

## A DIVA DEFENDS HERSELF: GENDER AND DOMESTIC VIOLENCE IN AN EARLY TWENTIETH-CENTURY HEADLINE TRIAL

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### INTRODUCTION

On October 28, 1909, a twenty-six year-old singer named Mae Talbot met with her husband, Al, in her attorney's office in Reno, Nevada to discuss the division of their property.<sup>1</sup> Mae was seeking a divorce, and she and Al argued about how much Mae would receive under the settlement.<sup>2</sup> At this lunch-hour meeting, Mae's head bore bruises from the previous night when Al beat her so severely for taking rent money from his pocket that she required a doctor's assistance.<sup>3</sup> The couple had not been able to keep its quarrels hidden from Reno society;<sup>4</sup> indeed, newspapers reported a previous incident in which Mae shot at her husband in the Golden Hotel when he "tried to give her a beating."<sup>5</sup> Al, who was about twice his wife's age, admitted that he frequently mistreated her.<sup>6</sup>

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1. *Mrs. Talbot to Answer to a Charge of Murder*, RENO EVENING GAZETTE, Nov. 8, 1909, at 1.

2. *Didn't Know She Shot*, L.A. TIMES, Jan. 29, 1910, at 15. *See Shot by Beaten Wife*, L.A. TIMES, Oct. 29, 1909, at 15; *Shot Husband Who Beat Her*, WASH. POST, Jan. 29, 1910, at 9; *see also Last Words of Al Talbot in Evidence*, RENO EVENING GAZETTE, Jan. 27, 1910, at 1 (reporting that Mae's divorce lawyer testified that "Mrs. Talbot wanted more than Talbot offered to give her of their property" and that she also sought the return of jewelry valued at about \$2,000); *Mrs. Talbot to Answer to a Charge of Murder*, *supra* note 1. Copies of these and all other cited newspaper reports are on file with the author.

3. *See Woman's Victim is Slightly Improved Today*, RENO EVENING GAZETTE, Oct. 29, 1909, at 1.

4. *See Al Talbot Shot Down by Wife in Office of Her Lawyer During Noonday Fight*, NEV. ST. J., Oct. 29, 1909, at 1 (stating that the domestic troubles of the couple had come to the public's attention on many previous occasions).

5. *Al Talbot Shot Today by Wife*, RENO EVENING GAZETTE, Oct. 28, 1909, at 1.

6. *Woman's Victim is Slightly Improved Today*, *supra* note 3.

In the lawyer's presence, a physical scuffle ensued, during which Al allegedly struck Mae, and his lung was pierced by a bullet from the pistol she had concealed in her fur muff.<sup>7</sup> Mae fled from building, discarding her furs along the way.<sup>8</sup> She was arrested at her residence after she had changed out of her street clothes.<sup>9</sup> The pistol and the fur muff, which might have been powder-burned, disappeared and could not be introduced as evidence against her.<sup>10</sup> At trial, Mae took the witness stand in her own defense and told a story of wife-beating that her housekeeping staff corroborated.<sup>11</sup> The jury acquitted her following a brief deliberation,<sup>12</sup> and she appeared on stage in Chicago in a musical farce entitled "Get Busy with Emily" within a few months of her release.<sup>13</sup>

The Talbot murder trial may not rank with those of Sam Sheppard, Claus Von Bulow, or Lizzie Borden as one of the most sensational trials in American history. However, it attracted the attention of newspapers in New York City<sup>14</sup> and Washington, D.C.,<sup>15</sup> not to mention Los Angeles,<sup>16</sup> San Francisco,<sup>17</sup> and of course, Reno.<sup>18</sup> Mae was an opera singer with a mezzo soprano voice and her husband a racetrack gambler from a prominent Canadian family.<sup>19</sup> The alleged

7. *Didn't Know She Shot*, *supra* note 2; *Shot Husband Who Beat Her*, *supra* note 2. At trial, Mae testified "[t]hat following [a verbal dispute over the division of their property] he ran toward her and struck her in the breast. She said that her husband then clutched her hands, and that she reached for the revolver and Talbot called to Judge Jones to help him." *Mrs. Talbot on Stand*, RENO EVENING GAZETTE, Jan. 28, 1910, at 1.

8. *Al Talbot Shot Today by Wife*, *supra* note 5.

9. *Singer Shoots Husband*, N.Y. TIMES, Oct. 29, 1909, at 1.

10. *Mrs. Talbot Has Been Charged with Murder of Her Husband*, RENO EVENING GAZETTE, Nov. 10, 1909, at 1 (reporting that the sheriff was still looking for the pistol and furs).

11. *Talbot Murder Case is Nearly Ready for Jury*, L.A. HERALD, Jan. 30, 1910, at 9.

12. Verdict Form, *State v. Talbot*, No. 6954 (Nev. Dist. Ct., Washoe Cnty. Feb. 1, 1910) (recording acquittal) (on file with author); *Mrs. Talbot Freed*, RENO EVENING GAZETTE, Feb. 1, 1910, at 1; "Not Guilty" Says Jury: *May E. Talbot Acquitted*, NEV. ST. J., Feb. 2, 1910, at 1; *see also Mrs. Talbot Acquitted of Murder*, WASH. POST, Feb. 2, 1910, at 1; *Mrs. Talbot Acquitted of Slaying Husband*, S.F. CALL, Feb. 2, 1910, at 7.

13. *Playbills of the Week*, CHI. DAILY TRIB., May 8, 1910, at B2.

14. The homicide made the front page of the *New York Times*. *See Singer Shoots Husband*, *supra* note 9.

15. The *Washington Post* also covered the story. *See Mrs. Talbot Acquitted of Murder*, *supra* note 12; *Shot Husband Who Beat Her*, *supra* note 2.

16. The *Los Angeles Herald* and the *L.A. Times* both devoted attention to the Talbot case. *See Pleads Self Defense*, L.A. HERALD, Jan. 21, 1910, at 3; *Shot by Beaten Wife*, *supra* note 2.

17. News of Mae's acquittal appeared in the *San Francisco Evening Call*. *Mrs. Talbot Acquitted of Slaying Husband*, *supra* note 12.

18. The *Reno Evening Gazette* and the *Nevada State Journal* both gave extensive coverage to the Talbot case.

19. *See Al Talbot Shot Down by Wife in Office of Her Lawyer During Noonday Fight*, *supra* note 4 ("[B]oth are well-known, she being a singer lately heard at the Wigwam, and he the proprietor of a bowling alley on Center street and a noted figure in sporting circles"); *Al Talbot*

murder received national media coverage because the story had all the features of popular theatre: a brutal husband, a wife who killed him with a pistol concealed in her muff, a legal battle for control of the corpse, a long-lost son who appeared to claim his share of the estate, and a jury that acquitted a beautiful, female defendant in a black veil despite the prosecution's efforts to paint her as a prostitute and drug user.<sup>20</sup> The marriage of a couple that moved in elite social circles was shown to be tarnished by the husband's brutality and declining fortunes. The defense claimed that the deceased had dragged his wife from her bed by the hair and beaten her unconscious the night before she allegedly murdered him, and newspapers gossiped that "the estate of A.E. Talbot was not so large as generally believed."<sup>21</sup> The trial thus offered a dramatic spectacle for newspaper readers, as well as for the standing-room-only crowds that packed the Reno court to catch a glimpse of the aspiring opera star.<sup>22</sup> Observers cast the case as a "Western tragedy,"<sup>23</sup> and compared it to that of Henry K. Thaw, a rich New Yorker who fatally shot his wife's despoiler, Stanford White, in 1906.<sup>24</sup>

The Talbot case fits several overlapping categories in Lawrence Friedman's typology of headline criminal trials: Celebrity Trial, Tabloid Trial, Soap Opera Trial, and Worm in the Bud exposure of the seamy side of wealthy American life.<sup>25</sup> I will argue in this paper, however, that the prosecution of Mae Talbot is more properly seen as an intimate-partner murder case that transcended class boundaries and that raised important social issues, rather than simply serving as entertainment. Journalistic accounts of such trials, which often involved poorer, more anonymous couples than the Talbots,

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*Shot Today by Wife*, *supra* note 5 (noting that Mae was a mezzo-soprano); *Mrs. Talbot and Brother of Dead Man May Appeal to Courts for Settlement of Controversy Over Possession of Body*, RENO EVENING GAZETTE, Nov. 15, 1909, at 1 (indicating that Al Talbot's brother was a Lieutenant Colonel and member of the Canadian Parliament); *Mrs. Talbot to Answer to a Charge of Murder*, *supra* note 1 (noting wealth and background of victim and defendant); *Singer Shoots Husband*, *supra* note 9 (describing Mae's singing career and her husband's notoriety as a racetrack bookmaker).

20. See *infra* Part I (describing the facts of the case).

21. *To Administer Talbot Estate*, NEV. ST. J., Nov. 10, 1909, at 8. For a full description of the facts of the case and the legal strategies of both sides, see *infra* Part I.

22. See *Last Words of Al Talbot in Evidence*, *supra* note 2.

23. *Bullet from Wife's Pistol Kills Talbot*, NEV. ST. J., Nov. 8, 1909, at 1.

24. *Mrs. Talbot on Stand*, *supra* note 7 (opining that, due to the state's efforts to establish the defendant's past violence and immorality on cross-examination, "[t]he case is now degenerating into the class of the famous Thaw trial and promises to become even more filthy [sic] and disgusting"); see also *Harry K. Thaw, Ex-Millionaire Playboy, is Dead*, CHI. DAILY TRIB., Feb. 23, 1947, at 9.

25. See generally Lawrence M. Friedman, *Front Page: Notes on the Nature and Significance of Headline Trials*, 55 ST. LOUIS UNIV. L.J. 1243 (2011) (providing a typology of headline criminal trials).

survive as rich social texts for examining societal attitudes and criminal justice responses toward domestic violence.

Professor Friedman's assertions about non-political criminal trials exist in some tension with each other, but this is probably because headline trials themselves and media coverage of them often sent complex, contradictory messages to American society. Professor Friedman says that such trials were "basically pure entertainment," but that they also "shed a blinding light on social norms" and sometimes replaced the moral and "didactic function" of public punishment.<sup>26</sup> Without discounting the voyeurism inherent in reading about violence in other people's marriages, I will argue that press coverage of Mae Talbot's trial and others like it served an important social function. It helped to make intimate-partner violence a public issue and to define men's brutality toward their wives as improper and unmanly.

However, as we shall see, the newspapers did not always get the story right. Despite reporters' speculation that Mae would plead insanity, her defense team centered its case on the alternative theories of justifiable homicide and accident.<sup>27</sup> The jury instructions given in the case and filed with the Washoe County Court tell an even more interesting story of a judge who supplemented black-letter self-defense law with commentary on gender roles and the decline of men's right to beat their wives.<sup>28</sup> The newspapers, the defense lawyers, and ultimately the trial judge all seemed to see the case as one in which the deceased's wrongful behavior—that is, his brutality toward the defendant—played a central role. Thus, analyzing sensational newspaper reports *in tandem* with surviving court files and other legal materials, where possible, yields the most clues about the relationship between law, social norms, and media narratives.

Part I of this paper describes the facts and trial strategies of the Talbot murder case. Part II discusses how the trial and its construction by the press fit into Professor Friedman's typology. Part III then argues that the case transcends such categorizations to provide an important glimpse of public responses to domestic violence in the early twentieth century. Rather than being pure entertainment of a salacious variety, the trial and acquittal of Mae Talbot tapped into the wider social and legal condemnation of men's violence against their intimate partners, regardless of wealth or class, in the early twentieth century.

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26. Friedman, *supra* note 25, at 1256, 1268, 1248.

27. See *infra* notes 59–68 and accompanying text.

28. See *infra* notes 72–73, 133–136 and accompanying text.

## I. THE FACTS, PROSECUTION, AND DEFENSE OF MAE TALBOT'S CASE

Al Talbot did not die instantly after his wife shot him; rather, he languished in a Reno hospital for ten days.<sup>29</sup> Although he ultimately identified Mae as his killer in a dying declaration,<sup>30</sup> he had earlier stated that the shooting was an accident.<sup>31</sup> When he finally succumbed, doctors deemed pneumonia and pericarditis arising from the bullet wound to be the most immediate causes of death.<sup>32</sup> On November 9, a Coroner's Jury determined that Al died as the result of a gunshot wound inflicted by his wife.<sup>33</sup> The District Attorney then swore out a complaint, charging her with murder.<sup>34</sup>

While the criminal case proceeded toward trial, a sideshow over the disposition of Al's body entertained the public and burdened the civil docket of the Nevada District Court. Mae sought to have the remains shipped to San Francisco for cremation, but her husband's relatives vigorously opposed this plan on the grounds that he should be buried in Canada according to Catholic rites.<sup>35</sup> Complicating matters, Al's long-lost son arrived from Ouray, Colorado, to claim his share of the estate.<sup>36</sup> Mae allegedly favored cremation to prevent Al's former wife and Al Junior's mother from identifying the corpse.<sup>37</sup> In a highly public legal battle that divided Reno citizens,<sup>38</sup> Judge

29. *Mrs. Talbot to Answer to a Charge of Murder*, *supra* note 1.

30. *Last Words of Al Talbot in Evidence*, *supra* note 2 ("She shot me; I guess that she thought it was the best way to settle the matter.").

31. At trial the only eyewitness, attorney W.D. Jones, testified that immediately after the shooting, he asked Al Talbot if he was hurt, to which Talbot replied, "Yes, but it was an accident." *Enact Scene of Death Struggle*, NEV. ST. J., Jan. 27, 1910, at 1.

32. *See Jury Believes Mrs. Talbot Shot Her Husband*, RENO EVENING GAZETTE, Nov. 9, 1909, at 1 (reporting that a doctor testified at the coroner's inquisition that "Talbot came to his death from pleuro pneumonia brought on by the bullet wound in his right breast," combined with the "inflamed condition of his heart").

33. *Id.*

34. *Mrs. Talbot Has Been Charged with Murder of Her Husband*, *supra* note 10.

35. *See Court Forbids Talbot Burial*, NEV. ST. J., Nov. 17, 1909, at 8; *Fight Over Body of Slain Man*, NEV. ST. J., Nov. 16, 1909, at 8; *Mrs. Talbot and Brother of Dead Man May Appeal to Courts for Settlement of Controversy Over Possession of Body*, *supra* note 19; *see also Fights for Murder Victim*, L.A. TIMES, Nov. 17, 1909, at I3 (showing that news of the civil case reached major newspapers on the West Coast).

36. *See Asks Estate of Slain Man*, NEV. ST. J., Nov. 12, 1909, at 1; *see also Attends Victim's Funeral*, L.A. TIMES, Nov. 13, 1909, at I2 ("With the coming to Reno of Alfred Edward Talbot, Jr., 18 years old, the information was made public that A. E. Talbot, who was shot by his wife on October 28, had a son and a sensational contest is about to be begun for a share of the dead man's goods, which, in the absence of any other heir, would go to Mrs. Talbot.").

37. *Asks Estate of Slain Man*, *supra* note 36 ("It is even intimated that for the purpose of frustrating plans to identify the dead man as the former husband of the boy's mother, Mrs. Talbot ordered the victim's body sent to San Francisco for cremation.").

Pike awarded the remains to the son, an eighteen-year-old who had never met his father but promised the judge to arrange a Catholic burial.<sup>39</sup>

Meanwhile, at the preliminary hearing in the criminal case, the court bound Mae to answer for second-degree murder, despite the state's contention that it could prove the first-degree offense.<sup>40</sup> Mae was released on \$6,000 bail.<sup>41</sup> At these proceedings, as at the Coroner's Inquisition,<sup>42</sup> the state struggled with the refusal of the sole eyewitness, W.D. Jones, to testify on the ground that what had transpired in his office was shielded by attorney-client privilege.<sup>43</sup>

Ignoring the justice of the peace's estimation of the case, the grand jury returned an indictment against Mae for first-degree murder, and the trial was set for January 20, 1910.<sup>44</sup> As journalists waited impatiently for the trial to begin, they engaged in wild speculation about the probable defenses. Hampered by the refusal of Mae's attorneys to speak to the press, newspapers variously reported that the defense would claim justifiable homicide, accident, lack of causation, and insanity due to Al's brutal treatment of his wife when she was "in a delicate condition."<sup>45</sup> This speculation was fueled in part by Mae's own inconsistent explanations in the aftermath of the shooting.<sup>46</sup>

38. *Court Forbids Talbot Burial*, *supra* note 35 ("The townspeople have divided into two hostile camps as a result of the trouble, one supporting the blood relatives of the deceased and the other whose sympathies are with the woman in jail.").

39. *Court Awards Remains of Talbot to the Son*, RENO EVENING GAZETTE, Nov. 20, 1909, at 1; *Talbot's Son Gets the Body*, NEV. ST. J., Nov. 20, 1909, at 1.

40. *Grants Bail to Mrs. Talbot*, NEV. ST. J., Dec. 2, 1909, at 1.

41. *Id.*

42. Coroner's Inquisition at 23, ¶¶ 20–23, *State v. Talbot*, No. 6954 (Nev. Dist. Ct., Washoe Cnty. Nov. 9, 1909) (recording that W.D. Jones declined to testify due to attorney-client privilege) (on file with author); *see Jury Points to Mrs. Talbot*, NEV. ST. J., Nov. 10, 1909, at 3 (reporting that W.D. Jones believed that attorney-client privilege might preclude him from testifying before the coroner's jury).

43. *See Grants Bail to Mrs. Talbot*, *supra* note 40 (reporting that "the principal material witness was permitted to escape from testifying under the pretext that what he saw and heard of the tragedy was privileged by virtue of his relation to the accused as attorney").

44. *Talbot Trial On January 20*, NEV. ST. J., Jan. 6, 1910, at 8; *see also Talbot Case is Being Acted on by Grand Jury This Afternoon*, RENO EVENING GAZETTE, Dec. 29, 1909, at 1 ("[I]t is understood that the grand jury may ignore entirely the remarkable action of Justice of Peace Soucereaue when he bound the woman over on a charge of murder in the second degree, and bring a true bill against her for murder in the first degree, upon which she would be tried.").

45. *Mae Talbot Placed on Trial for Life Today for Alleged Murder of Husband*, RENO EVENING GAZETTE, Jan. 20, 1910, at 1 (speculating that a self-defense claim would probably be "coupled with . . . that of insanity brought on by alleged ill treatment on the part of the husband while the defendant was in a delicate condition"); *see also Talbot Hearing to Take Place Tomorrow*, RENO EVENING GAZETTE, Nov. 30, 1909, at 2 (stating that defendant attorney James Boyd "refuses to discuss the accused womans [sic] case, but it is believed that her defense if she ever comes to trial will be insanity brought on by abuse on the part of her husband"); *Talbot Jury is Near Completion*, NEV. ST. J., Jan. 21, 1910, at 3 (concluding from defense questions at voir dire that self-defense and insanity claims would be raised); *Talbot Trial is to be Started Thursday*,

Empanelling a jury proved to be a long and time-consuming process, as many observers predicted it would be.<sup>47</sup> The state's examination of the venire revealed concern about possible bias in favor of female defendants, and the defense team "asked nearly all veniremen whether they believed a husband had a right to chastise his wife even in a slight degree."<sup>48</sup> Although the district judge ruled that "opposition to the imposition of the death penalty would not disqualify a talesman to serve on the jury,"<sup>49</sup> it still took four days to complete the selection process, owing in large part to the extensive publicity the case received in Reno and Sparks.<sup>50</sup> The jury that was to decide Mae's fate was composed entirely of men.<sup>51</sup>

In its opening statement, the prosecution "asserted that the case was one of premeditated and cold-blooded murder."<sup>52</sup> The state relied heavily on the deceased's dying accusation of his wife.<sup>53</sup> It also produced a witness whom the defendant allegedly had asked to find and hide her fur muff.<sup>54</sup> Moreover, prosecutors finally succeeded in compelling the testimony of the divorce attorney, W.D. Jones, who helped them re-enact for the jury the struggle between the defendant and the deceased that occurred in his office.<sup>55</sup> Yet, "[t]he general effect of Judge Jones' testimony . . . [left] the question of the

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RENO EVENING GAZETTE, Jan. 18, 1910, at 5 ("Just what the defense will be is not known yet but it is possible that it will be insanity and that the defendant will attempt to show an abnormal condition of the mind due to [the] alleged beatings and her alleged delicate condition. It is also believed by some that she will offer a plea of self defense."). Part way through the trial, the *Nevada State Journal* reported: "The theory of the defense seems to be one of many angles and in fact the attorneys seem ready to avail themselves of all known defenses, ranging from a denial of the cause of death, through accident, self defense, justifiable homicide and insanity." *Enact Scene of Death Struggle*, *supra* note 31.

46. See, e.g., *No Development Yet in Talbot Shooting*, NEV. ST. J., Oct. 30, 1909, at 1 ("Mrs. Talbot has wavered between three statements—that she knows nothing of the occurrence, that it was an accident, and an implied justification for the shooting arising from Talbot's repeated cruelties and indignities.").

47. See, e.g., *Talbot Murder Trial Tomorrow*, NEV. ST. J., Jan. 19, 1910, at 3 ("[I]t is expected that great difficulty will be met in securing a jury.").

48. *Extra Venire of Jurors Required in Talbot Case*, RENO EVENING GAZETTE, Jan. 21, 1910, at 1.

49. *Talbot Jury is Near Completion*, *supra* note 45.

50. *Talbot Jury Now in Box*, NEV. ST. J., Jan. 25, 1910, at 8.

51. *Actual Trial of Case Has Now Begun*, RENO EVENING GAZETTE, Jan. 25, 1910, at 1 (reporting that it took four days "to secure twelve true impartial, honest *men* to hear the facts in her case") (emphasis added).

52. *Tell of Death of Al. Talbot*, NEV. ST. J., Jan. 26, 1910, at 1.

53. *Last Words of Al Talbot in Evidence*, *supra* note 2.

54. *Tell of Death of Al. Talbot*, *supra* note 52 (reporting that the district attorney stated in his opening argument that he planned to call such a witness).

55. *Enact Scene of Death Struggle*, *supra* note 31.

manner of the beginning of the fight and the method of its progress as much in the field of speculation and theory as it ha[d] ever been.”<sup>56</sup>

Both in its case-in-chief and on cross-examination, the state sought to introduce evidence of prior bad acts to depict Mae as a violent, immoral woman who shot her husband in cold blood and whose testimony lacked credibility. One prosecution witness testified that Mae’s prior attempt to shoot Al at the Golden Hotel arose from jealousy, not self-defense.<sup>57</sup> On cross-exam, the state grilled Mae about using an assumed name, meeting her husband at an immoral house, going to baths “in a nude condition” with men besides her husband, taking drugs, and being convicted of running a hop-smoking establishment in Reno.<sup>58</sup>

Ending months of speculation, the defense focused its case on the alternative claims of self-defense and accident,<sup>59</sup> paired with an attack on the causal link between the gunshot and the deceased’s fatal case of pneumonia.<sup>60</sup> Mae supported her attorney’s opening statement by recounting from the witness stand how her marriage to her gambler husband when she was only eighteen years old descended into a nightmare of ill treatment that included threats and beatings.<sup>61</sup> On the day and night prior to the murder, she testified, he threatened “to cut her clothes into shreds” and dragged “her out of bed by the hair and [threw] her against the piano, beating her until she fell unconscious.”<sup>62</sup> A doctor corroborated this narrative by testifying how he treated the injured woman that evening for a sore arm and contusions over her left eye.<sup>63</sup>

The defense team also called a housekeeper who stated that “Talbot frequently abused his wife in a scandalous fashion” and that on one occasion, “she entered the room to find Talbot kneeling on the prostrate body of his wife, choking her.”<sup>64</sup> The defense sought unsuccessfully to introduce evidence that the couple had been ordered to leave a hotel where they once lived due to

56. *Id.*

57. *Talbot Case Goes to the Jury Today*, NEV. ST. J., Feb. 1, 1910, at 1 (reporting the testimony of Mike McMahon).

58. *Mrs. Talbot Battles for Her Life*, RENO EVENING GAZETTE, Jan. 29, 1910, at 1; *Mrs. Talbot On Stand*, *supra* note 7.

59. *How Fatal Shot Was Fired Will Remain a Mystery*, NEV. ST. J., Jan. 28, 1910, at 1; “*Not Guilty*” Says Jury: *May E. Talbot Acquitted*, *supra* note 12.

60. *Defense Will Try to Prove Talbot Died of Pneumonia*, RENO EVENING GAZETTE, Jan. 26, 1910, at 5 (“Attorney Boyd endeavored in every way to get Dr. Lewis to state that Talbot did not die as the result of the gun shot wound but from pneumonia, a hemorrhage and pericarditis.”).

61. *See Shot Husband Who Beat Her*, *supra* note 2.

62. *State Grills May Talbot on Past Life*, NEV. ST. J., Jan. 29, 1910, at 1.

63. *How Fatal Shot Was Fired Will Remain a Mystery*, *supra* note 59.

64. *State Grills May Talbot on Past Life*, *supra* note 62. *See Talbot Murder Case is Nearly Ready for Jury*, *supra* note 11 (reporting that Mrs. Talbot’s testimony about past beatings inflicted by her husband was substantiated by several housekeepers).



Talbot's "abusive treatment and brutality" toward Mae.<sup>65</sup> Although the court sustained objections to this particular line of testimony, Mae's lawyers nevertheless made a strong case for justifiable homicide, arguing that "as a result of threats [Al Talbot] had made and on account of a beating administered by him on the previous night [his wife] was in fear of her life" at his hands.<sup>66</sup> According to the multi-barreled defense theory, Al "began the fight by striking his wife," and she either shot him in self-defense or her pistol fired accidentally during the struggle.<sup>67</sup> Moreover, her lawyers contended, "none of the doctors had plainly pronounced the wound to be the cause of death."<sup>68</sup>

When the jury acquitted Mae in a single ballot after a forty-five minute deliberation,<sup>69</sup> one attorney involved in the case opined that the acquittal represented the triumph of the accident theory.<sup>70</sup> In this view, jurors could not reconcile Al's dying declaration, accusing Mae of murder, with his statement to the divorce lawyer at the time of the shooting that it was an accident. Consequently, they disregarded the dying declaration completely.<sup>71</sup>

However, analysis of the jury instructions given at trial demonstrates that the court placed great emphasis on the justifiable homicide theory. Indeed, the district judge gave multiple instructions on self-defense.<sup>72</sup> By contrast, he refused to direct the jury to acquit if it believed the pistol fired accidentally during the scuffle because such a theory was "not the law" and "not supported by the evidence."<sup>73</sup> Whatever actually occurred in the black box of jury deliberation, the dominant motif in the defense case was the image of Mae Talbot as a tragically beautiful but fully rational woman who suffered escalating physical abuse as her gambler-husband's fortunes rode a roller-

65. *How Fatal Shot Was Fired Will Remain a Mystery*, *supra* note 59.

66. *Id.*

67. *Talbot Case Goes to the Jury Today*, *supra* note 57; "Not Guilty" Says Jury: *May Talbot Acquitted*, *supra* note 12 (defense attorney Boyd "reiterated the attack on the dying declaration, he cast doubt on the cause of death and he repeated the statement that if Mrs. Talbot fired the shot intentionally it was in necessary self-defense").

68. *Talbot Case Goes to the Jury Today*, *supra* note 57.

69. *Mrs. Talbot Acquitted of Murder*, *supra* note 12 (reporting the amount of time required for deliberation); *Mrs. Talbot Acquitted of Slaying Husband*, *supra* note 12 (reporting the same amount of time); *Mrs. Talbot Freed*, *supra* note 12 (also describing deliberation time); *see also Mrs. Talbot Freed*, *supra* note 12 ("They took one ballot and every man voted 'Not guilty.'").

70. *Mrs. Talbot to Cultivate Voice for Opera*, RENO EVENING GAZETTE, Feb. 2, 1910, at 1.

71. *Id.*

72. Instructions Given nos. 6, 10, 15, 18, *State v. Talbot*, No. 6954 (Nev. Dist. Ct., Washoe Cnty. Feb. 1, 1910) (on file with author).

73. Instructions Refused, *State v. Talbot*, No. 6954 (Nev. Dist. Ct., Washoe Cnty. Feb. 1, 1910) (on file with author). Although the court declined to require acquittal if the jury believed the accident theory, it instructed that, under those circumstances, jurors "should find the defendant guilty of no greater offense than manslaughter." *Id.*

coaster of success and failure. Mae's lawyers did not, in fact, rely on an insanity theory.<sup>74</sup>

## II. THE TALBOT CASE AND PROFESSOR FRIEDMAN'S TYPOLOGY OF HEADLINE TRIALS

Professor Friedman offers a basic typology of headline trials by sorting them into nine categories, many of which overlap.<sup>75</sup> His more important contribution, though, is to start a dialogue about the role of the media in constructing the criminal trial and in shaping social norms and attitudes about criminal justice. A central theme in the Talbot trial was the deceased man's physical abuse of the defendant.<sup>76</sup> Mae's lawyers tried to capitalize on the increased condemnation of wife-beating in American society to acquit their client. The trial thus had the potential to send a didactic, moral message about domestic violence. But did it? Or was the average newspaper reader drawn to the case by its more distracting and sensational features? Did this headline trial simply titillate and entertain? Was its message about domestic violence, if it sent such a message at all, confined to its role as a tell-all about the underbelly of the sporting set?

I will argue that, like many headline trials, the Talbot case sent several messages. The homicide and subsequent prosecution of the young widow gripped public attention in Reno and made the front section of major newspapers across the country. It offered a morality lesson about the defendant's justifiable, self-defensive killing of her brutal spouse. It also provided months of entertainment in a time before television. Part II will assess the Talbot case as a sensational, non-political trial that revealed sordid details about the marriage of a professional singer to the "Prince of Gamblers."<sup>77</sup> Yet, whether the case is classed as a Celebrity, Tabloid, or Soap Opera Trial, or as a Worm in the Bud exposure of the disreputable side of sporting life, its greater historical significance lies in what it reveals about social and legal responses to gendered violence in early twentieth-century America.

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74. The trial judge did not give an insanity instruction in the case, nor does it appear that the defense lawyers requested one. See *Instructions Given*, *supra* note 72; *Instructions Refused*, *supra* note 73.

75. Friedman, *supra* note 25, at 1248–67.

76. See text accompanying notes 59–63.

77. See *Recalls Reno Shooting*, L.A. TIMES, Feb. 24, 1913, at I5 (noting that Talbot was nicknamed the "prince of gamblers" but erroneously reporting that his given name was Robert).

A. *The Talbot Trial as Entertainment: Celebrity, Tabloid, or Soap Opera Sensation?*

The Talbot case made the newspapers on both coasts,<sup>78</sup> but locally, it was even more of a sensation. Jury selection posed a challenge because, in Reno and Sparks, “nearly every one [sic] had heard something about the case.”<sup>79</sup> Once the trial began, men waited on the stairs for over an hour to enter the courtroom, and many women spent all day observing the proceedings.<sup>80</sup> Indeed, the case became “the main topic of conversation thru-out [sic] the city whenever a few gather[ed] together.”<sup>81</sup> What made it so attention-grabbing?

In his typology of headline trials, Professor Friedman separates Celebrity, Tabloid, and Soap Opera trials, but he acknowledges that they also have much in common.<sup>82</sup> For example, the Celebrity Trial, like the Soap Opera Trial, might involve romantic, marital, or sexual relationships.<sup>83</sup> It also might center on aberrational or grotesque human behavior—a feature shared with the Tabloid Trial.<sup>84</sup> Finally, media coverage of the case itself might turn relatively unknown individuals into celebrities based on public fascination with the case.<sup>85</sup> Moreover, Professor Friedman argues, the farther removed the case was from the paradigm of the Political Trial, the more likely it attracted attention for its pure entertainment value.<sup>86</sup>

The shooting of Al Talbot and the subsequent prosecution of his wife, Mae, bore some features of all of these “entertaining” headline trials. The Talbots were not true celebrities prior to the homicide, but neither were they anonymous, ordinary people. The *New York Times* described Al as “a race track bookmaker formerly on the Coast. . .” who had earned the nickname “Prince Talbot” by amassing a gambling fortune;<sup>87</sup> he came from a prominent and respectable Canadian family and had a brother in the Canadian

78. See, e.g., *Shot Husband Who Beat Her*, *supra* note 2 (article in the *Washington Post*); *Singer Shoots Husband*, *supra* note 9 (article in *The New York Times*).

79. *Talbot Jury Now in Box*, *supra* note 50.

80. *Defense Will Try to Prove Talbot Died of Pneumonia*, *supra* note 60; see also *No Jury Yet in Mrs. Talbot's Trial*, RENO EVENING GAZETTE, Jan. 22, 1910, at 1 (“The trial is creating more interest every day and the courtroom is hardly large enough to accommodate all who desire to attend and hear the proceedings.”).

81. *Enact Scene of Death Struggle*, *supra* note 31.

82. Friedman, *supra* note 25, at 1256–60, 1263–64.

83. See *id.* at 1257–60, 1263–64 (describing President Clinton’s celebrity trial as “a sordid tale about lust and sex in office. . .”).

84. See *id.* at 1260 (asserting that the Manson trial had celebrity and tabloid aspects).

85. *Id.* at 1275–76 (using Lizzie Borden, Sam Sheppard, Claus von Bulow, and Scott Peterson as examples of this phenomenon).

86. *Id.* at 1256.

87. *Singer Shoots Husband*, *supra* note 9.

Parliament.<sup>88</sup> Mae had sung opera in Europe, as well as playing professional roles in the United States.<sup>89</sup> Moreover, their volatile marriage had already given them local notoriety in Reno.<sup>90</sup> Thus, the shooting inevitably began as a story about violence beneath the surface of a glamorous, luxurious life.

Although there were no television soap operas in 1909 or 1910, the Talbot case frequently seemed to be a scripted drama, or melodrama, with actors playing assigned roles. Al appeared as the dashing, financially successful older gentleman who became more abusive as his fortunes fell. Mae, of course, was actually a professional singer, and while the newspapers cast her as the tragic, accused widow, it seems likely that much of her theatrical behavior—her sobbing over Al's casket,<sup>91</sup> the black mourning attire she wore to all court appearances,<sup>92</sup> her supposedly pregnancy-induced pallor<sup>93</sup>—stemmed from her own stage training and innate sense of drama, rather than simply being invented by journalists. Finally, no soap opera scriptwriter could have improved on the sudden, unexpected arrival of Al's only son as a solution to the protracted struggle over the corpse and as a potential rival to Mae for Al's inheritance. As purveyors of entertainment, not merely news, journalists capitalized on these developments and told the story of the civil case with as much suspense and gusto as they reported on the criminal trial.

The case also featured aberrational, shocking behavior that we associate today with the screaming headlines of tabloids sold in the grocery-store checkout line. Even prior to her trial, Mae's allegedly immoral origins and connections to prostitution raised eyebrows.<sup>94</sup> As the State's trial strategy unfolded, it became clear that undermining her credibility by forcing her to admit to involvement with drugs, commercial sex, and other improper behavior

88. *Bullet from Wife's Pistol Kills Talbot*, *supra* note 23; *Mrs. Talbot and Brother of Dead Man May Appeal to Courts for Settlement of Controversy Over Possession of Body*, *supra* note 19.

89. *Singer Shoots Husband*, *supra* note 9.

90. *Al Talbot Shot Down by Wife in Office of Her Lawyer During Noonday Fight*, *supra* note 4 (“The shooting is the culmination of months of domestic discord which has brought the troubles of the pair to the attention of the public on many previous occasions.”).

91. *Tears are Shed by Mrs. Talbot as She Views Body of Husband*, RENO EVENING GAZETTE, Nov. 11, 1909, at 1; *Woman Weeps at Bier of Man She Shot*, RENO EVENING GAZETTE, Nov. 12, 1909, at 1.

92. *See Mae Talbot Placed on Trial for Life Today for Alleged Murder of Husband*, *supra* note 45 (“She was dressed [sic] in black as she has always dressed since the death of her husband and a part of her costume consisted of a long black cape, which enveloped her whole form.”).

93. *See, e.g., Mrs. Mae Talbot is Held to Answer for 2nd Degree Murder*, RENO EVENING GAZETTE, Dec. 1, 1909, at 1 (“She appeared pale, probably as a result of her long confinement in the country jail and also to her alleged delicate condition.”).

94. *See, e.g., Jury Believes Mrs. Talbot Shot Her Husband*, *supra* note 32 (reporting that a witness testified before the Coroner's Jury that Mrs. Talbot met her husband in an “immoral house”).

constituted a central prosecution goal.<sup>95</sup> It was a goal that failed because Mae refused to admit to any of this misconduct during cross-examination.<sup>96</sup> But journalists reported every detail of the salacious line of questioning.<sup>97</sup> Although at least one article seemed to disapprove of the State's efforts to turn the trial into a "disgusting" spectacle similar to the prosecution of Henry Thaw,<sup>98</sup> the titillating "tabloid" features of Mae's case undoubtedly sold newspapers and kept Reno citizens begging for more.

*B. The Talbot Trial as Social Commentary: The Violent Marriage of a Glamorous Couple*

The public, then, must have gotten a certain voyeuristic thrill out of watching the Talbot trial in the Washoe County Courthouse or reading about it in myriad newspapers. But, as Professor Friedman suggests, headline criminal cases also have the potential to spark more serious discussion of social problems and to destabilize assumptions about such social markers as class, race, wealth, and religion. In particular, he highlights the Worm in the Bud Trial as an example of how such events and media coverage of them "expose the sleazy underside of prominent or respectable society."<sup>99</sup> Professor Friedman associates the Worm in the Bud Trial with the nineteenth century and the revelation of raw, disturbing details of Victorian life.<sup>100</sup> Yet, presumably he means that the Worm in the Bud Trial became a prominent form of trial-as-theatre starting in the 1800s, not that it rose and fell in that century. The Talbot homicide in 1909 not only threw a spotlight on the probable connection between the world of high-end gambling and such other vices as prostitution and drug use, but more importantly, it exposed domestic violence as a social problem that was not confined to the working class or the unemployed.

Reno's sporting elite knew that the Talbots had a volatile relationship; there had been past incidents of beating and even gun-wielding in that marriage.<sup>101</sup> But the extreme abuse of Mae on the night before the shooting and her fatal use of the pistol against Al on October 28 represented a shocking

95. See *supra* notes 57–58 and accompanying text (discussing the prosecution's efforts to discredit the defendant).

96. For an example of how Mae denied such allegations, see *Mrs. Talbot on Stand*, *supra* note 7; *State Grills May Talbot on Past Life*, *supra* note 62.

97. E.g., *Mrs. Talbot on Stand*, *supra* note 7.

98. *Id.*

99. Friedman, *supra* note 25, at 1264.

100. *Id.* at 1271 ("The 'worm in the bud' trial is specifically nineteenth century.").

101. See *supra* notes 4–5, 55, 62–63, 90 and accompanying text (discussing Mr. Talbot's previous abuse of Mae and her prior attempt to shoot him at the Golden Hotel).

escalation that many of their acquaintances might not have expected.<sup>102</sup> Although wealthy and middle-class husbands were compelled to appear in court on domestic assault and battery charges more often than scholars have realized,<sup>103</sup> such cases were deeply distressing to the men involved, and prominent male defendants sometimes filed libel suits in an effort to clear their good names.<sup>104</sup>

The exposure of domestic violence, and even intimate-partner homicide, among socially prominent men and women presented an opportunity for social commentary and reform. It also constituted a threatening moment that shook class-based assumptions about respectable, companionate marriage. The Tabloid and Celebrity features of the case allowed respectable American society to maintain a certain distance from Mae and Al's violent marriage. Because the couple inhabited the fast, glamorous world of gambling, horse racing, and theatre, newspapers and other observers could insinuate that their problems were not representative of bourgeois, or even elite, American life. However, Mae and her defense lawyers struggled valiantly (and, in the end, successfully) to depict her as a good Midwestern girl who became trapped in an abusive marriage.<sup>105</sup> Denying that she had met her husband in a brothel,<sup>106</sup> Mae insisted on an image of herself as an innocent, young woman whom a divorced gambler seduced when he passed through her small Ohio town.<sup>107</sup>

Before the dominant defense strategies in the case were known, newspapers speculated that Mae might claim insanity based on being beaten

102. See *State Grills May Talbot on Past Life*, *supra* note 62 (“On that night he came home . . . and again quarreled with her . . . ending by dragging her out of bed by the hair and throwing her against the piano, beating her until she fell unconscious.”).

103. Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860–1930*, 86 IND. L.J. 185, 201 & n.85 (2011) [hereinafter Ramsey, *Domestic Violence and State Intervention*].

104. See, e.g., *Libel Charged to Campaigner*, L.A. TIMES, June 1, 1929, at A3 (reporting that a City Councilman and candidate for City Attorney was expected to sign a libel complaint against a newspaper editor for accusing him of wife-beating); see also *Wife's Plan for Divorce Near Upset*, L.A. TIMES, Dec. 18, 1926, at A8 (stating that, after his wife accused him of physical abuse, a husband nearly refused to agree to their divorce, telling the court, “I don't want my name on the court records as a wife beater”).

105. See *supra* notes 61–66 and accompanying text (describing Mr. Talbot's previous abuse of Mae, which began when she was only eighteen years old); see also *Mrs. Talbot on Stand*, *supra* note 7 (reporting that the defense brought out that defendant was “born in Illinois, that she attended school at Hannibal, Missouri, both public school and business college”).

106. *Mrs. Talbot on Stand*, *supra* note 7; *State Grills May Talbot on Past Life*, *supra* note 62.

107. See *Bullet from Wife's Pistol Kills Talbot*, *supra* note 23; see also *Mrs. Talbot to Answer to a Charge of Murder*, *supra* note 1 (“Mrs. Talbot who is now 26 years of age was born in Ohio and was married eight years ago. She is a woman of considerable beauty and has a beautiful soprano voice.”). But see *Jury Believes Mrs. Talbot Shot Her Husband*, *supra* note 32 (reporting that a former business partner of the deceased testified to the Coroner's Jury that “Talbot met Mae Talbot in an immoral house in St. Louis in 1902 and married her in 1903 at Denver”).

while she was pregnant.<sup>108</sup> Her defense team raised the accident theory in a likely effort to muster “not guilty” votes from jurors who might find it unthinkable and horrifying that any woman could form homicidal intent. However, at trial her lawyers argued strenuously that, even if the shooting was *not* an accident, it constituted a justifiable homicide done in self-defense and that Mae’s past physical abuse by her husband made her fear that he would kill her both honest and reasonable.<sup>109</sup> Thus, her acquittal demonstrated that respectable Americans were prepared to excuse, or even to *justify*, her fatal shooting of the man who subjected her to such degradation and brutality. Acquitting Mae was necessary to police and condemn Al’s behavior as unmanly and inappropriate in civilized society.

### III. HOW THE TALBOT CASE TRANSCENDS THE TYPOLOGY

#### A. *Beyond the Worm in the Bud*

Describing the Talbot case as a Worm in the Bud Trial is not entirely satisfactory because it implies that it was somehow unique or unprecedented in revealing domestic violence behind the closed doors of socially prominent, middle- or upper-class marriages. Some historians and legal scholars too hastily assume that, as the husband’s right to chastise his wife lost favor, the only criminal prosecutions of wife-beating targeted lower-class men, particularly men of color.<sup>110</sup> My research shows, in contrast, that men of higher social status began to be prosecuted and convicted of assaulting and even murdering their wives at least as early as the second half of the nineteenth century and that, when abused women killed their batterers, they were often acquitted.<sup>111</sup> Seen in this light, the Talbot case looks less like a shocking

108. *Mae Talbot Placed on Trial for Life Today for Alleged Murder of Husband*, *supra* note 45; *Talbot Trial is to be Started Thursday*, *supra* note 45.

109. See *supra* notes 65–66 and accompanying text (discussing the defense theory that Mr. Talbot’s abuse of Mae the night before the shooting in conjunction with his years of previous violence against her, abuse gave her reasonable fear for her life).

110. See, e.g., Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2119–20 (1996) (contending that, after the Civil War, judges asserted that the criminal justice system should respect the privacy of middle- and upper-class families by not prosecuting wife-beaters).

111. See Ramsey, *Domestic Violence and State Intervention*, *supra* note 103, at 188–89, 201–02, 206–20, 222–30, 236–43, 252–55. Female defendants who lived dissolute lives and killed influential, high-status men were among the most difficult to defend. Carolyn B. Ramsey, *Intimate Homicide: Gender and Crime Control, 1880–1920*, 77 UNIV. COLO. L. REV. 101, 136–39 (2006) [hereinafter Ramsey, *Intimate Homicide*]. Thus, it is easy to see why the state attempted to associate Mae Talbot with immoral conduct. But in the final analysis, juries were sometimes willing to believe that a socially prominent decedent had provoked a self-defensive response from his killer. The line separating acquittals from convictions, and justified from unjustified acts of violence, was not a class line.

exposé than a representative example of the condemnation of wife-beating and the sympathy for beaten wives' desperate recourse to self-defensive violence that characterized social and legal responses to such cases in the late 1800s and early 1900s. Mae Talbot's shooting of her gambler-husband attracted nationwide attention in part because of its Celebrity, Tabloid, and Soap Operatic elements. But it constitutes a fruitful subject of scholarly analysis precisely because it transcended the entertainment functions of trial-as-theatre to leave a record about social and legal attitudes toward intimate-partner violence in 1910.

Although Mae was young, beautiful, and talented, many other female defendants found to have killed their abusers in self-defense did not fit this glamorous image.<sup>112</sup> Indeed, even if a working-class woman swore like a sailor and lacked any physical charms, she might be acquitted of murdering her batterer on grounds of justifiable homicide.<sup>113</sup> In an important sense, Mae's story is also the story of these other domestic violence survivors.

I have written at length elsewhere about how wife-beating was condemned during the late Victorian and Progressive Eras and how police and courts sought ineffectually to prevent intimate-partner violence and to punish its perpetrators.<sup>114</sup> I have also argued that the acquittal of women, including Mae Talbot, on charges of murdering their violent husbands demonstrated societal willingness to justify their recourse to self-defensive homicide, given their lack of other viable escape routes.<sup>115</sup> This section of my paper explores in greater detail how the Talbot case supports such arguments.

#### *B. Prosecuting the Deceased: The Role of Judges, Juries, and the Press in Enforcing Gender Roles*

What role did the press play in making domestic violence a public issue? This is a chicken-and-egg question that remains difficult to answer. Journalistic construction of intimate partner murder trials had the power to reinforce social values condemning men's violence against their wives. But at least in the Talbot case, it did not *create* such values. Rather, the defense team and the trial judge seem have to been ahead of the newspapers in seeing Al Talbot's behavior as a threat to companionate marriage and bourgeois masculinity.

112. See, e.g., Ramsey, *Domestic Violence and State Intervention*, *supra* note 103, at 238–43.

113. See, e.g., *id.* at 241–43 (discussing the acquittal of Bridget Waters on charges of murdering her estranged husband in Los Angeles in 1888).

114. See *id.* at 188–89, 197–231.

115. *Id.* at 252–53 (providing a brief discussion of the Talbot case in the context of a broader argument about the acquittal of women charged with murdering their batterers).



The press was generally sympathetic to Mae Talbot.<sup>116</sup> Although journalists recounted with relish the side-show dispute over custody of Al's corpse and the cross-examination of the defendant regarding her allegedly immoral past, the dominant attitude of the newspapers, even prior to trial, was that Mae's shooting of her husband could be excused due to his past violence toward her.<sup>117</sup> Making a prediction consonant with my own findings about intimate partner murder trials of female defendants during this era, the *Reno Evening Gazette* opined the day after the shooting, "the case will be difficult to prosecute."<sup>118</sup>

Nevertheless, journalists did not ordain the outcome of Mae's trial, nor did they create the narratives that spared her. Indeed, while newspapers speculated about whether Mae would plead insanity, stereotypical assumptions that a murderess must be hysterical or crazy<sup>119</sup> did *not* play a significant role at trial. Mae's lawyers began to frame the case in terms of justifiable homicide at voir dire when one of her attorneys

declared that the policy of Nevada laws was to protect womanhood and give them the best of it, and to support this argument he went back into the old laws of this state and dug up the old law which has never been repealed and which declared that a man who shall strike a woman over sixteen years of age shall be placed in a pillory.<sup>120</sup>

The defense argument thus centered on the wrongfulness of the deceased's conduct toward Mae, not upon any abnormality of mind that the beatings produced in her. In closing, one of Mae's lawyers asked the jury to acquit "this devoted wife who was persecuted by her brute of a husband."<sup>121</sup>

The defense team was able to support its position because the trial court allowed evidence of Al's past violence, including the severe beating he inflicted the night before she shot him, to be presented to the jury.<sup>122</sup> Over the

116. See, e.g., *Shot Husband Who Beat Her*, *supra* note 2 (reporting Mae's assertions that "her husband often threatened to kill her," that she had suffered a "fearful beating" from him the night prior to the shooting, and that immediately preceding the shooting, Mr. Talbot struck her).

117. *Al Talbot Shot Down by Wife in Office of Her Lawyer During Noonday Fight*, *supra* note 4 ("The shooting is the culmination of months of domestic discord."); see *supra* notes 35–39 and accompanying text (describing the battle over custody of the corpse); see also *supra* notes 57–58 (discussing the prosecution's attempt to impeach defendant).

118. *Woman's Victim is Slightly Improved Today*, *supra* note 3.

119. Several newspaper articles on the case propagated such stereotypes. See, e.g., *Bullet from Wife's Pistol Kills Talbot*, *supra* note 23 (noting that when she learned that her husband was dead Mae "collapsed and manifested signs of great distress of mind"); *Woman's Victim is Slightly Improved Today*, *supra* note 3 (reporting that, occupying a cell at the county jail, Mae Talbot "is at times hysterical").

120. *No Jury Yet in Mrs. Talbot's Trial*, *supra* note 80.

121. *Mrs. Talbot is Soon to Know What Destiny Has in Store*, *RENO EVENING GAZETTE*, Feb. 1, 1910, at 1.

122. *State Grills May Talbot on Past Life*, *supra* note 62.

prosecutor's objections, the defendant testified about how the deceased had beaten her at her apartment in the Saturno Building.<sup>123</sup> But under black letter self-defense law, Mae's lawyers still faced an uphill battle. Although the trial judge overruled the state and admitted the testimony, he reserved judgment about whether it should go to mitigation or to substantiating the self-defense claim.<sup>124</sup>

Professor Friedman notes that the "unwritten law" sometimes caused juries to return verdicts that conflicted with black letter doctrine.<sup>125</sup> In a recent article, I make a similar argument about the acquittal of abused women charged with murdering their batterers.<sup>126</sup> Despite self-defense law's requirement that a defendant must have faced an imminent threat of death or serious bodily injury, some battered wives were exonerated on justifiable homicide grounds when they killed in non-confrontational circumstances.<sup>127</sup> In the final analysis, however, the jury instructions given at the end of the Talbot trial demonstrate that social values condemning male violence toward women had a profound effect, not only on the defense attorneys' framing of their case and the jury's acquittal of Mae Talbot, but also on the way Judge Pike presented the law.<sup>128</sup> Indeed, one of the most remarkable things about the Talbot trial was the extent to which the court tailored its instructions to give the jury room to acquit.

In explaining the law of self-defense, the trial judge noted the traditional requirement that "[i]t must appear that the circumstances were sufficient to excite the fears of a *reasonable* person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge."<sup>129</sup> The danger, according to the court, must have been "so *urgent* and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was *absolutely necessary*. . . ."<sup>130</sup> Such instructions might have presented an obstacle to finding that Mae Talbot acted in self-defense because there was little or no evidence that the blow Al struck in the attorney's office was potentially lethal. Neither side even conclusively established

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123. *Mrs. Talbot on Stand*, *supra* note 7.

124. *Id.*

125. Friedman, *supra* note 25, at 1268–69.

126. See Ramsey, *Domestic Violence and State Intervention*, *supra* note 103, at 252–54.

127. *Id.*

128. Instructions Given, *supra* note 72, nos. 6, 10, 15, 17, 18.

129. *Id.* no. 11.

130. *Id.* no. 12 (emphasis added); see also 1 REV. LAWS OF NEV. § 6402 (1912) ("If a person kill [sic] another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary.").

whether the deceased or the defendant was the primary assailant during the lunch-hour meeting.<sup>131</sup>

Significantly, however, Judge Pike paired his classic re-statement of self-defense law with a caveat to jurors that “if you find from the evidence the defendant did kill the said A. E. Talbot, you may take into consideration the facts that the deceased was a man and that the defendant is a woman . . . .”<sup>132</sup> He also reminded them that “under the laws of the State of Nevada a husband has no right to physically chastise his wife . . .”; thus, if the deceased struck Mae in W.D. Jones’ office, “[he] had no more right to so assault her than any other person, not related to defendant by marriage or otherwise . . . .”<sup>133</sup>

The court’s instructions thus lent considerable support to the defense theory that Mae’s lawyers began to introduce at voir dire—that the dead husband, not the wife, was the real wrongdoer and that through his past violence, he had made her reasonably afraid for her life.<sup>134</sup> Although self-defense law is often seen as a sexist doctrine designed for fights between men,<sup>135</sup> the District Court of Washoe County invited the jury to see that law in explicitly gendered, albeit somewhat paternalistic terms. The deceased husband’s past acts of wife-beating, as well as the blow he allegedly struck in the attorney’s office, provided a context for assessing Mae’s self-defense claim. The jury was allowed, indeed instructed, to find guidance in early twentieth century values calling for men to protect and honor, rather than physically chastise, their wives.<sup>136</sup>

131. See *Al Talbot Shot Down by Wife in Office of Her Lawyer During Noonday Fight*, *supra* note 4 (“While her attorney struggled to separate the enraged couple . . . Mrs. A. E. Talbot and Al Talbot, her husband, fought for the possession of a revolver.”).

132. Instructions Given, *supra* note 72, no. 6.

133. *Id.* no. 17.

134. See *supra* notes 61–66 and accompanying text (describing the defense’s strategy of highlighting Mr. Talbot’s history of abusive behavior, including the beating occurring the night prior to the shooting).

135. See, e.g., CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW 182 (1989) (arguing that the law of self-defense discriminates against women); Laura E. Reece, *Women’s Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference*, 1 UCLA WOMEN’S L.J. 53, 57 (1991) (“Not only are women denied defenses available to men, they are also denied the opportunity to use the reality of women’s lives to establish a defense. A female homicide defendant must attempt to collapse her experience into the male homicide structure. But the forced fit is inadequate and awkward.”); Walter W. Steele & Christine Sigman, *Reexamining the Doctrine of Self-Defense to Accommodate Battered Women*, 18 AM. J. CRIM. L. 169, 175 (1991) (“Because only men executed the laws and served as protectors in those early days, a masculine model of self defense naturally developed. . . . That masculine model remains ingrained in the law even in this more enlightened age. . . . As in times of old, society expects a woman to be protected by her father and husband. It does not expect her to protect herself from assaults committed by her own protectors.”).

136. Instructions Given, *supra* note 72, no. 17.

## CONCLUSION

The Talbot murder case offered the perfect material for headline news: a prominent victim and defendant involved in a fatal shooting which showed that they and their glamorous social world had been trying to conceal marital violence (and perhaps other illicit activity) behind closed doors. While newspapers publicized the trial and sympathized with Mae Talbot, they did not create the social values that spared her. Over time, journalistic attention to wife-beating, wife-murder, and self-defensive killings by abused women probably contributed to societal condemnation of domestic violence. But in the Talbot case, the defense team, the jury, and the court seemed more prepared than the newspapers to view Mae as a rational actor whose killing of her husband arose from his wrongful violence toward her. The press clung for months to speculation that the defense would be insanity, thus perpetuating a “disease theory” of why women kill and how domestic violence affects its victims. Journalists also joined prosecutors in dramatizing the Talbots’ possible connections to prostitution, drugs, and financial intrigue. In contrast, Mae and her lawyers (and, to a surprising extent, the trial judge) called the jury’s attention to gender norms that had already made wife-beating illegal and offensive in respectable society.

Focusing on the trial’s sensational aspects ignores the ways in which it was representative of cases in which women from all social classes were acquitted of murdering their batterers in the late Victorian and Progressive Eras. The jury’s likely reliance on the self-defense theory in acquitting Mae harmonized with “not guilty” verdicts for other battered wives—many of whom were working-class women who did not fit the role of celebrity shooter, soap-opera protagonist, or opera diva like Mae Talbot did.<sup>137</sup> Moreover, although the Talbot case showed that wife-beating was not confined to racial minorities and poor whites, it was certainly not the first or only trial in the late 1800s and early 1900s to expose this fact. Rather it underscored what many newspaper readers would have known from perusing reports on routine police-court business, as well as major homicide trials—that men from all walks of life might be perpetrators of domestic violence.<sup>138</sup>

The press put the Talbot homicide in the headlines, where it satisfied the public’s desire for entertainment, as well as provided an occasion for candid discussion of wife-beating. Prescriptive values exalting companionate marriage were unstable and contested; so, too, was the public image of Mae Talbot—who appeared variously in newspaper articles as justified, temporarily insane, and cold-bloodedly grasping to inherit Al’s estate. In the final analysis,

137. See Ramsey, *Domestic Violence and State Intervention*, *supra* note 103, at 238–43; Ramsey, *Intimate Homicide*, *supra* note 112, at 125, 128–31.

138. See Ramsey, *Domestic Violence and State Intervention*, *supra* note 103, at 201 & nn. 85–86.

however, the jury verdict acquitting Mae of murdering her abusive spouse constituted an effort to police the boundaries of respectable masculinity, and the prominent place occupied by the self-defense theory at her trial showed that such policing did not always come at the expense of declaring battered women to be insane.

