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ELEVEN

THE CONSEQUENCES OF ARBITRARY AND
SELECTIVE ENFORCEMENT OF
PROSTITUTION LAWS**Norma Jean Almodovar¹**

Abstract: In policing criminal activity, law enforcement agents cannot simply choose which rapist, thief or murderer to search for and apprehend, as it is their duty to arrest, prosecute and punish every individual who commits such crimes. Yet this is not the case with policing sex work, as anti-prostitution laws are often arbitrarily enforced and police are frequently given opportunities for intimacy by choosing which perpetrators they will arrest. Drawing upon multiple case studies regarding police abuse of authority as well as my own experiences as a former LAPD traffic officer and sex worker, this paper demonstrates the consequences of such arbitrary enforcement.

As long as prostitution has existed, there have been government and religious crusades to eliminate it, and when those crusades proved unsuccessful, the focus has consistently turned to controlling those who practiced it (Doezema, 2000). Throughout the history of the attempted abolition of prostitution, many reasons have been given for the need to do so, ranging from lofty moral arguments that sex outside of marriage is a sin to the more recent declarations that all prostitution demeans or degrades all women. In the late 20th century, a hybrid claim emerged that attempted to convince politicians and the public that prostitution was not only an evil enterprise, but that the prostitutes themselves were actually victims of what has become known as “modern day slavery” (U.S. Congress, 2000).

Anti-porn/prostitution feminists and their religious conservative accomplices allege that all sex workers are coerced into prostitution and are emotionally if not physically harmed by their pimps and/or clients. This argument holds that the only way to

eliminate this harm is to “rescue” the prostitute through stringent penalties for those who break anti-prostitution laws. Yet all too often, it is the prostitute who is “rescued” (often through her arrest) by the police, with her clients occasionally snagged in periodic sting operations. Police in California, for instance, may charge women suspected of soliciting clients with offenses such as loitering with “the intent to commit prostitution”, often done through costly surveillance operations that take considerable time away from other police work. Sex workers’ clients, conversely, are often encouraged to “go home and not come back” following the arrest of suspected prostitutes (*Modesto, 2010*).

This article will demonstrate that being “rescued” through arrest is far more detrimental to prostitutes than any harm that could result *solely* from taking money for sex act. Sex workers, like any other workers, may encounter abusive bosses and violent clients (as I did when I worked for the LAPD) but violence is not inherent in the work itself. Accordingly, this article moves beyond the scope of rather simplistic arguments about sex worker as agents or victims to analyze the serious harm to prostitutes, law enforcement and society that is a direct consequence of the arbitrariness inherent in the laws and the human nature of those who enforce them.

While agents of the government are expected to apply the laws in a constitutional, equitable manner, laws which can be selectively enforced tempt even the most trustworthy officers to fudge reports and make dubious arrests, both of which I witnessed firsthand. In 1972 at the age of 21, I was employed by the Los Angeles Police Department (LAPD) as a civilian traffic officer in the years before women were hired as sworn police officers. I was primarily assigned to the night watch, driving a patrol car without a gun and usually without a partner. I spent the next decade watching with dismay as my sworn colleagues selectively enforced laws related to prostitution. After two of my LAPD colleagues offered me \$200 to have sex with a retiring captain (which they referred to as "a going away present"), I became acutely aware that something was very wrong with laws which could be so arbitrarily enforced. After ten years of looking the other way and after a series of on-duty traffic accidents, I decided that I would rather be an honest whore than continue working for the LAPD. My outspoken criticism of police corruption led to a sting operation, the confiscation of my unfinished manuscript, and I ended up as a convicted felon serving time at the California Institute for Women. My case is chronicled in my autobiography (Almodovar, 1993) and has featured on television shows such as *60 Minutes* and *American Justice*. I have been a sex workers' rights activist since I left the LAPD in 1982 and, due to my notoriety, after prison I had to forgo earning a living as a prostitute in order to focus on activism.

The purpose of police agencies is to protect the life and property of the citizens of the communities they serve from those who break the law. Laws which prohibit one individual or group of individuals from violating the rights of others are justifiable and proper. Victims of a crime, known as “complainants”, call the police and file a report. An investigation is launched and if the investigation shows that a crime was indeed committed and a perpetrator is found, the police make an arrest and then it is up to the prosecutor to persuade a judge and/or jury of the suspect’s guilt. If convicted, the perpetrator is punished in whatever manner is prescribed for the offense. Nonetheless, temptations for law enforcement agents exist for any number of illegal activities, from robbery to murder, as is evident throughout news coverage of such unfortunate misuse of legal powers (e.g. Marzulli, 3/5/2010; Marzulli, 3/16/2010). Fortunately, the number of officers who do not succumb to those temptations far exceeds the number who do.

When serious crimes do occur, police resources are rightfully spent to locate and apprehend the perpetrator, regardless of how long it takes. The police may not always be successful and sometimes the statute of limitations runs out on “lesser” crimes, but as a rule the police do not pick and choose which cases they will pursue. Serious criminals are not given a free pass nor are they offered more opportunities to commit crimes by agreeing to cooperate with the police and give the police information on other criminals, as they often are if they are prostitutes or madams (Cantlupe, 1990, A-9).

Infamous Hollywood Madam Heidi Fleiss’ predecessor Elizabeth Adams, (aka Madam Alex), is a prime example of cooperation. She operated one of the most successful prostitution rings in Los Angeles history for over two decades, with the full knowledge and consent of the LAPD. She was considered an asset to law enforcement because of the types of information she was able to provide them, which “led to major, major criminals going to jail”, according to defense witness LAPD Detective Daniel Lott, during

Madam Alex's 1988 criminal hearing after she had been arrested for failing to give information to another vice cop, LAPD Detective Alan Vanderpool. In the arrest report, Vanderpool stated, "No contact. Inactive. Should go to jail." As long as she provided him with information, she was free to "exploit" the women who worked for her and make as much money as she could. During her criminal hearing, in May of 1990, LAPD Detective Daniel Lott noted that "the department looked the other way at her brothel activities because of the help she provided on numerous criminal cases." (Timnick, 5/19/90, B-3). If Heidi Fleiss had agreed to become an informant like Madam Alex did, Fleiss might still be operating her call girl ring.

As a result of a curious policy in which the "victim" is also defined as the "criminal", the police officer becomes the complainant who must instigate a violation of law to make an arrest. Police officers are sometimes permitted to go as far as necessary to ensure a conviction, including having sex with a suspected prostitute/victim or hiring someone from the community to have sex with the suspected prostitute and then testifying against that victim/criminal (Scolforo, 2009, B-5). Several cities allow undercover police officers to undress and even engage in paid sex due to the supposed urgency of eradicating adult-related businesses. In Houston, for instance, a Harris County District Attorney noted that "someone had to do something to shut these places down" (KCRA, 2005). Confirmation that this practice is relatively widespread recently appeared in *The Washington Post*, noting:

They enter the massage parlors as undercover detectives. They leave as satisfied customers. In Spotsylvania County, as part of a campaign by the sheriff's office to root out prostitution in the massage parlor business, detectives have been receiving sexual services from "masseuses." During several visits to Moon Spa on Plank Road last month, detectives allowed women to perform sexual acts on them

on four occasions and once left a \$350 tip, according to court papers (Jackman, 2/13/06).

Although many police agencies claim they no longer allow this practice, the reality is that the cops often go beyond what is necessary to “catch suspects in the act.” Spotsylvania, Virginia County Sheriff Howard Smith has stated that he stands by the practice of allowing detectives to receive sexual services in the course of their investigations “in order to build a case that the owner of the business knew of and profited from illegal sexual acts for money by employees” (Jackman 2/13/06). Smith further observed that, “It's not something the sheriff likes his people to do, but in these cases, it's the only way to prosecute these people” (Jackman, 2/13/06).

In those locales where cops are not allowed to engage in sex with alleged prostitutes to make their case, others are sometimes hired to do it for them. As an Associated Press report from Nashville, Tennessee observes:

Police have paid confidential informants thousands of dollars to engage in sexual encounters with prostitutes as part of a crackdown on the sex business in Nashville, drawing criticism from the top prosecutor. Police spent almost \$120,000 over three years to foster the encounters, which involve sexual touching and sometimes more. The evidence has helped the city close more than 35 businesses believed to be selling sex and disconnect phone lines to about 100 escort services. “What's the greater good?” asked Capt. Todd Henry, who heads the department's specialized investigations division. “It may be distasteful to some people, but it's better that we have those places shut down.” Police pay informants about \$300 for up to three prostitution buys, and an extra \$100 for each additional transaction, department officials said (Associated Press, 2005).

As recently as November 2009, police have paid informants to have sex with prostitutes in Pennsylvania, even though this particular case was thrown out by the appellate court. The court ruled that the Pennsylvania State Police had inappropriately carried out an investigation in which they provided an informant with \$180 in incentive pay in addition to four sexual acts at a local massage parlor (Scolforo, 2009, B-5).

It is not too difficult to figure out that there are far more people engaged in prostitution as providers and clients than can ever be apprehended and prosecuted. Logically, for every prostitute there must be at least ten clients if the prostitute is to have a business. Doing the math, if every tax dollar was allocated to the enforcement of prostitution laws and every police officer in every city was assigned to the vice detail full time, and the vice detail operated 24 hours per day each and every day, and every courtroom expropriated for the sole purpose of prosecuting prostitution cases, there would still not be sufficient resources to arrest, prosecute and incarcerate every prostitute and every client. Given that there are violent crimes which need solving, the only option for law enforcement is to selectively enforce the prostitution laws.

When it comes to determining which clients to arrest, there is no question that there is a double standard for those who are wealthy and have power and influence, and those who are poor and more likely to seek a street worker than hire upscale prostitutes at \$5,000 an hour. Former New York State Governor Eliot Spitzer not only hired prostitutes but took them across state lines in violation of the Mann Act, a federal offense. He was not arrested for any crime while the madam who ran the high end escort agency who provided Mr. Spitzer's call girls, went to prison. The madam who provided prostitutes to Louisiana's Republican Senator David Vitter was convicted of federal offenses and sentenced to prison while David Vitter is still a senator. Other men, like seventy-five

year old Charles Fletcher of Cape Coral, Florida, are not so lucky. Mr. Fletcher was arrested and charged with solicitation, and his name and photo appear on a website dedicated to exposing everyone engaging in prostitution activity.

The police have no way of eliminating much prostitution and certainly not *all* prostitution as many anti prostitution/pornography feminists and religious conservatives are demanding. The draconian enforcement of laws and punishment necessary to eradicate even a small portion of prostitution would surely nullify everyone's civil liberties. There is no constitutionally acceptable way to mandate the intrusion into the most private activities of *everyone* or impose the kind of harsh laws and penalties that would have any significant impact on those who are willing to break the law. This is particularly problematic given the pervasive and enduring social stigma sex workers face. As Pasadena Superior Court Judge Gilbert C. Alston succinctly stated when, despite the jury's protestations, he stated that a prostitute could not be the victim of rape: "Who in the hell is going to believe a whore on the witness stand, anyway?" (Arax, 1986, 1-2).

Similarly, Houston police officer Samuel Roccaforte, a twenty-eight year veteran of the force, seemed to embrace this line of thinking when he arrested forty-six year old Phyllis Stokely on October 6, 2009. According to the police report he filed subsequent to her arrest, she agreed to sexual intercourse for \$200. Unfortunately for the officer, Ms. Stokely secretly taped the conversation and presented the tapes to her attorney. On the tape, Roccaforte could be heard saying, "I will tell you what I want... sex with a condom. Can you do that for me?" Stokely replied, "Sir, like I said, I don't provide that kind of service." Roccaforte went on, "Well, you did. You know you did, I know you did. There's no audio, there's no video. It's going to be my word against yours and who do you think they're going to believe?" (Rogers, 2010). Roccaforte's attorney, Chip Lewis, responded to the charges against his client by noting that "I find it very hard to put this

whose's credibility ahead of a well-decorated, exemplary officer. I'm very comfortable calling her a prostitute because we have the ad [that she posted for her services on the internet]" (Rogers, 2010).

Sex workers often report having been sexually assaulted while in custody by the very men who are supposed to protect them, such as Los Angeles County Sheriff's Deputy Kenneth Lawrence, who raped a woman prisoner shortly after she was sentenced for prostitution (Rohrlick, 1984). And Corrections Officer Willis, who sexually assaulted me at the halfway facility where I was housed during my incarceration in 1988. This officer extorted sexual favors from many women who came through the facility, and eventually, after I mentioned this incident on a national television show following my release, the officer was transferred to work in a men's prison. As he was not arrested and did not lose his job, one can conclude that being extorted for free sexual favors is not as harmful to women as consenting to be paid for sexual services. Thankfully not all cases of such abuse while sex workers are held in custody go unpunished. In 2005, at least five police officers in Hartford, Connecticut were convicted in court for sexually assaulting prostitutes (Brown, 2005, B-6). Bronx police officer Kevin Burke was also successfully prosecuted for the rape of a sex worker in 1992 (*New York Times*, 1992).

Unfortunately, prostitutes being raped or extorted for sexual favors by cops happens far too often, which is ironic, as one of the main arguments for keeping prostitution illegal is that prostitutes are vulnerable to rape and murder. Donna Marie Gentile was one such woman. The second victim in a string of almost fifty sex worker homicides, Gentile was found strangled to death, her mouth stuffed with gravel, a month after she testified against two police officers. Her death resulted in one officer losing his job and another's demotion (Torres, 1985). The deaths of Gentile and at least 45 other prostitutes from 1985 to 1992 became a rallying point for a number of San Diego artists, who were horrified to learn that the

police consider homicides of prostitutes as “NHI” - an unofficial police term meaning “No Humans Involved” (Butler, 2001, 287).

In 1982, the year I left the LAPD, I learned from the late attorney Harry Weiss, one of the most highly respected of all Los Angeles criminal lawyers, that three Los Angeles call girls who had filed a lawsuit against the LAPD cops for having sex with them before they were arrested, had met with fatal car accidents. Weiss did not think it was a coincidence. In 1984, the year I was arrested for one count of pandering and for which I ultimately served a nearly six year sentence, two San Francisco vice cops were not charged with any crime after they hired a prostitute to orally copulate a recruit during a Police Academy graduation party at the Rathskeller Restaurant. A day after she testified against the cops, the prostitute was arrested, standing on a street corner talking with two friends. The vice cops were not charged with pandering, even though it clearly was a case of “encouraging a person to commit an act of prostitution”- the same crime for which I had been arrested, prosecuted and incarcerated (Popp 1984).

By no means are these isolated cases. In 1988, California Sheriff’s Deputy David Rogers, was sentenced to die in the gas chamber for the murder of two prostitutes. Rogers admitted shooting one of the women in an argument over the amount due for a sex act (Supreme Court of California, 2006). Also in 1988, two LAPD officers, Richard Ford and Robert Von Villas, were convicted of attempting to murder an exotic dancer in order to collect a \$100,000 life insurance policy they had taken out in her name. And again in 1988, another LAPD sergeant, Emmanuel Valencia, was found to have participated in lewd acts with a transvestite prostitute on numerous occasions, for which he received a six month suspension without pay but did not lose his job. He did not go to jail. In 1996, San Francisco police officer Francis Hogue was sentenced to 6 years in prison for kidnapping a masseuse and forcing her to orally copulate him while on duty. In 1997, a former cop was convicted

of shooting and paralyzing a Queens prostitute who mocked him after he failed to perform sexually (Donohue, 1997).

In 1998, a sex scandal of epic proportions erupted in New York's Midtown South Precinct, where officers had been having sex with the prostitutes at a brothel on a regular basis in exchange for not arresting any of them. The "worst kept secret on the block" came to light when a factory owner caught one of the prostitutes sneaking a client into a bathroom of his handbag factory. He threatened to call the cops, but she retorted "What would you say if I told you my boyfriend is... a cop, so when you call the police, you'll be calling him" (McPhee, Gonzalez & Goldiner, 1998). It is little surprise, then, that when confronted by reporters, local residents "spoke matter-of-factly about the alleged deal that kept the hookers in business and the cops happy...Police officers were a regular sight at one of the more notorious hooker hangouts" (McPhee, Gonzalez & Goldiner 1998). As many as 40 police officers faced charges, with twice that many stripped of their badges as a direct result of the scandal (Weiss, 1998).

These examples of police and judicial corruption in connection with the enforcement of prostitution laws are unfortunately but a few of the thousands I have collected through the years. There is overwhelming evidence that some police officers are not only hypocritical in the enforcement of prostitution laws, but have much to gain personally and professionally to keep women under the control of such laws, which is why they protest so vehemently against decriminalizing or legalizing prostitution. Recently there has been a change in the dialogue about prostitution. While many abolitionists still argue that prostitution inevitably results in the exploitation of women and children, others suggest that even if a woman consents to engage in sex work, her economic circumstances are such that her consent is invalidated. In reality, however, the illegal nature of prostitution is itself responsibility for limiting sex workers' choices. Making sex workers criminals ensures that the only real "choices" we have are whether or not to

cooperate with the cops; give the cops sex for protection, become an informant, or go to jail.

Abolitionists claim that prostitution is not a victimless crime and wish to continue the prohibition against it, meaning that prostitutes continue to be arrested, but if this is true, why would we arrest “victims” in the first place? Using the pretext of ferreting out underage prostitution, sex slavery and trafficking, the police and FBI arrest first make arrests and then sort out the “victims”. If an adult prostitute is not a victim, should they be arrested because they *aren't* victims? And if a client or has not abused a sex worker or hired an underage person, is it appropriate to charge him with a crime, or threaten to label them as sex offenders, as at least one U.S. state has proposed doing? (Klepper, 2010).

As long as prostitution remains criminalized, the harm done to prostitutes, law enforcement and society is immeasurable. Through the enticement of good officers into accepting money or other favors from those “victims”, law enforcement is corrupted. It is further corrupted because police officers learn quickly that the best way to score convictable arrests is by reportilying, and they know that the prosecutors, judges and juries will always believe them over the whores. Society looks the other way because, after all, the cops are dealing with a stigmatized population that is, at best, in need of “rescue”. When evidence against bad cops can no longer be ignored, there is the harm that is done to society through the confidence lost law enforcement agents and the criminal justice system.

Victims of more serious or violent crimes, in turn, are left with the unpleasant realization that the system cares more about pursuing and punishing “victims” of the subjective theory that commercial sex harms and exploits all women (regardless of their age or consent) than it cares about their plight, providing no justice for those who did not consent to being robbed or raped. Just ask rape victims how they feel about the rape kits that have gone untested

for years because those police departments do not have the financial resources to process the kits and apprehend the rapists (Strickler, 2009), but can afford to send one hundred officers out to arrest fourteen unarmed “suspected prostitutes” (Oliver, 2003). Those who press for stronger penalties and more restrictive legislation for commercial sex fail to take into account the historic corruptibility of vice law creators and enforcers. When even those with money, power and position- men who write the laws like former New York Governor Eliot Spitzer and Louisiana Senator David Vitter- are willing to risk everything for a tryst with a prostitute- how can we expect the average law enforcement agent to resist temptation when he knows the odds are in his favor that he won't get caught?

Police perpetrators find prostitutes easy targets for the same reason serial killers do: because they believe no one is going to care if a whore is raped or killed. Simultaneously, abolitionists continue to advocate for the very laws and policies that continue to cause more harm than good, all in the name of protecting sex workers. The cumulative and unacceptable damage to every segment of society from the arbitrary enforcement of victimless crime laws should cause us to reconsider our priorities. With the limited resources we have, we should concentrate on protecting citizens from those who would do them real harm. Unfortunately, the greatest harm to society as a whole comes from those wishing to protect us from ourselves, "for our own good".

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