Black Rage Confronts the Law

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When I hear shooting my job is to get my two-year-old sister and hide in the bathtub.
—A six-year-old girl in urban America

Chapter 10

Urban War Zones

Doris first became a mother at fifteen, and then again at sixteen. She delivered her third child, Felicia, into the world at eighteen, in Milwaukee, Wisconsin. For the first years of her life Felicia Morgan lived with Doris and her father. Her parents had a volatile relationship and often would bring guns to the dinner table to protect themselves from each other. They beat Felicia with leather belts, extension cords, and switches. Her father left for Mississippi when Felicia was seven, and she went to live with her grandparents. At eleven she returned to her mother’s home, where the violence continued. One night her mother put a knife to Felicia’s throat and threatened to kill her. Felicia escaped to the basement, where she broke the light with her hand so her mother could not see her. Recalling the event years later, she said, “I cut my hand and peed on myself. I didn’t want her to kill me.” In spite of this, Felicia, like so many abused children, remained loyal to her mother. She said, “My mama ain’t no bad person. Whatever happened to me, I still love my mama.”

Later that year her mother’s boyfriend sexually abused Felicia. When her mother found out, she grabbed her gun and, in front of Felicia, shot at the boyfriend as he ran out of the house.
At fourteen Felicia moved back in with her grandmother. Her home life was more peaceful, but the streets had become more violent. She was jumped by a group of girls in an attempted robbery and beaten with a bat; her ribs were broken and she suffered internal bleeding. She was so scared afterwards that she became afraid to walk in the neighborhood. She began to drink and smoke marijuana heavily.

The same year, the landlord’s son entered her home and sexually attacked her. She threw hot grease at him, but he overpowered her, tied her hands to the bed, stuffed a sock in her mouth, and raped her. Soon afterwards, Felicia swallowed some pills from the medicine chest in a failed suicide attempt. She began to hear voices telling her to kill herself. Although the content of the messages would change, she continued to experience auditory and even visual hallucinations.

A year later, her aunt Joyce’s boyfriend pulled a gun on her aunt. Felicia stepped into the path of the gun, seemingly oblivious to the danger, and the incident was defused. A few months later, Felicia’s cousin Shanna was shot during a street fight and lost the use of her arm. Felicia continued to suffer harassment and violence. At fifteen a group of young men grabbed her, stole her rings at gunpoint, punched her in the eye, and threw her in a large dumpster. Remembering this incident Felicia said, “Sometimes I wish I was dead. I wish I wasn’t born so this never would have happened to me.”

Felicia described her years dealing with the streets of Milwaukee. “I had too much shit happened to me my whole life. Every motherfucker punkin’ me out, jumping me. I got tired of running home every day, tired of running from people jumping on me, somebody trying to fight me, trying to make me kiss a tree, kiss their feet.”

In September 1990, sixteen-year-old Felicia lost her favorite uncle, who was just nineteen when he was shot to death. She saw him being taken from the scene in a body bag. Felicia said that she had conversations with her uncle after he died and that he would visit her and they would hug. Two days after her uncle’s funeral, her cousin Anthony was killed in a drive-by shooting.

In December, Felicia was robbed of her coat at gunpoint by a group of teenagers. A few weeks later, her sister’s boyfriend Tomas was shot. Tomas had been like a father figure, urging her to go back to school after she had
dropped out in the ninth grade and counseling her about life in general. He was permanently paralyzed from the shooting. Felicia had dreams that he could walk again. As bad as 1990 had been, the next year would be even worse.

In September 1991, Felicia obtained a clerical job through a youth training program. One evening after buying some clothes, she was approached by a group of girls at the bus stop who attempted to steal her new shoes. Although she fought them off, they got away with her shopping bag of clothes and some of her money. She was so distraught that it took her hours to be able to give a coherent description of the assault. A month later, she was present when a gang shot at some of her friends. Felicia tried to hide, covering her eyes and ears.

On October 18, a man who was visiting her mother’s home pulled a gun on her mother. Felicia, as she had done before, stepped in front of the gun. Her mother remembered that Felicia was “hysterical” and seemed “out of touch with reality.”

On October 12, Felicia was at a “dope house” with an acquaintance named Dixon. He pulled out a revolver and fired at some bottles, terrifying Felicia.

On October 24, Felicia’s boyfriend R.C. gave her a gun to hold for him. The next night, she and a fifteen-year-old friend named Monique were hanging out when R.C. came over and became angry with Felicia, slapping her repeatedly in the face. Then another young man threatened to slap her. Felicia became agitated and furious. She defied him as she said, “I’m gonna stand up for myself. I done run too many fuckin’ times in my life. I run and got my ass kicked. I don’t care if you are six feet tall, I ain’t running from you.”

The two boys left, and then Dixon said he would take the girls to a party. Felicia kept saying she wanted to go home, but they pressured her and she eventually went along. It turned out to be a night that Felicia would dream about over and over, and a night that would bring anguish and sorrow to the family of Brenda Adams.

As the three young people were driving along, Dixon saw some girls, one of whom was wearing a gold necklace. Stopping the car, he gave Monique a small caliber gun, told her to get the necklace, and ordered Felicia to watch Monique’s back. When Felicia did not get out of the car, he said,
"I thought you were her friend." She then got out of the car. Soon Monique and Felicia came running back with a pair of shoes, saying that three guys who had been nearby had jumped the girls and stolen the necklace.

Less than ten minutes later, they saw three more girls and a boy walking down the street. By now it was after midnight and no one else was around. Felicia and Monique got out of the car and, pointing the gun, stole a necklace, a baseball hat, and the boy's jacket.

A few minutes later, they arrived at the scene of the party. Felicia saw a girl named Brenda Adams outside and said, "I want that trench," pointing to Brenda's leather coat. Dixon handed Felicia a gun and said, "Let Monique do what she got to do and don't let no niggers get into it." There are differing versions of what next took place, but it seems that Felicia and Monique fought with Adams and pulled her coat off. Someone across the street from where the three girls were fighting fired a number of shots from a .38 caliber gun. In the midst of this chaos, Felicia shot Brenda at close range and killed her.

The next day, Felicia surrendered to the police. She told them she heard shots being fired. When she opened her eyes, her arm was pointed at Brenda Adams shoulder area. She grabbed Brenda's necklace, but when she saw the blood she dropped it and ran into the car.

Although Felicia was seventeen she was processed into adult court, where she was charged with five armed robberies, one attempted robbery, and first-degree homicide. She was lucky to have an experienced lawyer named Robin Shellow appointed to represent her. Born in Milwaukee, the thirty-four-year-old Shellow majored in English and psychology at Sarah Lawrence College and obtained a master's degree with honors from Cambridge University. Her thesis, on "Tragedy," would prove prophetic for her defense of Felicia.

Shellow's practice was primarily devoted to representing juveniles charged with crimes. She spent 70 percent of her time defending young people against homicide charges in juvenile and adult court. With her background in psychology and her knowledge of post-traumatic stress disorder (PTSD), it was natural that Shellow would raise an insanity defense in Felicia Morgan's case.

In Wisconsin, such a trial is divided into two phases. In phase one, the guilt or innocence of the defendant is argued. In phase two, the issue of
insanity is decided. Shellow argued that Felicia was suffering from a mental illness, which negated the intent necessary for first-degree murder. However, the trial judge refused to allow such a defense in the first phase, a decision that was subsequently upheld by the Court of Appeals, over a vigorous dissent.²

In phase two, Shellow produced three psychologists to support her defense. First was Charles Ewing, author of *When Children Kill: The Dynamics of Juvenile Homicide*. In his report he described Felicia as “a short, light-skinned Black girl who looks her stated age but relates in a rather immature and childish fashion, more in keeping with a younger 13 or 14 than an 18 year old. Her hair was braided and she was neat and clean in her appearance.” Ewing testified that Felicia thought Brenda Adams was the same girl who had robbed her a month earlier at the bus stop. She heard a voice in her head telling her to “get her back, she helped take something from you, so take something back.” (Despite clear evidence that Brenda was not the girl who had robbed her, Felicia adamantly clung to the belief that she was the same girl.)

Felicia said that when she heard the gunshots from across the street, she began to sway back and forth and felt like she was going to pass out. Her eyes became heavy, and she felt like she was in a trance. She did not remember shooting anyone. But she understood that witnesses had said she killed Brenda, and she had accepted it as true. While she lay in her jail cell she had dreams that Brenda was still alive, that they were friends, and that they talked “girl-talk together at school.”

Ewing concluded that Felicia was suffering from “chronic symptoms of post-traumatic stress disorder secondary to a lifetime of physical, psychological, and sexual abuse” and suffered a “brief reactive psychosis triggered by the violence surrounding her that night.” In Wisconsin, the legal test of insanity is whether the defendant (1) had a mental disease at the time of the crime; and (2) as a result of that disease lacked the substantial capacity either to appreciate the wrongfulness of her conduct or to conform her conduct to the law. Ewing concluded that she fit the definition of legal insanity on the night of October 26, 1991.

Also testifying for the defense was Dewey Cornell, a clinical and forensic psychologist. He agreed with Ewing’s diagnosis and added that Felicia also had a borderline personality disorder. Cornell concluded that Felicia’s
abnormal mental condition did impair her ability to control her behavior, 
but he felt that there was not enough information to conclude “unequivocally” that she lacked a “substantial” capacity.

Shellow attempted to call James Garbarino to the stand. Garbarino is an internationally recognized expert in post-traumatic stress. He has won numerous awards, has published extensively, and had gone to Kuwait and Iraq at the request of UNICEF to study the effects of the war on children. He had recently published a book entitled *No Place to Be a Child: Growing Up in a War Zone*. The judge, from the start of the trial, had been hostile to the environmentally based psychiatric defense. Consequently, he called a hearing out of the presence of the jury to determine whether he would allow Garbarino to testify. At the hearing, Garbarino explained how people in a war zone focus solely on survival, and that this can negate their capacity to make moral decisions about right and wrong.

PTSD was first associated with single horrible events such as a train or plane crash, but it is now understood that the trauma can result from chronic and cumulative exposure to stress, such as spending a protracted period of time in a war zone.³ Garbarino likened Felicia’s life history to living in a combat situation. He then made the critical point that most people experiencing severe trauma have the support of others, which allows them to recover. But someone like Felicia had neither a societal nor a family support structure, and therefore did not have the resilience and coping mechanisms necessary for recovery.

Judge Michael Guolee became antagonistic during this testimony. Garbarino commented on the judge’s hostile tone, and eventually the judge made a mild apology for raising his voice at him. The judge stated that to allow a defense based on environmental hardships would open the “floodgates” and “thousands of children, thousands of defendants would come to court saying that they have this Post-Traumatic Stress Disorder and therefore we should have a different standard for them in regards to their responsibility.” He ruled that Garbarino’s testimony was “irrelevant” and, because two other psychologists had testified to PTSD, also “cumulative.” He refused to allow Garbarino to testify in front of the jury—a ruling that eventually would be criticized by the Court of Appeals, which specifically stated that the testimony was relevant. Appellate Judge Schudson wrote in the opinion that “the grotesque reality is that rapacious,
murderous violence to children in their houses and on their streets causes Post-Traumatic Stress Disorder that, in turn, can cause trance-like traumatic flashbacks comparable to those experienced by Vietnam veterans.” He concluded that Garbarino’s “scholarship exposes the devastation of children throughout the world, pierces the conscience of those who are able to shed denial, and motivates all who will listen, learn, and fight for the protection of children.” However, the Court of Appeals, as appellate courts so often do, upheld the verdict anyway, ruling that the failure to allow Garbarino to testify was “harmless error.”4

Felicia wanted to take the stand on her own behalf. She did, and her testimony was both helpful and harmful. The young woman was emotionally out of control, and therefore she said things that weakened the case. She often sounded like an angry, streetwise child. On the other hand, Shellow was correct in understanding that the jurors and the judge had to have the opportunity to see Felicia as a human being. At the end of her testimony, it was clear that she was a confused young girl and not the monster depicted by the prosecution.

Under Wisconsin law, the prosecution has two advantages in an insanity trial. First, the defense, not the state, has the burden of proving insanity to a “reasonable certainty.” Second, a verdict need not be unanimous—a decision of 10–2 is sufficient. In Felicia’s case, these advantages resulted in a verdict of guilty, by a vote of 10–2.

Felicia’s sentencing is an example of how a black rage defense based on environmental hardship can have a positive impact on the participants. Because such a defense exposes the societal factors that contribute to the criminal act, the stereotype of the defendant as a selfish, heartless, useless person is undermined. As the defendant’s life is examined, the judge, the jury, even the victims are able to understand what drove the defendant to the brink of despair and pushed her over the precipice into destruction. In Felicia’s case, the combination of parental abuse and the daily consequences of living in a neighborhood virtually written off by the government had an impact on everyone involved. At the sentencing hearing, Brenda Adams’s sister and father made statements. Their words were filled with anger and pain, but also with compassion. Brenda’s sister Yolanda expressed the view of many people when she said that poverty is not an excuse for crime.
To prepare myself for this occasion last night I stayed awake watching tapes of the proceedings and clips from the news, and for the first time I saw my sister taken out in a body bag. And I asked God why. Poverty is not an excuse to maim, mangle or murder anybody. I don’t care who you are, what you come from or how your life was. I didn’t have a good time growing up, either, and my environment was far from being nurturing sometimes. But I chose a different route. Felicia, I’ve had a hard, hard time trying to come to grips with this. Hating you will not bring my sister back. You receiving life will not bring my sister back, but the only restitution is for you to be rehabilitated, reformed.

Due to the nature of the defense, Brenda’s sister was able to see and to say that there were two victims—her sister and Felicia. And understanding Felicia’s life, she was able to forgive her and to ask the judge not to impose a life sentence.

After Brenda’s sister finished, her father addressed the court:

I don’t forgive and forget. I am a very hateful person. But I will forgive you....

I want to see if she can do something for herself. If she can get a college education in 10 or 15 years, I want the Court to set aside the first-degree intentional homicide sentence and give her a second chance at life.

The district attorney did not accept the environmental defense, legally or philosophically. She described the crime as the result of “peer-related antisocial behavior.” Characterizing the crimes as a shopping spree, she urged the court to sentence Felicia to life with a parole eligibility date of forty years, and an additional twenty years to run consecutively, for a total of sixty years.

Robin Shellow took the podium. Her presentation was a lesson in lawyering, as she tied the sympathetic factors of the case into a concise presentation of the law that allows a judge to mitigate the sentence. After analyzing the sentencing guidelines, Shellow reached out and addressed the pain in the courtroom.

I ask you to take into consideration the fact that we are not here weighing pain today. There is enough pain in this courtroom to last a thousand lifetimes. There is the pain so eloquently articulated by Brenda Adams’s family. There is the pain that has been talked about that Felicia has undergone, and
this isn't about weighing pain. If we were weighing pain, we would have to have scales that were far bigger than this room.

Shellow asked the court for the minimum sentence, which would allow a parole date after thirteen years, and then concluded her effective presentation:

I hope that this Court realizes that my client was the victim of things that no one should have to be a victim of.

We have had many philosophical disagreements. We put those all aside, and I come to this Court asking for the same thing that every single defense lawyer in the building asks for—compassion and mercy, sense of justice. I ask that this Court follow the recommendation of the family that has been most aggrieved, Brenda Adams's family, who has shown this Court so much dignity.

Before the judge pronounced sentence, Felicia Morgan was given the right of elocution—the right to speak before being sentenced. She said only a few words and chose to direct them to Brenda Adams's father.

I will finish my education, and I want you to know that a day ain't going to go by that I don't think about the situation I am in or that your daughter is gone. If I could change back the hands of time I would take her place, but I can't. I know I will never take the place of your daughter.

Judge Guolee had spent many days considering the case and its philosophical implications. He had taken his duty seriously and knew that he held the life of a young girl, almost a child, in his hands. After giving a lengthy and informed dissertation on the history of punishment, he expressed his concern that the defense of environmental hardship "deflected" responsibility away from the defendant.

The judge's statement goes to the core of the criticism of the black rage defense. In a murder case, this gut feeling that the defendant is not accepting responsibility for the awful crime is often the reason jurors will convict, even though, as in Felicia's case, they become sympathetic to the defendant.

Though the judge had expressed his disagreement with the defense, it seems to have influenced his understanding of Felicia. Along with the lay psychiatric testimony, it served to offset the "hardened criminal" portrayal by the prosecution. Obviously moved by the plea of Brenda Adams's fam-
ily, the judge rejected the state's recommendation and fashioned a life sentence that would allow early parole after thirteen years.

A significant benefit of a black rage defense is that it allows the defendant a perspective from which she can look at the factors that shaped her and then commit to changing the direction of her life. Since she has been in prison, Felicia has completed four years of high school and is changing the "negativity into positivity." Another benefit of the environmental hardship defense is that it can result in an understanding and bonding between the defendant and the lawyer. Every Saturday, like clockwork, Felicia telephones her lawyer and friend Robin Shellow.

Shellow continues to represent young people. In 1996 Wisconsin passed a law providing that in first-degree homicide cases there would be mandatory adult court jurisdiction for any defendant ten years of age or older. This shortsighted, counterproductive law will result in Shellow representing more children in adult courts. During Felicia's sentencing, Shellow told the court, "on behalf of Felicia Morgan I hope that I have fought a long and hard battle." She certainly did. Shellow represents the best in American defense lawyers—those who merge aggressive advocacy with creativity and compassion.5

George Williams, the father of the girl who was killed, has embraced life and redemption instead of death and hate. He recently testified against the death penalty at Wisconsin legislative hearings.

As lawyers struggle with the consequences of urban war zones, they look for legal strategies to defend their clients. Psychological defenses, although very difficult to win, are at the top of the list. In an enlightening and practice-oriented article entitled "Not Guilty by Reason of Victimization," Susan Rutberg encourages lawyers to use environmental background as part of their defense strategy.

As criminal defense lawyers we are privy to our clients' psycho-socio histories in a way that others in the system are not. We have a responsibility to educate judges and juries about the relationship of traumatic events to the formation of specific intent, and to the significance of PTSD as a factor in mitigation at sentencing.6

Rutberg correctly states that PTSD is used almost exclusively in homicide cases. Rutberg, who was an outstanding public defender, challenges
lawyers to use the PTSD defense when representing first-time offenders in crimes other than murder, before “a client’s mental state has degenerated to the point where they face the most serious crime.”

In addition to PTSD, Rutberg discusses other mental-state defenses. It is important to recognize that not all, perhaps not even most, criminal acts that grow out of the rage, despair, and violence of urban America fit within the definition of PTSD. This psychological classification first developed out of union advocacy on behalf of railroad workers traumatized by train wrecks. It gained legal acceptance in the form of the Vietnam Vet Syndrome. Lawyers saw the analogy between combat conditions in Vietnam and conditions in high-violence areas in America and began to use the PTSD analysis developed in the Vietnam Vet Syndrome cases to defend nonveterans.

Clinical and forensic psychologist Daniel Goldstine of the Berkeley Therapy Institute cautions against lawyers’ hastily assuming that a client’s act is a consequence of PTSD. He agrees that there are many different psychological disorders resulting from the poverty, chronic joblessness, and daily gunfire found in America’s ghettos. But he argues that there has not been enough research and analysis into the nature of the mental illness created by these awful conditions. He suggests that a syndrome other than PTSD may more accurately explain the behavior of young people who have to hide under beds and in bathtubs to avoid gunshots.

A San Francisco rapper named Charley Hurbert expresses the life our urban youth face in the last years of the twentieth century:

We’re all broken bits
Piece it together, some will never fit
Living on the Jagged Edge
You start to resemble it

The boys and girls, young men and women who cannot fit, who become the jagged edge, need our help.