“WE JUST LOOKED AT THEM AS ORDINARY PEOPLE LIKE WE WERE:” THE LEGAL GAZE AND WOMEN’S BODIES

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Abstract

This Article analyzes the struggles of two female musicians who became caught up in the criminal justice system because they revealed their bodies. Using archival research and personal interviews, I tell the story of punk rocker Wendy O. Williams’ 1981-1984 obscenity and police brutality court battles. I also relay the life of Lorien Bourne, a disabled and lesbian rock-n-roller charged with disorderly conduct in Bowling Green, Ohio, in 2006. I examine how legal actors, including courts and jurors, viewed Williams and Bourne using classist, ableist, sexist, and homophobic optics. In so doing, I extend my previous work on legal “gazes,” or what I have called the legal practice of “peering.” I end the Article by looking to the women’s art and lives as correctives to oppressive manners of legal seeing.

PRELUDE: TWO TALES OF FEMALE NUDITY AND THE COURTS

“The prosecutors are the guys doing this for money. These guys are the real whores,”1 Mohawked and leather-clad2 Plasmatics frontwoman Wendy O. Williams shouted to jurors in the Cleveland Municipal Court3 in April 1981. They had just rendered a not-guilty

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2 Id.
verdict on an obscenity charge Williams faced after a sexually explicit January 20 show at the city’s Agora club. During the performance, Williams had probably sung her politically uproarious songs while chainsawing a guitar and sledgehammering a television—energetic outrages that proved all the more remarkable since only two nights before she had been beaten and arrested for obscenity by police after a Milwaukee concert. Yet the Cleveland authorities seemed less interested in Williams’ Dionysian treatment of property or her out-of-state scandals than in her wearing little over her breasts but shaving cream and fondling her microphone at the Agora.

During the trial, Cleveland prosecutor Patrick Roche showed the jury a film of the Plasmatics’ show, which revealed Williams’ half-nude dancing as well as the cuts and bruises she’d weathered during the January 18 Milwaukee arrest. This was provocative stuff, but the five-man, three-woman jury did not respond to these visuals with disdain. They acquitted her after only three hours.

than the trial of the late punk rock icon Wendy O. Williams in 1981.

4 Court Sees Girl Singer Clad in Shaving Cream, GLOBE & MAIL, Apr. 9, 1981.

5 See infra note 100.


7 Plasmatics Singer Arrested, SARASOTA HERALD-TRIB., Jan. 24, 1981 (“Cleveland police . . . arrested the punk rock singer for allegedly pandering obscenity at a Wednesday night performance at a rock nightclub. She was released on $200 bond.”).

8 Punk Rock, supra note 1 (“Prosecutors said Miss Williams was nude after the shaving cream melted and that her gyrations with a microphone were depictions of masturbation.”).


10 Kolson, supra note 9.

11 Id.
Williams’ and the Plasmatics’ luck with the courts held throughout 1981.12 Several months after the Cleveland acquittal, Plasmatics manager Rod Swenson appeared in Milwaukee to face the charges of obstructing justice he had earned when trying to save Williams from the police’s January 18 beatings.13 The defense put on a hugely enlarged photograph of Williams being dogpiled by local police as evidence of Swenson’s justification for assaulting the officers who attacked her.14 Once again, the jury acquitted, and one interviewed juror said that they did so because they saw the Plasmatics as “ordinary people” just like they were.15

Three years later, however, Williams’ life and legal fate saw a different turn. Now a struggling rock star with an arrest for battery on her record,16 she traveled with her band back to Milwaukee to sue its police department on a civil rights claim based on her January 18, 1981 arrest.17 During this trial, the Milwaukee jury was offered two images that hailed from those difficult three days: City Attorney Scott Ritter, who defended the police officers, made sure that the jurors saw a blown-up still photograph of Williams covered in shaving cream, an image that resembled the video (sans bruises) that the Cleveland jurors had studied when deciding that she had not committed obscenity.18 The plaintiffs’ attorney, in turn, submitted the photograph of Williams being attacked by the police officers, which had persuaded the 1981 Milwaukee jury that Rod Swenson had not obstructed justice when he had come to Williams’ aid.19 Yet while those images had helped convince the 1981 Cleveland and Milwaukee jurors of Williams’ Cleveland innocence and Milwaukee peril, they now helped induce the jury to find that the Milwaukee officers had not sexually

13 See id. (dates and details of trial); Wilson, supra note 6.
14 See infra note 141.
15 See Fee, Not Guilty, infra note 136.
16 See Berger, infra note 147.
17 Williams Sues Milwaukee Police, GLOBE & MAIL, Jan. 20, 1982; Backstage: Doctor Disputes Williams’ Claim, GLOBE & MAIL, Oct. 6, 1984 (Circuit Court and damages claim details). See also infra text accompanying notes 170–179.
18 See Ritter Interview, infra note 174.
19 See infra note 141.
assaulted her, not used excessive force, and not been guilty of violating her civil rights.20

*                        *                        *

On September 16, 2006, musician,21 journalist,22 and Bowling Green University student23 Lorien Bourne stripped to the waist in City Park, in Bowling Green, Ohio.24 She did so as a protest of park regulations25 that permitted men to bare their chests but forbade women from doing the same. Her civil disobedience plan included head-turning fliers,26 a fundraising picnic potluck for a legal defense fund known as the “Titty Committee,”27 and the topless action that would occur in the midst of the alfresco lunch. At City Park, Bourne and several friends disrobed, taking care also to videotape the proceedings.28 Local police received a complaint and responding officer Matthew Kielman arrived at the scene. He issued Bourne and her female friends citations for disorderly conduct, which in Bowling Green requires that the defendant “recklessly cause inconvenience, annoyance, or alarm

20 Backstage: Williams Loses Suit against Police, GLOBE & MAIL, Oct. 20, 1984; see also Plasmatics Singer Loses Suit, EVENING INDEP., Oct. 19, 1984 (reporting same); see also infra note 141.


22 See, e.g., Lorien Bourne, Animal Lovers Want Nominations For Outstanding Critters, BG NEWS 6 (June 8, 2005), http://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=8449&context=bg-news [https://perma.cc/BT2E-R5M8]; see also infra text accompanying note 244.


26 Defendant’s Exhibit A, City of Bowling Green v. Bourne, No. 06-CRB-02701 (Bowling Green Mun. Ct. 2006); see also infra Appendix.


to another” by (among other things) “creating a condition that is physically offensive to persons.”

Bourne retained the representation of Angelita Cruz Bridges, of the Bowling Green State University’s Student Legal Services. On November 17, oral arguments on a motion to dismiss were held. On December 5, 2006, the Bowling Green Municipal Court denied the motion to dismiss on Equal Protection and First Amendment grounds, finding that breasts were “different[]” “erogenous zone[s],” and the disrobing qualified as unprotected conduct. It also held that First Amendment rights must be balanced “with the right of others to live in an orderly and tranquil society” and chided Bourne for “perversely disregarding . . . that a person in the public park near her would be annoyed by her bare breasts.”

In deciding that Bourne’s constitutional rights had not been infringed by her arrest for disorderly conduct, the court was aided by defense counsel’s submission of the fliers as well as the videotape. This tape would have revealed Bourne’s visible symptoms of Turner syndrome, which causes short stature and a webbed neck, along with heart problems, early mortality, and, sometimes, psychological difficulties. In other words, the videotape would have shown that Bourne experienced physical disability. Bourne was also a lesbian, and while I have found no evidence that she specifically highlighted her sexual identity during

29 Bowling Green v. Bourne, 2007 WL 5082312, at *2, citing BOWLING GREEN CODE OF ORDINANCES § 132.04 (A)(5) (emphasis added). Other facts that can result in a conviction for disorderly conduct are presenting physical risks of harm to others. Id.


32 Bowling Green v. Bourne, 2007 WL 5082312, at *1 (“The court also concluded that the police officer was responding only to appellant’s conduct and did not curtail her First Amendment free speech rights. Finally, the court noted that the right to free speech is not absolute and must be balanced with the rights of others.”).

33 Bowling Green v. Bourne, No. 05-CRB-02701, at *3.

34 Id.

35 See infra Appendix.

36 Transcript at 3, Bowling Green v. Bourne, 2007 WL 5082312 (Ohio 2007) (statements of Angelita Cruz Bridges) (on file with author) (“Exhibit D is a video.”).

37 See infra notes 220–225.
her picnic, her decision to eat lunch with other topless women and men may have triggered an impression of sexual difference. The court, however, did not refer to its reactions to seeing Bourne without a shirt on at the park, nor did it breathe a word about Bourne’s disability when it denied the motion to dismiss.

Bourne did not see herself and her body as “physically offensive.” She appealed to the Ohio Appeals Court, and later to the Ohio Supreme Court, but lost. The Ohio Appeals Court made short work of her claims. The court adumbrated the female breast, like the Municipal Court had, as a forbidden “erogenous zone,” and Bourne’s behavior as unseemly, and unprotected, conduct: “Because of the anatomical and societal differences, the government has an interest in preservation of the public decorum, decency, and morals.” The Ohio Appeals court felt it unnecessary to bulk up its analysis with citations to seminal Equal Protection cases addressing women’s rights, such as United States v. Virginia, which requires that gender classifications exist for “exceedingly persuasive” reasons, or Mississippi University for Women v. Hogan, which forbids justifying gender discrimination on “fixed notions” of gender roles. The Bourne court concluded succinctly that “appellant was not discriminated against based solely upon her gender.” After this defeat, Jeff Gamso, then head of the Ohio office of the ACLU, took up Bourne’s case with the Ohio Supreme Court, as did Andrew D. Bowers, counsel for the Naturist Action Committee (“NAC”), a political group that supports the legalization of public nudity.

38 Recall that physical offense forms a definition of disorderly conduct in Ohio. See supra text accompanying note 29.
40 United States v. Virginia, 518 U.S. 515, 533 (1996) (state must demonstrate that the justification for its discrimination is “exceedingly persuasive”).
41 Id.
43 Id.
45 Telephone Interview with Jeff Gamso, Legal Dir., Ohio Am. Civil Liberties Union (Feb. 11, 2016). See also Gamso Brief, supra note 25.
While the ACLU is a formidable legal institution, NAC, NAC’s legal representatives, and NAC’s mission convey explicit messages of the value of public displays of nudity. This unlikely pairing of advocates did not win the day for Bourne.

Neither the Ohio Appeals Court nor its Supreme Court mentioned, and perhaps never knew, that Bourne was disabled and a lesbian, and that the Municipal Court must have seen documentary footage of Bourne’s physical condition and personal affiliations in the videotape. Nor did the Supreme Court mention anything about NAC’s presence in the litigation, and how it influenced its perception of Bourne’s case. It just denied certiorari over two dissents, and without any written opinions.

INTRODUCTION

Why did Wendy O. Williams find vindication in Cleveland and Milwaukee juries in 1981, but then lose her well-founded Milwaukee police brutality case three years later? And why did Lorien Bourne get such short shrift during her entire battle with the courts? Both were raucous musicians, and both also protested against sexism and hypocrisy. They each used their undressed bodies as a way both to gain attention and to fight against an unequal society. Yet a study of their lives and their legal cases reveal important differences that telegraph the forces women, LGBTQ people, disabled people, and people who are not members of an elite class must harness to be taken seriously in the courts.

Specifically, the cases of Williams and Bourne reveal the power of “peering,” a visual

47 See David Bernstein, You Can’t Say That: The Growing Threat to Civil Liberties from Antidiscrimination Laws 153 (2003) (listing “the ACLU’s resources, prestige, [and] . . . long-standing civil liberties credentials.”).
48 See infra text accompanying note 363.
49 See infra text accompanying note 367 (“squeamish”).
51 See supra note 28; infra text accompanying note 106.
52 See infra text accompanying note 126 (“a man”); infra note 237.
practice that drives oppression and “othering” in law. Legal power attaches in the realm of the visual: a legal actor—a judge, a jury member, a politician, and sometimes influential members of the press—may design a person’s fate by seeing (that is, “peering” at) them as either recognizable human beings, well-regarded “stars,” or debased creatures. A recognizable human being qualifies as the legal actor’s peer, and, unsurprisingly, will find themselves on solid ground when making their case to a jury or a judge. A “star” possesses spectacular qualities, such as great wealth, fame, or glamour, and can be “looked up to” with an “upward gaze” that usually presages excellent treatment in the courts. A person degraded by the legal system, on the other hand, often discovers themselves depicted or described visually as divested of any admirable, or sometimes even human, qualities. If judges or juries “look down” on such unfortunates then they cannot be assured a happy jurisprudential resolution.


54 Melissa A. Milkie et al., Current Theorizing and Future Directions in the Social Psychology of Social Class Inequalities, in HANDBOOK OF THE SOCIAL PSYCHOLOGY OF INEQUALITY 55 (Jane D. McLeod et al., eds., 2014) ("Othering is a form of collective identity work in which those with higher status create definitions that identify other groups as inferior and sustain those definitions in social interactions.").


56 I am using slightly different language here than I set forth in Peering. Yet that article, as well as my essay on Detroit, addressed the level, upward, and downward gazes. See Murray, Peering, supra note 53, at Parts III and IV; Murray, Motor City, supra note 53, at Section VI (upward and downward gazes) and VIII (advocating a practice that could create a “level” gaze, that of “being with” people).

57 Readers may here note the double entendre intended in the use of the term “peering.”

58 See, e.g., Murray, Peering, supra note 53, at 281 (describing Associate Justice Sandra Day O’Connor’s efforts to see on the level of the middle class in her famous dissent in Kelo v. City of New London, 545 U.S. 469 (2005)).

59 See, e.g., id. at 289 (describing how the New York Court of Appeals and a blight consulting company, aligned its vision with that of fabulous Columbia University in a fractious Fifth Amendment action involving West Harlem).

60 See, e.g., id. at 250–51 (describing how the United States Supreme Court described poor people of color as cattle and as filthy in Berman v. Parker, 348 U.S. 26, 28–30 (1954)).
In my previous work, I studied gazes in the Fifth Amendment context, and observed how these level, upward, or downward gazes affected poor people and people of color during condemnation proceedings.\(^6\) In this Article, I explore how peering infiltrates criminal and civil rights cases not only on a class and race basis, but also in terms of gender, sexuality, and disability.\(^6\) I show how a woman—Wendy O. Williams—who was “looked up” to as a telegenically ferocious and sympathetic star in 1981 enjoyed legal wins.\(^6\) But three years later, when Williams’ career had stumbled, and she had made some mistakes, the downward gaze cast her as a stripper and a harlot who deserved her Milwaukee beatings.\(^6\)

The case of Lorien Bourne is also one of bad visuals, though these prove more difficult to extract from the legal papers. I have noted that Lorien Bourne was a lesbian\(^6\) and a sufferer of Turner Syndrome.\(^6\) She was also poor\(^6\) and a sufferer of mental health problems.\(^6\) These facts are nowhere to be found in any of the litigation documents or the smattering of news reports on her conviction and appeals. Instead, I discovered these facts in interviews of Bourne’s sister and bandmate.\(^6\) But there are indications that Bourne failed a legal peering test, much like Williams did in 1984: the Municipal Court accessed ample visual evidence of Bourne’s physique\(^7\) and fidelities\(^7\) when it declared her half-naked body “physically offensive.”\(^7\) And when the Supreme Court denied her appeal, it may have been influenced by the fact that she found legal backing in a group of eccentric,

\(^{61}\) See id.

\(^{62}\) See infra Part III.

\(^{63}\) See infra text accompanying notes 282–293.

\(^{64}\) See infra note 180.

\(^{65}\) See infra text accompanying note 228.

\(^{66}\) See infra text accompanying note 219.

\(^{67}\) See infra text accompanying note 247.

\(^{68}\) See infra text accompanying note 233.

\(^{69}\) See, e.g., infra notes 261 (“She wanted someone to listen to her”) and 248 (“Styx had little to offer them”). Regarding the path I took to discovering Bourne’s story, see infra note 438.

\(^{70}\) See infra note 349.

\(^{71}\) See infra text accompanying note 342; Appendix.

\(^{72}\) See infra text accompanying note 29.
low-status nudists with a controversial and visual public profile.\textsuperscript{73}

To make my case that peering and optical practice helped drive the legal cases involving Williams and Bourne, I focus on the use of visual materials such as videotape,\textsuperscript{74} still photographs,\textsuperscript{75} costume and performance during trial,\textsuperscript{76} television, magazine, and newspaper coverage,\textsuperscript{77} fliers,\textsuperscript{78} and the discrediting force of public and thus visual nudity itself\textsuperscript{79} to show how legal actors peered at them. In Williams’ case, I also examine how other contemporary police brutality cases in Milwaukee, some involving Black male plaintiffs and one involving a white female exotic dancer whose picture figured in media coverage, created a frame in which the 1984 jury viewed Williams.\textsuperscript{80}

In Parts I and II of this Article, I lay out the lives of Williams and Bourne, and also delineate the social forces that help build the gazes that determined their legal treatment. In Part III, I adumbrate my theory of peering, and elaborate how jurors and judges looked at Williams and Bourne through the lenses of sexism, homophobia, classism, ableism, and racism. These optics helped them “see” whether Williams and Bourne were obscene or disorderly, and whether (in Williams’ case) they had been unjustly hurt by police.

In Part IV.A, I consider the hard job of learning how to see beyond these blinders. I draw upon some of my other work with artifacts\textsuperscript{81}—that is, art made by legal subjects\textsuperscript{82}—and offer Williams’ and Bourne’s art as teaching lessons for the gaze. Their performances can help us observe gender, sexuality, disability, class, and race in a new, non-subordinating, and non-objectifying way.

\textsuperscript{73} See infra text accompanying note 367.
\textsuperscript{74} See infra text accompanying note 349.
\textsuperscript{75} See, e.g., infra text accompanying note 118.
\textsuperscript{76} See infra text accompanying note 128.
\textsuperscript{77} See infra note 327.
\textsuperscript{78} See infra text accompanying note 342; Appendix.
\textsuperscript{79} See infra text accompanying note 367.
\textsuperscript{80} See infra text accompanying note 311 (“I’m glad to see this verdict.”).
\textsuperscript{81} See Yxta Maya Murray, Rape Trauma, the State, and the Art of Tracey Emin, 100 Cal. L. Rev. 1631 (2012).
\textsuperscript{82} Id.
In Part IV.B, I offer another resource for addressing the depredations of peering: biography. Taking my cues from feminist legal theory,83 critical race theory, and law and the emotions scholars,84 I will employ the art of biography to counter the narrow views of Williams and Bourne shared by jurors and courts. As the reader will discern, this Article vibrates with narratives of both women’s entire lives. I include these stories to excoriate and also mourn the effects of what might be called the “snapshot culture” of peering—that is, the reduction of human beings down to a few potent images. Legal peering (in particular, the downward gaze) did deep injustice to both Williams and Bourne. But it proves difficult to fathom how inaccurate, and how damaging, those aspersion-casting visuals were without tracking the two women beyond the apertures of their cases. By trying to better understand the lives they led before, during, and after their litigation, we can discover better how courts’ and juries’ reliance on these frozen-in-time portraits of stars, harlots, and perverts did grave harm. I do not offer Williams’ and Bourne’s complete stories in the hope that they will immediately eradicate oppressive legal optics. I do so to encourage in the reader feelings of loss and grief inspired by the knowledge that the law can work on woefully superficial and dangerous levels. Only when we absorb the emotional impact of peering’s risks and devastations can we begin to develop the political will to change it.

I. Looking Good, Then Looking Bad: Wendy O. Williams

Born in Rochester, New York on May 28, 1949,85 Wendy Orlean Williams began

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83 See, e.g., Susan D. Carle, Gender in the Construction for the Lawyer’s Persona, 22 Harv. Women’s L.J. 239, 239 (1999) (“The overarchig question motivating this Review Essay is whether—and, if so, in what ways—we should understand lawyering roles to be gendered. I examine this question by reviewing Kathryn Kish Klar’s recent biography of Florence Kelley.”).

84 See, e.g., Alex M. Johnson, Jr., Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship, 79 Iowa L. Rev. 803, 851 (1994) (“exposition of the Voice of Color in Narrative and non-Narrative form is a relatively recent addition to legal scholarship”); Mario L. Barnes, Black Women’s Stories and the Criminal Law: Restating the Power of Narrative, 39 U.C. Davis L. Rev. 941, 961 (2006) (“I use this familial and somewhat autobiographical narrative as other CRT scholars have: to implicate how outsiders often have a different relationship to the law and society than do those in the majority.”). Regarding law and the emotions scholars, see infra notes 429–433.

working as a dominatrix in the 1970s\textsuperscript{86} with Yale MFA and radical artist Rod Swenson,\textsuperscript{87} who produced live sex acts in Times Square under the name Captain Kink’s Theater.\textsuperscript{88} Swenson and Williams formed the Plasmatics in 1978, first appearing at New York’s famous CBGB club that July.\textsuperscript{89} Though Swenson and Williams founded the band on anarchic and liberationist principles,\textsuperscript{90} it took a while for them to find their public personae. Williams first branded herself “The America Dream Girl Gone Nightmare,” but complained that “[p]eople were treating me like a blond peabrain.”\textsuperscript{91} In 1979, she shaved her hair into a Mohawk\textsuperscript{92} in order to “say fuck you to all the cosmetics companies.”\textsuperscript{93} Still, Williams did pay attention to her appearance and her body: she was a vegetarian advocate of healthy

\begin{itemize}
  \item Carole Wallace, \textit{Bold, Brash and Braless, Rock’s Bad Girl Reveals a Surprising Offstage Life and Past—Would You Believe She was a Brownie?}, \textsc{People} (July 25, 1983), http://www.people.com/people/archive/article/0,,20085546,00.html [https://perma.cc/Z6ZL-AJ7M] (“Disillusioned with Europe, Wendy returned to the U.S. in 1976 and took a roach-filled room in a seedy Times Square hotel. She quickly landed a job nearby at Captain Kink’s Sex Fantasy Theater, where she performed scripted sex fantasies, usually as a fierce dominatrix. ‘It wasn’t sleazy,’ she maintains stoutly. ‘It was a legitimate theater.’”).
  \item Webber, \textit{Revolution, Evolution}, supra note 87.
  \item Wallace, \textit{supra} note 86.
  \item Webber, \textit{Revolution, Evolution}, supra note 87 (describing the Plasmatics’ methods and ethos) (“Part of the assault on conformity and what we saw as blind worshipping of consumerism was shocking to people indoctrinated into it.”).
  \item Wallace, \textit{supra} note 86.
  \item \textit{Id}.
  \item Burning Them Down, \textit{Wendy O. Williams and the Plasmatics: 10 Years of Revolution Rock N Roll}, at 28:00, \textsc{YouTube} (Feb. 9, 2009), https://www.youtube.com/watch?v=5TGBXkkSyoY (last visited Jan. 9, 2017) [hereinafter \textit{Wendy O. Williams and the Plasmatics}]. In an interview, Williams said: “Like you have all these cosmetics companies dictating to you what you’re supposed to look like, how you’re supposed to act . . . . I’m saying ‘fuck you’ to all the cosmetic companies.” \textit{Id}. at 27:30.
\end{itemize}
eating who worked out with weights ten to twelve hours a week.94 This regimen earned her a taut, admirable physique, which she showed off in bra tops and tights pants or bikini bottoms.95 Her body was well remarked upon through the 1980s.96

During that decade, Williams’ search for the spotlight finally succeeded: she garnered massive attention at a huge, free concert the Plasmatics put on at New York’s Pier 62,97 which would promote their album *New Hope for the Wretched*, put out by Stiff Records.98 Driving a brakeless 1972 Cadillac Coupe de Ville loaded with explosives onto a stage also laced with incendiary devices, she leapt out moments before the car detonated and careened into the Hudson River.99

Antic property destruction became a signature of Williams’ performance style. Williams chainsawed guitars, sledgehammered televisions and radios, and fired shotguns

94 Wallace, *supra* note 86 (“She jogs and works out daily, and swims regularly. By far her biggest passion is pumping iron, which she does diligently 10 to 12 hours a week.”). She later became a health food expert after the Plasmatics. See *infra* text accompanying note 209.


97 Richard Harrington, *Rock’s Smashing Success: The Plasmatics, Their New Wave of Destruction*, WASH. POST, Nov. 22, 1980 (“Some 10,000 people in New York got off in mid-September when the Plasmatics gave their biggest (and free) outdoor show on Pier 62. With the cooperation of New York police and fire officials, Williams drove a 1972 Cadillac Coupe de Ville loaded with explosives onto a stage laden with explosives. She leapt out just before the whole caboodle blew up and toppled into the Hudson River.”).


99 The detail about the Cadillac’s lack of brakes may be found in Wendy O. Williams and the Plasmatics, *supra* note 93, at 23:51. Also, this documentary numbers the audience at 25,000, as opposed to the 10,000 estimated by the Washington Post. Regarding the 25,000 figure, see *id.* at 24:06. Regarding the 10,000 figure, see Harrington, *supra* note 97. For footage of the explosion, see Wendy O. Williams and the Plasmatics at 24:41.
into amplifiers,\cite{100} coups de gras that she exhibited, for example, during an amazing May 20, 1981, performance on _The Tomorrow Show with Tom Snyder_.\cite{101} Williams, wearing a black-dyed Mohawk, a leather bikini top, arm cuffs, and liquid-looking black tights, sang the Rod Swenson-written “Master Plan” off of the _Beyond the Valley of 1984_ album, released in 1981.\cite{102} On a stage set with an orange car, two guitarists, and a drummer, she began shouting lyrics like “Masterplan Masterplan Masterplan / It makes you feel so sure . . . You like controlling minds.”\cite{103} She then grabbed a sledgehammer and smashed the car’s windshield and body in an ecstatic free for all.\cite{104} As a topper, she jogged about with sticks of dynamite, showing them to the audience before lighting them and throwing them into the car. The audience cheered. The Plasmatics became known for these gestures as much as their playing and singing.\cite{105}

Williams made it clear that these acts of destruction carried political meaning. As she told media personality Tom Snyder on his television show:

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to media personality Tom Snyder on his television show:
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\begin{enumerate}
\item Harrington, _supra_ note 97 (“The five-member group (which features a 6-foot-5-inch lead guitarist who looks like an understudy for “Dawn of the Dead,” complete with blue-dyed Mohawk haircut and tutu) is an on-stage eve of destruction: They chain-saw through guitars, sledgehammer televisions and radios, fire loaded shotguns into their amplifiers, and even play a little bit of rock ’n’ roll.”).
\item _Masterplan Lyrics, supra_ note 102.
\item _Tom Snyder Show, supra_ note 101.
\end{enumerate}
\end{flushleft}
In our society, things are way out of whack.\textsuperscript{106} It seems like it’s normal for rape and murder to go on, but it’s not normal to smash a T.V. set. And I think things are out of proportion . . . I’m exorcising the evil in society when I’m smashing these things because I’m showing that these are just . . . things. . . . Materialism is rampant, you know, like with violence and everything in our society. And the only way you can not let money rule your life, not let materialism rule your life, is be able to flush it down the toilet . . . . We are bound and determined to undermine the status quo.\textsuperscript{107}

Williams emphasized her anticapitalist, anarchic, anti-status quo, and pro-animal rights politics as the driving force behind her performances and life many times in the course of her career.\textsuperscript{108} She additionally may have supported gender nonconformism when she encouraged her bandmate Richie Stotts to wear the nurses’ uniforms, bras, and tutus that he wanted to adopt on stage.\textsuperscript{109}

\textsuperscript{106} See Tom Snyder Show, supra note 101, starting around 3:50.

\textsuperscript{107} Id. at about 5:27.

\textsuperscript{108} See, e.g., Wallace, supra note 86 (“[S]he hopes to ‘shock the s—- out of a complacent society that is destroying itself.’ . . . She contributes to several animal-protection and environmental funds, and refuses to wear makeup manufactured by companies that use animals for laboratory experimentation.”); Harrington, supra note 97 (“‘We like to show that things are just . . . things,’ said Williams . . . . ‘You work for them and take care of them and these things become your gods.’”); HANNON, supra note 101, at 66 (quoting Williams as saying “People in our society, I think, place too much value on material things.”); Lance Evans, Plasmatics’ Transfusion Sparks Little Confusion, SCRANTON TIMES (Apr. 27, 1981), http://blogs.thetimes-tribune.com/pages/index.php/2014/11/30/you-dont-forget-us/ [https://perma.cc/T8ZF-5WDL] (calling herself an anarchist).

\textsuperscript{109} See Kolson, supra note 9 (describing her encouragement of Stotts). Stotts himself, however, does not appear to have identified as trans, gay, or even gender nonconforming outside a desire to appear “radical” and different on stage. dudeme, Richie Stotts interview, Part 2, PEARLDRUMMERSFORUM.COM (Feb. 9, 2009), https://www.pearlrummersforum.com/showthread.php?221080-**CLASSIC-ROCK-News-Reviews-amp-Chat-For-Jan-Feb-2009**/page30 [https://perma.cc/RU9N-BZHP] (last visited Jan. 9, 2017) (“I felt I needed to go totally over the top. The New York Dolls, Bowie, and the glam-rock scene had dressed in drag, but from a transgender point of view. I loved those bands but dressing in drag was not my bag. My vision was of a grown man (I am 6’6) with a Mohawk, wearing a nurse’s outfit and pounding his head with a guitar until it bleeds. Once I started wearing the nurse’s outfit, it was a logical progression to the other outfits I wore such as the French Maid, the French Maid with Tutu, and the Nurse with Tutu. Wendy was all for it.”).

It is unclear whether Williams simply wanted Stotts to just be “over the top,” wanted to represent queerness to her fans, or thought that Stotts may have found personal gender liberation in the clothing despite his disavowal of his own queerness. Thus, we must qualify our assessment of Williams potentially being queer supportive when discussing her encouragement of Stotts. Thank you to the editors for helping me make this point.
Perhaps predictably, Williams’ act caught the attention of the authorities. On January 16, 1981, Milwaukee police were alerted to the Plasmatics when watching a censored ABC clip of their act, and on January 18, they made sure to attend their concert at the Palms nightclub. Williams allegedly simulated masturbation with a sledgehammer and microphone while wearing nothing on her top but whipped or shaving cream. She was arrested under a city ordinance against lewd and obscene conduct. Though Williams went with her arresting officers peacefully at first, she slapped one of them when he (or several men) reached under her shirt and roughly groped her breasts. The officers said that she kicked them and injured one of their hands. Then threw Williams to the snowy ground and beat her by choking her and rubbing her face into ice, which nearby photographer Alan Gartzge captured on film. Swenson came running out and attempted to interfere with the attack, and he was arrested for

110 Paul McGrath, *Rockers Dig Deep to Aid Wendy’s Defence*, GLOBE & MAIL, Mar. 28, 1981 (“Alerted by an ABC-TV clip of the group broadcast two days earlier, part of which had been censored, Milwaukee police were on hand to watch Williams perform.”).

111 Id. For detail concerning the Palms see Wilson, supra note 6.

112 Foran, supra note 12 (“making ‘sexual gestures’ and wearing ‘what appeared to be whipped cream or soap lather (covering) her upper torso’—the singer was arrested.”) (quoting Milwaukee Journal Sentinel reporter Divina Infusino).

113 McGrath, supra note 110. As the recipient of an arrest for obscenity, Williams was thought by police to have violated a version of what today is Milwaukee Ordinance 106-7(1)b-2-b, which prohibits “[p]atently offensive representations or descriptions of masturbation.” MILWAUKEE ORDINANCE 106-7(1)b-2-b, http://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-1/Master-V1.pdf [https://perma.cc/K3SD-M7JX].

114 Wilson, supra note 6 (“she said she ‘went along with them peacefully’ until officers began touching her indecently as she entered a police van.”).

115 Id. (“There were hands all over me . . . hands pulling my T-shirt up, exposing my breasts . . . . I was so shocked . . . . I turned around to defend myself because I thought I was being sexually assaulted. I slapped the nearest officer in the face.”).

116 Foran, supra note 12.

117 Wilson, supra note 6 (“‘I was screaming because I thought I was going to die,’ she said. One officer, she said, kicked her and ‘then jumped on top of me. He was choking me, rubbing my face into the ice.’ Ms. Williams said she suffered a broken nose . . . and a wound requiring seven stitches.”).

118 Foran, supra note 12.

119 Wilson, supra note 6 (“[H]e said he identified himself as the manager and asked, ‘What’s going on here?’ Police then threw him against an automobile and beat him with nightsticks, he said. Swenson denied that he struck out at or kicked an officer.”).
obstructing an officer. Williams said that her injuries included a broken nose and a wound requiring seven stitches.

Out on bail, Swenson and Williams decided to travel to Cleveland for another show, which would result in Williams’ arrest and trial for obscenity. Williams collapsed before the show’s encore and had to be taken to the hospital, and she was arrested by Cleveland police the next morning.

The Cleveland obscenity trial took place first, on April 8. Williams had been speaking out against state repression and violence ever since the Milwaukee attack, haranguing both Milwaukee and Cleveland authorities for sexism and brutality. She was equally outspoken at the Cleveland trial, for which she dressed up in her trademark tight, chain-dripping, tiger-striped outfits, which were much commented on by the press. She lashed out both during proceedings and after her acquittal.

120 Id.
121 Id.
122 See supra text accompanying notes 4–11.
123 Wendy O. Williams and the Plasmatics, supra note 93, at 38:30.
124 Id.
125 Joe Brown, Former Vice President Walter Mondale Said the Reagan Administration Should Better Define the Order of Power in an Emergency Situation, WASH. POST, Apr. 8, 1981 (“Wendy O. Williams, 28, lead singer of the flamboyantly theatrical punk group the Plasmatics, begins trial on obscenity charges in Cleveland municipal court today, after allegedly performing nude.”).
126 Names and Faces, Bos. Globe, Jan. 24, 1981 (“‘Women should have the same rights as men,’ she said. ‘If a man took off his shirt, no one would arrest him.’”).
127 A February 27, 1981 show held in New York to raise money for a legal defense began with Williams bursting out from a poster that read “Stop the Gestapo,” a demand that reads as an indictment of Milwaukee. Wendy O. Williams and the Plasmatics, supra note 93, at 38:35. The Plasmatics’ new song, “A Pig is a Pig,” sung during the concert, is also a critique of the police. Id.
128 Punk Rock, supra note 1.
129 Id.
130 Jury Studies Obscenity Charge against Singer, TELEGRAPH, Apr. 9, 1981 (“Twice during opening statements, Miss Williams spoke out, prompting the judge to reprimand her.”).
131 See supra text accompanying notes 1–3.
By the time of the Milwaukee trial against Swenson in June, Williams’ struggles and her political views had given her an international platform. After growling lyrics about “the sickie sadist who hides behind his police badge” in May at her New York’s Bond’s International Casino performance, and talking about how “terrifying” it felt to be brutalized by Milwaukee police, as well as how the “female body is not dirty” on Toronto TV’s New Music, Williams and the Plasmatics were now “be[ing] taken [so] seriously” that at least one journalist described Williams as a “crusader.”

Williams’ new fame and public gravitas may help explain why the Milwaukee jurors, who gathered to determine whether Swenson should be convicted of the charge of obstructing a police officer, rendered a “not guilty” verdict. Though the Milwaukee trial only concerned charges against Swenson, it seemed to be Williams’ show. As The Milwaukee Journal’s Walter Fee wrote: “Williams, attired for the third straight day in what are probably the tightest fitting black leather slacks ever seen in Milwaukee . . . dominated the proceedings the way she dominates a stage.” Two elements mesmerized onlookers: First, Williams described her assault by police officers in candid, vivid terms, recounting how “they were joking . . . they were laughing,” and how “they were twisting my arms . . . they were twisting my legs.” She also described her broken nose and serious wound. Second, Williams possessed sufficient fame that Gartzge had been on hand outside of the

132 See the Plasmatics’ May 15, 1981 rendition of “A Pig is a Pig” at Jean Beauvoir, The Plasmatics “Pig is a Pig” Live in NYC 15.05.1981, YouTube (Sept. 30, 2012), https://www.youtube.com/watch?v=VVmoXBKnPNk (last visited Jan. 9, 2017).

133 See Jean Beauvoir, The Plasmatics on TV New Music 1981, Toronto Interview + Live YouTube, YouTube (Sept. 30 2012), https://www.youtube.com/watch?v=8OKwk_BBBoI (last visited Jan. 9, 2017). These quotes were taken from an interview that Williams did with a female TV journalist, who asks her, “are you scared at all about what’s happening to you with the courts?” A web search reveals that on May 10, 1981, the Plasmatics performed at Toronto’s Masonic Hall, and it appears that this interview accompanied that show. See Toronto, Canada, Masonic Temple, TRIPSO TRAVEL GUIDE, http://www.triposo.com/poi/W__59036049 [https://perma.cc/4UXF-BNDL] (last visited Jan. 9, 2017) (listing of live shows).


135 See Beauvoir, supra note 133.

136 See Walter Fee, Plasmatics Manager Found Not Guilty, MILWAUKEE J. SENTINEL, June 11, 1981 (on file with author) [hereinafter Fee, Not Guilty].


138 Id.

139 Wilson, supra note 6.
Palms to photograph her arrest, documenting violence and force that far exceeded that admitted by the officers during their testimony.\textsuperscript{140} His picture reveals a group of men dogpiling Williams, and her screaming face.\textsuperscript{141} It was blown up and shown as an exhibit at trial.\textsuperscript{142}

Despite her antics, outrageous wardrobes, and outré hairstyle, the jurors saw Williams as a human being. As one juror told a reporter after the trial, “I think they thought we were strange. We just looked at them as ordinary people like we were. I don’t have any children that look like that, but I just figure, to each his own.”\textsuperscript{143}

Williams rode high for a while after these successes, spreading her message of peace and her critique of state violence, including an attack on the neglect of murders of African American children that had shaken Atlanta in the past two years.\textsuperscript{144} Moreover, all of the other charges against Williams and Swenson were dropped.\textsuperscript{145}

Although the Plasmatics continued to play in packed shows,\textsuperscript{146} the Plasmatics’ and Williams’ stars quickly began to fade. One reason might have been Williams’ own betrayal of her widely-touted liberationist value system: a month after the Milwaukee vindication, police arrested Williams in Chicago for attacking photographer David Barnes, whom she

\textsuperscript{140} See id. (“[P]olice who testified during the trial denied the allegations of Ms. Williams and Swenson. Several officers said Ms. Williams slapped and kicked police, and then raised her T-shirt and screamed rape.”).


\textsuperscript{142} Supra note 141.

\textsuperscript{143} See Fee, \textit{Not Guilty}, supra note 136.

\textsuperscript{144} \textit{Wendy Williams Doesn’t Sound Like a Punk}, MILWAUKEE J. SENTINEL, June 11, 1981 (on file with author) (“Williams said she was a pacifist and opposed violence . . . I call what the vice squad did to me violent. I call what’s happening in Atlanta violent. When you go into airports around the world and you are greeted by guys with machine guns, to me that’s violent.”). Regarding Atlanta child murders, see, e.g., Martin King, \textit{Most Black Americans Fault Police in Atlanta}, EVENING INDEP., June 18, 1981; \textit{Police Identify 28th Victim in String of Atlanta Murders}, LAWRENCE J.-WORLD, May 28, 1981.

\textsuperscript{145} See Foran, supra note 12 (describing the dropping of charges).

\textsuperscript{146} See, e.g., \textit{Wendy O. Williams and the Plasmatics}, supra note 93, at 43:53 and at 49:00 (describing a riotous post-trial Plasmatics tour that touched down in Arizona, San Francisco, and New York).
accused of harassment. After Barnes had taken three pictures of Williams, she had tried to grab his camera, straddled his back, and punched and kicked him in the back and head. She also spat at him and a lifeguard who tried to stop the fight, and then she tried to throw the camera into Lake Michigan. Charged with misdemeanor assault and battery, she was tried and then sentenced in November to one year of court supervision. Unsurprisingly, press accounts of the attack did not heroize Williams but now left the impression that she was growing unhinged, or, at least, morose. Her behavior clashed with her earlier claims that she was a pacifist, as well as her recent status as a crusader for justice. At trial, she no longer displayed the mouthy, brash attitude that her fans once loved: now she was “subdued.”

Despite this dent in Williams’ reputation, the Plasmatics’ 1981 album Beyond the Valley of 1984 hit 142 on the Billboard 200, which earned the band a signing deal from Capitol

147 Leslie Berger, Two of This Year’s 36 Contestants for the Title of Miss Black America Say the Promoter “Ripped Off” the Participants, Wash. Post, July 16, 1981 (“Police issued an arrest warrant Wednesday for Wendy O. Williams, the lead singer for the Plasmatics rock group who is accused of assaulting a photographer.”).

148 Plasmatics Rock Singer Gets Year of Court Supervision, Ocala Star-Banner, Nov. 25, 1981.

149 Berger, supra note 147.


151 See, e.g., Wendy O. Whacks Photographer, Milwaukee J. Sentinel, July 15, 1981 (on file with author) (“‘It was like the lady went bonkers,’ [Barnes] said. ‘When a lifeguard came to protect me, she ran away.’”).


153 Again, in May of that year, Williams had described being a pacifist on the Tom Snyder show. See Tom Snyder Show, supra note 101, at 8:56 (“I’m basically a pacifist.”). Williams had also clarified that “I would hit somebody if they hit me,” but that rule does not seem to cover her interaction with Mr. Barnes. Id. at 9:00.

154 See supra text accompanying note 135.

155 See UPI, supra note 152.

Records. Their success did not hold, though: the album *Coup d’Etat* soon followed, but it did not sell well, and Capitol dropped the act. The Plasmatics then disbanded in 1984, and in the same year, Williams issued her first solo album, *W.O.W.*, produced by Gene Simmons. The record received a mixed reception. In 1985 Williams was nominated for a Grammy for this effort, but it appears that the album or its singles failed to chart.

Williams, along with Swenson, former Plasmatics bass player Jean Marie Beauvoir, and stagehand Peter Capadocia, filed a six million dollar lawsuit in the Circuit Court

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158 Joy Williams, *The Love Song of Wendy O. Williams*, *Spin*, Sept. 1998, at 136 (“*Coup d’Etat* . . . was released and was not a commercial success. After that their label, Capitol, dropped them and Wendy went on to make several solo albums.”).


164 See *Plasmatics Singer Loses Suit*, supra note 20.
against the Milwaukee police department in January 1982,165 that is, at the cusp of her 
declining fortunes and name.166 The mood in the air was signaled as early as December 
1983, when a reporter wrote that Williams had “virtually disappeared” since 1982, “when 
the public discovered that undressing on stage was her greatest talent.”167 In 1984, officials 
at the University of Wisconsin apparently agreed, as they forbade her from appearing in 
their homecoming parade, even though she had been invited by a fraternity.168 A news 
reporter also described her, simply, as being “out.”169

The Milwaukee police brutality case went to trial in Milwaukee County Circuit Court 
in 1984.170 Williams, Swenson, Jean Marie Beauvoir, and Peter Cappadocia sued Officers 
John Remus, Telesphorus Pinkos, Gregory Nawrocki, Vincent Bobot, Daniel Cohn, Robert 
of action for deprivations of constitutional rights under color of law,172 and also sued for 
false arrest under Wisconsin state law,173 among other state offenses. I was informed about 
jurisdiction, charges, and trial strategy during a telephone interview with former city 
attorney R. Scott Ritter.174 Mr. Ritter explained that he defended the Milwaukee officers 
against Williams’, Swenson’s, and Beauvoir’s federal and state claims of deprivations

165 Williams Sues Milwaukee Police, supra note 17; Backstage: Doctor Disputes Williams’ Claim, supra 
ote 17 (giving Circuit Court and damages claim details).
166 See supra text accompanying note 158.
167 Alan Niester, POP Once Again, There’s No Life Like It, GLOBE & MAIL, Dec. 31, 1983.
169 Joe Wheelan, Cabbage Patch Dolls and Sun Tans Will Fall into Disfavor in 1985, AP ONLINE, Nov. 
4, 1984 (“Wendy O. Williams, formerly of the punk-rock Plasmatics, is out.”) (quoting Kim Long and Terri 
Reim).
170 Backstage: Doctor Disputes Williams’ Claim, supra note 17.
171 See Amended Complaint, Williams et. al. v. Estate of John Remus, et. al., No. 573-2215, at 1 (Milwaukee 
173 Amended Complaint, supra note 171, at 9. The other causes of action were false imprisonment, assault 
and battery, intentional infliction of emotional distress, malicious prosecution, negligence, conspiracy, and 
interference with contract. Id.
174 Telephone Interview with Scott Ritter, Former City Attorney, City of Milwaukee (July 7, 2016) (on file 
with author).
of constitutional rights and for false arrest. The false arrest claim, Mr. Ritter said, was dropped during trial. Mr. Ritter also said that two photographs were introduced: the defense submitted “a picture of [Williams] up on the stage covered with whipped cream provocatively touching her groin.” Mr. Ritter said he disputed the false arrest claim with this visual evidence that the police did have probable cause to believe Williams guilty of obscenity. The court ordered the image removed after that charge was dropped, but the jury saw the image before it was taken down. The second image was the Gartzge photograph, which plaintiffs introduced to buttress their claim of excessive force and violation of civil rights.

Mr. Ritter explained during his interview that at trial, he had made copious references to Williams’ sexual provocation during her acts, as well as to her history of engaging in sadomasochist performance at Captain Kink’s Sex Fantasy show in New York’s Times Square so many years before. When I asked him why he had submitted this information into evidence, he answered that he intended it to show that Williams had not sustained any damages, in the event that a sexual assault was found by the jury: “[We were contesting that] she was so embarrassed that she was crying. When they arrested her all she has on is whipped cream. She claims that they made a comment about her body and that caused her huge emotional damages, [and we were trying to show that ] . . . she was not this shy girl.” Instead, Mr. Ritter argued to the jury that Ms. Williams had concocted her claims of abuse and that she only brought the action to promote Plasmatics albums.

Contemporary news reports disclose that Williams testified that, as a result of the police beating, she suffered from problems hearing and singing, as well as pain in her ears during travel. She also testified to sexual assault and verbal abuse by the defendants:

175 Id.
176 Id.
177 Id.
178 Id.
179 Id.
180 Telephone Interview with Scott Ritter, supra note 174.
181 Id.
182 Id.
183 Id.
she said that the police officers stood in a circle around her, made lewd comments about her body, put their hands on her breasts and buttocks, and made racist observations about African American men in her band—among them, Jean Marie Beauvoir. Williams covered her face before this testimony and wept during it. A plaintiffs’ witness, Dean Segel, testified that a police officer placed his hand on her buttocks as she climbed into the police van, and that two officers sat on her, slapping and shoving her for a minimum of ten minutes. A third officer, Segel said, also came along and pushed his knee into the side of Williams’ head. Jane Peschman, Williams’ treating nurse at Mount Sinai, also testified as to Williams’ fresh report, saying that Williams had been “scared and hysterical” during treatment, and that Williams thought she had been “manhandled.” The defendant’s expert witness, however, convinced the jury that Williams’ injuries were not that severe: Dr. S. Frederick Horwitz testified that Williams’ ears were normal and that her throat was in excellent condition.

After deliberating for five hours, jurors ruled for the Milwaukee police. Mr. Ritter soon after told the press that he felt “very happy and very relieved that the jury believed the police officers’ testimony,” in part because Milwaukee had recently been taxed with huge civil rights damages in a rash of police brutality cases.

184  Meg Kissinger, Specialist Disputes Rock Singer’s Testimony, MILWAUKEE J. SENTINEL, Oct. 4, 1984 (on file with author) [hereinafter Kissinger, Specialist] (“[S]he said . . . dozens of police officers were standing in a circle laughing and shouting suggestive remarks at her. Williams said they taunted her for having black men in her band and made lewd remarks about her body . . . [O]ne of the officers placed his hand on her buttocks and another lifted her shirt and felt her breast.”). See also Wendy O. Williams on Donahue, infra note 205 (describing racist and homophobic comments made by police in Milwaukee).


186  See Meg Kissinger, Police Beat Her, MILWAUKEE J. SENTINEL, Oct. 2, 1984, Metro at 1 (on file with author) [hereinafter Kissinger, Police Beat Her] (“Williams wept throughout her testimony, calling the officers ‘animals’ who gawked and pawed her body as though it were nothing more than ‘a juicy piece of meat.’”).

187  Kissinger, Specialist, supra note 184, at 9.

188  Id. at 11.

189  Id. at 1.

190  Backstage: Doctor Disputes Williams’ Claim, supra note 17.

191  Backstage: Williams Loses Suit against Police, supra note 20; see also Plasmatics Singer Loses Suit, supra note 20.

192  Meg Kissinger, Wendy Wasn’t Beaten, Jury Rules, MILWAUKEE J. SENTINEL, Oct. 19, 1984 (on file with
Why had Williams’ case not succeeded? The Milwaukee civil jury’s verdict seems startling, considering the presence of the Gartzge photograph, Williams and Swenson’s allegations of vicious force and sexual touching, and Segel and Peschman’s eyewitness testimony. Moreover, though Dr. Horwitz testified that Williams’ ears and throat were normal or “excellent” at the time of trial, that does not conflict with Williams’ allegation that the police officers broke her nose, crushed her face into the ice, and gave her a wound requiring seven stitches.

Yet if Williams were believed, the jury could have easily determined, for example, that force was excessive, and that the defendants had violated Williams’ constitutional rights by sexually assaulting her. An accusation brought under 42 U.S.C. § 1983 for the use of excessive force during arrest would be gauged as a possible deprivation of rights under the Constitution. The Supreme Court would not decide Tennessee v. Garner, the case setting forth the standards for discerning excessive force during arrest under § 1983, until 1985. But by 1976, in a § 1983 action, the Eastern District of Wisconsin had established that excessive force during arrest would be determined by looking to the particular circumstances of the arrest. A jury, again, could have determined that the circumstances of this arrest, proven by photographic and witness testimony, demonstrated excessive force. Further, at least one federal district court in Wisconsin had observed by 1984 that sexual assaults committed by police officers in the course of duty violate victims’

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193 See supra text accompanying note 179.
194 Plasmatics Singer Recalls ‘Outrage’, supra note 6 (“Officers had their hands in her pants and on her breasts, she said . . . . Swenson said he saw an officer kick Ms. Williams in the face, while others were feeling every part of her body, beating and kicking her.”).
195 Regarding Segal and Peschman’s testimony, see supra text accompanying notes 187–189.
196 See supra text accompanying note 190.
197 See supra text accompanying note 121.
198 See infra notes 200–201.
200 See Burr v. Gilbert, 415 F. Supp. 335, 341 (E.D. Wis. 1976) (“Many, if not most, arrests are bound to involve some touching of the person of the arrested person by the officer. It becomes a ‘battery’ in violation of Constitutional Rights only when excessive under the circumstances, certainly if the arrest be a lawful one.”) (quoting Daly v. Pedersen, 278 F. Supp. 88, 94 (D. Minn. 1967)).
constitutional rights.\textsuperscript{201} The facts of this case proved fourth-degree sexual assault, since that offense would be established by evidence of the police touching Williams’ breasts or buttocks with the intent of sexual gratification.\textsuperscript{202} The police officer’s lewd comments and touching could easily substantiate that state of mind.\textsuperscript{203}

But the jury didn’t side with Williams and her co-plaintiffs.\textsuperscript{204} The case was lost, and that established the last of Williams’ involvement with the court system. She busied herself with her career, even recording another album with the Plasmatics—the apocalyptic, anti-global warming \textit{Maggots},\textsuperscript{205} which did not sell well.\textsuperscript{206}

The violence and disappointments of the 1980s cast a long shadow on Williams’ life. Williams continued making her allegations against the police in the media, most prominently on the talk show \textit{Donahue} in 1990.\textsuperscript{207} In 1991, Williams and Swenson, a longtime couple, abandoned music and moved to Connecticut.\textsuperscript{208} Williams took care of injured wild animals at its Quiet Corner Injured Wildlife Center and also worked as a

\begin{itemize}
\item \textsuperscript{201} Wedgeworth v. Harris, 592 F. Supp. 155, 160 (W.D. Wis. 1984) (“The Court can entertain no doubt that an unconsented sexual assault by an on-duty police officer is at least as offensive to conscience and justice as the above mentioned cases [that found deprivations of constitutional rights].”).
\item \textsuperscript{202} West v. State, 88 Wis. 2d 763, 1979 WL 30695, at *6 (Ct. App. 1979) (citing Sec. 940.225(5)(b), which so defines “sexual contact.” That same statute’s section 3(m) defines fourth-degree sexual assault as sexual contact without consent. \textit{West} is a second-degree sexual assault case.).
\item \textsuperscript{203} See \textit{supra} text accompanying note 184.
\item \textsuperscript{204} \textit{Plasmatics Singer Loses Suit, supra} note 20.
\item \textsuperscript{207} \textit{Wendy O. Williams on Donahue, supra} note 205, at 1:15 (“They told me they thought . . . I was an incarnate of the devil. . . . They attacked me and beat me unconscious . . . they didn’t like me because [they said] my band was made up of [n—ers] and queers . . . that’s what I was being hit with a nightstick for.”).
\item \textsuperscript{208} Strauss, \textit{supra} note 105.
\end{itemize}
natural foods expert at a health food store, and they lived a quiet life. But Williams had long suffered from depression. Indeed, Williams’ mental health problems proved so widely known that when I interviewed Mr. Ritter about his Milwaukee defense, he asked me, hesitantly: “She committed suicide, didn’t she?” I replied that she had. No specific evidence suggests that the legal system’s failure to respond to the brutal Milwaukee beating created any special stress that may have contributed to Williams’ weakening mental health throughout the 1990s, and Swenson has said that Williams suffered from such a degree of melancholy that she often found it a struggle to live. Yet one might surmise that, at the least, her 1984 loss did not create happy memories.

The one thing we do know is this: in 1998, Williams succumbed to her sadness and killed herself by gun.

II. Lorien Bourne

Lorien “Styx” Bourne’s parents named her Julia Lynn Miller when she came into the world on May 2, 1972. Terrence and Susan Miller raised her and her two sisters, Terri and

209 Williams, supra note 158, at 138. Regarding Williams’ natural food activism, see Wendy O. Williams, Letter to the Editor, 116 Vegetarian Times 4 (1987), where she praises the editors for running a previous article against irradiated foods. Williams supported the Bosco Bill, which sought a two-year moratorium on irradiated foods. This was in line with Williams’ support of healthful living and environmental preservation, as irradiated foods have since been questioned for their possible links to cancer and for their danger to the environment. Regarding cancer, see Bradford C. Ashley et al., Health Concerns Regarding Consumption of Irradiated Food 18 (2004), http://www.fda.gov/ohrms/dockets/dailys/04/aug04/082404/99f-5321-c00078-02-vol8.pdf [https://perma.cc/Z34W-9MGA] (“The toxicity of unique radiolytic products should be tested vigorously, especially in regards to the tumor promoting activities.”). Concerning the environment, see Food Irradiation—The Problems and Concerns, Food Commission (July 2002), http://www.foodcomm.org.uk/campaigns/irradiation_concerns/ [https://perma.cc/W4XD-DPE8] (addressing hazards to food workers and to the environment). On the Bosco Bill, see Robert D. Lystad, Irradiation Food Process under Fire, Lakeland Ledger 28, June 23, 1987.

210 Williams, supra note 158.

211 Webber, supra note 87([Q] “Did Wendy tell you she was planning on taking her own life? If not, were you angry with her for choosing to end her life? [A] Yes, she did tell me. I spent the better part of four years trying to dissuade her, or at least postpone [her suicide.”]).

212 Telephone Interview with Scott Ritter, supra note174.

213 Webber, supra note 87.

214 Williams, supra note 158, at 138 (“she tried to live meekly”).
Nikki, in Rossford, Ohio. Terri and Nikki were the pretty ones, while Bourne—or Julie, as she was known then—was always different. Susan had suspected that something was “wrong” with Bourne while she was a toddler, and through the years, Bourne’s failure to grow and her different appearance signaled health problems. Susan took her to doctor after doctor, but only when she was in fourth or fifth grade was Julia diagnosed with Turner syndrome, a rare chromosomal condition that occurs in females when one X chromosome is altered or missing.

Bourne was in for a hard time. Those with Turner syndrome face a host of physical obstacles, including failure to grow over five feet, webbing at the neck, swelling of hands and feet, infertility, and renal and cardiovascular problems. Cardiac events are one of the main concerns for Turner patients, as is their failure to ever enter puberty, which is one of the reasons for their small size. Women and girls with Turner syndrome can have trouble with personal relationships, as well as anxiety and depression. Their spatial reasoning may be diminished, but their verbal skills are quite often superior.

215 Telephone Interview with Terri A. Ospina, sister of Lorien Bourne (Feb. 11, 2016) (on file with author).
216 Id.
217 Id.
218 Id.
219 Id.
220 THOMAS D. GELEHRTER, FRANCIS S. COLLINS & DAVID Ginsburg, Principles Of Medical Genetics 186 (1998) (“Karyotypically, there is something wrong with the second sex chromosome in at least some of the cells of individuals with Turner syndrome.”) (going on to describe the different variants of X-chromosome disorder).
221 Id.
223 Id.
224 David S. Hong, Bria Dunkin & Allan L. Reiss, Psychosocial Functioning and Social Cognitive Processing In Girls With Turner Syndrome, 32 J. Dev. Behav. Pediatrics 512, 512 (“[T]he extant literature indicates that relative to age-matched peers, these individuals experience higher incidence of anxiety, depression, poor body image, low self-esteem and self-perception of impaired social competence.”) (citations omitted).
225 Id. (“Females with Turner syndrome often demonstrate a distinctive neurocognitive profile characterized by full-scale IQs in the average range, with relative strengths in verbal abilities and weaknesses in visual-spatial skills and executive function.”).
These scientific projections were prophetic in Bourne’s case: social problems and acute poetic powers would drive her life, and Bourne endured a tumultuous youth.\textsuperscript{226} “The only times my parents fought was about my sister,” Terri said in an interview in 2015. “And she fell behind with her peers, she wasn’t invited to any parties. She was a nightmare for me—she would take phone calls from my boyfriends, and we [just] fought all the time, even though I really tried my best to have a normal relationship [with her].”\textsuperscript{227}

Bourne left home at seventeen and came out as lesbian.\textsuperscript{228} She likely entered Bowling Green University in the late 1990s or early 2000s, as she graduated in 2006.\textsuperscript{229} Bourne would earn a Bachelor’s degree in Journalism\textsuperscript{230} and pursue her music.\textsuperscript{231}

During these years, Bourne changed her name to Lorien Bourne, on account of two pressures to take on a new identity. First, Bourne had a track record in Bowling Green’s mental hospital.\textsuperscript{232} During her elective stays there, doctors diagnosed her with bipolar disorder and schizophrenia,\textsuperscript{233} and a nurse told her that she might find herself involuntarily committed one of these days. This threat seemed more pressing after Bourne pulled a gun on her dorm roommate over a disagreement over music choices. Bourne was arrested and sat in jail for a couple of days. Bowling Green University administrators also expelled her, and shortly thereafter she changed her name to Lorien Bourne and re-enrolled at the

\textsuperscript{226} All of the facts in this paragraph are from the Ospina interview, supra note 215. Ospina told me that Bourne’s parents fought over whether their daughter should attend a human sexuality class in high school. Eventually, her father, who supported the education, won. But his proved a Pyrrhic victory, as after Bourne learned the mechanics of heterosexuality, she stormed at her father and essentially called him a sexual abuser of her mother.

\textsuperscript{227} Id.

\textsuperscript{228} Id.

\textsuperscript{229} See Lorien Bourne Obituary, Toledo Blade (Sept. 25, 2014), http://www.legacy.com/obituaries/toledoblade/obituary.aspx?pid=172568654 [https://perma.cc/2UCK-NMEU]; see also In Memoriam, supra note 23, at 31 (giving graduation date as ’06).

\textsuperscript{230} See Lorien Bourne Obituary, supra note 229.

\textsuperscript{231} This information was obtained from ZoomInfo, which contains a “web reference” called “drummergirl list,” where Bourne identifies herself as being from Bowling Green and writes of a desire to “play with a band or jam.” Jennifer Whitecotton, ZoomInfo, http://www.zoominfo.com/p/Jennifer-Whitecotton/82506142 [https://perma.cc/FHQ4-UCEJ] (last visited Jan. 9, 2017).

\textsuperscript{232} Telephone Interview with Terri Ospina, supra note 215.

\textsuperscript{233} Id.
University, which hadn’t a clue about who she was. She also escaped her mental health record. “She was diabolical,” Terri says today.\(^{234}\)

She was now Lorien Bourne, Bowling Green undergrad. The transition seemed to occur without incident. In 2005, she dedicated herself to journalism under this name, writing in the *BG News* about issues such as the need to help the victims of Hurricane Katrina.\(^ {235}\) Her passions for social justice and risk-taking seemed to find their perfect outlet when she came across the double standard on nudity at City Park in the Fall of 2006.\(^ {236}\) She was thirty-three years old, and she believed she had discovered a political platform that would make great changes: she wanted to take the issue all the way up to the Ohio and then United States Supreme Courts.\(^ {237}\)

After she lost at the appellate court level, Bourne joined up with Gamso of the ACLU and also the Naturist society attorney, who both wrote briefs arguing that the state Supreme Court take up certiorari.\(^ {238}\) The relationship between the ACLU and the Naturist society proved cold to nonexistent, with Gamso evidently brushing off Naturist representatives who wanted to “help” him.\(^ {239}\) Gamso knew that Naturists would not help Bourne’s cause, as they were not well regarded by the Supreme Court,\(^ {240}\) and indeed the Supreme Court denied certiorari.\(^ {241}\) After Bourne lost, she left Bowling Green in a hurry, refusing to appear for her

\(^{234}\) Id.


\(^{237}\) Telephone Interview with Terri Ospina, *supra* note 215 (“I had a couple phone conversations [with her where] she was very excited. She was trying to push it to the supreme court[, and] felt like an underdog and that she had a great message which is, our breasts are for life, for giving life, and what have you, and why should men get to do all these things that we don’t get to do?”). See also Lorien Bourne, *My Case Challenges Double Standards*, *BG News* (Nov. 13, 2007), http://www.bgnews.com/my-case-challenges-double-standards/article_h300b19e-0221-59ce-8a22-cafa41aa439a.html [https://perma.cc/MG77-CG9U] (“I am going to the Ohio Supreme Court. The ACLU wants to take my case. I will go as far as I can - and if I win, I will be doing a service to all women in Ohio.”).

\(^{238}\) See *supra* note 25.


\(^{240}\) See *infra* text accompanying note 367.

\(^{241}\) See *supra* text accompanying note 50.
sentencing or to pay her $105 fine for disorderly conduct.\textsuperscript{242} This earned her an outstanding warrant for her arrest.\textsuperscript{243}

Bourne next moved to Portland, where she wrote for alternative journalism publications on social justice issues, including the environment, housing, and governmental overreach.\textsuperscript{244} She also immersed herself in the music scene. She became part of several bands, including “In Vivo” and “Dark Oz,”\textsuperscript{245} a band started by Francis Gehman. This appears also to be where she took on an additional new name, “Styx.”\textsuperscript{246} However, Bourne soon became homeless, a condition she dealt with through couch surfing\textsuperscript{247} when possible, though personal relations could make this difficult. As Gehman explained during an email interview: “Most people probably thought she was weird and dismissed her . . . . Styx had little to offer them. I think she had a lot of denial about how people saw her and that denial was necessary for her to keep functioning in society.”\textsuperscript{248}

Despite these difficulties, Bourne’s work and life began to take a clearer shape. She

\begin{itemize}
\item \textsuperscript{242} Telephone Interview with Terri Ospina, supra note 215 (“She was in a hurry to go to Portland . . . she was in a mad rush to go and that’s why. She ran away from that.”). See also Case Summary, City of Bowling Green v. Bourne, No. 06-CRB-02701 (Bowling Green Mun. Ct. 2006), http://web1.civicacmi.com/BowlingGreenMC/Site/Lookup.aspx (query “Bourne” under “TR/CR Lookup”; then follow “Select” hyperlink besides “06CRB02701”) (last visited Jan. 9, 2017).
\item \textsuperscript{243} Supra note 242. As this Article was going to press, I also had an email conversation with Susan Miller, Bourne’s mother. Ms. Miller says that Bourne was forced out of Bowling Green by a police officer. Email from Susan Miller to the author (Feb. 3, 2017) (on file with author).
\item \textsuperscript{246} See, e.g., \textit{id.}, identifying Lorien Bourne as Styx.
\item \textsuperscript{247} Telephone Interview with Terri Ospina, supra note 215.
\item \textsuperscript{248} Email from Francis Gehman, Founder, Dark Oz, to author (Mar. 26, 2016) (on file with author).
\end{itemize}
funneled her energy into her work with Dark Oz in 2013, playing drums and percussion, as well as singing. She also began to employ the megaphone in her musical work. Gehman described the meanings of the megaphone for Bourne:

This is going out on a limb, but I think the megaphone was a symbol of power for her. She was not a very powerful person in any of the ways people usually have power. She was poor, short, disabled, etc. You know how kids get into superheroes because it makes them feel powerful to identify with these mythical beings who have extraordinary powers? I think it was a similar thing with the megaphone.

One of Bourne’s most visible uses of the megaphone can be found in her performance of the single “Forgiveness,” a video of which is available on In Vivo’s page on the music website Reverbnation. In this song, Bourne clearly wages against a world that refuses to hear or see her, expressing her rebellion through her use of that sound-enhancing tool as well as her lyrics:

I haven’t had a voice now
Since the storm ripped it away
Trapped inside my silent self
I slowly fade away.

Bourne also worked for North Portland’s Food Not Bombs, serving as the contact person for community food distribution. She identified as an anarchist. And she sought

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250 Email from Francis Gehman, supra note 248.


companionship, joining the POF dating site, where she described herself as having an “average body type,” and as being Buddhist.255

Her personal life, however, continued to be contentious. She fought with members of her band, rifts that she liked to complain about in her short Twitter account.256 Her cat died, and her housing problem persisted; a close friend passed away.257

But she kept on with her music. In 2014, she went on tour with Dark Oz. On September 5, 2014, after playing with the band at Missoula, Montana’s Badlander bar,258 she collapsed at the club due to heart failure.259 She died on the scene despite Mr. Gehman’s CPR attempts and the efforts of paramedics.260

When I contacted Terri Ospina, Bourne’s sister, I asked her to tell me about Bourne’s life and her feelings about her case. Ospina told me very moving details about Bourne’s complicated, sometimes difficult personality, and the tension that existed between Bourne and her family. She also gave me candid details about how difficult it is to live with Turner syndrome because of the social stigma, the feelings of isolation that it can create, and the physical problems associated with it. Ospina called Bourne a “fighter,” and said that though Bourne had lost her constitutional challenges in the Ohio courts, she still felt satisfaction at her act of dissent:

She took off her clothes because she wanted to say [to the] world, “Here I

but she also says that she is from Bowling Green, so there is some unclarity about when she began identifying herself as an anarchist and also her living situation.

255 See Lorien Bourne (@Styxhere), Looking to Date Wonderful Women, POF, http://www.pof.com/member15220876.htm [https://perma.cc/9A2V-RGWW] (last visited Jan. 9, 2017). It lists Bourne as being forty-four years of age, though her obituary has her dying at the age of forty-two and her birthdate as May 2, 1972. There is no date on the POF website. See Lorien Bourne Obituary, supra note 229.


257 Email from Francis Gehman, supra note 248.


260 Id.
am, I am a person, like everybody else.” . . . [And in the end] I don’t think she had any regrets . . . . Just getting that notice [was important to her]. . . I think that was enough for her to say someone is listening to me. She wanted someone to listen to her. 261

But Ospina also felt anxious about talking to me about her sister at all. After describing Bourne’s social problems, she said that she and her family were worried that I would not have good faith in writing about her. They feared that I would “make fun of Julie.” 262 When I asked why they thought I would do that, she hesitated for a second, as if surprised that I need ask at all.

“There’s what happened to Julie all her life,” she said. “People were always making jokes about her. They were mean.” 263

III. Williams, Bourne, and Peering

Wendy O. Williams and Lorien Bourne were both artists, rockers, anarchists, environmentalists, and feminists who used their bodies to rebel against oppression. Both were crusaders. Both saw early deaths. Yet even with these synchronicities, they possessed great differences. Williams was internationally famous, backed by a Yale MFA impresario, 264 and appeared on many television shows. Bourne played in small venues, and remained an obscure artist. Williams was fit, tan, muscled, and possessed attractive breasts that gained her so much infamy. Bourne did not fit typical beauty standards.

And yet their fates in the courtroom were driven by the same phenomenon, what has been described by some critics as “the gaze.”

A. Peering, Explained

The complications of “the gaze” first found expression in 1975 with Laura Mulvey’s groundbreaking work in film criticism. Her essay Visual Pleasure and Narrative Cinema

261 Telephone Interview with Terri Ospina, supra note 215.
262 Id.
263 Id.
264 See supra note 87.
identified how male filmmakers present women as a silenced erotic cypher. Other key identifications of gazes also exist in the work of Frantz Fanon, who describes the “negat[ing]” white look, which “rob[s]” black people of their “share.” Film scholars Chris Straayer and Judith Halberstam describe the straight gaze, which generates oppression “within the storm of law and order, mental health, and financial stability.” Straayer’s accounting of “heterosexual gaze[s]” laments their “disciplinary” qualities and voyeurism.

In previous work, I studied gazes in the context of property law, in particular Fifth Amendment law. My focus there considered how these manifold optics also interact with a classed gaze that predates upon poor people and people of color. I called this look, and this practice of gazing, “peering.” “Peering” contains a pun, as the gesture is both a verb and a noun. It is also a question. While the legal gazer peers at her subjects, she also asks whether they are that gazer’s “peers.”

The answer to this question can take several forms. The legal actor may look at the legal subject “on the level,” as being just like them. Jurisprudential subjects regarded as the peers of legal actors (defined as courts, jurors, and those playing key roles in legal interpretation) gain a portion of sympathy that may sway decisions in their favor.

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266 Frantz Fanon, Black Skin, White Masks 90 (2008).
269 See Murray, Peering, supra note 53.
270 Id. at 267.
271 Id. at 257.
272 Id.
273 This is a scare quote to indicate the way that equality and the ideas of elevation and descent influence our conceptions of gazes, hierarchy, and fairness.
274 See supra note 56 and infra note 435.
275 See supra note 58.
Certain legal subjects look even better, however, when they visibly possess certain virtues or apparent virtues, such as extreme elegance and wealth that they seem willing to share.\textsuperscript{276} These stars can fare beautifully in the justice system, enjoying what I have called the “upward” or “aspirational gaze,”\textsuperscript{277} particularly if legal actors want to affirm the possibility of their belonging to the stars’ caste by siding with them.\textsuperscript{278} Those subject to the “downward gaze,” often poor people and people of color, sometimes find themselves being described, or “othered,” as filthy or monstrous creatures.\textsuperscript{279} With respect to the downward gaze, there also exists the lookist phenomenon known as the “unattractive harshness” conviction bias, which yields greater criminal convictions in cases involving people who veer a good distance from beauty norms.\textsuperscript{280}

This study of Wendy O. Williams and Lorien Bourne reveals the complex workings of the level, upward, and downward gazes, and reveals how gender, sexuality, race, physical ability, class, and lookism influenced the shaping of those optics. Peering helped determine whether the two women would be seen by police, jurists, and jurors as “ordinary people” like “[they] were,”\textsuperscript{281} or whether these legal actors would reject their claims of brutality and discrimination.

### B. Peering and Wendy O. Williams

The legal gaze that focused on Williams was complicated by her fame, her sexual candor, her gender, and the race and sexual identity of her bandmates. In the case of the civil rights trial stemming from the assaults suffered outside of the Palms, the particular race politics of Milwaukee in the 1980s also became important. At first, Williams was regarded with compassion and her widely projected ascending star helped guide the 1981 Milwaukee and Cleveland juries’ identification with her. Williams was regarded worldwide

\textsuperscript{276} See supra note 59 (relating to a New York property taking that profited Columbia, which promised to build an elegant satellite campus in West Harlem and also to create economic benefits for the city).

\textsuperscript{277} Id.

\textsuperscript{278} Id.

\textsuperscript{279} See supra note 60.


\textsuperscript{281} See Fee, \textit{Not Guilty}, supra note 136.
as a “freak,” but one whose antics brought a message of peace and liberation. She also benefited from backing by Rod Swenson, with his high class distinction of a Yale MFA, and enjoyed the kind of upswell in attention that resulted in a deal with Capitol Records. Further, the media, in televised interviews and image-rich magazine profiles, trumpeted her as a “crusader” for women, minorities, and nonviolence whose destruction of property only sought to wake society up to the dangers of materialism.

In other words, Williams was looked “up” to—in an example of the “aspirational gaze”—and this gave her tremendous leeway: though she made a visual spectacle of her body by dressing in scanty clothing both during her performances and at her 1981 trials, this seems to have either been ignored as irrelevant by the juries, or seen as supporting her general message of gender resistance and freedom. Whichever interpretations of Williams’ dress won the day, she had garnered a kind of authority that made her display of her body—on stage and in the dock—permissible. With her successful shows, her television appearances, and her forthright, televised defense of punk rock as social justice, she turned sexy dressing into a message of empowerment. She embodied, for a moment, the kind of successfully “defiant” sexy dressing trumpeted by Harvard Law Professor Duncan Kennedy. This mix of prestige and glamour allowed her body to be seen as clean of obscenity by the Cleveland jurors. Williams’ strange beauty and exhibitionist philosophy of love either enchanted the jury into looking “up” at her, or canceled out her more controversial qualities so that she

282 See also Kolson, supra note 9 (describing her basically naked on stage, her sexual antics, her politics, and describing her as “charming.”).
283 See supra note 87.
284 See Larkin, supra note 157.
285 See Beauvoir, supra note 133.
286 See supra note 106.
287 See supra note 144
288 See supra note 107.
289 See supra note 8.
290 See Punk Rock, supra note 1.
292 See supra text accompanying note 11.
could be seen by them as an “ordinary” human worthy of physical aid by the Milwaukee
jurors.293 In other words, Williams’ fame and status allowed her to win the peering contest
in the Ohio and Wisconsin trials.

But this lens began to shatter in July 1981 with Williams’ own betrayal of her values,
that is, in her senseless beating of photographer David Barnes in Chicago294—which
was well covered by the Milwaukee press.295 Then, Capitol dropped the Plasmatics, and
she started to turn into a joke, and was called a talentless stripper by the media.296 With
the withdrawal of moneyed support and the adulation of critics, Williams now became
vulnerable to the male gaze that Laura Mulvey excoriated.297 As Maxine Eichner has
written about the complexities of sexual candor in women: “while there may be multiple
and conflicting readings of gender performances in late modern society, this does not
mean that there will not be dominant readings of these performances.”298 The “dominant
reading”—or what I call here the “downward gaze”—now appeared with the subsidence of
power and protection: Williams started to look easy and sordid, instead of fabulous. And
so her claims of being beaten and mistreated, which were believed by a Milwaukee jury in
1981, no longer carried the same weight in 1984: she looked like a slut and a liar,299 and so

293  See supra text accompanying note 15.
294  See supra note 147.
295  See, e.g., Wendy O. Whacks Photographer, supra note 151 (“‘It was like the lady went bonkers,’ [Barnes]
said. ‘When a lifeguard came to protect me, she ran away.’”).
296  See Niester, supra note 167 (“greatest talent”).
297  See Mulvey, supra note 265.
299  A review of jurisprudence reveals that female sexual incontinence often pairs with assumptions of
dishonesty. See, e.g., Nancy Chi Cantalupo, Jessica Lenahan Gonzales v. United States & Collective Entity
a victim who was called ‘slut,’ ‘cow,’ ‘whore,’ ‘liar,’ and ‘bitch.’); Elizabeth M. Jaffee & Robert J. D’Agostino
Bullying in Public Schools: The Intersection Between the Student’s Free Speech Rights and the School’s Duty
to Protect, 62 MERCER L. REV. 407, 438 n.257 (2011) (“The plaintiff testified, ‘A lot of people were calling me
a slut, saying I slept with two boys. Just nasty names. . . . A slut, a liar, a bitch, a whore.’”) (describing the case
of Doe ex. rel. A.N. v. E. Haven Bd. of Educ., 200 F. App’x 46, 49 (2d Cir. 2006)); Deborah Labelle, Bringing
have heard in this courtroom today is what women have heard every day of their lives in prison, they’re liars,
they’re cheaters, they can’t be believed, they’re sluts.”) (quoting Transcript of Closing Arguments at 177–78,
the closing argument of Defendants).
when the '84 Milwaukee jury considered Gartzge’s photograph at the police brutality trial, they didn’t react to it as had the '81 jury. They didn’t see anything wrong.

The downward gaze that Williams was subjected to in 1984 takes a bit of detective work to unearth, beyond recording Williams’ assertion that the police officers accompanied their blows with racist comments about her bandmates. However, Scott Ritter’s explanation of his trial strategy helps show that Williams’ beating was seen through the scrims of her lapsed professional success and her sexual bluntness. Mr. Ritter explained very plainly during our interview that he had called into question Williams’ veracity at the outset of the trial, arguing to the jury that she and her bandmates were only bringing this case to publicize the albums Beyond the Valley of 1984 (particularly its song “A Pig is a Pig”) and the badly-received W.O.W. As mentioned above, Mr. Ritter also said that he made sure to get in photographic evidence of Williams’ wearing provocative attire during her performances, and he took care to communicate to the jury that she had worked in a sex show earlier in her career.

Again, when I asked Mr. Ritter whether he thought that the jury had been persuaded against Williams because of these facts, he explained that this evidence only related to possible damages. But when I pressed him, he did not contradict the idea that the jury might have been so swayed. Rather, he observed that when he saw the jury’s negative answer to the verdict form’s first question, which asked whether Williams had been sexually assaulted, he knew that he had “won” the case because the jury “didn’t believe her story” —a turn in our conversation that I read as communicating that she was too sexually outrageous and thus not eligible for a civil rights remedy, or simply untrustworthy. Thus, when the jury was allowed to choose between two visuals of Williams—the wrongfully beaten woman captured by Gartzge and the shaving-cream-wearing, money-grubbing

300 See supra text accompanying note 178.
301 See Kissinger, supra note 184 (“black men”).
302 See Telephone Interview with Scott Ritter, supra note 174 (“[P]art of our defense was that this was all a promotional stunt.”).
303 Id.
304 Id.
305 See supra note 180.
306 See supra note 181.
307 See Telephone Interview with Scott Ritter, supra note 174.
harlot offered by Ritter—they chose the latter, peering at the down-on-her-luck Williams with a downward gaze, much as contemporary music journalists and the University of Wisconsin were also doing at the same point in history. Or, perhaps they saw the two images as part of the same visual moral tale: first Williams exposed herself, and then she got what she deserved in the form of a beating. That Ritter had offered them an image that may be described as pornography might have also given the jury permission to so visualize and conceive of Williams as a non-person.

Another aspect of the downward gaze the jury could have utilized may be found in Mr. Ritter’s seemingly throw-away comment to the press after the verdict. Recall that post-verdict, Mr. Ritter complained to the press about previous civil rights awards that had been handed out by Milwaukee juries. He said, “There’s been so much publicity lately about how much the city has paid out in cases involving the police and other news about police brutality . . . . I’m glad to see this verdict.”

Who were these other plaintiffs? Milwaukee had indeed seen a rash of expensive police brutality cases arising in the years immediately before Williams’ and the Plasmatics’ civil trial. Two of these cases involved African American men and, in one case, an Anglo female sex worker. In 1981, the family of Daniel Bell, a twenty-two-year-old African American man who was killed by Milwaukee police in 1958 after being stopped for a defective taillight, received a $1,750,000 settlement, and in 1982, the family of thirty-six-year-old Anglo exotic dancer Sugar Dee Tates began to prepare a lawsuit against the department

308 See Niester, supra note 167.
309 See supra text accompanying note 168.
310 Cf. Amy Adler, Performance Anxiety: Medusa, Sex and the First Amendment, 21 Yale J.L. & Human. 227, 246 (2009) (“[T]he woman captured in pornography is deprived of her gaze, her agency and her ability to look back at the viewer. Most significantly . . . she is deprived of speech. Ultimately, what the filmed woman lacks . . . is subjectivity itself.”). See also Rebecca Tushnet, Scary Monsters: Hybrids, Mashups, and Other Illegitimate Children, 86 Notre Dame L. Rev. 2133, 2148 (2011) (“Women, in conventional discourse, including legal discourse, are looked at and spoken about. Their bodies convey men’s messages.”); Amy Adler, Girls! Girls! Girls!: The Supreme Court Confronts the G-String, 80 N.Y.U. L. Rev. 1108, 1148 (2005) (connecting historical photographs of female erotic dancers with diagnoses of female hysteria; for the purposes of the present article, photographic evidence of Williams’ own erotic dancing may have contributed to a juror sense that she was hysterical, a liar, and unreliable).
311 Kissinger, Wendy Wasn’t Beaten, supra note 192.
for Tate’s fatal shooting during a traffic stop.\textsuperscript{313} Tate’s good looks and sexually available manner were displayed in newspaper coverage of her death.\textsuperscript{314} And in 1983, the kin of Ernest Lacy, an African American man who died while in the custody of the Milwaukee police after being wrongfully detained on suspicions of rape, filed a $30,000,000 wrongful death lawsuit against the city\textsuperscript{315} (it would later settle for $600,000).\textsuperscript{316} Further, in June of 1984, Milwaukee had agreed to pay James Schoemperlen, an Anglo accountant, $500,000 for a brutal police beating suffered after he relieved himself in public.\textsuperscript{317}

While Mr. Ritter denied during our interview that the jury might have been swayed by a feeling that other police brutality claimants had already tapped the city’s coffers,\textsuperscript{318} contemporary newspaper accounts reveal that Milwaukeeans did pay attention to these events. A survey taken by the \textit{Milwaukee Journal Sentinel}\textsuperscript{319} shows the city’s reactions to these incidents were complex and not always supportive of the victims, particularly victims of color or women who put on visual displays of their sexuality. While 77\% of Milwaukee citizens polled in 1982 said that police conduct in the Schoemperlen case (involving the Anglo accountant victim) was improper, and 81\% found police conduct in the (circa 1958, and so long ago) Bell case (involving an African American) improper, only 55\% thought


\textsuperscript{314} Six Officers, supra note 313.

\textsuperscript{315} Ralph D. Oliver, Verdicts Are In, The Lacy Case Is Far From Over, MILWAUKEE J. SENTINEL, MAY 20, 1983 (on file with author).

\textsuperscript{316} AP Online, Milwaukee, Oct. 1, 1985 (“The Milwaukee Common Council voted today to pay $600,000 to settle a lawsuit stemming from the death of a man who struggled with police while being questioned about a rape authorities later found he did not commit.”).

\textsuperscript{317} Frank Bauer & Alex Dobish, Schoemperlen Says City’s Offer In Suit Is Fair, MILWAUKEE J. SENTINEL, June 23, 1984 (on file with author).

\textsuperscript{318} See Telephone Interview with Scott Ritter, supra note 174. He said that the jury was insufficiently “sophisticated” to factor in other police brutality awards when considering the Plasmatics’ claims.

\textsuperscript{319} Ron Elving, Survey of Police Finds Support For Lacy Case Officers, MILWAUKEE J SENTINEL, Aug. 31, 1982 (on file with author).
that the police behaved inappropriately in the more contemporary Lacy case (also involving an African American), and 65% supported police conduct in the Tates case (involving the Anglo female exotic dancer whose sexually candid picture appeared in the paper). Thus, in 1984 Williams and the Plasmatics faced different Milwaukee perspectives than they had in 1981. The city had paid millions of dollars in settlements by this point, and the public had only two years before demonstrated a remarkable amount of tolerance for police violence against minorities—minorities such as the Plasmatics’ own Jean Beauvoir—and supported police violence against women who displayed themselves on stage. Worry about putting police officers in danger, and of paying the “wrong” sorts of people civil rights damages also influenced the way Milwaukee folks had begun to see things.

Williams, then, was caught in a downward Milwaukee gaze that might well have paired her with Sugar Dee Tates, the exotic dancer whose nearly naked body glimmered from Milwaukee scandal sheets, and whom the public did not mind being killed by the police. Through her bandmate Jean Beauvoir, Williams was also visually associated with racial minorities who had made expensive claims of police brutality against the city, which a good number of Milwaukeeans did not appreciate.

Perhaps this is why editors at the Milwaukee Journal Sentinel felt comfortable making light visual fun of Williams’ grief at her 1984 trial, further exacerbating the downward gaze: on the front page of the paper’s Metro section, a large photograph is shown of Williams sitting in the courtroom covering her face, with the caption, “Rocker Wendy O. Williams shielded her face from a photographer.” Then comes a smaller, close-up photograph, showing Williams still covering her face, but with her fingers slightly parted. The caption

320 Id.
321 Id. (32% of the public thought police conduct in the Lacy case was appropriate, as compared with the accountant case).
322 See Jean Beauvoir, supra note 185.
323 Elving, supra note 319.
324 Court Rulings Have Opened the Floodgates For Suits against Cities, Milwaukee J. Sentinel, Aug. 28, 1983 (on file with author). This is a scare quote.
325 See supra note 321.
326 See id.
to this photograph reads: “But curiosity got the better of her.” This tone seems entirely too lighthearted for the subject matter, and indicates that the public no longer saw her as an “ordinary person, like [they were],” but rather that she had descended to the status of an abject spectacle who threatened the social order, and coffers, like Lacy and Tates.

We have no juror interviews from the 1984 trial. However, Milwaukee’s recent history with police brutality, the public opinions displayed in the poll results, the concern about money and public safety, Williams’ own rapid fall from stardom, and Mr. Ritter’s specific focus on her faltering career and sexual performance style, which he established with his irrelevant disclosures about Williams’ past as a sex performer and a photograph of her explicit performances, made it far easier for jurors to look down on her not as a champion of the underclass, but as a particular kind of failure, being the loose white woman—one of the villains surveilled by the white supremacist gaze. Williams also proved vulnerable to peering that saw the sexily-dressed and weird-haired defendant as a liar, a clown, and a money-grubber who could be lumped in with questionable minorities and too-visible women who deserved the beatings and killings they got. These optics would ease the way for a finding for the police, despite the copious visual evidence that the police used excessive force on Williams and thus violated her civil rights.

C. Peering and Lorien Bourne

Lorien Bourne also faced down evil eyes when fighting Bowling Green’s modesty fiat. Recall that the Bowling Green Municipal Court and the Ohio Appellate Court approved

327 Kissinger, Police Beat Her, supra note 186.
328 See supra note 143.
329 Elving, supra note 319.
330 See supra text accompanying note 179.
331 On white supremacy and its expectations of chastity in white women, see, e.g., Amil Larkin Barnard, The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women’s Fight Against Race and Gender Ideology 1892-1920, 3 UCLA Women’s L.J. 1, 8 (1993) (“[Nineteenth century] racist ideology was gendered to the core. During this time, white men viewed white women as the moral repositories of the race. Idealized as pure, chaste beings, white women controlled the fate of the white race because they reproduced.”).
332 Elving, supra note 319.
333 See supra note 178.
Bourne’s citation for disorderly conduct, that is, conduct that was “physically offensive.”

Why was a prosecution of visible female, but not male, breasts not a violation of equal protection? Both the Municipal Court and the Appellate Court agreed that women could be treated differently than men because breasts are an “erogenous zone” belonging only to women, and thus proved physically offensive. The Appellate Court went on to say that because of “anatomical and societal differences, the government has an interest in preservation of the public decorum, decency and morals.”

It does not take hermeneutical genius to understand that the courts saw Bourne through a downward heterocentric glare that found women’s breasts sexy and men’s not—a fact that Bourne herself complained about to the press at the time. Mulvey’s male gaze, which “knows” what’s hot and disorderly, also does not hide from us in these appellate decision passages.

But there are other gazes at work here, too. Like Williams, Bourne exhibited her body and so ran afoul of white supremacy’s expectations of its women. As mentioned above, Bourne had advertised her action at City Park with fliers, which she distributed at Bowling Green University. The handbills, which Bourne’s counsel introduced as evidence during the motion to dismiss, announced Bourne’s “Solidarity Potluck.” They bore a cartoon of an old woman with naked drooping breasts, pictures of a topless Janet Jackson dancing at the 2004 Super Bowl halftime show, a half-naked Lil’ Kim being felt up by Diana Ross at the 1999 MTV Video Music Awards, and a crowd of topless women protesting war by holding a “Breasts Not Bombs” sign.

The fliers thus identified Bourne’s cause with that of Black singers who have received

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334 See supra note 29.
336 See supra note 335.
338 See Straayer, supra notes 267–268.
339 First Punch, supra note 28.
340 See, e.g., Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (“I know it when I see it.”).
341 See supra note 39 (erogenous zone).
342 See supra note 26. See also infra Appendix.
much flak for their exhibitions of their bodies—and so added racial meanings, and readings, to her parkside rebellion. Since South African Saartjie Baartman was captured and displayed nude in Paris in the nineteenth century, the white ruling class has enjoyed deploying Black women’s unclothed bodies as visual markers affirming Anglo civilization and Black inhumanity. Bourne included the images of Jackson and Kim as a gesture of sisterhood, but her alignment with Black female body pride may have been read in the Municipal and Appellate courts as just more proof of her failure to match up to whatever standard of personhood would have allowed her to occupy public space on equal terms with men. In addition, the fliers showed the picture of topless women assembling together, which may have been interpreted as a lesbian image, and she also added in the cartoon of the elderly topless woman. The fliers, consequently, challenged racist, heteronormative, and ageist practices of peering—which may have been a reason why Bowling Green Municipal Judge Reddin looked down on Bourne as “perverse.”

What about Bourne’s body and its display of the symptoms of Turner syndrome? Again, Mark Reddin, who decided the lower court opinion, saw images of Bourne before his ruling: the transcript of the argument before Reddin reveals that Bourne’s counsel submitted a videotape as Exhibit D, and showed Bourne and other potluck attendees “basically minding their own business.” Though we cannot know for certain the personal reactions that Judge Reddin experienced when he peered at Bourne’s nudity, he did employ


344 See Charmaine Nelson, The “Hottentot Venus” in Canada: Modernism, Censorship, and the Racial Limits of Female Sexuality, BLACK VENUS 2010: THEY CALLED HER ‘HOTTENTOT’ 114 (Deborah Willis ed., 2010) (“The colonial regime, which transfigured Saat-Jee into the ‘Hottentot Venus,’ relied upon the dissolution not merely of her individuality but also of her humanity since, as part of an animal act, Saat-Jee’s humanness was fundamentally questioned through her constant juxtaposition with animals.”).

345 See infra notes 368–378,

346 See infra Appendix.

347 See id.

348 See supra note 34.

the language of the downward gaze by finding her exposed body “physically offensive”\textsuperscript{350} “annoy[ing],” and a defeat of “tranquility.”\textsuperscript{351}

The videotape was not submitted to the Ohio Appellate Court, but, strangely enough, that Court also affirmed that gender discrimination could be employed to make sure the public did not see human bodies—in this case, a disabled female body—that could cause aesthetic offense. Disabled women who reveal their bodies experience a host of shocks that women of supposedly ideal beauty may not encounter: they may find themselves rejected and dismissed as terrifying or repulsive.\textsuperscript{352} Almost as if on cue, the Appellate Court explained that Bourne’s criminal citation made constitutional sense because it preserved “decorum”\textsuperscript{353} —a fascinating use of language, since “decorum,” which means “decency of conduct,”\textsuperscript{354} closely relates to the root Latin word \textit{decus},\textsuperscript{355} which bears the twin meanings of “seemly behavior” as well as “[a] pleasing appearance, beauty, grace, [and] splendour.”\textsuperscript{356} It also comes from the Latin \textit{decorus},\textsuperscript{357} which means “[g]ood-looking.”\textsuperscript{358} This association between decorum and pleasing appearances persists today.\textsuperscript{359}

\textsuperscript{350} See supra note 29.
\textsuperscript{351} See supra note 33.
\textsuperscript{352} The artist Mary Duffy, who experiences disability, has made work exploring this phenomenon. See Ann Millett-Gallant, The Disabled Body in Contemporary Art 39 (2010) (“Duffy confronts a sexual economy from which her body has been excluded, rejected, and made freakish.”).
\textsuperscript{353} See Bowling Green v. Bourne, 2007 WL 3120191, at *2 (Ohio Ct. App. Oct. 26, 2007). With respect to the absence of the videotape at the appeals court level, see Docket, City of Bowling Green v. Bourne, 2007 WL 5082312, http://pub.clerkofcourt.co.wood.oh.us/eservices/search.page.?x=GWHO8agrcDi2FwY*eUeGjQ [https://perma.cc/6N4E-A5EK] (enter “Bourne” in “Last Name” field; enter “Lorien” in “First Name” field; follow “Search” hyperlink and select case number 2007WD0007) (noting that transcripts of the proceedings were forwarded to the Court of Appeals, but not mentioning the videotape).
\textsuperscript{354} W.W. Skeat, \textit{Decorum, in A Concise Etymological Dictionary of the English Language} 158 (1901).
\textsuperscript{356} \textit{Id.}
\textsuperscript{357} Skeat, supra note 354.
\textsuperscript{358} \textit{Decorus, supra} note 355, at 403 (definition one).
One last perspective—that of class—also helped shape Bourne’s legal fate: she, and her case, seemed so amateur as to lurk on the farthest fringe. When interviewed, Bourne’s former ACLU counsel, Jeff Gamso, said that Bourne’s appeal

[\text{W}asn’t really going to change anything because what you’re talking about is a couple of people sitting in a corner of a municipal park in Bowling Green and wanting to chat . . . . If you want a protest to change something you have to get some publicity for it [and they did not.] . . . [Look,] I’m old, I’ve marched on Washington, and [I] spent a lot of years doing a lot of stuff and it’s hard to get things changed . . . . [You have to] get the press there, put out [a lot of] press releases, be there not just in a park having a potluck Titty Committee—you have to be handing out leaflets! You have to be reaching out to people and they weren’t!’

However, Bourne’s lack of savvy organizational know-how wasn’t the only problem: she allowed\(^\text{361}\) the Naturist Action Committee to write an amicus brief in her appeal to the Ohio Supreme Court.\(^\text{362}\) NAC fights for the legal and social acceptance of public nudity on the grounds that “[a] benefit of nude recreation is that it allows people to see what real bodies look like and to experience self-acceptance.”\(^\text{363}\) Let us embrace understatement and observe simply that NAC has met a great deal of social resistance.\(^\text{364}\) A look at NAC’s

\(^{360}\) Telephone Interview with Jeff Gamso, \textit{supra} note 45.

\(^{361}\) Bourne solicited the Naturists before the solidarity picnic. See Neinast, \textit{supra} note 239 (“NAC got involved after she lost her appeal (this was the first we’d heard about it, aside from when Lorien first asked NAC about it long before her picnic.


\(^{363}\) \textit{Id.}

webpage, which shows all of NAC’s board members in the nude, also reveals how it uses visuals that the mainstream legal community may regard as ridiculous.365 When I interviewed Mr. Gamso, his voice took on a humorous lilt when he first mentioned NAC’s presence in the litigation.366 He then stated that NAC’s participation hurt Bourne: “some organization called the Naturist Society filed an amicus brief in support of jurisdiction and I suspect . . . the court may have been made squeamish by that.”367

That Bourne’s lack of credentials, failure at sophisticated networking, and her personal difference may have contributed to the courts viewing her claim as negligible, or even the ravings of an unbalanced mind, seems clearer when we compare her case to that of Ramona Santorelli. Santorelli, a slim, apparently physically able, dark-haired woman,368 became the public face of the feminist fight against nudity discrimination in the early 1990s. She challenged New York’s public exposure law369 on equal protection grounds because it banned visible female, but not male, breasts.370 Santorelli was and is politically active, connected, and known.371 In 1988 she had been featured in the Empty Closet, New York’s oldest gay newspaper, as a political activist.372 And as early as 1986, she had been receiving bountiful press for her topless sit-in protests, including being featured in articles

366 Telephone Interview with Jeff Gamso, supra note 45.
367 Id.
369 N.Y. Penal Law § 245.01 (McKinney 1983).
370 Id.
371 See infra notes 372–378.
in the Orlando Sentinel,373 the Albany Times Union,374 the Los Angeles Times,375 and Newsday.376 She was also represented by the gorgeously manicured legal superstar Herald Price Feringer,377 whom the New York Times described as “dashing” and a “defender of free speech” for his role in high profile cases such as those defending pornographers Larry Flynt and Al Goldstein.378

Bourne had no such glittering fame or friends. As her sister Terri says: “I don’t think she knew about how to go about gaining that support [of the kind enjoyed by Santorelli]. . . . I feel like she always felt like she was one woman against the world, and whatever came to her just came to her.”379

Here we find Bourne facing an unfriendly classed look. Santorelli looked like a civil rights activist: she organized, she held press conferences, she mobilized, and she spoke so well and forcefully that she found herself quoted by national newspapers.380 Her focus, bearing, and passion helped attract, in turn, the magisterial and famous Feringer, who would have commanded an upward look among jurists vulnerable to his class and glamour.381 As a result, Santorelli was seen as a person deserving of equal justice, instead of as “physically offensive,” even when she was topless.

373 Topless Picnic, ORLANDO SENTINEL, June 20, 1986 (“‘It’s just a matter of excess tissue’ to Ramona Santorelli.”).
374 Protesting Women to Grin and Bare It, ALBANY TIMES UNION, June 20, 1986 (“Santorelli said she and at least four other women, maybe as many as 50, will gather in a Rochester park for a shirtless picnic in the hopes of getting arrested.”).
375 The Nation, L.A. TIMES, June 22, 1986 (“Several men peeled off their shirts and sat down in a show of solidarity, organizer Ramona Santorelli said.”).
376 Topless-Case Appeal, NEWSDAY, Mar. 24, 1987 (“Romano Santorelli, leader of the women’s group, applauded [District Attorney Howard] Relin’s decision to appeal.”).
379 Telephone Interview with Terri Ospina, supra note 215.
380 See supra notes 373–376.
381 See supra notes 377–378.
But Bourne did not prove so fortunate. She appeared in a few local newspapers, yet looked different and appeared so socially awkward that mistreatment became a regular part of her life. She was first represented only by free counsel handed to her by Bowling Green, and then later the ACLU and the unfortunate Naturist Action Committee. Unlike Santorelli, she did not combine rhetorical skills, savvy, the persistent sit-in strategies that recalled storied activists such as the followers of Martin Luther King, and the frisson of erotic excitement inspired by Santorelli’s slim good looks that would have helped draw the media to her story.

This is, in part, a class distinction, and a way that lawyers, courts, and juries see defendants and plaintiffs. The proper, the disorganized, the weird, do not get as much credence. They are not looked at in the same way. Though there are few who will admit this openly, the bar and the bench are more likely to look down upon, or even laugh at them.

Together, then, Bourne lost her case in part because she did not look right. Her body didn’t look right. She didn’t look connected to people in power. She didn’t look pretty. She didn’t look healthy. She associated in public with nude women, which may have associated her visually with a lesbianism that didn’t have Feringer’s backing. And so she submitted
to a downward legal gaze that found her physically offensive, annoying, perverted, and indecorous instead of respectable and powerful, when she took off her clothes.

Legal peering, then, dehumanizes and objectifies people, and helps direct their legal fortunes. Those submitted to the downward gaze fall to a very vulnerable legal position, while those who look like the peerer—or even superior to the peerer—have a better chance of winning.

How on earth can we change this scabrous legal practice of seeing?

IV. Using Artifacts and Biography to Change Our Way of Seeing

Wendy O. Williams and Lorien Bourne found themselves caught in a multi-faceted gaze that objectified, erased, and vilified them. The next question becomes how to combat such optics in the law. How can legal actors see “different” people like women, the poor, and folks experiencing disability like that one juror in the Milwaukee trial? How can judges, jurors, and prosecutors regard them as “ordinary people”?

William and Bourne each offer two resources for challenging these exploitative gazes. First, we can look to their art for a broader viewpoint. Second, we can look to their lives.

A. Artifacts

Williams and Bourne battled racist, disablist, sexist, homophobic, and classist gazes on the mirrors of their performing bodies. They were, in other words, artists dealing with discrimination. In other work, I have called the telling forms of artwork made by outsiders “artifacts,” that is, art made by legal subjects that constitute both art and facts. Artifacts tell counter stories about outsiders’ lives, and offer important information that the law should absorb. Artifacts may give us a new way of looking at evidence in criminal trials.

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386 See supra note 29.
387 See supra note 34.
388 Id.
389 See supra note 39.
390 See supra notes 81–82.
391 Id.
and offer key insights that might shift legal debates on subjects ranging from immigration\textsuperscript{392} to copyright\textsuperscript{393} to responses to rape.\textsuperscript{394} In the cases of Williams and Bourne, their artifacts can spur a new way of seeing women, the disabled, LGBTQ people, and homeless people as “ordinary people.”\textsuperscript{395} They can also help us take a new look at the seemingly invisible capitalist and oppressive forces that help shape the downward and upward gazes to begin with.

1. Wendy O. Williams’ Artifacts

Williams countered a white supremacist and hetero-patriarchal look by performing in a musical ensemble that contained men of color and perhaps gender-nonconforming men.\textsuperscript{396} She also manifested her own aggressive sexuality\textsuperscript{397} while shearing herself of the graces that make women appear to be acquiescent and approachable. That is, she shaved her long blonde hair, that “heterosexual disguise,”\textsuperscript{398} into the bristling Mohawk,\textsuperscript{399} which may have been rooted in a controversial effort to align herself with non-whites, as some critics have thought of the hairstyle’s place in punk culture.\textsuperscript{400}

\textsuperscript{392} See Yxta Maya Murray, Inflammatory Statehood, 30 Harv. J. on Racial & Ethnic Just. 227 (2014) [hereinafter Murray, Inflammatory Statehood].

\textsuperscript{393} See Yxta Maya Murray, From Here I Saw What Happened and I Cried: Carrie Mae Weems’ Challenge to the Harvard Archive, 8 Unbound: Harv. J. Legal Left 1 (2013).

\textsuperscript{394} See supra note 81.

\textsuperscript{395} See supra note 143.

\textsuperscript{396} See supra note 184 (Jean Beauvoir) and 109 (Richie Stotts).

\textsuperscript{397} See supra note 95.

\textsuperscript{398} Laurel Gumyer, Spilling the Caviar: Telling Privileged Class Tales, in Women and Social Class: International Feminist Perspectives 231 (Christine Zmroczek & Pat Mahony eds., 2004) (calling long curly blond hair a “heterosexual disguise if there ever was one”). On blond hair, race, and patriarchy, see also Steve Cohan, Masked Men: Masculinity and Movies in the Fifties 13 (1997) (“The craze for becoming blonde on screen and off during this period [the 1950s] reflected the increased value of WASP identity for a nation beginning to see white supremacy challenged at home (with the Montgomery, Alabama, bus boycott beginning the civil rights movement in 1955).”)

\textsuperscript{399} Michelle Ann Abate, Tomboys: A Literary and Cultural History 198 (1990) (“With its interest in shock and emphasis on ugliness, it represented a radical new way for young women to reject femininity. By sporting Mohawks, wearing black lipstick and piercing their ears with safety pins, punk allowed girls . . . to be ‘unpretty.’”)

\textsuperscript{400} Norman Mailer, Rock ‘n Roll N—er, in White Riot: Punk Rock and the Politics of Race 19 (Stephen Duncombe & Maxwell Tremblay eds., 2011) (describing some punks as “othering” themselves through dress
Her highly visual performances also fought against a monolithic capitalist visual culture that would otherwise trap her in the role of an easily marketable “blond peabrain.”  She took to the stage to destroy the same products that were worshiped in the commercials that punctuated the shows she starred in. She blew up Cadillacs with a strange and fiery *joie de vivre*. She chainsawed her own expensive instruments. She crushed the televisions that hosted her image. And in the wake of this annihilation, she created a new space where she could talk about racism and sexism. She also revealed how the culture within which she worked trafficked in violence through the very stereotypes that she battled. The press might have viewed her television bashing as “violent,” and yet it ignored authentic, pressing violence—that found in the rape of women, and the failures to stop murders such as those traumatizing the African American community in Atlanta.

For a while, Williams succeeded in offering a new way to gaze at outsiders, at strangers. When she appeared in front of the Milwaukee jury, she was seen as a human being. Using the authority she gained as a rock star, she shaped her visibility with her own intransigent, eloquent dissidence.

Until she didn’t, that is. By the time of Williams’ civil trial, she looked sordid and like a failure to the media, to the Milwaukee district attorney’s office, and perhaps to the jury as well. Williams’ story helps us see the danger of using the “master’s tools:** she had tried to use television, celebrity, and the backing of the music industry to challenge its ghastly optics and leverage her message of peace. But offering oneself to television and its

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401 See Wallace, *supra* note 86.
402 See *supra* note 99.
403 See *supra* note 100.
404 *Id.*
405 See *supra* notes 107 (rape) and 144 (Atlanta).
406 *Id.*
407 See *supra* note 143.
408 See Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House*, in *Sister Outsider: Essays and Speeches* 110 (2007). In this famous essay, Lorde warns that we cannot use the strategies of the powerful to liberate poor and oppressed people.
journalists also goes by a telling name, that of “feeding the beast.” It is difficult, perhaps impossible, to control a medium that makes its money off of fresh stories, female bodies, and violence. And Williams could not.

Williams’ music and performance, however, can still offer us a reminder to interrogate the downward gaze, and how that look overtakes people who are losers in the contest of capitalism. Her art retains value, because it asks us to question how we, as legal actors, may only see humanity where there is money and fame. Her performances can help us recognize the moral blindness that allowed her to benefit from the aspirational gaze and then led to her entrapment in the downward look. So inspired, we may begin to bash those optics with the same energy as Williams exhibited when she annihilated Cadillacs and televisions with liberatory glee.

2. Lorien Bourne’s Artifacts

Lorien Bourne’s art also offers an alternative to the grim gazes that saw her as a pervert, annoying, indecorous, and “physically offensive.” In her song, “Forgiveness is a Madness,” she explains how she is being erased by a “storm” that has also swallowed her voice. Here, we can see her naming the invisibility that was imposed upon her by forces akin to the Bowling Green Municipal Court and the Ohio Appellate and Supreme Courts. She worked to overcome that erasure by being a rock-and-roll musician, appearing on stage. Her fascinating use of the megaphone is also telling. Not only did it project her voice that she complained was otherwise destroyed, but it also allowed her to borrow the accessories of visible women, and a “symbol of power.” Cheerleaders regularly use

409 See, e.g., Marianne Pearl & Sarah Crichton, A Mighty Heart: The Brave Life and Death of My Husband, Danny Pearl 116 (2007) (“I know the pressure to ‘feed the beast’; I have felt it. I think about how easy it is to reduce this story to a simple tale: handsome hostage husband, pregnant despairing wife. There is no way for any of these shows to reflect the complexity of what is going on here, and while simplification of complex events may seem harmless, it isn’t.”); see also Mike Barnicle, Some Shots in the Dark, Bos. Globe, Oct. 29, 1989 (“As shootings go, it wasn’t much although it did manage to feed the beast of Friday night’s 11 o’clock news.”).

410 See supra notes 29–34.

411 See supra note 252.

412 Cf. Kevin Nunn, Global Punk: Resistance and Rebellion in Everyday Life 116 (2016) (“Within the continuing Riot Grrrl ‘revolution’ is an ongoing demand to be recognized as part of a borderless community of feminist agents seeking to make gender and gender bodies visible on their own terms.”).

413 See Gehman Email, supra note 248.
megaphones,\textsuperscript{414} as do the police.\textsuperscript{415} Gehman says that Bourne was in “denial” about “how people saw her” in order to “function . . . in society,”\textsuperscript{416} but Bourne seems to understand exactly how people regarded her and her body.

Bourne’s artifacts alert us to a harmful gaze throughout her story. Her art helps notify us of a downward look that stole her dignity. Through her music she insisted on being seen as an “average”\textsuperscript{417} person, and as equal. The court’s peering at her—seeing her as offensive, and also seeing her and her body as being “weird . . . [with] little to offer them”\textsuperscript{418}—finds a corrective in her music and performance.

B. Biography’s Riposte to Peering

But legal theories about artifacts, and legal method itself, is not enough to fix the problem that denied Williams and Bourne justice. Neither naming harmful legal gazes, coming up with a different jurisprudential test, nor studying art promises to dismantle the fiasco of peering, which uses powerful optics to dazzle legal actors out of the recognition that they participate in (what is probably, or hopefully, largely) unconscious bias.\textsuperscript{419} How can jurisprudential intervention change the intense force of these gut reactions to appearance, race, gender, sexuality, status, money, and ability, which matter quite as much as factors and bright lines?\textsuperscript{420}

Bafflement over productive responses to unconscious bias concerns not only questions of courts and psychology, but also the role of legal scholarship. Some argue that legal scholarship...

\textsuperscript{414} Leslie M. Wilson, The Ultimate Guide to Cheerleading: For Cheerleaders and Coaches 60 (2003) (“A megaphone is a valuable prop to ensure that cheers can be heard by other cheerleaders.”).


\textsuperscript{416} See Email from Francis Gehman, supra note 248.

\textsuperscript{417} See supra note 302.

\textsuperscript{418} See supra note 248.

\textsuperscript{419} On peering and unconscious bias, see Murray, Motor City, supra note 53, at 448.

\textsuperscript{420} Cf. Bernice B. Donald & Erica Bakies, A Glimpse Inside the Brain’s Black Box: Understanding the Role of Neuroscience in Criminal Sentencing, 85 FORDHAM L. REV. 481, 499 (2016) (“[I]mplicit biases often predict and determine actions and decisions more so than the values that we make sure to explicitly adopt.”).
scholarship operates optimally to help courts “support the decisional lawmaking process,”421 to parse and evaluate legal doctrine,422 and to reflect on the meaning and intelligibility of judicial activity,423 among a multiplicity of other objectives.424

This Article can fairly reside in the category of “other objectives.” Readers will note that I have irradiated these pages with biographical details about Williams and Bourne, and that their stories expand greatly from the list of facts admissible as relevant in their legal cases—primarily because these tales treat the portions of their lives that passed far before and far after their arrests, citations, and litigations. I have merged legal scholarship with the biographer’s art, which Carolyn G. Heilbrun once described as a force that may create feminist power.425 I do this for the legal scholarly purpose of making the reader feel something—really, feel terrible—about the way that the upward and (primarily) downward gazes erased, othered, shamed, and captured Williams and Bourne in the courts. The full emotional impact of Williams’ 1984 loss, and of Bourne’s treatment by the Bowling Green Municipal Court, cannot be felt fully without better grasping these women’s humanities and their fates. When we know that Williams struggled with depression, that she could not always do the right thing, that she resisted materialism, that she tried to heal people, nature, and animals, and that she killed herself, we may react to the 1984 Milwaukee jury’s determination that she was “not this shy girl”426—that is, that she collapsed so far below their peerage that she could be beaten with impunity by the police—with despair. And when we know that Bourne experienced Turner’s syndrome, that people were mean to her, that she cared about the environment, that she was homeless, that she tried to feed the homeless, that she suffered from mental health problems, that she thought she had an

422 Richard A. Posner, The Present Situation in Legal Scholarship, 90 Yale L.J. 1113, 1125 (1981) (“The use of the social sciences (primarily economics) and the humanities (primarily philosophy) to evaluate legal doctrines goes back many years.”); id. at 1123 (“the doctrinal analyst . . . is not engaged in a search for something new but in tidying the doctrinal product of judges.”).
424 For a survey, see Carlo A. Pedrioli, Professor Kingsfield in Conflict: Rhetorical Constructions of the U.S. Law Professor Persona(e), 38 Ohio N.U. L. Rev. 701 (2012).
425 Carolyn G. Heilbrun, Writing a Woman’s Life 43 (2008) (“Power consists to a large extent in deciding what stories will be told.”).
426 See supra note 181.
“average”—that is, typical, or “normal”—body despite her lack of social support, and that she removed her clothes at City Park to say “Here I am, I am a person,” then the Municipal Court’s videotape-aided assessment of her as perverse and physically offensive may more readily make us feel like hell.

I am certainly not alone in employing legal scholarship and biography to evoke emotion in order to fight seemingly intractable forces that create inequality through law. Feminist legal and critical race feminist theorists such as Angela Onwuachi-Willig have long understood that women’s and outsiders’ biographies offer key yet often buried facts that might aid legal reform. Law and emotions scholars such as Elizabeth Rappaport support empathy and emotion as key players in executive clemency. Kathryn Abrams and Hila Keren write scholarship that seeks to cultivate hope. Martha Nussbaum looks to literature and the imagination to generate compassion and empathy in legal decision making.

427 See supra note 255.

428 See supra note 261.


431 Kathryn Abrams & Hila Keren, Law in the Cultivation of Hope, 95 CALIF. L. REV. 319, 321(2007) (noting law’s possible role in the “cultivation of emotion,” though there the emotion focused on is hope).
making. Robin West studies the emotions produced by law. Also, in my past work, I have written legal scholarship that I hoped would promote “gadfly” dread about the treatment of Latinos in Arizona.

My deployment of biography in this Article relates to all of these goals. Like West, I am interested in emotions produced by law, although here, I am (like Abrams and Keren) seeking actively to create an emotional response to law’s harms. Through that reaction, I hope to awaken readers—who are legal actors—to the hidden dangers of peering, and to claim compassion and hope as legal values. I seek a replacement of peering’s voluptuous gratifications, that is, its promotion of the schadenfreude, hatred, fear, disgust, *amour propre*, and disdain that prevented Williams and Bourne from being viewed as “ordinary people”—with the empathy sought by Onwuachi-Willig and Nussbaum. I also hope that Williams’ and Bourne’s steadfast resistance to society’s “looking down” on their bodies, their values, and their voices with the way that they lived their lives can also model for us a path to a better future. Seeing other people as ordinary human beings, like we are, or hope that we are, is difficult work that legal actors need to understand, and to practice.

**CONCLUSION**

Wendy O. Williams and Lorien Bourne both fought society by making the unconventional choice to pair exposures of their bodies with their political protest. The different ways that legal actors reacted to them demonstrates the power of peering that offers us particular lessons on the gender, class, ability, and sexual orientation dimensions of legal optics. In short, when Wendy O. Williams’s star burned bright in terms of money and worldwide, televised fame, she earned enough credibility to win in the courts, despite her radical messages of love and acceptance. People saw her as an ordinary human

432 **Martha Nussbaum, Poetic Justice: The Literary Imagination and Public Life** xvi (1995) (describing literary imagination as “an essential ingredient of an ethical stance that asks us to concern ourselves with the good of other people whose lives are distant from our own”). See also **Martha C. Nussbaum, Love’s Knowledge** (1992) (addressing the relations between emotions and ethical judgment).

433 Robin West, *Law’s Emotions*, 19 Rich. J.L. & Pub. Int. 339, 342 (2016) (“What . . . [scholars] haven’t much to date investigated, however, are the emotions law produces, or authors, or sires, or births, or fathers—the emotions that law itself generates, rather than the emotions that affect law or the emotions that law affects.”). West’s focus is on law’s generation of unhealthy emotions. See id. at 343–44.


435 In the end, we all probably influence the law. See, e.g., Will Rhee, *Law and Practice*, 9 Legal Comm. & Rhetoric: JALWD 273, 274 n.9 (2012) (“This article uses the rather broad term ‘legal actors’ to represent anyone who formally or informally affects or influences law in a democracy, however law is defined.”).
deserving of rights and an audience. But when she found herself booted off stage, all the forces of multidimensional oppression weighed on her to such an extent that a 1984 jury was not moved by persuasive visual and eyewitness testimony evidence of brutality. She was now seen as a wretch who could be beaten in conformity with the law. Lorien Bourne’s dismal career as a criminal defendant and equal protection champion demonstrates that she, too, fell afoul of the downward gaze. The Bowling Green Municipal court cast aside her equal protection challenge, after viewing a tape of her unclothed physique, with insulting descriptions of her as a “perverse” person with an “annoy[ing]” body.

These gazes proved difficult to extract from a surface review of the cases, and required fairly extensive historical archival research as well as interviews with Mr. Ritter and intimates of Bourne. This indicates that legal optics that oppress outsiders may prove challenging to bring to light and to counter during litigation. In addition, the sinuous, adaptive nature of the oppressive downward gaze, revealed in these two cases by its ability to manifest in multiple, often irretrievable ways—in a court’s hidden reaction to a videotape, in a jury’s silent appreciation of a photograph, in the unrecorded perceptions of fliers, wardrobes, and even photographs of other seemingly unrelated legal subjects like Sugar Dee Tates—means that it will prove very hard to combat.

A possible corrective announces itself, however, in the form of looking even closer at the lives of legal subjects, that is, looking at the art that they have made, and looking at their biographies. When we really observe the life stories of outsiders tangled within the dangerous gazes of the law, we can start on the emotional path of seeing them as humans, without needing them to be famous or rich in order to do so. The power of an intimately observed life story can, I hope, clarify the vision that money- and sex-dazzled optics now obscure.

436 See supra notes 158 (Capitol dropped her) and 168 (banned from appearing in a homecoming float by the University of Wisconsin).

437 See supra note 34.

438 The reader may wonder how I even chanced to dig deeper into Lorien Bourne’s story to find out the facts of her physical and mental conditions. I can only say that I began this Article by looking for female artists who ran afoul of the criminal law, and in my Westlaw research found the Bowling Green Municipal Court opinion. When I read it, it struck me as so colossally rude that I wondered if some factors not made available in the decision had influenced the court. This led me to a Google search, which produced the Facebook postings by Francis Gehman. He had written about Bourne’s death, and made a brief mention of Turner syndrome. My work proceeded from there.
APPENDIX

In 2005, a BGSU female student was given three citations for walking topless along the Slippery Elm Trail in Bowling Green. According to the Park Ordinance, all patrons except males under the age of 12 must wear a shirt; however, no men were cited for not wearing a shirt. Thus, a woman was unfairly singled out. From the infamous “Nipplegate” to our own community, this is discrimination, plain and simple, and it is wrong. Sexism, the sexualization of women, and double standards abound in our community. The good news is that we can do something about it! Join us for our outdoor potluck in City Park to talk to likeminded people, strategize against injustice and support equal protection under the law.
Tired of Sexist Double Standards?
Join Us to Fight Back!

SOLIDARITY POTLUCK

Sponsored by the Titty Committee (TC)

Date: Saturday
September 16, 2006

Time: 1–5 PM

Location: City Park,
at Conneaut and Fairview Avenues in Bowling Green
Look for the TC Sign!

More Info: Email TittyComm@yahoo.com

In 2005, a BGSU female student was given three citations for walking topless along the Slippery Elm Trail in Bowling Green. According to the Park Ordinance, all patrons except males under the age of 12 must wear a shirt; however, no men were cited for not wearing a shirt. Thus, a woman was unfairly singled out. From the infamous “Nipplegate” to our own community, this is discrimination, plain and simple, and it is wrong. Sexism, the sexualization of women, and double standards abound in our community. The good news is that we can do something about it! Join us for our outdoor potluck in City Park to talk to likeminded people, strategize against injustice and to support equal protection under the law.