”¹⁵⁶ Such laws, often written in gender-neutral language that does not reflect what Professor Molly Dragiewicz identified as “women’s grossly disproportionate risk of violence from male partners,”¹⁵⁷ did not constitute a specific defense but allowed evidence of abuse to be presented in support of self-defense claims. Dr. Lenore Walker, who coined the term “battered woman syndrome” in her 1979 book The Battered Woman, defined the phrase through common characteristics that appear in women who are physically and psychologically abused by

¹⁵⁰ Browne, supra note 146, at 109-11; Mahoney, supra note 146, at 61-63.
¹⁵¹ Nourse, supra note 35, at 1300-01.
¹⁵² Gertner, supra note 136, at 304.
¹⁵⁴ Dutton & Goodman, supra note 153, at 743.
¹⁵⁶ Walker, supra note 153, at 185-86. Michigan law uses the phrase “battered spouse syndrome.” People v. Wilson, 487 N.W.2d 822, 823 (Mich. Ct. App. 1992). This term both pathologizes women who have been abused and ignores statistical evidence that most abusers are male. See Catalano et al., supra note 16.
¹⁵⁷ Dragiewicz & Lindgren, supra note 136, at 229.
their partners. She described three recurrent phases of a battering relationship: a tension-building stage, an acute battering stage, and a loving respite stage. Walker argued that a woman caught up in this cycle lives with constant fear that translates into a state of learned helplessness in order to survive since there is no escaping with one’s life.

While battered woman’s syndrome laws have made inroads in advancing public awareness of inequality, bias, and victimization in the law and society, they have also proven inadequate and even harmful to women. As Professor Beth Richie has noted, the use of the battered women’s syndrome in defense strategies is based on “a perspective that locates the problem of violence not with the abuse of power, but with maladaptive gender behavior. Further complicating this is the reified gendered notion of womanhood; a notion that is exclusive rather than inclusive of women from a range of racial, cultural, or class backgrounds.” Because of the historic acceptance of wife-beating by the criminal legal system, a woman who commits a violent act against her husband or boyfriend deeply threatens traditional concepts of home, safety, and a woman’s proper role. Rules of criminal law are discarded or distorted out of a misunderstanding of facts that are shaped by personal values and a tendency to blame behavior that offends one’s cultural norms or beliefs. The “syndrome” reinforces the notion of a single uniform experience that fits the traditional view of a battered woman: the passive, married, middle-class, white woman who suffers from a psychological problem. She is the “perfect victim,” an archetype whose action to save herself can be justified. This totalizing ideal not only ignores race, class, and other differences, but also

158 See WALKER, supra note 153, at xv, 31-35.
159 Id. at 56-70.
160 Id. at 31-35, 45-51. According to Walker, a battered woman is “a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights.” Id. at xv. The battered woman’s syndrome refers to characteristics that purportedly appear in women who have been physically and psychologically abused by their husbands or partners. Id.
161 See FROST, supra note 5, at 21 (“[P]ro-arrest policies for police handling of domestic violence incidents have contributed to an unwarranted rise in arrests of women for violent offenses.”); BELKNAP, supra note 12, at 356 (“[A] number of costs are associated with using BWS as a defense. Although it goes beyond insanity and self-defense claims to help women who kill their abusers, it perpetuates stereotypical images of women. Ferraro appropriately criticizes pathologizing these women by calling it a syndrome and asks: ‘[I]s it so difficult to understand why battered women fear for their lives without relying on a dubious psychological malady?’”).
162 RICHE, supra note 38, at 80; BELKNAP, supra note 12, at 144-49 (detailing ways in which criminal laws and their applications are often gendered and how “[m]any efforts to improve the lot of women in the crime-processing system have backfired, resulting in worse treatment or stricter guidelines for females”).
163 See BELKNAP, supra note 12, at 180-81, 243-44; see also GILLESPIE, supra note 36, at 15, 140-42. It deserves mentioning that the foundations of English common law, that American self-defense law was built on, historically treated women who killed their husbands as if they had killed the king, and held them guilty of petty treason; the punishment was being burned alive at the stake, and it was “legally impossible” to use a plea of self-defense against a charge of treason. Id. at 37. See also 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *75 (declaring that a wife who killed her husband was guilty of petty treason).
164 See generally BELKNAP, supra note 12, at 143-70 (discussing sex discrimination in criminal and sentencing laws and describing current gender differences in crime processing).
165 See SCHNEIDER, supra note 6, at 62-65; BELKNAP, supra note 12, at 356-57.
166 See BELKNAP, supra note 12, at 356-57.
invalidates women’s many strategies for survival—from placating batterers to fighting back, calling police or leaving—and diverts attention from the larger problem of gender discrimination in the courts, law enforcement, and society.\footnote{See id. at 152-53 (describing how the criminal legal system is prone to making decisions based on stereotypes that white women are more feminine, fragile, deserving of protection, and more amenable to rehabilitation than women of color or immigrants, who might be stereotyped as “aggressive” and “virile,” and how poorer women are less likely to be treated as “ladies” than wealthier women and receive more severe crime-processing treatment); id. at 324-25 (recognizing that battered women syndrome laws are geared towards “pure victims,” who do not hit back, want the police to arrest the batterer, and experience the same violence in the same ways, to the detriment to women who do not fit this “pure victim” image).} Such widespread assumptions also prevent women of all colors from presenting their full, truthful stories to attorneys, courts, advocates, and parole boards.\footnote{Sharon Angella Allard, \textit{Rethinking Battered Woman Syndrome: A Black Feminist Perspective}, 1 UCLA WOMEN’S L.J., 191, 193-95 (1991); Jacqueline St. Joan & Nancy Ehrenreich, \textit{Putting Theory into Practice: A Battered Women’s Clemency Clinic}, 8 CLINICAL L. REV 171, 219-23 (2001); Carol Jacobsen & Lora Lex Lempert, \textit{Institutional Disparities: Considerations of Gender in the Commutation Process for Incarcerated Women}, 39 SIGNS: J. WOMEN CULTURE & SOC’Y 265, 272-74, 276-77, 282-84 (2013).} As Susan Brody summarizes the gender problem in presenting the full facts of women’s cases:

The voices of these groups for example, women, are necessarily excluded from legal discourse, in part because they have been constrained by and dependent upon the language of the patriarchy and unable to develop their own language and narrative. To be heard, marginalized groups have been forced to squeeze their experiences into narrowly defined legal language and categories; they have been inhibited by evidentiary rules; and they have been challenged by adversarial devices such as cross examination. These conventions stifle the ability to contextualize.\footnote{Susan L. Brody, \textit{Law, Literature, and the Legacy of Virginia Woolf: Stories and Lessons in Feminist Legal Theory}, 21 TEX. J. WOMEN & L. 1, 5 (2011).}

In Juanita Thomas’s case, for example, the prosecutor mocked the mountainous evidence of abuse in her case with such spurious remarks as the behavior psychologist “never really gave us a profile of a battered spouse."\footnote{Keith Gave, \textit{Professor Says Thomas Too Timid to Plan Murder}, LANSING ST. J., June 17, 1980, at B1.} In Karen Kantzler’s 1988 case, the judge, who later regretted his words, blamed her for not leaving before she acted in self-defense, stating as he sentenced her to life in prison, “I must tell you that the proper option in the situation that you found yourself in would have been to seek a separation or a divorce."\footnote{Transcript of Jury Trial Vol. 8 at 18-19, People v. Kantzler (Mich. Cir. Ct. 1988) (No. 87-78545-FC).} In the 2005 trial of Nancy Seaman, jurors dismissed evidence of both domestic violence and self-defense with such rationales as “she did not fit the picture,"\footnote{Stephen Frye, \textit{Teacher Guilty of Murdering Husband}, DAILY OAKLAND PRESS, Dec. 15, 2004 (on file with the Labadie Collection, Hatcher Graduate Library, University of Michigan).} “did not stay at home,"\footnote{\textit{Id.}} and “was not a meek, howling woman waiting for the next beating."\footnote{L. L. Brasier, \textit{Seaman Jury Rejects Battered Wife Claim}, DETROIT FREE PRESS, Dec. 15, 2004, at A1.}
These cases, tried many years apart, illustrate the powerful and persistent stereotypes that produce harsh judgments against abused women. As A. Renée Callahan lamented, “Will the ‘Real’ Battered Woman Please Stand Up?” The judges in both Karen Kantzler’s and Nancy Seaman’s cases recognized too late the errors in the cases, and both judges tried unsuccessfully to change the convictions. After both women were given a reduced sentence, the prosecutors appealed and the original convictions and sentences were reinstated. The two women remain in prison serving life sentences, despite the judges’ admitted errors in their cases.

C. The High Cost of Gender Discrimination

Feminist legal scholars and litigators have challenged the gender disparities in traditional self-defense laws and their interpretations, and most also oppose models that do not reflect the specifics of women’s lives. Meda Chesney-Lind and others have found that so-called “neutral” decision-making only produces “equality with a vengeance,” and thus the war on crime becomes a “war on women.” The phenomenon is characterized by the glaring discrimination in criminal processing that has generated a dramatic increase in women’s incarceration in recent decades, jumping 757% from 1977 to 2004, despite declining crime rates. By 2004, almost one-third of women in prison were serving long sentences for drug offenses, even though most had only minor roles in the drug trade. Dual arrest and mandatory-arrest policies for domestic violence also led to an unwarranted rise in women’s convictions, and greater control of women by the state—even though statistical evidence shows that most intimate partner assaults are by males. Tragically, the war on crime has not significantly altered the rate of murders of women committed by male partners. The U. S. Department of Justice reported that 1,640 women were known to have been murdered by intimate partners in 2007, while 700 males were killed by intimate partners that year; the actual data on intimate partner homicides is unknown since it is voluntarily reported to the FBI, and the “victim-offender” relationship is missing in about one in every three murders.

175 BELKNAP, supra note 12, at 357.
177 See Letters from Judge Lippitt to Governor Granholm, supra note 45 (urging the governor to commute Ms. Kantzler’s sentence); People v. Seaman, No. 04-196916-FC, 2007 WL 466003, at *2 (Mich. Ct. App. Feb. 13, 2007) (“On August 31, 2005, some seven months after sentencing, the trial court did an about face when it reduced [Ms. Seaman’s] conviction [from first-degree murder] to second-degree murder . . . .”).
179 See SCHNEIDER, supra note 6, at 31-33; see also Buel, supra note 18, at 218, 234-35, 265, 297-303.
181 FROST, supra note 5, at 7.
182 Id. at 10.
183 Id. at 21; Coker, supra note 5, at 813; CATALANO ET AL., supra note 16.
reported. In most cases of intimate partner homicide, the woman suffered prior abuse. Professor Chesney-Lind suggests “the real question is why so few women resort to violence in the face of such horrendous victimization—even to save themselves.” Women who report men’s violence are seen as vindictive or lying, while women who are assertive, professional, large in stature or voice, or insufficiently timid because they fought back are not seen as authentic victims. Such negative attitudes and archetypal images underpin the prosecutorial, judicial, and defense decisions that regularly and wrongfully convict them. Most feminist scholars and litigators agree that women’s defense requires a legal framework that embodies their physical differences and their experiences with male coercion and violence, but one that also confronts the state’s crime of gender discrimination.

D. State Abuse of Women in Prisons

Abuse does not end for battered women who are convicted and sent to prison. Rapes, four-point chaining, long-term segregation, medical neglect, overcrowded conditions, rotten food, unwarranted misconducts, emotional and psychological abuse, retaliation, and other atrocities are rampant. Angela Davis has pointed out that the violent sexualization and racism of women’s prisons means that women are subjected to unrelenting, unacknowledged forms of state punishment. In the late 1990s, Governor John Engler issued a media ban and visitor restrictions on all prisons in Michigan. Scholars, educators, filmmakers, reporters and human rights investigators could no longer enter Michigan prisons as they had been able to previously. Visitors were restricted to family members and a limited number of friends; recording devices were also forbidden. Reporters could speak to inmates only with official permission and usually by phone, where conversations could be recorded. In 1994, the governor even banned federal

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184 See CATALANO ET AL., supra note 16, at 3-4.
185 Campbell, supra note 16, at 18.
186 CHESNEY-LIND, supra note 180, at 98.
187 See BELKNAP, supra note 12, at 18-21, 299, 357.
189 SCHNEIDER, supra note 6, at 133-35; see generally BELKNAP, supra note 12; FROST, supra note 5.
194 MICH. DEP’T OF CORR., MEDIA RELATIONS, supra note 192.
attorneys from the U.S. Department of Justice from entering the women’s prisons to investigate systematic sexual abuse of women prisoners. 195 Again in 1998, the state refused permission to the United Nations Special Rapporteur on Violence Against Women who sought to investigate claims of sexual assaults and rapes. 196 The crackdown was Governor Engler’s response to the lawsuits filed by women prisoners, as well as investigations of sexual misconduct by Amnesty International, Human Rights Watch, and the U.S. Department of Justice, including alleged incidents of rape, sexual abuse, and other acts of violence against women in Michigan’s women’s prisons. 197

Access to all Michigan state prisons remains extremely difficult. 198 The restrictions on media and other visitors facilitate the invisibility of state-sanctioned human and civil rights violations in the prisons. 199 As legal representatives working with women on clemency and parole processes, we were allowed to continue our visits and interviews, taking students and citizen volunteers inside with us. In 1999, we met Jamie Whitcomb, who had filed a lawsuit against the State of Michigan for the torture she endured at Scott Prison, one of two state correctional facilities for women operating at the time. 200 While incarcerated for four years on a conviction of destruction of property over $100, she was targeted by a guard, harassed constantly, and confined to the segregation unit where she was chained down flat on her back to a cement slab, much of the time naked, in four point, steel, or leather restraints for days or weeks each time. 201 Like all prisoners in segregation, she was often forced to eat only “the loaf” or dry sandwiches while lying on her back. 202 On one occasion while she was chained in this position, a blanket was thrown over her face in the middle of the night and she was raped. 203 Following her successful lawsuit, she furnished the footage that was shot by guards of her repeated chaining for the film, “Segregation Unit,” and narrated her four-year ordeal. 204 She has continued to fight courageously against the
state’s policy of four- and five-point chaining and other tortures since her release. 205

Jamie Whitcomb’s case brought us into contact with other women in the mental and segregation units. It is not easy in practice to exchange information within a regime that secures its power through physical control, psychological abuse, and censorship, but women like Jamie brave retaliation to work with us not only on their own cases but also on the human rights issues affecting the other prisoners. Volunteers with the Clemency Project become accustomed to humiliating searches of our bodies, intimidation, and bullying tactics by guards and prison officials whenever we go into the prison, but never to the suffering of women who have to live with these mind and body invasions and assaults every day. 206

Following one of our many reports protesting the state’s practice of four- and five-point chaining, mistreatment, and filthy prison conditions, we received a letter from the Michigan Department of Corrections (“MDOC”) disavowing all charges of perpetrating such practices in state prisons—an unusual occurrence, because most of our protest letters elicit no response from the MDOC. 207 Tragically, just days afterward, a young man died of dehydration and abuse while chained down in segregation at Jackson Prison. 208

Torture in Michigan prisons is a dirty secret that constitutes a powerful method of control within the routine punishment regime of the penal system. 209 As Professor Margo Schlanger has written, “[t]he segregation units of American prisons are full not of Hannibal Lecters, but of ‘the young, the pathetic, the mentally ill.’” 210 In recent years, the number of suicides and attempted suicides at Huron Valley Women’s Correctional Facility—which currently

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205 Id. Jamie Whitcomb has joined with the Clemency Project and others in public protests at the state capitol to speak out against practices of torture in Michigan prisons.

206 Some of the recent human rights violations instituted at Huron Valley Women’s Correctional Facility that were reported to the authors by women prisoners include vaginal searches in which women are forced to open their legs and spread their labia for inspection by non-medical staff. The degrading practice is reported to have ended following protests from the American Civil Liberties Union, the Clemency Project, and others. See Body Cavity Searches at Michigan’s Women’s Huron Valley Correctional Facility, AM. CIVIL LIBERTIES UNION (Apr. 12, 2012), https://www.aclu.org/prisoners-rights-womens-rights/body-cavity-searches-michigans-womens-huron-valley-correctional.

Other egregious practices reported to the authors include four-point chaining of prisoners for hours or days at a time in segregation, and confining prisoners to segregation or mental units where they are locked down twenty-two or twenty-three hours a day, fed through slots in the doors, and given no access to programs or education. The University of Michigan Law School estimates that close to 1,000 prisoners are held in solitary confinement in Michigan prisons. See Symposium, Inhumane and Ineffective: Confinement in Michigan and Beyond, MICH. J. RACE & L. (Feb. 2, 2013), http://students.law.umich.edu/mjrl/2013symposium/2013-symposium-main.html, for documentation of the journal’s 2013 symposium on solitary confinement.


209 See Jeff Gerritt, Mental Care Uncured—Too Many with Mental Illness Find Torture Instead of Proper Treatment, DETROIT FREE PRESS (Nov. 25, 2012), available at http://www.freep.com/article/20121125/OPINION02/311250148/.

houses all women incarcerated by the State of Michigan—has been a public concern.\(^{211}\) Unfortunately, torturous practices continue to this day. Recently, guards augmented their arsenal with taser guns to be immediately put to use against the prisoners.\(^{212}\)

In 2009, approximately five hundred women prisoners won a landmark class action lawsuit against the State of Michigan and Department of Corrections, in *Neal v. Michigan Department of Corrections*, for rapes and sexual abuse the women had suffered for decades.\(^{213}\) The named plaintiffs were harassed, threatened, and subjected to cruelties, including additional sexual assaults, harassment, and retaliation, during the many years that the state dragged out the lawsuit with appeals.\(^{214}\) Several of the women gave birth in prison to children fathered by guards who raped them.\(^{215}\) During the *Neal* trial, women gave gut-wrenching details of the rapes, drug-dealing demands, and death threats to their families that they were subjected to by guards.\(^{216}\) One warden of the women’s prison testified that she was so afraid of her own officers that she obtained permission from the state to carry a handgun into the prison for her own protection; she never interviewed, disciplined, or fired any officers who were reported for rapes, and never reported incidents to the state or to police.\(^{217}\) The first ten female prisoners were awarded $15.5 million, which was estimated to reach $40 million with attorney’s fees and interest rates, and were given a personal apology from the jury for the injuries the state had inflicted on them.\(^{218}\) The State

\(^{211}\) Between 2008 and 2013, there were at least seven reported suicides—and possibly many more attempted suicides—by female prisoners at Huron Valley Women’s Correctional Facility. See Mich. Dep’t of Corr., Legislative Reports, Prisoner Suicide Reports for 2009, 2010, 2011, 2012, and 2013, available at http://www.michigan.gov/corrections/0,4551,7-119-1441-1513—-.00.html (indicating that there were three suicides at Huron Valley Women’s Correctional Facility in 2010, one in 2011, and one in 2012); Mich. Dep’t of Corr., Public Act 245 of 2008: Critical Incident Reports, Section 911(2) at 56, available at http://www.michigan.gov/documents/corrections/02-01-09_-_Section_9112_265819_7.pdf (indicating that there were two suicides at Huron Valley Women’s Correctional Facility in 2008). See also Cindy Heflin, *State Police Investigate Apparent Suicide at Huron Valley Women’s Prison in Pittsfield Township*, DETROIT NEWS (Dec. 27, 2010); Huron Valley Correctional Facility on Alert after Discovery of Suicide Pact, ANN ARBOR NEWS (Nov. 2, 2010); Op-Ed., *State Must Do More to Prevent Prison Suicides*, DETROIT FREE PRESS (Jan. 5, 2009).


\(^{213}\) Jeff Seidel & Dawson Bell, *$100 Million Ends Prisoner Sex-Abuse Suit*, DETROIT FREE PRESS (July 16, 2009), http://www.freep.com/article/20090716/NEWS06/101250006. A groundbreaking lawsuit filed by female prisoners, styled *Neal v. Michigan Department of Corrections*, was filed in the Washtenaw County Circuit Court under docket number 96-6986-CZ in 1996, and initiated the claim against the state correctional department for sexual assaults.


\(^{218}\) Seidel & Bell, supra note 213; Jeff Seidel, *Jury Awards $15.4 Million to Inmates*, DETROIT FREE PRESS, Jan. 7, 2009, at 5B.
of Michigan later settled the class action suit for $100 million. Female prisoners successfully settled several other similar lawsuits against the state.

While all of these atrocities are deeply disturbing, there are also the daily cruelties and degradations, justified as “security,” that pervade the prison regime. In our interviews with women prisoners, we hear about overcrowded cells, lack of nutritious food, cutbacks in programs, medical neglect, punitive tactics by guards, including retaliation and perpetration of physical, financial, and psychological exploitation of prisoners, lack of human rights education, and lack of training of officers and wardens. These problems—and the invisibility of all of them to public scrutiny—all contribute to the despicable conditions that violate prisoners’ human rights with impunity.

V. BUILDING PUBLIC SUPPORT FOR CLEMENCY

A. Public Education and Coalition Building

During our second decade, a new governor of Michigan, Jennifer Granholm, elected in 2002, took more than two years to respond to the petitions as we submitted them. We did not realize at the time that her attorneys were actually carefully winnowing them.

In the meantime, we submitted a few new petitions each year and steadily expanded our public education efforts, both formal and informal. We put up our new website with the clemency manual, distributed films narrated by women in the Clemency Project, published articles, op-ed pieces and letters to editors, taught courses and summer seminars on women’s criminalization, organized rallies at the state capitol each fall and other events during the year, gave public and professional lectures and screenings, and collaborated with other nonprofits. We also contacted judges, legislators and other policymakers across the state. We became a 501(c)(3) non-profit organization, and began working more closely with the University of Michigan Law School, the American Friends Service Committee, the University of Michigan-Dearborn’s Prison College Program, and others. While the corporate media capitalized on sensational crime stories, and we felt burned a number of times, we found independent columnists who were sympathetic to our issues. Our films, lectures, writings, and classes expanded our community outreach and public visibility for women’s wrongful convictions. None of our work would have been possible without the willingness of women prisoners to put their names and faces and stories out in the public sphere and withstand the derisive attacks—“husband killers,” comparisons with “Jack the Ripper,” and the like—from uneducated prosecutors and reporters who abused the power of their


222 The University of Michigan-Dearborn’s Prison College Program was founded and is directed by Dr. Lora Lempert.
During this period, another effort was gaining national visibility that paralleled many of the same objectives as the battered women’s clemency movement: the innocence projects. Both the clemency and innocence movements were characterized by the consciousness of numerous wrongful convictions that resulted from systemic failures in the criminal legal system, particularly those affecting marginalized persons, and called for releasing wrongfully convicted prisoners as well as promulgating structural change to address the weaknesses of the criminal legal system. The first innocence projects focused on DNA cases involving male prisoners who were convicted of rape or murder, and later proven innocent. But as the network of innocence projects grew, the exonerations they won brought the larger problem of wrongful convictions into public view. We found a valuable ally in the new, non-DNA Innocence Project at the University of Michigan. Undoubtedly, our staunchest and most influential supporter of all was former Governor William Milliken. His public encouragement of Governor Granholm to leave a lasting legacy through use of the clemency power was persuasive, as was his repeated declaration that his only regret as Governor was in not granting more clemencies while he was in office.

In 2004, our hopes for clemency were raised when we were granted a meeting with Governor Granholm’s legal staff to discuss our cases—twenty in all by that time. When three of us arrived at the meeting, we were told that only two would be allowed to enter the room. Seated at an enormous conference table, we (Susan Fair and Carol Jacobsen) were interrogated by two of the Governor’s lawyers for over an hour about the negative facts of a single case. After the meeting was over, we worried that we had not controlled the agenda as we should have. The final question from the Governor’s attorneys was whether we thought the case they selected was unique, or emblematic of a larger problem. We answered, “Both.” A year later, Jacobsen and another volunteer bought expensive tickets to an event that allowed five minutes’ face time with the Governor. She plied us with admonitions to “keep up the great work.” The implication was that without sizeable public support she would not take the political risk. Shortly before she was re-elected in 2006, she denied all twenty petitions.


224 For a full discussion of wrongful convictions and innocence projects, see generally BARRY SHECK ET AL., ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT (2000), and Zalman, supra note 7.

225 Zalman, supra note 7, at 1466-68.

226 See, e.g., SHECK ET AL., supra note 224, at 362-63 (detailing the egregious nature of publically available data on mistaken identities, lengths of wrongful incarceration, and lengths of maximum sentences on wrongful convictions).

227 The University of Michigan Law School’s (non-DNA) Innocence Clinic, founded by law professors David Moran and Bridget MacCormack (now a Michigan Supreme Court judge), has assisted with cases for the Clemency Project. See Michigan Innocence Clinic, UNIV. OF MICH. LAW SCHOOL, http://www.law.umich.edu/clinical/innocenceclinic/Pages/default.aspx (last visited Jan. 25, 2015).


229 Carol Jacobsen, Lore Rogers and Susan Fair traveled to meet with the governor’s legal counsel in Lansing on October 8, 2004.

230 The Parole Board makes the decision whether or not to recommend that the governor consider clemency.
It could be said that winning even one prisoner’s release from a life sentence is success, and we had won freedom for two women in our first decade, but we were determined to gain our first clemency for women during the second decade. We knew that, as a former prosecutor and Attorney General, Jennifer Granholm would be loath to overturn lawful convictions, but we hoped that, as a woman, she might find the compassion to do it in her second term. Not facing re-election, she would have less to fear from the political backlash that has paralyzed American politicians’ fair and open exercise of the clemency power for decades.231

B. Bittersweet: Michigan’s First Clemencies of Battered Women Prisoners

Before she left office in December 2010, Governor Granholm granted the first-ever clemencies to battered women prisoners in Michigan’s history when she released four women who were serving non-parolable life sentences for first-degree murder of (or by) their abusers. The Clemency Project represented all four women. Doreen Washington, Linda Hamilton, Minnie Boose and Levonne Roberts were among only ten women to receive clemency from life or long sentences for murder or conspiracy from the Governor.232 Of the ten, two women who filed their own successful applications for clemency were also supported by the Project—either through letters to the parole board, or testimony at their public hearings, or both. During the same period, the Michigan Parole Board took the highly unusual step of also releasing five women who were serving life sentences for second-degree murder, a different but still parolable offense.233 Two of these women were directly represented by the Clemency Project, and one more had support from the Clemency Project.234 Michigan law allows parole for all sentences other than non-parolable life sentences for first-degree murder. However, the MDOC Parole Board has routinely refused to release prisoners serving any life sentences, arguably in violation of the law, declaring, “Life means life.”235

Altogether, Governor Granholm granted 179 clemencies, 20 of them to women.236 Like

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231 See Love, supra note 8, at 1484 (“[T]he intense competition for partisan advantage in matters touching on crime control has made pardoning politically problematic.”).

232 Representatives of the Clemency Project attended hearings, supported and testified for eleven women who received public hearings for consideration of clemency or parole from life or long sentences during Governor Granholm’s final term in office. Eight of the eleven were released, and six of those were directly represented by the Clemency Project.

233 Louisell, supra note 80, at 29.

234 The two women represented by the Clemency Project who were paroled from so-called parolable life sentences were Millie Perry and Barbara Anderson. A third woman was also supported by the Clemency Project through letters to the Parole Board and attendance at her public hearing.

235 STATE BAR OF MICH., PRISONS AND CORRS. SECTION, WHAT SHOULD “PAROLABLE LIFE” MEAN? JUDGES RESPOND TO THE CONTROVERSY 1 (2002), available at http://www.michbar.org/prisons/pdfs/lifer1.pdf (stating that the Michigan Parole Board has asserted that “Life means life” and will not parole prisoners with life sentences); see Louisell, supra note 80, at 29 (arguing that the Michigan Parole Board’s policy is against legislative intent).

236 Dawson Bell, 179 Commutations and Counting: Granholm Exits as Most Merciful Governor in
the media’s mixed responses, the clemencies were simultaneously lauded and criticized in news reports for being greater in number than any other Michigan governor had granted.237 Our own celebrations in the Clemency Project were bittersweet. We decided to refrain from publicizing the commutations and paroles of the women we supported as they were occurring in order to get as many released as possible without stirring backlash from the media. We wrote our own op-ed pieces to encourage the governor to “leave a lasting legacy,” and welcomed every release with private parties. Yet we felt bitter disappointment for those who were just as deserving of their freedom but remained in prison, many of them for life.

Perhaps it should have come as no surprise that the twenty clemencies granted to women prisoners formed a very limited, politically safe, and racially unbalanced pattern.238 Most of the clemencies were awarded to prisoners who were terminally ill, had been imprisoned for minor probationary offenses, or for outdated, draconian drug sentences.239 Only ten went to women who were convicted of serious crimes (such as murder or conspiracy), and all but one of those ten were accessories to male codefendants, who were the actual perpetrators of the crimes.240 The only woman released whose crime did not involve an accessory to a male codefendant was a woman whose conviction had been overturned in the trial court, but reinstated after the Oakland County prosecutor filed an appeal.241

Although approximately 47% of women incarcerated in the state prison in Michigan in 2010 were women of color,242 only six of the twenty women granted clemency through pardons or commutations were women of color.243 Of the ten who were granted commutations from serious

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237 See Bell, supra note 236 (describing Governor Granholm as the “most merciful chief executive in modern Michigan history”); Family Angry Over Clemency Decision by Granholm, ASSOCIATED PRESS (Dec. 23, 2010), http://www.mlive.com/news/detroit/index.ssf/2010/12/family_angry_over_clemency_dec.html (describing the reactions of family members of a victim who were upset by the release of a conspirator in their brother’s murder).

238 See Steven C. Liedel, Prisoner Commutations Have Been Rare and Safe for Public, DETROIT FREE PRESS, Feb. 14, 2010. Steven Liedel was Governor Granholm’s legal counsel. Id. He states that the same criteria were used to select all the prisoners, female and male, who received commutations. Id.

239 See id. (explaining that most commutations were for terminally ill inmates, and priority was given to nonviolent offenders or offenders for whom the nature and circumstances of their crime warranted release).

240 The Clemency Project maintains files on all the women serving time for murder in the State of Michigan. Of the ten women who were granted clemency from serious crimes (e.g. murder or conspiracy) by Governor Granholm, the Clemency Project represented four and actively supported two more. For a critical review of the commutation process for incarcerated women in Michigan, see generally Jacobsen & Lempert, supra note 168.


242 MICH. DEP’T OF CORR., 2010 STATISTICAL REPORT at C-75, C-77 (2010). The percentage was calculated based on the total number of women in the Huron Valley Women’s Correctional Facility in 2010 who were white (962) and non-white (863). By the end of 2009, all women incarcerated in state prison were housed in one facility: Women’s Huron Valley Correctional Facility. See Women’s Huron Valley Correctional Facility, MICH. DEP’T OF CORR., http://www.michigan.gov/corrections/0,4551,7-119-68854_1381_1388-116930—,00.html (last visited Jan. 25, 2015) (“The facility serves as the only prison in Michigan which houses females.”).

243 This information is kept on file with the Clemency Project. See supra note 240.
crimes, only two were women of color.\textsuperscript{244} This pattern of discrimination reflects the racial disparity documented by researchers throughout the criminal legal system.\textsuperscript{245} Similarly, the five women who were paroled from life sentences for second-degree murder or conspiracy all had male codefendants who committed the crimes, and only one of the five was a woman of color.\textsuperscript{246}

Most unpardonable was Governor Granholm’s failure to achieve any meaningful change in either the criminal processing system or the prison industry in the state while she had the opportunity. Michigan was already incarcerating its citizens at an unprecedented pace when she came into office in 2003.\textsuperscript{247} The previous governor, John Engler, had inadequately funded education,\textsuperscript{248} virtually eliminated in-patient and community mental health treatment,\textsuperscript{249} and instituted drastic changes that shifted funds to prisons, which locked up more citizens than ever before.\textsuperscript{250} Changes in the sentencing guidelines and in shaping the parole board at that time were also pivotal in increasing Michigan’s prison population.\textsuperscript{251} Those measures were a reprehensible solution to the unemployment crisis produced by the state’s disappearing automobile industry. Promotion of a nationwide war on crime and drugs detonated a punishment explosion that has profited politicians, corporate media, and the prison industry for decades.\textsuperscript{252} Michigan soon was

\begin{itemize}
  \item \textsuperscript{244} Id.
  \item \textsuperscript{245} CHESNEY-LIND, supra note 180, at 138 (stating that the surge in women’s population in jail led to “a dramatic increase in the imprisonment of women of color”); see also ALEXANDER, supra note 91 (discussing how the criminal legal system works as a modern Jim Crow law and works to control black populations).
  \item \textsuperscript{246} Barbara Anderson was the only woman of color serving a life sentence for second-degree murder who was paroled during Governor Granholm’s tenure. She was represented by the Clemency Project.
  \item \textsuperscript{248} Neglected Institution: Engler’s Spending Plan Ignores U, MICHIGAN DAILY (Feb. 12, 2001), http://www.michigandaily.com/content/neglected-institution-englers-spending-plan-ignores-u.
  \item \textsuperscript{249} Christopher Zbrozek, Opening Its Doors Again, MICHIGAN DAILY (Sept. 28, 2005), http://www.michigandaily.com/content/opening-its-doors-again?page=0,2.
  \item \textsuperscript{251} See generally CITIZENS RESEARCH COUNCIL OF MICH., supra note 247.
  \item \textsuperscript{252} See, e.g., JOSEPH T. HALLINAN, GOING UP THE RIVER: TRAVELS IN A PRISON NATION xvi-xxvii (2001) (stating that the explosion of prison populations has benefited the prison industry financially); Craig Haney, Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency, 9 HASTINGS WOMEN’S L.J. 27, 27-33 (1998) (explaining that “[o]ver the last twenty years, the United States has witnessed truly unprecedented growth in its punishment industry” and giving examples of officials celebrating the system, including “the sheriff of Phoenix, Arizona[,] who proudly proclaimed himself the ‘meanest sheriff in America’ and publicly [took] pride in running what he term[ed] ‘a very bad jail!’” in 1995).
\end{itemize}
spending more of its general fund budget on prisons than any other state in the U.S.\textsuperscript{253} Life without parole sentences—including those given to juveniles—spiked dramatically, as did women’s incarceration rates and overall sentence averages in the state. By 2003, the average sentence in Michigan was longer than the national average.\textsuperscript{254} It was not until 2007 that Governor Granholm began to cut back on the corrections budget; she temporarily increased the size of the parole board and appointed an Executive Clemency Advisory Council to expedite releases.\textsuperscript{255} Parole rates improved slightly for one year, but generally slid backward again in her last year in office.\textsuperscript{256} In 2011, the incoming Republican Governor, Rick Snyder, promptly rescinded the measures, abolished the Advisory Council, and pushed for increases in the corrections budget despite Michigan’s nearly bankrupt economy.\textsuperscript{257}

VI. STATE AND SOCIAL OBSTACLES TO WOMEN’S CLEMENCY AND PAROLE

A. A GRASSROOTS STRUGGLE

Because the Clemency Project originated inside the prison, the organization was grounded from the beginning both in grassroots methods developed through our relationships with individual women and also in a commitment to working together to stake claims for their rightful freedom. Cutting through the red tape of the prison fence is never easy, given the state’s restrictions and ever-tightening policies, not to mention the whims of individual officers. We are ever conscious that we could be banned from the prison in retaliation for publicly denouncing human rights abuses, or for protesting denials of paroles or clemencies. Yet, at the same time we realize that we have not always been aggressive enough about challenging power on these and other issues.

With a small core leadership and a rotating roster of volunteers, the Clemency Project has remained independent and grassroots-oriented in order to work closely with individual women and volunteers and at the same time, to educate, organize, write, film, and publicize about the systemic issues and injustices we witness firsthand. We remain the only nonprofit in Michigan

\textsuperscript{253} By 2006, the state of Michigan was spending the highest proportion of total state revenues on corrections of any state in the nation, at 21.8%.\textsuperscript{2} BRIAN SIGRITZ, NAT’L ASS’N OF STATE BUDGET OFFICERS, STATE EXPENDITURE REPORT FISCAL YEAR 2006, at 60 (2007). By 2011, the figure had increased to over 23%.\textsuperscript{3} See Robbing Our Future, CITIZENS ALLIANCE ON PRISONS & PUB. SPENDING, http://www.capps-mi.org (last visited Jan. 25, 2015).

\textsuperscript{254} Kanclerz, supra note 85.


\textsuperscript{256} Of at least thirty-six women serving parolable life sentences during that period, the authors are aware of five that were released on parole. See MICHIGAN DEP’T OF CORR., STATISTICAL REPORT 2009 at C-66 to -75. In the authors’ opinion, many more of these women deserved parole.

\textsuperscript{257} MICH. EXEC. ORDER NO. 2011-3, reprinted in MICH. H.R. JOURNAL, 2011 96th Leg. Reg. Sess. 10 (Mich. 2011) (abolishing the Executive Clemency Advisory Council and creating the Michigan Parole Board in its place by an order of Michigan Governor Rick Snyder); see MICH. COMP. LAWS ANN. § 791.305 (West 2014) (“All of the authority, powers, duties, functions, responsibilities, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Michigan Parole and Commutation Board are transferred to the Michigan Parole Board . . . .”).
solely working with women prisoners on challenging wrongful, abuse-linked incarcerations and punishments, despite our understanding that our approach makes us vulnerable to censors and critics from more established institutions and organizations. Still, we have had valuable support from the University of Michigan, the American Civil Liberties Union, the Michigan Women’s Foundation, many judges, lawyers, legislators, educators, artists, domestic violence professionals, and journalists—and a former Governor. It is not our wish to compete, but rather to collaborate with others, and we do not maintain exclusive representation. We encourage women to seek out as many resources as they can, and we do the same by recruiting attorneys to review cases for advice or possible pro bono representation. We do not withdraw from any case unless the request comes from the woman herself, which is extremely rare.

Some of the problems we faced have come from misrepresentations by the mainstream media. The journalistic pretense of “balance” often produces false representations of defendants, spurious statements by prosecutors and other damaging misinformation. Also heart-wrenching are the angry, even threatening, phone calls, emails, letters, and personal confrontations we receive from victims’ families. We answer every message with care, and sometimes meet with family members of victims who try to convince us to withdraw from a case. One year, we held our breath through our annual rally at the State Capitol after a victim’s brother left a threatening phone message promising to disrupt the event. He did show up at the rally, but he remained a quiet spectator on the sidelines. Occasionally, we have been surprised by family members who have had changes of heart and decided not oppose a woman’s release.

Rarely have we had any misunderstandings or disagreements with women themselves, although denials of parole or clemency are always bitterly disappointing events. We try to talk those through together, although the Parole Board’s refusal to provide substantive information or explanations in response to our Freedom of Information Act requests makes it difficult to answer questions or improve chances for a woman’s success in the future. Sometimes misunderstandings occur when we encounter incriminating facts that a woman withheld from us out of fear or shame and we failed to catch it in our investigation. Such a situation arose in one case where a woman was convicted of conspiring in her husband’s murder, but passed a lie detector test, and for years denied that she played any part. Given the husband’s drug connections and criminal background, we understood her denial. After we submitted numerous clemency petitions for her, she changed her story. Such a turnabout is not unusual; the lack of gender-based programs, therapy, and other services that are available to address the specific needs of women prisoners often delay female prisoners coming to terms with societal and structural discrimination that could alleviate individual shame and silence. Changing her story can sometimes help, but may also hurt a woman’s chances for freedom—and possibly other applicants’ chances as well—by reinforcing stereotypes of women lawbreakers as liars.

Our experience in testifying at dozens of parole and public hearings has shown that most incarcerated battered women tend to minimize their histories of abuse to their detriment, even when they were not at fault, given hostile, intimidating attitudes, and tactics of parole board

\[258\] Bloom, supra note 17, at 12, 25-26, 84-85 (explaining that prison staff training and programs are not tailored to female prisoners and arguing for improved services).

\[259\] See St. Joan & Ehrenreich, supra note 168, at 221-23 (arguing that the negative consequences of changed stories include “clemency decisionmakers’ general lack of information about why a battered woman might withhold information and their corollary willingness to see any inaccuracies in a woman’s story as evidence of culpability for murder”).
members and other state officials. The protocol for hearings is constructed for violent male prisoners, which does not accommodate considerations of female lawbreaking with regard to types of crimes, reasons for their actions, or whether they pose any danger to the community.

Unlike men, the most common pathways to women’s lawbreaking are acts of survival that occur out of experiences of abuse, poverty, or addiction. Interrogations at parole or public hearings begin with instructions to the prisoner to discuss her crime, but she is often interrupted, corrected or challenged in ways that are intimidating, hostile or even disparaging. Our experience has shown us that most of the battered women that we have worked with, who have committed a crime under duress or threat of violence, have no wish to excuse their actions. Rather, we feel that they have an authentic need to take responsibility, perhaps undeservedly, given the state’s failure to protect them. But in this venue, their right to describe the context is routinely overlooked, and sometimes diminished by those leading the hearings. To complicate matters, in most cases there are aggravating factors that leave lasting impressions of guilt and trauma that are difficult to cope with, given the lack of educational, therapeutic, and other programs in Michigan prisons.

Thus, both parole and public hearings require the women to walk a tightrope, balancing convincing statements of remorse and responsibility for the crime with concise and convincing testimony about the reasons for their actions on the other. Any discrepancy between a woman’s statements (in hearings or contained in her clemency petitions) and the original presentence investigation report (“PSI”), which may be up to twenty or thirty years old, is seized upon by the Parole Board as a misrepresentation of the facts, and evidence of a woman’s lack of credibility. PSIs are reports written by probation officers from their own and the state’s point of view at the time of sentencing, and often contain errors and omissions due to the “probation officer’s subjective opinion of the defendant’s statements and demeanor” and the officer’s position as “an arm of the court.” In our reviews of clients’ PSIs, abuse is rarely mentioned, or if it is, the subject is framed as the defendant’s claim or otherwise downplayed. It is critical to challenge false assumptions and mistakes contained in such official documents—both through testimony at women’s hearings and in the clemency petitions—yet such challenges are met with suspicion. Since both the assistant attorney general, who presides over commutation hearings, and members of the Parole Board, use PSIs religiously to formulate their interrogations, women face a catch-22

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260 See Jacobsen & Lempert, supra note 168, at 269-71 (describing the authors’ study of eleven public commutation hearings).

261 See Jacobsen & Lempert, supra note 168, at 272 (“Public hearings for commutation are fictions of equity. They are, like most other programs and processes associated with prisons, structured for physical and psychological control of violent male offenders.”); Bloom, supra note 17, at 1-8.

262 See Bloom, supra note 17, at v-viii; see also Jane Evelyn Atwood, Too Much Time: Women in Prison (2000) (chronicling the lives of women living in prisons through their own words and black-and-white photographs).

263 See Jacobsen & Lempert, supra note 168, at 273, 280.

264 See Buel, supra note 18, at 227-29.


266 See Jacobsen & Lempert, supra note 168, at 282-84.

situation. Accounts of abuse that do not appear in the PSI are not only viewed as excuses, but more often as lies, since the PSI is considered infallible.268 The entire parole and commutation process is a minefield of such traps and demonstrations of gender bias, as well as of institutional power.269

A key factor in several of our successful cases undoubtedly was the political clout we were able to garner for some of the women. In Linda Hamilton’s case, for example, a person close to the Governor took an interest in her plight after we featured her story in a statewide column. We also contacted the original trial judge, who responded with a letter stating that he was “troubled” by the case for many years, and gave support to Linda’s clemency.270 He surprised us by arriving at her commutation hearing, aided by a walker, to testify on her behalf.271 Former Governor Milliken also attended her hearing to testify for her and for the other women in the Clemency Project generally.272 Several other trial judges responded with letters of support for other women as well.273 Although we were unable to raise judicial or other political support for the three black women we represented who were released from life sentences during Governor Granholm’s last term, we heard no objections raised by either their judges or the victims’ families at their public hearings.

Given the obstacles stacked against her, each battered woman prisoner who walked free from a life sentence accomplished a miracle. She not only survived a lifetime of abuse before and during her incarceration, but she represented herself with dignity and eloquence under circumstances that denied her constitutional right to fair and unbiased hearings.274

To date, our interventions in women’s life sentences total nine: we have helped free two women through motions in court, four through clemency, and three through parole. In addition to our continued efforts with women serving life sentences, we support many women who have indeterminate sentences for a range of offenses, often precipitated by abuse, and women who have suffered extraordinary punishment in solitary confinement, because of mental illness. By working closely with incarcerated women and by educating and sharing struggles with women on both sides of the fence, the past two and a half decades have rewarded all of us. Although we celebrate the release of every woman who succeeded in her bid for freedom, we do not forget the larger problem of gender and racial discrimination that has bloated into a toxic industry of mass incarceration and malignant state control.

VII. CONCLUSION

The failure to provide equal protection to women who are battered, the overcharging and over-sentencing of them after they are forced to defend themselves, the hiding or ignoring of

268 See id. (stating that the subjective opinions of probation officers often have a “measurable and often irrevocable impact upon the sentencing outcome” and result in “foregone conclusion[s]”).

269 See Jacobsen & Lempert, supra note 168, at 284-85.

270 Letter from Judge Webster to Governor Granholm, supra note 1.

271 Transcript of Public Hearing, supra note 58, at 250-56.

272 Id. at 275-76.


274 See Jacobsen & Lempert, supra note 168, at 284-85.
exculpatory evidence in their cases, and the denials of their right to present expert testimony or
evidence of abuse in court and post-conviction hearings are just a few examples of the widespread
violations of due process and human rights perpetrated by the state that we have seen in women’s
cases over the years.275 These are reminders that we cannot wholly trust the power of the state to
protect and support women and that we must continue to challenge the state’s abuse of power as
we struggle for human rights and justice. Just as the clemencies granted to battered women and
prisoners on death row and the exonerations of the innocent have exposed the dismal failures of
our criminal legal institutions, the open and generous use of clemency is one pathway toward
restoring a fair and equitable system of justice to all those whose rights American criminal
jurisprudence has consistently disregarded. As participants in a growing abolition movement
against abuse of women, the prison industry, wrongful convictions and the death penalty, we look
ahead to a world of compassionate and restorative justice, economic and education rights, mental
and physical health care and respect for human and civil liberties—a world that we can only
imagine today.

275 See SCHNEIDER, supra note 6; BELKNAP, supra note 12, at 144-48, 158-70, 356-57; RICHE, supra note
38, at 99-124.
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<table>
<thead>
<tr>
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<th>Woman *</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim’s Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
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<tbody>
<tr>
<td>1979</td>
<td>1</td>
<td>37</td>
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<td>Ingham</td>
<td>First-degree murder</td>
<td>Retained</td>
<td>Jury</td>
<td>Life</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Stabbed abusive boyfriend in self-defense</td>
<td>1998 (by MWJCP &amp; University of Michigan Law School motion)</td>
</tr>
<tr>
<td>1984</td>
<td>2</td>
<td>39</td>
<td>Black</td>
<td>Wayne</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>14 to 40 years</td>
<td>Husband</td>
<td>No</td>
<td>Yes</td>
<td>Stabbed abusive husband in self-defense</td>
<td>2/1/2004</td>
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<tr>
<td>1986</td>
<td>3</td>
<td>29</td>
<td>Black</td>
<td>Genesee</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>8.5 to 20 years</td>
<td>Ex-friend</td>
<td>No</td>
<td>No</td>
<td>Shot ex-boyfriend who would not stop stalking, harassing her</td>
<td>11/4/1995</td>
</tr>
<tr>
<td>1986</td>
<td>4</td>
<td>56</td>
<td>White</td>
<td>Wayne</td>
<td>Second-degree murder; weapons charge</td>
<td>Retained</td>
<td>Jury</td>
<td>10 to 15 years, plus 2</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband while trying to leave</td>
<td>10/20/1999</td>
</tr>
<tr>
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<td>Black</td>
<td>Genesee</td>
<td>First-degree murder; weapons charge</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>John</td>
<td>No</td>
<td>No</td>
<td>Shot John during struggle, self-defense</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1987</td>
<td>7</td>
<td>27</td>
<td>Black</td>
<td>Wayne</td>
<td>Second-degree murder; weapons charge</td>
<td>Appointed</td>
<td>Bench</td>
<td>8 to 15 years, plus 2</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend in self-defense</td>
<td>10/16/1999</td>
</tr>
<tr>
<td>1987</td>
<td>8</td>
<td>30</td>
<td>Black</td>
<td>Wayne</td>
<td>Manslaughter; weapons charge</td>
<td>Appointed</td>
<td>Jury</td>
<td>6 to 15 years, plus 2</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend during argument</td>
<td>10/31/1998</td>
</tr>
<tr>
<td>1987</td>
<td>9</td>
<td>32</td>
<td>White</td>
<td>Macomb</td>
<td>Assault / attempted manslaughter</td>
<td>Appointed</td>
<td>Plea</td>
<td>3 to 5 years</td>
<td>Boyfriend</td>
<td>No</td>
<td>Yes</td>
<td>Stabbed abusive boyfriend in self-defense</td>
<td>1992</td>
</tr>
<tr>
<td>1987</td>
<td>10</td>
<td>40</td>
<td>White</td>
<td>Lapeer</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>25 to 50 years</td>
<td>Husband</td>
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<td>Shot abusive husband out of fear</td>
<td>1/12/2009</td>
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<td>1988</td>
<td>11</td>
<td>34</td>
<td>Black</td>
<td>Wayne</td>
<td>Assault; weapons charge</td>
<td>Retained</td>
<td>Bench</td>
<td>3 to 6 years, plus 2</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend in self-defense</td>
<td>1995</td>
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<tr>
<td>Year of Offense</td>
<td>Woman *</td>
<td>Age</td>
<td>Race</td>
<td>Michigan County</td>
<td>Conviction</td>
<td>Attorney Relationship</td>
<td>Trial</td>
<td>Sentence Received</td>
<td>Victim’s Relationship to Woman</td>
<td>Co-Defendant</td>
<td>Criminal History</td>
<td>Situation</td>
<td>Release Date</td>
</tr>
<tr>
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<td>-----------</td>
<td>--------------</td>
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<tr>
<td>1988</td>
<td>12</td>
<td>54</td>
<td>Black</td>
<td>Kent</td>
<td>Manslaughter</td>
<td>Appointed</td>
<td>Plea</td>
<td>5 to 15 years</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Stabbed boyfriend in self-defense</td>
<td>12/6/1993</td>
</tr>
<tr>
<td>1988</td>
<td>13</td>
<td>27</td>
<td>White</td>
<td>Oakland</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband in self-defense</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1988</td>
<td>14</td>
<td>23</td>
<td>Asian</td>
<td>Oakland</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>7 to 25 years, plus 2</td>
<td>Uncle</td>
<td>No</td>
<td>No</td>
<td>Shot rapist/abuser uncle</td>
<td>1/21/2002</td>
</tr>
<tr>
<td>1988</td>
<td>15</td>
<td>21</td>
<td>Black</td>
<td>Kent</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>John</td>
<td>No</td>
<td>No</td>
<td>Shot John during struggle, self-defense</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1988</td>
<td>16</td>
<td>26</td>
<td>Black</td>
<td>Wayne</td>
<td>Manslaughter</td>
<td>Retained</td>
<td>Plea</td>
<td>5 to 15 years</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Stabbed abusive boyfriend in self-defense</td>
<td>1994</td>
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<tr>
<td>1989</td>
<td>17</td>
<td>42</td>
<td>White</td>
<td>St. Clair</td>
<td>Second-degree murder</td>
<td>Retained</td>
<td>Jury</td>
<td>6 to 10 years</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Stabbed abusive husband during argument</td>
<td>1997</td>
</tr>
<tr>
<td>1989</td>
<td>18</td>
<td>32</td>
<td>White</td>
<td>Wayne</td>
<td>Manslaughter, weapons charge</td>
<td>Appointed</td>
<td>Plea</td>
<td>1 to 15 years, plus 2</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Shot abusive husband during argument</td>
<td>6/11/1995</td>
</tr>
<tr>
<td>1990</td>
<td>19</td>
<td>36</td>
<td>Black</td>
<td>Wayne</td>
<td>Manslaughter, weapons charge</td>
<td>Appointed</td>
<td>Bench</td>
<td>5 to 15 years, plus 2</td>
<td>Ex-Husband</td>
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<td>No</td>
<td>Shot abusive ex-husband during argument</td>
<td>3/1/1999</td>
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<tr>
<td>1990</td>
<td>20</td>
<td>28</td>
<td>Black</td>
<td>Genesee</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>16 to 30 years</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Stabbed abusive boyfriend during fight</td>
<td>10/09/2008</td>
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<tr>
<td>1990</td>
<td>21</td>
<td>26</td>
<td>Black</td>
<td>Wayne</td>
<td>Manslaughter, weapons charge</td>
<td>Retained</td>
<td>Bench</td>
<td>3 to 15 years, plus 2</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband during argument</td>
<td>5/15/2001</td>
</tr>
</tbody>
</table>

Note: Italicization indicates the victim did not die.

* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.
<table>
<thead>
<tr>
<th>Year of Offense</th>
<th>Woman*</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim’s Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
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<tbody>
<tr>
<td>1975</td>
<td>1</td>
<td>24</td>
<td>Black</td>
<td>Saginaw</td>
<td>First-degree murder</td>
<td>Retained</td>
<td>Jury</td>
<td>Life</td>
<td>&quot;Friend&quot;</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend while he was lying down</td>
<td>1993</td>
</tr>
<tr>
<td>1977</td>
<td>2</td>
<td>18</td>
<td>White</td>
<td>Ingham</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband after he threw baby</td>
<td>1999 (by MWCP Motion)</td>
</tr>
<tr>
<td>1984</td>
<td>3</td>
<td>34</td>
<td>White</td>
<td>Oakland</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>20 to 40 years</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Struck husband with car part after she beat her and then laid down on bed</td>
<td>1998</td>
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<tr>
<td>1985</td>
<td>4</td>
<td>40</td>
<td>White</td>
<td>Oakland</td>
<td>Second-degree murder; weapons charge</td>
<td>Retained</td>
<td>Bench</td>
<td>5 to 15 years, plus 2</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband after he assaulted her</td>
<td>10/23/1994</td>
</tr>
<tr>
<td>1987</td>
<td>5</td>
<td>34</td>
<td>Black</td>
<td>Wayne</td>
<td>Second-degree murder; weapons charge</td>
<td>Retained</td>
<td>Bench</td>
<td>6 to 18 years, plus 2</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Shot abusive husband after he assaulted her</td>
<td>7/8/1992</td>
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<tr>
<td>1987</td>
<td>6</td>
<td>35</td>
<td>White</td>
<td>Kent</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot abusive husband after night of abuse</td>
<td>Not scheduled</td>
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<tr>
<td>1988</td>
<td>7</td>
<td>40</td>
<td>Black</td>
<td>Oakland</td>
<td>Second-degree murder; weapons charge</td>
<td>Retained</td>
<td>Jury</td>
<td>14 to 40 years, plus 2</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Shot husband on bed; he’d sexually abused her daughter</td>
<td>3/1/2004</td>
</tr>
<tr>
<td>1989</td>
<td>8</td>
<td>64</td>
<td>Black</td>
<td>Wayne</td>
<td>Manslaughter; weapons charge</td>
<td>Appointed</td>
<td>Bench</td>
<td>5 to 15 years, plus 2</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend after he assaulted her</td>
<td>5/16/1994</td>
</tr>
<tr>
<td>1989</td>
<td>9</td>
<td>29</td>
<td>Black</td>
<td>Genesee</td>
<td>Manslaughter</td>
<td>Appointed</td>
<td>Plea</td>
<td>8 to 15 years</td>
<td>Boyfriend</td>
<td>No</td>
<td>No</td>
<td>Struck abusive boyfriend with baseball bat after he assaulted her</td>
<td>1998</td>
</tr>
<tr>
<td>1990</td>
<td>10</td>
<td>34</td>
<td>White</td>
<td>Calhoun</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>17 to 30 years</td>
<td>Husband</td>
<td>No</td>
<td>No</td>
<td>Husband died in fire following fight</td>
<td>2006</td>
</tr>
<tr>
<td>1991</td>
<td>12</td>
<td>24</td>
<td>Black</td>
<td>Washtenaw</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>5 to 20 years</td>
<td>Ex-boyfriend</td>
<td>No</td>
<td>No</td>
<td>Shot abusive boyfriend after he assaulted her; she thought he was reaching for knife</td>
<td>1997</td>
</tr>
</tbody>
</table>

* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.
Table 3. Women Who Hired or Conspired to Kill their Batterers

<table>
<thead>
<tr>
<th>Year of Offense</th>
<th>Woman</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim's Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>1</td>
<td>31</td>
<td>White</td>
<td>Oakland</td>
<td>First-degree murder</td>
<td>Retained</td>
<td>Bench</td>
<td>Life</td>
<td>Husband</td>
<td>Yes</td>
<td>Yes</td>
<td>Friend hired killer of her abusive husband</td>
<td>8/4/2009 clemency (MWJCP)</td>
</tr>
<tr>
<td>1979</td>
<td>2</td>
<td>42</td>
<td>White</td>
<td>Wayne</td>
<td>Second-degree murder</td>
<td>Retained</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Hired killer of abusive husband</td>
<td>8/19/2008 (MWJCP)</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>35</td>
<td>White</td>
<td>Genesee</td>
<td>Second-degree murder; conspiracy to commit murder; arson</td>
<td>Retained</td>
<td>Plea</td>
<td>Life with possible parole</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Conspired with friends to kill abusive husband</td>
<td>5/2008</td>
</tr>
<tr>
<td>1983</td>
<td>4</td>
<td>33</td>
<td>White</td>
<td>Monroe</td>
<td>Second-degree murder</td>
<td>Retained</td>
<td>Plea</td>
<td>10 to 70 years</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Hired brother-in-law to kill abusive husband</td>
<td>1/25/2000</td>
</tr>
<tr>
<td>1988</td>
<td>5</td>
<td>34</td>
<td>Black</td>
<td>Wayne</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Plea</td>
<td>Life with possible parole</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Hired killers to kill abusive husband</td>
<td>8/13/2009 (MWJCP)</td>
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<tr>
<td>1988</td>
<td>6</td>
<td>47</td>
<td>White</td>
<td>Wayne</td>
<td>First-degree murder; weapons charge</td>
<td>Appointed</td>
<td>Bench</td>
<td>Life</td>
<td>Husband</td>
<td>Yes</td>
<td>Yes</td>
<td>Foster son shot and killed abusive husband; she helped hide the body</td>
<td>7/15/2008 clemency (MWJCP)</td>
</tr>
<tr>
<td>1989</td>
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<td>38</td>
<td>White</td>
<td>Oakland</td>
<td>Conspiracy to commit murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>Husband</td>
<td>Yes</td>
<td>No</td>
<td>Son hit abusive dad with baseball bat</td>
<td>Not scheduled</td>
</tr>
</tbody>
</table>

Note: Italicization indicates the victim did not die.

* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.
### Table 4. Women Who Were Forced to Participate in a Crime Committed by Battering Men

<table>
<thead>
<tr>
<th>Year of Offense</th>
<th>Woman *</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction Description</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim’s Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
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<tbody>
<tr>
<td>1983</td>
<td>1</td>
<td>27</td>
<td>White</td>
<td>Oakland</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>Boyfriend's steppmother</td>
<td>Yes</td>
<td>No</td>
<td>Abusive husband killed his step-mother; woman was present and helped conceal crime</td>
<td>9/3/2009</td>
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<tr>
<td>1984</td>
<td>2</td>
<td>20</td>
<td>White</td>
<td>Genesee</td>
<td>Criminal sexual conduct</td>
<td>Appointed</td>
<td>Plea</td>
<td>Life with possible parole</td>
<td>No death</td>
<td>Yes</td>
<td>Yes</td>
<td>Abusive boyfriend sexually abused kids; forced her to help</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1988</td>
<td>3</td>
<td>21</td>
<td>White</td>
<td>Wayne</td>
<td>First-degree murder; second-degree murder; weapons charge</td>
<td>Appointed</td>
<td>Bench</td>
<td>Life</td>
<td>Aunt and uncle</td>
<td>Yes</td>
<td>No</td>
<td>Abusive boyfriend killed her aunt &amp; uncle while she was present.</td>
<td>Not scheduled</td>
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<td>1988</td>
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<td>37</td>
<td>Black</td>
<td>Wayne</td>
<td>Criminal sexual conduct; child cruelty</td>
<td>Appointed</td>
<td>Plea</td>
<td>10 to 15 years</td>
<td>No death</td>
<td>No</td>
<td>Yes</td>
<td>Abusive boyfriend sexually abused her and her daughter</td>
<td>1998</td>
</tr>
<tr>
<td>1988</td>
<td>5</td>
<td>41</td>
<td>White</td>
<td>Wayne</td>
<td>Conspiracy to commit murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>No death</td>
<td>Yes</td>
<td>No</td>
<td>Abusive husband sexually abused kids; told her to pay killers of witnesses</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1990</td>
<td>6</td>
<td>16</td>
<td>Latina</td>
<td>Oakland</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>John</td>
<td>Yes</td>
<td>No</td>
<td>Abusive boyfriend killed john that he forced her to lure for robbery</td>
<td>Not scheduled</td>
</tr>
<tr>
<td>1990</td>
<td>7</td>
<td>26</td>
<td>Black</td>
<td>Oakland</td>
<td>Access fraud</td>
<td>Appointed</td>
<td>Jury</td>
<td>3 to 5 years</td>
<td>Stranger</td>
<td>Yes</td>
<td>Yes</td>
<td>Abusive husband killed someone and told her afterward to file false police report that he died</td>
<td>6/1/1995</td>
</tr>
<tr>
<td>1990</td>
<td>8</td>
<td>27</td>
<td>White</td>
<td>Genesee</td>
<td>Robbery</td>
<td>Appointed</td>
<td>Plea</td>
<td>22.5 to 37.5 years</td>
<td>No death</td>
<td>Yes</td>
<td>Yes</td>
<td>Abusive boyfriend forced her to drive the car while he robbed Burger King</td>
<td>2002</td>
</tr>
<tr>
<td>1991</td>
<td>9</td>
<td>22</td>
<td>White</td>
<td>Lenawee</td>
<td>Multiple larceny</td>
<td>Appointed</td>
<td>Plea</td>
<td>3.3 to 10 years</td>
<td>No death</td>
<td>Yes</td>
<td>Yes</td>
<td>Committed larcenies with abusive boyfriend</td>
<td>1996</td>
</tr>
</tbody>
</table>

Note: Italicization indicates the victim did not die.

* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.
Table 5. Women Who Were Forced to Commit a Crime by their Batterer

<table>
<thead>
<tr>
<th>Year of Offense</th>
<th>Woman *</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim’s Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>1</td>
<td>35</td>
<td>White</td>
<td>Wayne</td>
<td>Larceny</td>
<td>Appointed</td>
<td>Plea</td>
<td>14 months to 4 years</td>
<td>N/A</td>
<td>No</td>
<td>Yes</td>
<td>Abusive husband forced her to commit credit card fraud, larceny</td>
<td>1992</td>
</tr>
<tr>
<td>1990</td>
<td>2</td>
<td>38</td>
<td>Black</td>
<td>Saginaw</td>
<td>Check fraud (insufficient funds)</td>
<td>Retained</td>
<td>Plea</td>
<td>2 to 4 years</td>
<td>N/A</td>
<td>No</td>
<td>Yes</td>
<td>Abusive husband forced her to commit thefts</td>
<td>2000</td>
</tr>
</tbody>
</table>

Note: Italicization indicates the victim did not die.
* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.

Table 6. Women Whose Crimes Were Linked To Their Abuse

<table>
<thead>
<tr>
<th>Year of Offense</th>
<th>Woman *</th>
<th>Age</th>
<th>Race</th>
<th>Michigan County</th>
<th>Conviction</th>
<th>Attorney Relationship</th>
<th>Trial</th>
<th>Sentence Received</th>
<th>Victim’s Relationship to Woman</th>
<th>Co-Defendant</th>
<th>Criminal History</th>
<th>Situation</th>
<th>Release Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>1</td>
<td>29</td>
<td>White</td>
<td>Oakland</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>Strangers</td>
<td>Yes</td>
<td>No</td>
<td>Cousin, friend shot two in bar when they took her to meet abusive husband during divorce</td>
<td>N/A: Death in 2001 by suicide in prison</td>
</tr>
<tr>
<td>1977</td>
<td>2</td>
<td>56</td>
<td>White</td>
<td>Eaton</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>Stranger</td>
<td>No</td>
<td>Yes</td>
<td>Shot woman in bar; she had killed abusive husband before</td>
<td>N/A: Death in prison in 2005</td>
</tr>
<tr>
<td>1978</td>
<td>3</td>
<td>24</td>
<td>Black</td>
<td>Kalamazoo</td>
<td>Second-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life with possible parole</td>
<td>Boyfriend’s new girlfriend</td>
<td>No</td>
<td>No</td>
<td>Accidentally shot abusive boyfriend’s girlfriend during fight with boyfriend</td>
<td>2001</td>
</tr>
<tr>
<td>1983</td>
<td>4</td>
<td>16</td>
<td>Black</td>
<td>Washtenaw</td>
<td>First-degree murder</td>
<td>Appointed</td>
<td>Jury</td>
<td>Life</td>
<td>Female stranger</td>
<td>Yes</td>
<td>No</td>
<td>Forced by abusive boyfriend to rob woman; but she accidentally shot woman</td>
<td>Not scheduled</td>
</tr>
</tbody>
</table>

* The names of the women identified here have been withheld to protect their privacy. This information is on file with the authors.