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## WOMEN IN THE CRIMINAL JUSTICE SYSTEM

### A WOMAN'S RIGHT TO SELF-DEFENSE: THE CASE OF AILEEN CAROL WUORNOS

PHYLLIS CHESLER\*

For the first time in U.S. history, a woman stands accused of being a serial killer: of having killed six adult male motorists, one by one, in just over a year, after accompanying them to wooded areas off Highway 75 in Florida, a state well-known for its sun, surf, and serial killers.

I first heard about Aileen (Lee) Carol Wuornos in December of

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1990, when Florida newspapers and national media announced:

TWO WOMEN ARE BEING SOUGHT AS POSSIBLE SUSPECTS IN THE SHOOTING DEATHS OF EIGHT TO TWELVE MIDDLE-AGED MEN WHO WERE LURED TO THEIR DEATHS ON THE FLORIDA HIGHWAYS. SUSPECT #1 IS A WHITE FEMALE, FIVE FEET EIGHT TO FIVE FEET TEN, WITH BLONDE HAIR, WHO IS TWENTY TO THIRTY YEARS OLD. SHE MAY HAVE A HEART TATTOO ON HER UPPER ARM. SUSPECT #2 IS ALSO A WHITE FEMALE, FIVE FEET FOUR TO FIVE FEET SIX, WITH A HEAVY BUILD AND SHORT BROWN HAIR. SHE MAY BE WEARING A BASEBALL CAP. THESE WOMEN ARE ARMED AND DANGEROUS AND MAY BE OUR NATION'S FIRST FEMALE SERIAL KILLERS. INVESTIGATORS [FEEL] COMPELLED TO WARN THE PUBLIC, PARTICULARLY MIDDLE-AGED WHITE MEN TRAVELLING ALONE.<sup>1</sup>

This sounded as diabolically whimsical as Orson Welles's 1938 broadcast on the Martian invasion. What was Everywoman's most forbidden fantasy and Everyman's worst nightmare doing on television? Was this some kind of joke? Perhaps these women were *feminist* Martians on a mission to avenge the Green River killings or the Montreal massacre. If not, did female serial killers really exist on earth?

Historically, women certainly have been convicted and executed<sup>2</sup> for killing adult male non-intimates, often with male accomplices, but sometimes alone, for money, "thrills," or revenge, in a drug-induced fit of rage, a battery-induced fugue state, and/or in death-defying self-defense.<sup>3</sup> Battered women have also killed male

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<sup>1</sup> See Jean Dubail, *Police Seek Clues Along Trail of 8 Deaths*, ORLANDO SENTINEL, Dec. 9, 1990, at B1; Tom Lyons, *Two Sets of North Florida Killings Differ Markedly*, GAINESVILLE SUN, Dec. 7, 1990, at 1A; *Marion Police Fear Someone's Stalking, Killing Middle-Aged Men*, ORLANDO SENTINEL, Dec. 1, 1990, at D9; Rick Tonyan, *Volusia Police Hunt for 2 Linked to Killings*, ORLANDO SENTINEL, Dec. 19, 1990, at D3.

<sup>2</sup> See Elizabeth Rapaport, *Some Questions About Gender and the Death Penalty*, 20 GOLDEN GATE U. L. REV. 501 (1990); Victor Streib, *Death Penalty for Female Offenders*, 58 CINN. L. REV. 845 (1990); Victor L. Streib & Lynn Sametz, *Executing Female Juveniles*, 22 CONN. L. REV. 3 (1989); Victor L. Streib, *American Executions of Female Offenders: A Preliminary Inventory of Names, Dates, and Other Information* (prepared for distribution to research colleagues) (1988) (on file with author); Victor L. Streib, *Capital Punishment for Female Offenders: Present Female Death Row Inmates and Death Sentences and Executions of Female Offenders* (May 1, 1991) (on file with author).

<sup>3</sup> See FRED A ADLER, *SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL* (1975); LOWELL CAUFFIEL, *FOREVER AND FIVE DAYS* (1992); ANN JONES, *WOMEN WHO KILL* (1981);

and family intimates, children, the elderly, and employers.<sup>4</sup> In Europe and elsewhere, warrior queens, and female soldiers and civilians have killed their male counterparts in battle and in self-defense.<sup>5</sup> In the nineteenth and early twentieth centuries, female

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BEVERLY LOWRY, *CROSSED OVER* (1992); RITA J. SIMON & JEAN LANDIS, *THE CRIMES WOMEN COMMIT* (1991); CHARLENE SNOW, *WOMEN IN PRISON* (1981); WILLIAM WILBANKS, *FEMALE HOMICIDE OFFENDERS IN THE U.S.*; Coramae R. Mann, *Women Who Kill Someone They Don't Really Know*, Paper Presented at American Sociological Association Meeting (1987); Coramae R. Mann, *Black Women Who Kill*, in *VIOLENCE IN THE BLACK FAMILY 157-86* (Robert L. Hampton ed., 1987); William Wilbanks, *Murdered Women and Women Who Murder: A Critique of the Literature*, in *JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES, AND CRIMINAL JUSTICE 157* (Nicole H. Ratter & Elizabeth A. Stanko eds., 1982); Angela Browne & Kirk R. Williams, *Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides*, 23 *LAW & SOC'Y* 75 (1989); Coramae R. Mann, *Black Female Homicide in the United States*, 5 *J. INTERPERSONAL VIOLENCE* 176 (1990); Carol Smart, *The New Female Criminal: Reality or Myth?*, 19 *BRIT. J. CRIMINOLOGY* 50 (1979).

<sup>4</sup> See ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* (1987); CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE* (1989) (addressing legal status of abused women in the United States); JONATHAN GOODMAN, *THIRTEEN CLASSIC TRUE CRIME STORIES* (1990); ANN JONES, *EVERYDAY DEATH: THE CASE OF BERNADETTE POWELL* (1985); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE* (1982); JOCELYNNE SCUTT, *EVEN IN THE BEST OF HOMES: VIOLENCE IN THE FAMILY* (1983); SNOW, *supra* note 3; LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989); LENORE E. WALKER, *THE BATTERED WOMAN* (1979); WILBANKS, *supra* note 3; Nancy Jurik & Russ Winn, *Gender and Homicide: A Comparison of Men and Women Who Kill*, 5 *VIOLENCE & VICTIMS* 229 (1990).

<sup>5</sup> See PHYLLIS CHESLER, *WOMEN & MADNESS* (1972, 1989); Phyllis Chesler, *The Amazon Legacy: An Interpretive Essay*, in *WONDER WOMAN* (1972) (citing early works of Hesiod, 720 B.C.; Homer, 820 B.C.; Plutarch, 80 A.D.; Tacitus, 100 A.D.; Thucydides, 430 B.C.; Virgil, 40 B.C.). Female warriors and killers have been the subject of literature dating back to the early nineteenth century: JOHANN J. BACHOFEN, *MYTH, RELIGION, AND MOTHER RIGHT* (Ralph Manheim trans., 1967) (first published in three volumes in Switzerland in the nineteenth century); ROBERT BRIFFAULT, *THE MOTHERS* (1963) (first published in 1927); SIR RICHARD FRANCIS BURTON, *A MISSION TO GELELE, KING OF DAHOME* (1966) (first published in 1864); ELIZABETH G. DAVIS, *THE FIRST SEX* (1971); HELEN DINER, *MOTHERS AND AMAZONS: THE FIRST FEMININE HISTORY OF CULTURE* (John Philip Lundin trans., 1973) (first published in Austria in the 1930s); EDWARD GIBBON, *THE DECLINE AND FALL OF THE ROMAN EMPIRE: AND OTHER SELECTED WRITINGS* (J.B. Bury ed., 1896); ROBERT GRAVES, *THE WHITE GODDESS: A HISTORICAL GRAMMAR OF POETIC MYTH* (1948); JANE E. HARRISON, *PROLEGOMENA TO THE STUDY OF GREEK RELIGION* (1903); CHARLES G. JUNG & CAROLY KERENYI, *ESSAYS ON A SCIENCE OF MYTHOLOGY: THE MYTH OF THE DIVINE CHILD AND THE DIVINE MAIDEN* (R.F.C. Hull trans., 1949); CAROLY KERENYI, *ELEUSIS: ARCHETYPAL IMAGE OF MOTHER AND DAUGHTER* (Ralph Manheim trans., 1967); LEWIS H. MORGAN, *ANCIENT SOCIETY* (1978); MARGARET A. MURRAY, *THE SPLENDOR THAT WAS EGYPT* (1963); ERICH NEUMANN, *THE GREAT MOTHER* (1955); REGINE PERNOUT, *JOAN OF ARC BY HERSELF AND HER WITNESSES* (Edward Hyams trans., 1964); PHILLIP E. SLATER, *THE GLORY OF HERA: GREEK MYTHOLOGY AND THE GREEK FAMILY* (1971). The following are more recent sources that have been helpful on the subject: ANTONIA FRASER, *THE WARRIOR QUEENS: THE LEGENDS AND THE LIVES OF THE WOMEN WHO HAVE LED THEIR NATIONS IN WAR* (1989); ABBY W. KLEINBAUM, *THE WAR AGAINST THE AMAZONS* (1983); VICTORIA SACKVILLE-WEST, *SAINT JOAN OF ARC* (1991); JESSICA A. SALMONSON, *THE ENCYCLOPEDIA OF AMAZONS: WOMEN WARRIORS FROM ANTIQUITY TO THE MODERN ERA* (1991).

slaves and prostitutes sometimes injured or killed their masters, pimps, or johns, to avoid being beaten, raped, or killed, or because they *had* been seduced and abandoned, beaten, prostituted, or raped.<sup>6</sup>

However, according to contemporary studies<sup>7</sup> and countless true-crime accounts of homicide and femicide,<sup>8</sup> ninety-nine percent of mass, sexual, and serial murder, and about ninety percent of all violent crime, is committed by men. Women do not massacre adult or male strangers, all at once, in large numbers, nor do they stalk, rape, and kill male strangers, one by one. When those women who commit ten percent of all violent crimes *do* kill, nearly half kill male intimates who have abused them or their children, and they invariably do so in self-defense.<sup>9</sup> Until recently, such (battered) women were viewed as more deviant and "crazy" than their male counterparts. Indeed, for a variety of reasons, female *victims* who

<sup>6</sup> See, e.g., KATHLEEN BARRY, SUSAN B. ANTHONY: A BIOGRAPHY OF A SINGULAR FEMINIST 3 (1988) (discussing 1871 case of prostitute Laura Fair, who killed local dignitary in self-defense); TIMOTHY GILFOYLE, CITY OF EROS: NYC PROSTITUTION AND THE COMMERCIALIZATION OF SEX 1790-1920 (1992); JONES, *supra* note 3, at 147-52 (discussing 1843 case of prostitute Amelia Norman, 1855 case of Mary Moriarty, 1865 case of Mary Harris and 1872 case of Fanny Windley); MELTON A. McLAURIN, CELIA A SLAVE (1991) (discussing case of sexually abused Missouri slave, Celia, who killed her master).

<sup>7</sup> See U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, Table 4.19 (Kathleen Maguire & Timothy Flalagar eds., 1990); Ann W. Burgess et al., *Serial Rapists and Their Victims: Reenactment and Repetition*, ANNALS N.Y. ACAD. SCI. (1987); Ann W. Burgess, *Murderers Who Rape and Mutilate*, 1 J. INTERPERSONAL VIOLENCE 273 (1986).

<sup>8</sup> See, e.g., DEBORAH CAMERON & ELIZABETH FRAZER, THE LUST TO KILL (1987); JANE CAPUTI, THE AGE OF SEX CRIME (1987); ERIC W. HICKEY, SERIAL MURDERERS AND THEIR VICTIMS (1991); THE MONTREAL MASSACRE (Louise Malette et al. eds., 1991); FEMICIDE: THE POLITICS OF WOMEN KILLING (Jill Radford & Diana Russell eds., 1992); COLIN WILSON, WRITTEN IN BLOOD: THE CRIMINAL MIND & METHOD (1989); STEVEN J. MICHAUD & HUGH AYNESWORTH, THE ONLY LIVING WITNESS: A TRUE ACCOUNT OF HOMICIDAL INSANITY (1983); TIM CAHILL, BURIED DREAMS: INSIDE THE MIND OF A SERIAL KILLER (1986); ART CROCKETT, SERIAL MURDERERS (1990); ROBERT GRAYSMITH, ZODIAC (1986); ROBERT GRAYSMITH, THE SLEEPING LADY: THE TRAILSIDE MURDER ABOVE THE GOLDEN GATE (1991); CLIFFORD L. LINEDECKER, THE MAN WHO KILLED BOYS: A TRUE STORY OF MASS MURDER IN A CHICAGO SUBURB (1980); CLIFFORD L. LINEDECKER, NIGHT STALKER (1991); ANN RULE, THE I-5 KILLER (1984); ANN RULE, THE STRANGER BESIDE ME (1981); HAROLD SCHECHTER, DEVIANT: THE SHOCKING STORY OF ED GEIN, THE ORIGINAL "PSYCHO" (1989); TED SCHWARTZ, THE HILLSIDE STRANGLER: A MURDERER'S MIND (1982); CARLTON SMITH & THOMAS GUILLEN, THE SEARCH FOR THE GREEN RIVER KILLER (1991); MAURY TERRY, THE ULTIMATE EVIL (1987).

<sup>9</sup> See BROWNE, *supra* note 4; PHYLLIS CHESLER, MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY 293-98 (1986, 1991); GILLESPIE, *supra* note 4, at 1-31; JONES, *supra* note 3, at 320; Jurik & Winn, *supra* note 4, at 236; Schechter, *supra* note 4, at 170-74; WALKER, TERRIFYING LOVE, *supra* note 4, at 12; WALKER, BATTERED WOMAN, *supra* note 4; Lynne A. Foster et al., *Factors Present When Battered Women Kill*, 10 ISSUES IN MENTAL HEALTH NURSING 273 (1989).

kill male intimates in self-defense have been viewed more harshly than men who, unprovoked, kill their wives and girlfriends, or who kill female non-intimates, especially prostituted women.<sup>10</sup>

Most North American women prisoners have been convicted of petty economic crimes<sup>11</sup> and of primarily "female" crimes, such as prostitution.<sup>12</sup> Due to increased drug use and tougher drug penalties, more women are being imprisoned than ever before; however, women still comprise less than six percent of the North American prison population.<sup>13</sup> Nevertheless, this smaller and less

<sup>10</sup> See CHESLER, *MOTHERS ON TRIAL*, *supra* note 9, at 295-96; Florida Supreme Court Gender Bias Study Comm'n, *Gender Bias in Criminal Justice* 170 (Mar. 1990) [hereinafter *Gender Bias Rep.*]. See Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 *YALE J.L. & FEMINISM* (forthcoming March 1993).

<sup>11</sup> See Kentucky Task Force on Gender Fairness in the Courts 41 (Jan. 13, 1992) [hereinafter *Gender Fairness in the Courts*]. "In Kentucky, women accounted for only eighteen percent of the total arrests in 1990. Of those, only 2.9% were arrested for violent crime." *Id.*; CHESLER, *MOTHERS ON TRIAL*, *supra* note 9; JONES, *supra* note 3, at 12, 13; ANN STANTON, *WHEN MOTHERS GO TO JAIL* (1980); DOROTHY ZEITZ, *WOMEN WHO EMBEZZLE OR DEFRAUD: A STUDY OF CONVICTED FELONS* (1983); Charlene Snow, *Women Who Go To Jail*, *CLEARINGHOUSE REVIEW* (1981).

<sup>12</sup> See CHESLER, *MOTHERS ON TRIAL*, *supra* note 9, at 291. For more in depth discussion of prostitution and sexual and psychological exploitation, see ANN SNITOW ET AL., *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* 419-39 (1983); KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* (1979); KATHLEEN BARRY ET AL., *INTERNATIONAL FEMINISM: NETWORKING AGAINST FEMALE SEXUAL SLAVERY: REPORT OF THE GLOBAL FEMINIST WORKSHOP TO ORGANIZE AGAINST TRAFFIC IN WOMEN IN ROTTERDAM, THE NETHERLANDS APRIL 6-15, 1983* (1984); ARLENE CARMEN & HOWARD MOODY, *WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION* (1985); FREDERIQUE DELACOSTE & PRESCILLA ALEXANDER, *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* (1987); CECILIE HOIGARD & LIV FINSTAD, *BACKSTREETS: PROSTITUTION, MONEY AND LOVE* (1986); BARBARA M. HOBSON, *UNEASY VIRTUE: THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION* (1987); GLEN PETRI, *A SINGULAR INIQUITY: THE CAMPAIGNS OF JOSEPHINE BUTLER* (1971); GAIL PHETERSON, *A VINDICATION OF THE RIGHTS OF WHORES* (1989); MAIMIE PINZER, *THE MAIMIE PAPERS* (Ruth Rosen ed., 1977); Kathleen Barry, *Social Etiology of Crimes Against Women*, 10 *VICTIMOLOGY: AN INT'L J.* 164 (1985); M.H. Silbert & A.M. Pines, *Early Sexual Exploitation as an Influence in Prostitution*, *Soc. WORK*, July-Aug. 1983, at 285; Judith Walkowitz, *The Politics of Prostitution, in WOMEN, SEX AND SEXUALITY* 145 (Catherine R. Stimpson & Ethel S. Person eds., 1980); M.H. Silbert & A.M. Pines, *Occupational Hazards of Street Prostitutes*, 8 *CRIM. JUST. & BEHAVIOR* 395 (1981); Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 *WOMEN'S RTS. L. REP.* 99 (Summer 1989); Evelina Giobbe, *WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt)* (Educational Programs & Materials, Minneapolis, MN), Winter/Spring 1992; Andrea Dworkin, Address at the Michigan Univ. School of Law Conference on Prostitution (Oct. 31, 1992).

<sup>13</sup> See ADLER, *supra* note 3; A.M. BRODSKY, *WOMEN IN PRISON—THE LONELY MINORITY* (1975); SIMON & LANDIS, *supra* note 3; Smart, *supra* note 3; SNOW, *supra* note 3; FBI *UNIFORM CRIME REPORTS* (1970-1989). According to a recent *New York Times* article, the arrest rates of women are rising more rapidly than men. "During the 1980s, the number of women in state and federal prisons more than tripled, to 40,566; but the number of imprisoned men more than doubled, to 669,498. There are now approximately 90,000 women in state and

violent population of female inmates (most of whom are young, uneducated, impoverished, African-American or Spanish-speaking, single mothers) are, paradoxically, perceived as more violent than their more numerous and more violent male counterparts. Why?

#### PSYCHOLOGICAL DOUBLE STANDARDS

Women are held to higher and different standards than men. People *expect* men to be violent; they are also carefully taught to deny or minimize male violence ("I don't believe any father would rape his own child") and to forgive violent men ("He's been under a lot of pressure," "He's willing to go into therapy"). On the other hand, people continue to *blame women* for male violence ("She must have liked rough sex if she stayed married to him," "She provoked him into beating her").

Also, people *do not* expect and will not permit women to be violent—not even in self-defense. In fact, most people consistently confuse female self-defense with female aggression. In addition, people demand that women, but not men, walk a very narrow tightrope of acceptable behaviors—perfectly, and with a smile.<sup>14</sup> And, until very recently, both men and women experienced woman's human nature (menstruation, menopause, pregnancy, aging, illness, odors, etc.) as unnatural, offensive, diseased. Today, people still expect women to keep up an unnatural appearance—almost as a specifically female moral obligation.<sup>15</sup> Thus, most people are psychologically primed to distrust or dislike any woman who, in addition to being naturally imperfect, dares to commit other morally questionable acts. For women, such acts include having sex or children for money, outside of marriage; refusing to marry or bear and rear a man's children; or abandoning responsibility for a child in a way that only men are allowed to do.

For example, while many people, including journalists, seemed to "hate" battered wife Hedda Nussbaum,<sup>16</sup> surrogate contract

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federal prisons, and in city and county jails." Peter Applebome, *U.S. Prisons Challenged by Women Behind Bars*, N.Y. TIMES, Nov. 30, 1992, at A10.

<sup>14</sup> See PHYLLIS CHESLER, *WOMEN & MADNESS*, *supra* note 5; PHYLLIS CHESLER, *WOMEN, MONEY & POWER* (1976).

<sup>15</sup> See CHESLER, *WOMEN & MADNESS*, *supra*, note 5; CHESLER, *WOMEN, MONEY & POWER*, *supra* note 14.

<sup>16</sup> Hedda Nussbaum, formerly a children's book editor in New York City, was a battered common-law wife who failed to protect the illegally adopted five-year-old Lisa Steinberg from being tortured and ultimately killed by her common-law husband, former criminal defense attorney Joel Steinberg. See Gary Spencer, *Steinberg Conviction Affirmed*,

mother Mary Beth Whitehead,<sup>17</sup> and teenage prostitute Amy Fisher,<sup>18</sup> they remained emotionally "flat" about Joel Steinberg, William Stern, and, at least initially, about Joey Buttafuoco. Many, both male and female, also enjoyed "hating" Imelda Marcos<sup>19</sup> and Leona Helmsley<sup>20</sup> with a passion unvisited upon Ferdinand Marcos, Michael Milken,<sup>21</sup> Ivan Boesky<sup>22</sup> and Neil Bush<sup>23</sup>—all of whose white collar (and other) crimes were far

N.Y.L.J., June 12, 1992, at 1; see also *People v. Steinberg*, 79 N.Y.2d 673, 584 N.Y.S.2d 770 (1992).

<sup>17</sup> Mary Beth Whitehead was the New Jersey woman who, in 1985 signed a surrogacy contract to bear a child for William and Betsy Stern, and then changed her mind. In 1988, the New Jersey Supreme Court overturned Baby M's adoption by Betsy Stern and allowed Whitehead to have visitation. See *Matter of Baby M.*, 537 A.2d 1227 (Sup. Ct. N.J. 1988).

<sup>18</sup> Amy Fisher, a teenager from Long Island, New York, became sexually involved with Joseph Buttafuoco, a married man twice her age, when she was 15-16 years old. He allegedly prostituted her and asked her to kill his wife, Mary Jo. Amy shot Mary Jo Buttafuoco on May 19, 1992. As of this writing, Joey Buttafuoco has not been charged with statutory rape or with introducing Amy Fisher to a life of prostitution. Shirley E. Perlman & Stuart Vincent, *Buttafuoco Won't Be Prosecuted in Amy Fisher Case, Nassau DA Says*, NEWSDAY, Oct. 23, 1992, at 3. The seventeen-year-old Fisher was sentenced to 5-15 years. John T. McQuiston, *Amy Fisher Gets a Maximum of 15 Years*, N.Y. TIMES, Dec. 2, 1992, at B1. In addition, CBS/Tri-Star Pictures reportedly paid the Buttafuocos between \$200,000 and \$300,000 for the rights to their story. NBC/KLM reportedly paid the Fishers \$80,000. Jeff Silverman, *Murder, Mayhem Stalk TV*, N.Y. TIMES, Nov. 22, 1992, at H1, H28.

<sup>19</sup> Imelda Marcos was the wife of the late Ferdinand Marcos, former President of the Philippines. Ferdinand was apparently defeated in the 1986 presidential vote, during which his government was accused of fraud and intimidation, and later unseated by a popular uprising. See *Aquino Rejects Latest Calls for Marcos Burial in the Philippines*, N.Y. TIMES, Sept. 29, 1989, at B6. Imelda and Ferdinand were later brought up on racketeering charges involving fraud and embezzlement in assembling a "New York real estate empire." See *The Message of the Marcos Case*, N.Y. TIMES, Nov. 1, 1988, at A30.

<sup>20</sup> Leona Helmsley, seventy-one-year-old millionairess, "queen" of the Helmsley hotel chain, was convicted on tax fraud charges and sentenced to four years in prison. See Constance L. Hays, *Helmsley Conviction Upheld on Appeal*, N.Y. TIMES, July 31, 1991, at B2, col. 5.

<sup>21</sup> Michael Milken was indicted in March, 1989 on ninety-eight counts of fraud and racketeering in connection with insider trading and other alleged securities violations. See *The Milken Sentence; Milken: Pathfinder for the "Junk Bond Era"*, N.Y. TIMES, Nov. 22, 1990, at D4. Milken later agreed to a plea bargain and entered guilty pleas to six felonies in addition to paying \$600 million in penalties. *Id.* He was sentenced to ten years in prison, three years probation, and 5400 hours of community service. *Id.*

<sup>22</sup> Ivan Boesky pleaded guilty to insider trading in 1986. See Kurt Eichenwald, *Drexel Burnham Fights Back*, N.Y. TIMES, Sept. 11, 1988, § 3, at 1. "The arbitrage king . . . admitted using information about unannounced takeovers to make huge illegal profits." Karen W. Arenson, *How Wall Street Bred An Ivan Boesky*, N.Y. TIMES, Nov. 23, 1986, § 3, at 1.

<sup>23</sup> Neil Bush, youngest son of former President Bush, agreed to pay \$50,000 in a settlement with federal regulators for his role in the collapse of the Silverado Banking, Savings and Loan Association, of which he was a director from 1985 to 1988. See Jeff Gerth, *The 1992 Campaign; The Business Dealings of the President's Relatives: What the Record Shows*, N.Y. TIMES, Apr. 19, 1992, § 1, at 14.



greater than Helmsley's. (Parenthetically, most people have felt enormous sympathy for Chief Justice Sol Wachtler,<sup>24</sup> little interest in his female victim, and utter revulsion for Bess Myerson.<sup>25</sup>)

These psychological double standards of perceived violence result in a double standard of punishment. In a way, such double standards already constitute punishment, as they poisonously permeate and circumscribe a woman's daily life. It doesn't stop here. Studies document that women are often punished more severely for lesser, primarily "female" crimes, such as prostitution, than men are for the more violent "male" crimes of femicide and homicide. When women commit "male" crimes such as spouse murder or stranger murder, in self-defense, or when they protectively kidnap a child, they are usually punished more harshly than their male so-called counterparts.<sup>26</sup>

According to the 1990 Florida State Supreme Court Gender Bias Report, "despite the perception that the criminal justice system is lenient to women, . . . women [in Florida] are treated more harshly than similarly situated male offenders."<sup>27</sup> Generally, whatever their crime, men in jail and prison have greater access to libraries, educational and rehabilitation programs, modern gymnasiums, etc. than do women; men's jails are also more conveniently located for family visitation than are women's jails.<sup>28</sup>

<sup>24</sup> Sol Wachtler, former Chief Judge of the New York State Court of Appeals, was charged in a federal indictment of February 1, 1993 with extortion, mailing threatening letters to his ex-lover and her daughter, and lying to federal investigators. See Wayne King, *Ex-Chief Judge Pleads Not Guilty to Extortion*, N.Y. TIMES, Feb. 18, 1993, at B6. "[T]he indictment charges that Mr. Wachtler used 'his power, influence, and resources as chief judge' to advance the extortion plan." *Id.* He faces as much as sixteen years in prison and \$1.25 million in fines. *Id.*

<sup>25</sup> Bess Myerson, former Miss America and New York City Cultural Affairs Commissioner, was brought up on federal fraud and conspiracy charges together with a certain Mr. Capasso and a former justice of the State Supreme Court in Manhattan. See Robert D. McFadden, *Bess Myerson Is Accused of Shoplifting*, N.Y. TIMES, May 28, 1988, § 1, at 29. The three were accused of trying to reduce alimony payments in Mr. Capasso's divorce case and were acquitted on all charges in December of 1988. See *Headliners: The Envelope Please*, N.Y. TIMES, Dec. 25, 1988, § 4, at 7. In addition, Myerson was arrested in a small town in Pennsylvania for shoplifting \$44.07 worth of goods. See McFadden, *supra*.

<sup>26</sup> See FRED A ADLER & RITA JAMES SIMON, *THE CRIMINOLOGY OF DEVIANT WOMEN* 273-86 (1979); CHESLER, *MOTHERS ON TRIAL*, *supra* note 9; RICHARD DEMING, *WOMEN: THE NEW CRIMINALS* 170 (1977); JONES, *supra* note 3, at 293; Sarah K. Feeney & Samuel Roll, *Sex As An Extra Legal Factor in Judicial Decision-Making: An Analogous Study*, 2 AM. J. FORENSIC PSYCHOL. (1984).

<sup>27</sup> Gender Bias Rep., *supra* note 10, at 87.

<sup>28</sup> *Id.* at 93-97; WOMEN, CRIME & JUSTICE, 325 (Susan K. Datesman & Frank R. Scarpitti eds., 1980).

To avoid jail overcrowding, male criminals are often plea-bargained into lesser sentences by prosecutors who fear they might otherwise be set free. Since women commit fewer crimes, there are fewer, less overcrowded women's prisons, and less motivation to plea-bargain women out in order to save jail-space. Thus, women often inadvertently serve longer sentences for lesser crimes in more ramshackle jails than men serve for more serious crimes in more modern jails.<sup>29</sup> According to the findings of the 1990 Florida Gender Bias Report:

1. Women convicted of crimes have fewer opportunities for rehabilitation, training and treatment throughout Florida.

2. There are currently only two maximum security state facilities for women. Minimum security inmates thus must endure conditions designed for maximum security inmates.

3. Some women's facilities fall below the requirements for exercise facilities and, in any event, are not comparable to those provided for men.

4. Women generally are imprisoned for less serious offenses than their male counterparts [and] have significantly limited access to alternative programs or rehabilitative treatment. Men have programs and alternative treatment centers throughout Florida.

5. In the county jails, overcrowding in the male population results in men being released. However, there is less overcrowding among women inmates. As a result, women serve longer sentences than men who have committed more serious crimes.

6. Women have limited access to trusteeships and work release programs in comparison to men, thus restricting the availability of early release for good behavior.

7. Women sentenced to work release by the courts nevertheless are often incarcerated because of the lack of work release programs or the shortage of openings in similar programs for women.

8. Women unable to participate in work release programs lack the opportunity to gain useful work experience. This results in less successful reentry into society after incarceration and more time spent incarcerated than similarly situated male offenders.

9. Men are favored in experimental and alternative programs around Florida.

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<sup>29</sup> See Tape of Conference on Self-Defense and Battered Women, *The Frontiers of Legal Thought: Race, Gender & Justice*, held by the Duke Univ. Law Conference (Jan. 1991) [hereinafter Conference, *Race, Gender & Justice*](on file with Duke University Law School).

10. The remote location of some jails for women restricts family visitation, access to counsel and information.<sup>30</sup>

Another example: as noted, battered women who kill in self-defense account for about half of all women who kill. Even here, men and women are not "equal." (Non-battered) men kill their female domestic partners three to four times more often than (battered) women kill their domestic partners/aggressors. Battered women who kill in self-defense rarely "get off" and, to date, are rarely granted clemency; most are given long or even life sentences.<sup>31</sup>

In comparison, minority/immigrant men are sometimes freed on the grounds that, in their culture, men are "obligated" to kill wives who want to desert their whipping-girl posts to go to work, go to school, or get a divorce. White male defendants have sometimes successfully claimed that their wives' desire to "shop too much" or to leave the marriage amounted to unbearable sexual humiliation.<sup>32</sup>

In addition, while men accused of murder often refuse to confess, women, who believe that the criminal justice system will "care about the truth," are all too eager to "tell all," especially if they've killed their batterers or kidnapped their children to protect them from paternal physical and sexual abuse. Women are routinely punished for their naïveté and honesty, and/or for their inability or refusal to play courtroom "war games."<sup>33</sup>

<sup>30</sup> Gender Bias Rep., *supra* note 10, at 99-100 (text renumbered). Additionally, inmates at the Kentucky Correctional Institute for Women indicated that

jail facilities in some rural counties are not equipped to adequately house females due to limited space and/or lack of female guards. As a result, female services or privileges, such as laundry and showers, are not available to female inmates with the frequency that they are provided to male inmates. It appears then, that, in some rural areas where adequate space and staff are not available to house female prisoners, men may receive harsher penalties at sentencing, but women experience greater deprivation if actually incarcerated.

The inmates' complaints as to the inadequacy of jail space for women were echoed by testimony at the public hearings.

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Another problem related to the lack of resources and jail space for women offenders is that because some states have fewer correctional institutions for women, incarcerated women who are mothers are frequently housed a considerable geographical distance from their children.

Gender Fairness in the Courts, *supra* note 11, at 34-35.

<sup>31</sup> See GILLESPIE, *supra* note 4; Conference, *Race, Gender & Justice*, *supra* note 29.

<sup>32</sup> See BROWNE, *supra* note 4; Conference, *Race, Gender & Justice*, *supra* note 29.

<sup>33</sup> See CHESLER, *MOTHERS ON TRIAL*, *supra* note 9, at 66. Non-violent mothers lose cus-

Judges, jurors, Senate Judiciary committee members, and We, the People, still value men's lives more highly than women's and feel compassion for male—but not for female—sinners. When a woman is accused of committing a crime (and even when the woman is the *crime-victim*), her story is rarely believed, by men or by other women, and even less so if she's accusing a man of being the aggressor. That's when she's Anita Hill or Patricia Bowman; imagine what happens when she's a prostituted woman, armed robber, child-beater, or cold killer. Few are "interested" in hearing her "excuses": that she was a serial rape and/or incest victim, or that she killed in self-defense.

What do we really know about women killers—especially those who kill male non-intimates?

#### WOMEN KILLERS IN LITERATURE, FILM, AND THE SOCIAL SCIENCES

Have Austen, the Brontes, Eliot, Woolf, Colette, Wharton, Stein, Barnes, Nin, de Beauvoir, or Lessing ever given us a portrait of homicidal fury in female form? I don't think so, but neither have Doestoevski, Melville, Baudelaire, Zola, Dickens, Celine, Genet, Camus, Burroughs, Miller, Wright, Ellison, Mailer, Mishima, or Capote. Few pre-feminist writers have ever dared to imagine the lives of women killers and outlaws.<sup>34</sup>

Not one character comes to mind: no female Raskolnikov, Meursault, or Bigger Thomas. How could so many great writers have resisted this temptation?

Perhaps it wasn't challenging enough. Until recently—and I'm not sure much has changed—women and men of color were already presumed guilty, inferior, even evil, by virtue of their gender and skin-color, and were supposed to be humbled, and punished. There's no story here. On the other hand, white men were presumed innocent, God-like, heroic, both by birth and in the courtroom. Their descent into evil, redemption, or lack of it—now that's a story!

This may be changing. Something's up, it's in the air, it's a sea-change, and suddenly, or so it seems, we are being bombarded

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tody when it is contested from 70-82% of the time, often *because* they are non-violent and unwilling to employ violent means in order to win custody of their children. *Id.*; Conference, *Race, Gender & Justice*, *supra* note 29.

<sup>34</sup> I am not talking about female *sexual* outlaws: women who are "sexual" outside of marriage, women who use birth control, have abortions, or are prostitutes and/or lesbians.

by celluloid images of women killing men: Barbara Streisand's incest-victim prostitute in *Nuts*; the three women who stomp a man to death in the Dutch film *A Question of Silence*; and the battered wives and victims of rape in *The Burning Bed*, *Sleeping with the Enemy*, *Mortal Thoughts*, and *Thelma and Louise*. Superficially, non-traditional and career-women who kill men are also beginning to appear in films such as *Silence of the Lambs*, *Alien One and Two*, *Terminator Two*, *La Femme Nikita*, *Basic Instinct*, *Patriot Games*, *Passenger 57*, and others.

In actuality, these images have feminist precursors. By 1979-1980, the pre-existing grassroots shelter movement for battered women, and feminist lawyers and social scientists such as Angela Browne (1987),<sup>35</sup> Cynthia Gillespie (1989),<sup>36</sup> Ann Jones (1985),<sup>37</sup> Susan Schechter (1982),<sup>38</sup> Elizabeth Schneider (1978),<sup>39</sup> Diana Russell and Nicole Van den Ven (1976),<sup>40</sup> and Lenore Walker (1979, 1989)<sup>41</sup> began to focus on battered women who kill.<sup>42</sup>

Earlier still, and at a more imaginative level, feminist writers began to portray heroic, or anti-heroic, women who kill: Monique Wittig's fictionalized band of Amazon warriors, set in the future, in *Les Guerilleres*<sup>43</sup> (1969), and Manastabal, her lesbian feminist Archangel, who guides Wittig through a surrealistic Purgatory of abused women in *Across the Acheron*<sup>44</sup> (1985); Nawal el Sadawi's Firdaus, a prostituted woman who kills her pimp in *Woman at Point Zero*<sup>45</sup> (1975); Joanna Russ's Janet Evason, an advanced extra-terrestrial who kills heroically and in self-defense, in *The Female Man*<sup>46</sup> (1976); Marge Piercy's Connie Ramos, a time-traveler

<sup>35</sup> See, e.g., BROWNE, *supra* note 4.

<sup>36</sup> See, e.g., GILLESPIE, *supra* note 4.

<sup>37</sup> See, e.g., JONES, *supra* note 4.

<sup>38</sup> See, e.g., SCHECHTER, *supra* note 4.

<sup>39</sup> See, e.g., Elizabeth M. Scheider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 WOMEN'S RTS. L. REP. 149 (1978).

<sup>40</sup> See, e.g., DIANA E.H. RUSSELL & NICOLE VAN DEN VEN, THE PROCEEDINGS OF THE INTERNATIONAL TRIBUNAL ON CRIMES AGAINST WOMEN (1976) (discussing congresses on crimes against women and women's rights).

<sup>41</sup> See, e.g., WALKER, THE BATTERED WOMAN, *supra* note 4; WALKER, TERRIFYING LOVE, *supra* note 4.

<sup>42</sup> See Jurik & Winn, *supra* note 4; Mann, *Black Women Who Kill*, *supra* note 3; SCUTT, *supra* note 4, at 271.

<sup>43</sup> MONIQUE WITTIG, *LES GUERRILLERES* (1969).

<sup>44</sup> MONIQUE WITTIG, *ACROSS THE ACHERON* (1987).

<sup>45</sup> NAWAL EL SADAWI, *WOMAN AT POINT ZERO* (1975).

<sup>46</sup> JOANNA RUSS, *THE FEMALE MAN* (1976).

and ideological warrior, in *Woman on the Edge of Time*<sup>47</sup> (1976); Suzy McKee Charnes's warriors in *Mother-Lines*<sup>48</sup> (1974); Sally Gearheart's lesbian feminist warriors in *The Wanderground*<sup>49</sup> (1976); Kate Millett's Gertrude Baniszewski, who, in real-life, led a gang of teenagers in the torture-killing of 16-year-old Sylvia Likens, in *The Basement—Meditations on a Human Sacrifice*<sup>50</sup> (1979); Margaret Atwood's Ofglen, an ideological warrior, who mercifully kills a male comrade to spare him a slow and agonizing death in *The Handmaid's Tale*<sup>51</sup> (1985); Jeanette Winterson's Dog Woman, who is given to killing Puritans with an axe during the reign of Charles the Second in *Sexing the Cherry*<sup>52</sup> (1989); Helen Zahavi's Bella, an ex-prostitute, "no one special," but someone who, once she'd "realized she'd had enough," proceeds to kill at least seven sexually and murderously assaultive men, in *The Weekend*<sup>53</sup> (1991); and Diana Rivers' band of lesbian feminist psychic-military warriors in *Daughters of the Great Star*<sup>54</sup> (1992). Andrea Dworkin's *Mercy*,<sup>55</sup> first published in England in 1990 and in the United States in 1991, reads like something the visionary Cassandra might have written—had she escaped her life as Agamemnon's slave-prostitute and turned military tactician, had she escaped from History and become an "avenging angel":

We surge through the sex dungeon where our kind are kept, the butcher shops where our kind are sold; we break them loose; Amnesty International will not help us, the United Nations will not help us; so at night, ghosts, we convene; to spread justice . . . I am an apprentice: sorcerer or assassin or vandal or vigilante; or avenger; I am in formation as the new one who will emerge.<sup>56</sup>

Women, including women writers, have been conditioned to be the social enforcers of the status quo, to challenge and condemn any woman (or man) who "steps out of line." That women have begun to imagine and befriend women killers—and in print—is very promising. Writers need to create female heroes and anti-he-

<sup>47</sup> MARGE PIERCY, *WOMAN ON THE EDGE OF TIME* (1976).

<sup>48</sup> SUZY MCKEE CHARNES, *MOTHER-LINES* (1976).

<sup>49</sup> SALLY GEARHEART, *THE WANDERGROUND* (1976).

<sup>50</sup> KATE MILLET, *THE BASEMENT—MEDITATIONS ON A HUMAN SACRIFICE* (1979).

<sup>51</sup> MARGARET ATWOOD, *THE HANDMAID'S TALE* (1985).

<sup>52</sup> JEANETTE WINTERSON, *SEXING THE CHERRY* (1989).

<sup>53</sup> HELEN ZAHAVI, *THE WEEKEND* (1991).

<sup>54</sup> DIANA RIVERS, *DAUGHTERS OF THE GREAT STAR* (1992).

<sup>55</sup> ANDREA DWORKIN, *MERCY* (1990).

<sup>56</sup> *Id.* at 331.

rees, larger than life. Acts of radical compassion are required, acts that embrace other women, not just "nice" girls or "perfect" victims, not when it's safe, but precisely when it's risky.

Enter Aileen (Lee) Carol Wuornos—a prostitute and lesbian convicted of killing five men and accused of killing at least one more—a really "bad" girl.

### IS WUORNOS A SERIAL KILLER?

The media and social scientists have described Wuornos as the first "female serial killer"; the FBI has *classified* her as such. But is this true? Is Wuornos indeed a female "Jack the Ripper," "Hillside Strangler," "Green River Killer," or "Night-Stalker"? Eric Hickey, sociologist and criminologist, estimated that there has been an average of at least five serial killers each year in the United States since 1970. The vast majority are men (approximately 170 between 1970 and 1988). Hickey estimated that in the nearly 200 years between 1800 and 1988, a total of 34 female serial killers have existed—contrasted with an estimated 30 male serial killers on the loose as of the late 1980s. A disproportionate number of serial killing victims are women, a trend which Hickey says may be increasing.<sup>57</sup>

Serial killers are mainly white male drifters, obsessed with pornography and woman-hatred, who sexually use their victims, either before or after killing them, and who were themselves *pater-nally* abused children. As adults, they scapegoat, not fathers but mainly women, sometimes children, sometimes male homosexuals—who are seen as "feminine" or vulnerable. Serial killers may be responsible for the daily, and permanent, disappearance of thousands of prostituted and non-prostituted women, each and every year, all across the United States.<sup>58</sup> In addition, most sex-murderers who stalk, rape, torture, and kill prostitutes (and non-prostitutes, whom they view as prostitutes and as therefore worthy of death), are rarely ever found or convicted.<sup>59</sup>

I don't think Wuornos fits this description. Wuornos was not a pornography addict, she did not eroticize her hatred of women (or

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<sup>57</sup> See HICKEY, *supra* note 8, at 86.

<sup>58</sup> See Ann W. Burgess, et al, *Serial Rapists and Their Victims*, *supra* note 7; CAMERON & FRAZER, *supra* note 8; CAPUTI, *supra* note 8, at 202; HICKEY, *supra* note 8, at 223; Malette et al., *supra* note 8; Jay Mathews, *San Diego Task Force Joins Search for Seattle-Area Killer*, WASH. POST, Sept. 20, 1988, at A6; Baldwin, *supra* note 10, at 70.

<sup>59</sup> See HICKEY, *supra* note 8, at 223; Baldwin, *supra* note 10.

of men); she did not stalk women, or male or female prostitutes; in fact, she *was* a prostituted woman. The men she killed all fit the profile of johns, those who frequent prostitutes.

In addition, most serial killers don't insist that they killed in self-defense—as Wuornos has. She said so at least fifty times during her three-hour, videotaped, psychologically manipulated confession on January 16, 1991, in which she also said that she believed she was going to be beaten or raped or killed by each of her victims.<sup>60</sup>

People say that Wuornos could not have killed *six times* in self-defense, that no one could—except of course men, in times of war. But Wuornos, a seriously abused child and a serially raped and beaten teenage and adult prostitute, has been under attack all her life, probably more than any soldier in any real war.

In my opinion, Wuornos's testimony in the first trial was both moving and credible as she described being verbally threatened, tied up and then brutally raped, both anally and vaginally, by Richard Mallory.<sup>61</sup> According to Wuornos, this is what Richard Mallory did to her on the night of November 30th 1989:

I went to Tampa and made a little money hustling. I was hitchhiking home at night. This guy picked me up right outside of Tampa, underneath the bridge. So he's smokin' pot and we're goin' down the road and he says, 'Do you want a drink?' So we're drinkin' and we're gettin' pretty drunk. Then, around 5:00 in the morning, he says: 'Okay, do you want to make your money now?' So we go into the woods. He's huggin' and kissin' on me. He starts pushin' me down. And I said, 'Wait a minute, you know, get cool. You don't have to get rough, you know. Let's have fun.'<sup>62</sup>

I said I would not [have sex with him]. 'Yes, you are, bitch. You're going to do everything I tell you. If you don't, I'm going to kill you and [have sex with you] after you're dead just like the other sluts. It doesn't matter, your body will still be warm.' He tied my wrists to the steering wheel, and screwed me in the ass. Afterwards, he got a Visine bottle filled with rubbing alcohol out of the trunk. He said the visine bottle was one of my surprises. He emptied it into my rectum. It really hurt bad because he tore me up a lot. He got dressed, got a radio, sat on the hood for what

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<sup>60</sup> See Aileen Carol Wuornos, Confession (Jan. 16, 1991) (transcript/videotape on file with author).

<sup>61</sup> See *Highlights of the Wuornos Trial* (Court TV television broadcast, Jan. 1991) (Channel 51).

<sup>62</sup> Wuornos, *supra* note 60.



seemed like an hour. I was really pissed. I was yelling at him, and struggling to get my hands free. Eventually he untied me, put a stereo wire around my neck and tried to rape me again.<sup>63</sup>

Then I thought to myself, well, this dirty bastard deserves to die anyway because of what he was tryin' to do to me. We struggled. I reached for my gun. I shot him. I scrambled to cover the shooting because I didn't think the police would believe I killed him in self-defense.<sup>64</sup>

I have to say it, that I killed 'em all because they got violent with me and I decided to defend myself. I wasn't gonna let 'em beat the shit outta me or kill me, either. I'm sure if after the fightin' they found I had a weapon, they would've shot me. So I just shot them.<sup>65</sup>

Apart from her own testimony, the jury never got to hear any evidence about violence towards prostitutes in general, or about Mallory's history of violence towards women in particular, that might have helped them evaluate Wuornos's much-derided claim of self-defense.

#### VIOLENCE AGAINST PROSTITUTES

There is a suppressed, forgotten and/or unrecorded history of violence against prostituted women both worldwide and in North America. Prostitutes have long been considered "fair game" for sexual harassment, rape, gang-rape, "kinky" sex, robbery, and beatings; their homes have been destroyed, they have been taunted, even killed, for "sport."<sup>66</sup> According to historian Timothy J. Gilfoyle,

[a]fter 1820, physical violence against prostitutes [in New York City] increased dramatically.

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<sup>63</sup> Testimony of Aileen Carol Wuornos (Jan. 25, 1992), *State v. Wuornos*, No. 91-0257 (7th Jud. Cir., Volusia County, Fla. 1992) (transcript on file with author).

<sup>64</sup> Wuornos, *supra* note 60.

<sup>65</sup> *Id.*

<sup>66</sup> Gilfoyle cites to a number of early to mid-nineteenth century cases: *People v. Mott*, Oct. 20, 1842; *People v. Ford*, Sept. 28, 1842; *People v. Valentine*, Mar. 11, 1842; *People v. Golding*, Feb. 11, 1842; *People v. Wilson*, Jan. 9, 1840; *People v. Samis*, Feb. 20, 1837; *People v. Chichester*, May 11, 1836; *People v. Cole*, Dec. 16, 1836; *People v. Dikeman*, Dec. 14, 1836; *People v. Harrison*, May 12, 1833; *People v. Nosworthy*, Mar. 12, 1832; *Weyman v. Danon*, Dec. 12, 1832; *People v. Lozier*, June 14, 1831; *People v. Van Dine*, Jan. 7, 1831; *People v. Small*, Jan. 16, 1829; *People v. Anderson*, Jan. 12, 1829; *People v. Fink*, July 14, 1825; *People v. Lee*, Dec. 15, 1824; *People v. Johnson*, Jan. 9, 1821; *People v. Halliday*, Mar. 11, 1820.

. . . Drunken, disorderly, and delirious males often became incensed when a prostitute or madam denied them their heart's desire.<sup>67</sup>

. . . .  
 . . . The increasing frequency of these attacks during the 1830s reflected, in part, the growing perception that prostitutes were fair game for the aggressions of frustrated males.

The most threatening form of assault was "the spree" or "row." Fueled by male camaraderie and substantial quantities of liquor, gangs of rampaging drunks moved from one saloon or brothel to another, becoming increasingly obnoxious and violent at every stop.

. . . Many sprees evolved into scenes of sadistic terror.<sup>68</sup>

<sup>67</sup> See GILFOYLE, *supra* note 6, at 78-79.

John Evans, for example, was arrested for throwing stones at the house of Eliza Vincent after she "refused him admittance." Similarly, James Van Dine broke into Rebecca Weyman's house "by forcing open the windows and shutters . . . there behaved in a most riotous and disorderly manner." . . . Similarly, Hannah Fuller was awakened by William Ford early one summer morning in 1844. After kicking in her door, he removed his boots and pants, carried her to the bed, and attempted "to ravish and . . . carnally know her." Only the last-minute intervention by the watch prevented the rape. Fuller later dropped the charges because Ford was an "old friend."

Women on the street had even less protection from such assaults. Mary Smith, a Leonard Street prostitute, was walking home in 1832 after an evening at the Park Theater when William Nosworthy seized her "in a grossly rude and indecent manner and raised her clothes so as to expose her nakedness to the passers by."

*Id.* at 79.

<sup>68</sup> See GILFOYLE, *supra* note 6, at 79-80.

The three rioters who stoned Amanda Smith's house on Franklin Street also "destroyed her furniture, knocked her down, beat her on the face and head so as to blind her entirely, and after having knocked her down, kicked her." The invaders, charged the district attorney, then beat her crippled son William "in a most shameful and outrageous manner." Witnesses testified that the same men forced their way into two other Orange Street brothels, "making a great noise and disturbance, breaking the furniture." Likewise, John Golding led four other men into Elizabeth Rinnell's Crosby Street house and demanded food, drink, money, and entertainment. After their drunken orgy, Golding assaulted and beat Rinnell. . . . Similarly, when John Williams entered an Anthony Street brothel, he threw oil of vitriol in Mary Ann Duffy's face, severely scarring her. And when Edward Halliday and friends broke into a Bancker Street house, each one "drew a sword and slashed before them, [and] wounded Sarah Smith, the woman of the house, in the face."

The threat of rape was common in many of these brothel riots. Five men, for example, broke into Eliza Logue's Thomas Street house when she refused them admittance. After breaking the cookery and throwing a lamp at the head of a prostitute, they strangled Logue and "threw her across the foot of a bed and endeavored by force and violence to have connection with her." Only the nearby

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... Just as some white men terrorized black proprietors of small businesses, oyster shops, churches, and theaters, others found the increased economic and social power of prostitutes threatening.

... Efforts to limit accessibility, in the mind of the brothel bully, violated custom and male prerogative.

... In 1836, for example, John Chichester and his politically connected gang attacked at least three bordellos. Entering Jane Ann Jackson's Chapel Street brothel with bats, they destroyed windows and shutters and threatened to cut Miss Jackson's throat. Chichester's consorts then broke into Eliza Ludlow's house and forced her to serve brandy; they concluded their guzzling by tossing the glasses in the fire. Then they "abused the inmates of the house," burned a rug, broke a bench by hurling it at a prostitute, and threatened to toss one woman out the window.<sup>69</sup>

.....

... Just as lynchings in the American South later in the century extended psychological control far beyond their immediate victims, brothel riots probably imposed similar behavioral constraints upon prostitutes.<sup>70</sup>

A 1991 study by the Council for Prostitution Alternatives,<sup>71</sup> in Portland, Oregon, documented that 78% of 55 prostituted women reported being raped an average of 16 times annually by their pimps and 33 times a year by johns.<sup>72</sup> Twelve rape complaints were made in the criminal justice system and neither pimps nor johns were ever convicted. These prostitutes also reported being "horribly beaten" by their pimps an average of 58 times a year.<sup>73</sup> The frequency of beatings by pimps ranged from once to daily, or 365 times per year; the frequency of beatings by johns ranged from 1-

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watch, hearing the commotion, prevented the consummation of the act. In 1840, after beating Mary Lee, Benjamin Waldron and his gang followed her as she tried to escape, striking "her in the face several times and threaten[ing] to commit other outrages." In another instance, more than ten laborers broke into Eliza Ann Potter's Suffolk Street house, violently assaulted her, and "threatened to pickle" and rape her before hastily departing."

*Id.* at 80-81.

<sup>69</sup> *Id.* at 84-85.

<sup>70</sup> *Id.* at 90.

<sup>71</sup> SUSAN HUNTER ET AL, COUNCIL FOR PROSTITUTION ALTERNATIVES, INC. ANNUAL REPORT (1991).

<sup>72</sup> *Id.* at 2.

<sup>73</sup> *Id.*

400 times a year. Legal action was pursued in 13 cases, resulting in 2 convictions for "aggravated assault." Fifty-three percent were the victims of sexual torture at the hands of both pimps and johns; nearly a third reported being mutilated as a result of this torture.<sup>74</sup> Legal action was sought in eight cases and only once was a pimp convicted.

The 1990 Florida Supreme Court Gender Bias Report stated that "[p]rostitution is not a victimless crime. . . . Prostitute rape is rarely reported, investigated, prosecuted or taken seriously . . . [a]lmost all young prostitutes have run away from sexual and physical abuse in their homes . . . [and] . . . are most often the victims of coercion."<sup>75</sup> According to Philippa Levine, who studied street prostitutes in Florida,

the same dangers attached to prostitution wherever I looked. In every [Florida] city and town I heard grim stories of violence and coercion, of rape and murder, of non-payment and forced sex, of hunger, pain, disease, and desperation.

. . . [W]e should not forget the still unsolved murders of young prostitutes in Pensacola, the crack-addicted street-walkers of Tallahassee, the heroin-addicted HIV-infected woman whose prostitution charges made headlines in Tampa [in 1988] and whose name was disclosed by the media with little care for her health or dignity.<sup>76</sup>

. . . [T]he . . . [Florida] police confirmed that they knew of no [prostitutes] who had not had bad experiences with customers. Intimate transactions with strangers constitute danger in themselves, all the more so when one considers that almost all street prostitution is conducted in parked cars controlled by those customers. Women spoke of jumping out of moving cars in preference to facing weapons, of being driven to lonely areas against their will, of non-paying clients whose violent behaviour forced them to comply with unanticipated desires. One interviewee described one horrific night when three separate clients threatened her with a knife.<sup>77</sup>

Research has also indicated that street and juvenile prostitutes suffer bruises, broken bones and very poor health as a result

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<sup>74</sup> *Id.* at 3.

<sup>75</sup> Gender Bias Rep., *supra* note 10, at 179-80.

<sup>76</sup> Philippa Levine, *Prostitution in Florida—A Report Presented to the Gender Bias Study Commission of the Supreme Court of Florida* 34-35 (Sept. 1988).

<sup>77</sup> *Id.* at 43.

of multiple beatings and rape.<sup>78</sup> According to Eleanor Miller, "[t]he beatings and sexual assaults street female hustlers received at the hands of their 'men,' their 'dates,' their wives-in-law, former 'women' of their 'men,' and other street people as well as the police were numerous and often brutal."<sup>79</sup> Under-age girls are often introduced into prostitution by family intimates who either rape and then begin selling them, or "only" rape them, often from the time they are seven or eight years old; in so doing, they fatally break their spirits, and drive them out of the house and into the arms of waiting pimps and johns, often by the time they are twelve or thirteen years old.<sup>80</sup> According to Susan Kay Hunter, Executive Director of the Council for Prostitution Alternatives,

[s]uicide is common among victim/survivors of prostitution: 75% of women victimized by escort prostitution have attempted suicide and prostituted women comprise 15% of all suicides reported by hospitals.<sup>81</sup>

According to a 1981 study, 78% of 200 street prostituted women, the majority of whom were under twenty-one years of age, reported being victimized by forced perversion an average of 16.6 times per woman; 70% were victimized by john rape (when johns went beyond what was agreed on) an average of 31 times; 74% were victimized by non-payment an average of 5 times; 65% were victims of violence an average of 9 times; 41% were victimized in some other way such as being forced into sex for no pay with po-

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<sup>78</sup> See Dorothy H. Bracey, *Concurrent and Consecutive Abuse: The Juvenile Prostitute*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN* 317, 321 (Barbara Raffel Price & Natalie J. Sokoloff eds., 1982) (indicating risk of physical abuse and mugging); DOROTHY H. BRACEY, *BABY-PROS: PRELIMINARY PROFILES OF JUVENILE PROSTITUTES* 62-63 (1979).

<sup>79</sup> ELEANOR M. MILLER, *STREET WOMAN* 138 (1986).

<sup>80</sup> See Bracey, *supra* note 78, at 317 ("[a] growing body of evidence [indicates] that the juvenile [prostitute] . . . is the product of a specific history . . . that most likely involves sexual abuse, incest, . . . [and] abandonment"); BRACEY, *supra* note 78, at 62-63; Jennifer James, *Motivations for Entrance into Prostitution*, in *THE FEMALE OFFENDER* 177, 177 (L. Crites ed., 1976) ("Prostitutes are not the cause of prostitution."); Jennifer James & Jane Meyerding, *Early Sexual Experience as a Factor in Prostitution*, 7 *ARCHIVES OF SEXUAL BEHAVIOR* 31-42 (1978); Richard Phillips, *How Children Become Prostitutes*, *CHI. TRIB.*, Feb. 1, 1981, §12 (quoting Mimi Silbert); Bernie Schaffer & Richard R. DeBlassie, *Adolescent Prostitution*, 19 *ADOLESCENCE* 689, 689-696 (1984); CARMEN & MOODY, *supra* note 12 (chronicling church and social work with prostitutes); Mimi H. Silbert & Ayala M. Pines, *Entrance Into Prostitution*, 13 *YOUTH & Soc'y* 471, 479 (1982) (tabulating statistics on physical and sexual child abuse).

<sup>81</sup> Letter from Susan Kay Hunter, Executive Director, Council for Prostitution Alternatives, to Phyllis Chesler (Jan. 6, 1993) (on file with author).

lice, beaten by police, or beaten by other prostitutes.<sup>82</sup> Additionally, 65% of these young streetwalkers were physically abused and beaten by customers an average of 4 times—because they “got off on it, enjoyed it and thought it was part of sex,” or because the customers hated prostitutes or hated women in general.<sup>83</sup>

Prostituted women often make headlines when their headless and mutilated bodies are discovered. To date,

[a]t least forty-eight women, mainly prostitutes, were killed by the Green River Killer; up to thirty-one women [were] murdered in Miami over a three year period, most of them prostitutes; fourteen in Denver; twenty-nine in Los Angeles; seven in Oakland. Forty-three in San Diego; fourteen in Rochester; eight in Arlington, Virginia; nine in New Bedford, Massachusetts, seventeen in Alaska, ten in Tampa. Three girls, ages 3, 4, and 6, [were] sold in Suffolk, New York. Three prostitutes were reported dead in Spokane, Washington in 1990, leading some to speculate that the “Green River” murderer of 48 women and girls had once again become “active.”

. . . [W]omen in prostitution are dying quickly. One authority cited in the Canadian Report on Prostitution and Pornography concluded that women and girls in prostitution suffer a mortality rate 40 times the national average.<sup>84</sup>

Wuornos’s public defenders, Trish Jenkins and Ed Bonnett, chose not to use any of the pro bono expert witnesses who were ready to testify for the defense in the first trial. In my view, such experts were needed to educate the jury about the routine and horrendous violence against prostituted women, including Wuornos, the long-term consequences of extreme trauma,<sup>85</sup> and a woman’s

<sup>82</sup> See Silbert & Pines, *Occupational Hazards of Street Prostitutes*, *supra* note 12, at 397.

<sup>83</sup> *Id.*

<sup>84</sup> Baldwin, *supra* note 10.

<sup>85</sup> For more information on the trauma of sexual and psychological abuse, see E. SUE BLUME, *SECRET SURVIVORS: UNCOVERING INCEST AND ITS AFTEREFFECTS IN WOMEN* (1990); SANDRA BUTLER, *CONSPIRACY OF SILENCE: THE TRAUMA OF INCEST* (1985); PHYLLIS CHESLER, *SACRED BOND—THE LEGACY OF BABY M.* (1988) (psychological consequences of surrendering a child to adoption); JUDITH LOUIS HERMAN, *TRAUMA AND RECOVERY* (1992); MARIAN SANDMAIER, *THE INVISIBLE ALCOHOLICS: WOMEN AND ALCOHOL ABUSE IN AMERICA* (1980); BESSEL A. VAN DE KOLK, *PSYCHOLOGICAL TRAUMA* (1987); GAIL WYATT & GLORIA JOHNSON POWELL, *LASTING EFFECTS OF CHILD SEXUAL ABUSE* (1988); Roland Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 *CHILD ABUSE AND NEGLECT* 177, 177-193 (1983); see also ELLEN BASS & LAURA DAVIS, *THE COURAGE TO HEAL: A GUIDE FOR WOMEN SURVIVORS OF CHILD SEXUAL ABUSE* (1988); TONI ANN LAIDLAW & CHERYL MALMO, *HEALING VOICES: FEMINIST APPROACH TO THERAPY WITH WOMEN* (1990).

right to self-defense.<sup>86</sup>

If the people on Wuornos's jury had been allowed to hear about such experts, perhaps, just perhaps, they'd have been better able to understand that, as Wuornos has said, she lived "on dangerous ground at all times," and that she killed Richard Mallory in self-defense.<sup>87</sup> For example, in addition to Mallory's drunken sadism, Wuornos's early childhood—and the fact that she was serially raped and abused all her life—pre-disposed her to both deny and to over-react to all subsequent abuse.<sup>88</sup>

We know that Wuornos never met her father, Leo Pitman, a man who was imprisoned for molesting one child and who possibly murdered another, a man who committed suicide in prison when Wuornos was 13; that Wuornos's teen-age mother, Diane, abandoned her when Wuornos was a toddler; and that her maternal grandparents took her in. Wuornos was physically, psychologically, and probably sexually abused, as well as seriously neglected at

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<sup>86</sup> See Don R. Kates & Nancy Jean Engberg, *Deadly Force Self-Defense Against Rape*, 15 U.C. DAVIS L. REV. 873, 873-74 (1982) ("Resistance short of homicide is clearly condoned. Moreover, American law . . . has always recognized a right to use deadly force if reasonably necessary to prevent rape.") The experts I chose and proposed to the defense, either wrote the following books and conducted the following studies, or were knowledgeable about the information contained therein: LOUISE ARMSTRONG, *KISS DADDY GOODNIGHT* (1978); PAULINE B. BART & PATRICIA H. O'BRIEN, *STOPPING RAPE—SUCCESSFUL SURVIVAL STRATEGIES* (1985); KATHERINE BRADY, *FATHER'S DAYS: A TRUE STORY OF INCEST* (1979); GILLESPIE, *supra* note 4; MARGARET T. GORDON & STEPHANIE RIGER, *THE FEMALE FEAR—THE SOCIAL COST OF RAPE* (1989) (tabulating case studies on rape and fear of crime); JUDITH LOUIS HERMAN, *FATHER-DAUGHTER INCEST* (1981); LIZ KELLY, *SURVIVING SEXUAL VIOLENCE* (1988) (chronicling wife abuse, child abuse and family violence in the United States); DEAN H. KNUDSEN & JOANN L. MILLER, *ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE* (1991); LEE MADIGAN & NANCY GAMBLE, *THE SECOND RAPE—SOCIETY'S CONTINUED BETRAYAL OF THE VICTIM* (1991); FLORENCE RUSH, *THE BEST KEPT SECRET: SEXUAL ABUSE OF CHILDREN* (1980); RUSSELL & VAN DEN VEN, *supra* note 40; DIANA E.H. RUSSELL, *RAPE IN MARRIAGE* (1982); PEGGY REEVES SANDAY, *FRATERNITY GANG RAPE: SEX, BROTHERHOOD, AND PRIVILEGE ON CAMPUS* (1990); DIANA SCULLY, *UNDERSTANDING SEXUAL VIOLENCE: A STUDY OF CONVICTED RAPISTS* (1990); WALKER, *TERRIFYING LOVE*, *supra* note 4; Judith Fabricant, *Homicide In Response to a Threat of Rape: A Theoretical Examination of the Rule of Justification*, 11 GOLDEN GATE U. L. REV. 945, 947 (1981) (identifying historical background of attempted rape as justification for homicide); Laura E. Reece, *Women's Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference*, 1 UCLA WOMEN'S L.J. 1101 (1991); Laurie J. Taylor, *Provoked Reason in Men and Women: Heat-of Passion Manslaughter and Imperfect Self-Defense*, 33 UCLA L. REV. 1679, 1679 (1986) ("legal standards that define . . . provocation . . . reflect a male view"); see also *supra* note 85.

<sup>87</sup> Telephone Interview with Aileen Carol Wuornos (Apr. 1991).

<sup>88</sup> See CHESLER, *WOMEN & MADNESS*, *supra* note 6, at 138 ("prostitution, rape, and sexual molestation of female children by adult males are so common they are usually invisible"); HERMAN, *supra* note 85, at 87; VAN DE KOLK, *supra* note 85.

home. She was badly scarred in a fire when she was 9; her life-long hearing impairment was never corrected. We also know that Wuornos was raped, presumably by a stranger, when she was 12, impregnated, and sent to a home for unwed mothers, where she gave birth to a son she surrendered for adoption.

We know that Wuornos's maternal grandmother was an alcoholic who died of liver failure in 1971, when Wuornos was 14; that Wuornos finally ran away from home shortly thereafter; and that in her first year as a runaway, she was reportedly beaten and raped at least six times by six different men.

We know that Wuornos's grandfather killed himself in 1976, the year her brother Keith died of cancer, and that Wuornos tried to commit suicide, at least once seriously, by shooting herself in the stomach. Like many female victims of serious childhood abuse, Wuornos became an alcoholic, a prostitute, and a petty thief. She supported herself as a prostitute as she drifted between Michigan and Florida from 1971 to 1991. Wuornos spent time in reform school in Michigan and in jail in Florida.

Let's assume that Wuornos's attorneys decided not to use any pro bono experts. What else might they have done? If a prostituted woman (or anyone) alleges rape and self-defense, and there are no eye-witnesses other than the accused, it is appropriate to review the murdered man's past history of violence towards both prostitutes and non-prostitutes.<sup>89</sup>

Shortly after the Mallory homicide, *and a month before Wuornos's arrest*, Mallory's former girlfriend, Jackie Davis, gave a grim portrayal of Mallory to investigator Larry Horzepa. Mallory, Ms. Davis recounted, had served ten years in prison for burglary,

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<sup>89</sup> Such inquiry would not have implicated the "rape shield" laws, which prevent the use of evidence of the victim's past sexual conduct in rape cases. See Ann Althouse, *Thelma & Louise & the Law: Do Rape Shield Rules Matter?*, 25 *LOV. L.A. L. REV.* 757 (1992); Letter from Margaret Baldwin to Susan Bender, President of the Women's Bar Association of the state of New York (Nov. 1992) (on file with author). Professor Baldwin stated:

During the course of the William Kennedy Smith Trial, it became very clear to me that the rape shield rule had been taken as a hostage to guarantee silence about men, as in "if you don't have to tell, neither do we". This is phony symmetry, but one that has garnered strong surface appeal. Formal logic, like formal equality, has never interested me terribly. What has interested me profoundly in this turn of events is the whole question of "shield rules" that run to the benefit of *men* as johns: never arrested, never held to account, while the prostitutes who might give witness are discredited when not wholly destroyed. It bears mention that johns are commonly white, middle-aged, married men with some disposable income; that is, real people.



suffered from severe mood swings, drank too much, was violent to women, enjoyed the strip bars, was "into" pornography, and had undergone therapy for some kind of sexual dysfunction.<sup>90</sup> A search of Mallory's business revealed that he was erratic in business, heavily in debt, in trouble with the IRS, and had received many hostile letters from angry customers.<sup>91</sup> (Ultimately, Judge Uriel Blount did not allow Jackie Davis to testify about Mallory's past violence towards women).

However, the prosecution did not share Davis's information with the defense for more than a year. The prosecution revealed this information on January 10th, 1992, three days before Wuornos was to stand trial for Mallory's murder. On January 10th, Judge Blount denied a defense motion for the admission of this testimony at trial and for a continuance to allow the defense to find and question Davis anew.<sup>92</sup> In my view, the absence of such corroborating evidence was absolutely damaging to Wuornos's self-defense claim.

Chastity Lee Marcus, a Tampa-based exotic dancer, prostituted woman, and member of the Sons of Silence Motorcycle gang, was interviewed by the police as possibly the last person to have seen Mallory alive.<sup>93</sup> Marcus described Mallory as a drinking and partying man who thought nothing of paying \$600 (or the equivalent in VCRs), to have sex with two prostitutes at once: herself and her friend "Danielle."<sup>94</sup>

Neither the defense nor the prosecution questioned Marcus, Mallory's ex-wife or another ex-girlfriend, Nancy Peterson, about Mallory's violence towards them or towards other women. Neither Jackie Davis, Chastity Lee Marcus, nor Nancy Peterson, ever testified for the defense.<sup>95</sup>

It is true that Wuornos's public defender, Trish Jenkins, asked for a continuance at the last moment, in order to question Davis. However, on October 15, 1991—*two months* before the trial

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<sup>90</sup> See Deposition of Lawrence Peter Horzepa (Oct. 15, 1991), *State v. Wuornos*, No. 91-0257 (7th Jud. Cir., Volusia County, Fla. 1992) [hereinafter Horzepa Deposition].

<sup>91</sup> *Id.*

<sup>92</sup> See Robert Nolin, *Jurors Seated for Wuornos Trial*, DAYTONA BEACH NEWS J., Jan. 15, 1992, at B1.

<sup>93</sup> See Laura Kauffman, *Dancer's Story Adds Twist to Killing*, OCALA STAR-BANNER, Jan. 5, 1992, at 1A.

<sup>94</sup> *Id.*

<sup>95</sup> Nancy Peterson appeared on NBC-Dateline on November 10, 1992. See *NBC Dateline* (NBC television broadcast, Nov. 10, 1992).

started—Jenkins herself had deposed Officer Lawrence Horzepa about Jackie Davis.<sup>96</sup> Perhaps Jenkins forgot about this deposition. In a series of meetings with Jenkins, held in April and May of 1991—*nearly seven months before the first trial*—feminists, myself included, had asked Jenkins and her investigator, Don Sanchez, to look into Mallory's past.<sup>97</sup> They never did. A routine computer check would have revealed that Richard Mallory had done many years in Patuxent Prison, in Maryland, as a sex offender. In Mallory's criminal record he was described as an "im-

<sup>96</sup> See Horzepa Deposition, *supra* note 90.

Horzepa told Jenkins:

In speaking to Jackie Davis, which was the last known girlfriend of Mr. Mallory, she also said that he would like to drink, he enjoyed the strip bars, he was into some pornography . . . .

. . . .  
 . . . We found that in doing a search of the business that he appeared to be heavy in debt; he owned several thousand dollars for the rental of the store-front property that he had. We found hostile notes from customers who had dropped items to be repaired, which he apparently never did, and they were calling back or writing notes—apparently he wasn't returning phone calls—asking when they were going to get their items back. We took a look and saw over a hundred items that were in need of repair which he hadn't even started to work on. We found correspondence from IRS. Apparently he was in trouble with them, and he was, appeared to be, looked like he was going to be audited.

Jenkins asked: "I know ultimately you had a suspect . . . Chastity Marcus. . . . And how exactly did you get to her?"

Horzepa replied:

It was from—we had found some notes, handwritten notes, on a scrap piece of paper that were found in [Mallory's] living quarters. . . .

. . . .  
 [Marcus] had told us that she had had a date with Mr. Mallory, her and Kimberly Guy. And I asked her what "a date" meant, and she told me that "a date" to her and Kimberly Guy was that they went back to his place of business and had sex with him. . . . And I asked her if she received payment for this service, and she said that she did, that it was in the form of a 19-inch color TV and a VCR . . . . Probably somebody's that were there for repair. . . . Chastity Marcus was fuzzy on [the date]. Kimberly Guy, to the best of her knowledge, thought that it was the evening of November 30th.

. . . .  
 . . . [Kimberly Guy] advised that she was a lesbian and that she had a lesbian lover. She brought us over to her apartment where there had been a TV and VCR she had claimed that Mr. Mallory had given her.

<sup>97</sup> I had three meetings with Jenkins and a conversation with investigator Don Sanchez in the spring of 1991 about this. I again referred to the need to delve into Mallory's past violence towards women in a letter to Jenkins dated June 12, 1991. See Letter from Phyllis Chesler to Trish Jenkins, Public Defender, Marion County (June 12, 1991)(on file with author); Interviews with Patricia Jenkins, Public Defender, Marion County (Apr. to May 1991); Interviews with Donald Sanchez, Private Investigator for Marion County Office of the Public Defender (Apr. to May 1991).

pulsive and explosive individual who will get into serious difficulty, most likely of a sexual nature . . . . Because of his emotional disturbance and his poor control of his sexual impulses, he could present a potential danger to his environment in the future."<sup>98</sup>

I eventually hired Marion County ex-police officer Brian Jarvis, who had initially worked on the Wuornos case, to conduct a computer search and a series of interviews about Mallory. Jarvis found nothing. He claimed his investigation was being blocked by certain Florida officials. However, NBC private investigator Jack Kassewitz also learned of Mallory's criminal record and on November 10, 1992, NBC-Dateline aired the above findings. NBC also revealed that the defense had failed to call a number of "friendly" witnesses.<sup>99</sup>

It is not clear whether the prosecution had ever done a thorough computer check on Mallory, or whether they actively suppressed the results. Prosecutor John Tanner admitted, on camera, that the prosecution's preparation had been "incomplete."<sup>100</sup> He also admitted that "we may have to try the case again."<sup>101</sup>

#### THE PSYCHO-PATHOLOGY OF WOMAN-HATRED

Wuornos may have had sex for money with a "guesstimated" quarter of a million men. Did the six johns she killed demand something that so terrorized and outraged her that she "snapped?" Or was it just the first of the six, Richard Mallory, john number quarter-million-plus-one who sent her over the edge?

Was a quarter-million johns all Wuornos could take before she cracked, or, dare I say it, experienced a momentary flight into sanity? Was a quarter-million johns all Wournos could take before she decided that "enough was enough"?

Was it anything like the Dutch film, *A Question of Silence*,<sup>102</sup>

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<sup>98</sup> I obtained Richard Mallory's criminal record from the Circuit Court, Montgomery County, Maryland. In 1957, Mallory entered the home of a woman married to a wealthy and powerful man and attempted to rape her. He did not succeed. It is puzzling that in 1957, a young *white* man was actually convicted for *attempted* rape, sentenced to 4, and ultimately imprisoned for 10 years. Class and race biases always predominate in determining which man actually gets arrested and convicted for a crime of sexual violence against a woman.

<sup>99</sup> Telephone Interview with Jack Kassewitz, Private Investigator for NBC Broadcasting, (Nov. 5, 1992). Kassewitz boasted that it took him "about 20 minutes" to commandeer Mallory's record. *Id.*

<sup>100</sup> *NBC-Dateline* (NBC television broadcast, Nov. 10, 1992).

<sup>101</sup> *Id.*

<sup>102</sup> *QUESTION OF SILENCE* (directed by Marleen Gorris, 1983).

in which five women, strangers to each other, are shopping in the same store on the very day each woman, finally, has had enough of being treated like a “woman” by men? In a rather dream-like sequence, three of the women spontaneously stomp to death the 250,001st man who treats them with contempt; and they do so without exchanging a word. After the women are arrested, they maintain an uncanny silence.

The prison psychiatrist, a “happily married” woman, hopes to save them by finding them insane. To her consternation, she can find nothing wrong with them. They are all ordinary, rather “nice” women who are not insane. With considerable anguish, the psychiatrist acknowledges that there is a war going on against women and that during war, atrocities are committed—usually by the stronger, occupying force; more rarely, by the occupied themselves. Perhaps, she thinks, women are only insane when they put up with the daily atrocities committed against them, or when they deny that such atrocities are really happening. Improbably, the psychiatrist joins the silent, imprisoned women and their silent female supporters—none of whom expect justice or understanding.

*A Question of Silence* is a surrealist feature film. Wuornos’s story—especially since her arrest on January 9, 1991—is far more surrealist.

Despite widespread media attention, the state of Florida treated Wuornos the way it treats all its female prisoners—very badly. As a pre-trial detainee, Wuornos was entitled to the presumption of innocence. She was, instead, punished before her first trial. She lost more than 40 pounds and appeared to age ten years within ten months. Wuornos was kept in solitary confinement—intermittently, and sometimes without her clothes (presumably as a way of preventing her suicide). She was also verbally abused and threatened by prison guards and other inmates, deprived of daylight and exercise, allowed no safe, monitored medication for withdrawal from her long-standing alcohol addiction, and denied all contact visits. Wuornos did place numerous collect phone calls to Arlene Pralle, the Born-Again Christian “Good Samaritan” who first began writing to her in February of 1991, and who legally adopted her in November of 1991.

Wuornos was kept in jail at an 8-hour-round-trip distance from her public defender, Trish Jenkins. Therefore, their visits

were not as frequent as Wuornos might have wished (or needed).<sup>103</sup> In addition, although Wuornos could not hear or see very well, her frequent requests for a hearing aid and for glasses were denied, as was permission to see a gynecologist for painful, heavy bleeding. Trish Jenkins finally ordered a gynecological consultation in December of 1991, but only after I called some Florida newspapers about Wuornos's (routine) mistreatment in jail.<sup>104</sup> I suggested that Wuornos's mistreatment was a sadistic and calculated attempt to destroy her capacity to participate in her own trial and, perhaps, to drive her to suicide. I questioned whether Wuornos could receive a fair trial on these grounds alone.<sup>105</sup>

Wuornos decided to confess only after repeated entreaties by Tyria Moore, her lover, who was, early on, herself a suspect in the police investigation. Moore cooperated with the police by taping a number of phone calls from Wuornos in jail in which Moore begged Wuornos to protect her. During her videotaped confession, Wuornos kept explaining that she was only confessing in order to save Moore.

In her videotaped confession, Wuornos was visibly distraught, confused, and rambling. Her police interrogators created a false sense of camaraderie with her by frequent inquiries as to her comfort and by cozy small talk. Wuornos seemed to have no clear understanding of where she was, whether she was talking to police officers or lawyers, why exactly she needed a lawyer, or what exactly a lawyer could do for her. Despite the fact that she was going through alcohol withdrawal, scared, and pressured by Moore into confessing, Wuornos continued to insist that the killings were done in self-defense.<sup>106</sup> The absence of skilled legal counsel—even after Wuornos said she wanted counsel—was woefully apparent. Late in

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<sup>103</sup> The most idealistic and hard-working of public defenders is still too overworked and lacks the resources to do more than a perfunctory job. At the time of her assignment, Trish Jenkins was defending 12 *other* capital cases. Her pre-trial motions for continuances in the Wuornos case invariably met with unnecessarily acerbic opposition from the state, so much so, that at one hearing, exasperated, she asked the judge: "Do I spend all my time on Ms. Wuornos' case and let the others slide? Or do I do it in reverse? I am in a bind."

<sup>104</sup> See Michael Clary, *A Mother's Love*, L.A. TIMES, Dec. 17, 1991, at E1; (quoting Phyllis Chesler on subject); Laura Kauffmann, *Wuornos: Victim of Society?*, OCALA STAR BANNER, Dec. 11, 1991, at 1A (same); Chris Lavin, *Deaths Fade in Backdrop as Trial Takes Center Stage*, ST. PETERSBERG TIMES, Jan. 12, 1991 (same); Keith Maranger, *Trial Begins for Lesbian Serial Killer*, OUR TOWN, Feb. 1992, at 1 (same).

<sup>105</sup> For an expansion on these points, see Phyllis Chesler, *A Double Standard for Murder?*, N.Y. TIMES, Jan. 8, 1992, at A19.

<sup>106</sup> See Wuornos, *supra* note 60.

the session, counsel finally arrived.

Some of the events Wuornos attempted to describe to the police in her confession on January 16, 1991 had happened more than a year before; any clear recollection she might have been able to conjure up was distorted, manipulated or not properly "heard" by her interrogators. As a result, Wuornos omitted important details. Her later, more detailed account at trial, describing the horrific abuse she suffered at Mallory's hands immediately preceding his homicide, was viewed as "inconsistent," "contradictory," or as a series of "lies."

### THE MEDIA CONNECTION

Even before Wuornos was arrested, local, national, and international media, including Hollywood and network TV film-makers, became part of the drama. The most routinely brazen manipulation of Wuornos and of her case commenced. For example, right after her arrest, Wuornos's first public defender, Ray Cass, helped Wuornos negotiate a deal with Hollywood film-maker Jacqui Giroux—the only person who visited Wuornos immediately following her arrest. Three Marion County sheriffs—Major Dan Henry, Sergeant Bruce Munster, and Captain Steve Binegar—together with Wuornos's ex-lover, Tyria Moore, allegedly sold *their* version of the story to CBS/Republic Pictures.<sup>107</sup> (After the proposed movie deal, Tyria Moore was granted immunity in exchange for her testimony against Wuornos).<sup>108</sup> Arlene Pralle and Wuornos's third attorney, Steve Glazer, negotiated with and pocketed the relatively small amounts of money paid by the media to interview Wuornos on Death Row. In a phone conversation, Glazer himself confirmed to me that Montel Williams, BBC, and Geraldo Rivera, each paid between \$7,500 and \$10,000 to interview Wuornos on Death Row.<sup>109</sup> Glazer also persuaded Wuornos to withdraw her lawsuit against Giroux and to renegotiate (or "upgrade") the contract

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<sup>107</sup> See *Highway Slayings May Go Hollywood*, SUN-SENTINEL, Feb. 10, 1991, at 20A. Maj. Dan Henry later resigned after the release of a taped telephone conversation in which he discussed depositions taken for a civil lawsuit between Wuornos and a Hollywood film-maker and producer. See *Deputy Resigns After Conversation About Wuornos*, MIAMI HERALD, Nov. 12, 1992, at 2B. In an early version of the CBS script, *Overkill: The Aileen Wuornos Story*, the only names not fictionalized were Moore's, Munster's, Binegar's, and Henry's. Brian Jarvis called this to my attention.

<sup>108</sup> See *Movie Deal 'Didn't Prejudice' Probe*, MIAMI HERALD, Dec. 4, 1991, at 1B.

<sup>109</sup> Telephone Interviews with Steven Glazer, Defense Attorney for Aileen Carol Wuornos (Mar. 1992 to Nov. 1992).

instead.<sup>110</sup>

Although the media proved as much hero as villain, Government by Geraldo, if not translated into a series of legal motions is, at best, useless, and at worse, harmful. For example, Wuornos's original judge, Gayle Graziano, replaced Wuornos's first public defender, Ray Cass—who Wuornos charged had negotiated with Hollywood producer Jacqui Giroux for the movie rights to Wuornos's story. At Wuornos's request, her new public defender was a woman: Trish Jenkins of neighboring Marion County. This replacement (of a man and by a female lawyer in another county) was ultimately used by the prosecution to force Judge Graziano into recusing herself.<sup>111</sup>

Another example: According to a number of people I interviewed, Giroux allegedly began offering contracts for \$5000 to the people in Wuornos's childhood if they spoke only to Giroux—and presumably not to any other media person.<sup>112</sup> For this and other reasons, some Michigan residents who knew how badly Wuornos had been abused during childhood allegedly did not cooperate with Wuornos's public defenders at all, or in a timely fashion. When Giroux allegedly tried to intercede, it was too late. In any event, Trish Jenkins did not call anyone to testify for the defense from Michigan or elsewhere.

#### DOUBLE STANDARDS FOR SERIAL KILLERS?

Do we have different standards for evil, violence, and insanity: one for men, another for women? Or is Wuornos simply *too* evil, for a woman? As such, is her punishment a warning to other women that female violence, including self-defense, will never be

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<sup>110</sup> *Id.* Numerous newspaper and magazine articles and two books on the Wuornos case have already appeared: DOLORES KENNEDY & ROBERT NOLIN, *ON A KILLING DAY* (1992) and MICHAEL REYNOLDS, *DEAD ENDS* (1992). A number of television programs about Wuornos have aired, some repeatedly. Court TV aired highlights of the January 1992 trial proceedings; in depth features appeared on "A Current Affair," "Inside Edition," Montel Williams, NBC-Dateline (August and November, 1992). The Republic Pictures/CBS Movie *Overkill: The Aileen Wuornos Story* appeared on CBS on Nov. 17, 1992. Wuornos actually attracted a minimal amount of money. The three sheriffs and Tyrria Moore allegedly shared \$200,000 from CBS/Republic Pictures; Wuornos, to the best of my knowledge, has received and dispersed to others between \$30,000 and \$40,000.

<sup>111</sup> Judge Graziano recused herself in December 1991, about three weeks before trial.

<sup>112</sup> Telephone Interview with Dawn Botkins, Michigan resident and childhood friend of Wuornos (Nov. to Dec. 1992); Communications with Arlene Pralle, Florida resident and adoptive parent of Wuornos (Apr. 1991 to Mar. 1992); Communications with Aileen Carol Wuornos (Apr. 1991 to Dec. 1992).

glamorized or forgiven, only punished—swiftly and terribly?

One reporter I spoke to about the Wuornos case kept needling me for not being cynical enough: “C’mon, Wuornos is not entitled to the kind of lawyer that William Kennedy Smith or Mike Tyson had. Get real!” But what does it mean that Jeffrey Dahmer, accused of torturing, raping, killing, cannibalizing, and dismembering 15 young men, mainly of color—none of whom attacked him—was able to command a private lawyer, some well-known national experts, his father and stepmother, and continuous live TV in the courtroom? In addition, skinheads reportedly demonstrated on his behalf in Chicago (“He got rid of the filth” they chanted), and a growing number of women supporters filled the courtroom, some of whom reportedly formed a Jeffrey Dahmer Fan Club.<sup>113</sup>

Or, let’s look at another Florida serial killer: Ted Bundy, who killed at least 30 (and possibly 100) women.<sup>114</sup> Several lawyers, including Atlanta lawyer, Millard Farmer, and North Florida lawyer, Brian T. Hays, offered to defend Bundy pro bono in Florida; Dr. Emil Spillman advised him on jury selection pro bono; at one point, no fewer than five public defenders assisted Bundy, who insisted on representing himself.<sup>115</sup>

Even more interesting is that the State of Florida offered Bundy a life sentence without parole, a plea bargain Bundy refused. Jenkins et al. tried to arrange a similar plea for Wuornos but James Russell, the Dixie County Prosecutor, thought Wuornos deserved to die and refused to agree to a plea bargain.

Considering its complexity, Wuornos’s first trial was exceptionally brief: it took only 13 court days. The State had estimated

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<sup>113</sup> See *'Fascinated' By a Famous Killer*, ATLANTA J. & CONST., Jan. 29, 1992, at A2.

<sup>114</sup> See Larry Keller, *Victims*, SUN-SENTINEL, Jan. 24, 1989, at 1A.

<sup>115</sup> See RULE, *supra* note 8, at 360. Many lawyers are horrified by how grievously the state of Florida has gone about violating Wuornos’ civil and constitutional rights. Early on, in the spring of 1991, lawyer Linda Backiel led me to Len Weinglas who agreed to defend Wuornos pro bono in the first of her six trials, but who needed at least \$50,000 in expense money. Once I became ill with Chronic Fatigue Immune Dysfunction Syndrome, I could no longer continue fundraising. No one else ever took on this enormous, exhausting, and volunteer responsibility.

However, a number of lawyers have since expressed interest in the case and are willing to write amicus briefs and assist counsel pro bono: Margaret Baldwin, Professor of Law, Tallahassee Law School; The New York State Women’s Bar Association, especially Naomi Werne, Chair of the Criminal Law Committee; Alan Dershowitz of the Harvard Law School; Ruthann Robson, Professor of Law at CUNY Law School. Nevertheless, despite at least fifty or sixty requests for pro bono assistance, no one lawyer ever agreed to take responsibility for coordinating a legal team or for the remaining trial work.



that the trial would last from three to six weeks. Judge Blount, who was coaxed out of retirement to replace Judge Graziano, granted most of the prosecution and denied most of the defense motions. In deference to the State's motion, the jury was allowed to see excerpts from Wuornos's videotaped confession—*minus* her repeated statements that she killed in self-defense. Under Florida's *Williams* rule,<sup>116</sup> the jury was also permitted to hear similar fact evidence from the six other alleged murders. (Under the same *Williams* rule, Judge Mary Lupo, presiding in William Kennedy Smith's 1991 Palm Beach rape trial, did not allow the jury to hear any of the other allegations of rape against Smith.<sup>117</sup>)

Judge Blount did not grant the defense a change of venue despite the enormous local, pre-trial publicity, which included Wuornos's televised confession. (Ted Bundy did get a change of venue, from Tallahassee to Miami, for similar reasons). Judge Blount felt that he could seat an "impartial" jury even if they'd seen or heard about the confession—and he did so in a day and a half!

Given the gravity and the notoriety of the case, the sixty-eight prospective jurors might have been polled individually; none were. Further, only jurors who said they believed in the death penalty were seated. (This is routinely done in Florida).<sup>118</sup>

During the guilt/innocence phase of this bifurcated capital trial, Wuornos herself was the *only* witness for the defense. As previously noted, early in the trial preparation, feminists, myself included, contacted more than fifty experts, approximately ten of whom agreed to testify for the defense, pro bono or at minimal cost. These included a psychologist, a psychiatrist, experts in prostitution and violence against prostitutes, experts in child abuse, battery, rape trauma syndrome, lesbianism, lesbian battery, female alcoholism, and the psychology of adoption. None of these experts—and no other experts with similar information—were ever called by the defense. Three weeks before the trial, Trish Jenkins unsuccessfully called *one* of these experts for the first time, but

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<sup>116</sup> See *Williams v. State*, 110 So. 2d 654, 662 (Fla. 1959). The *Williams* rule provides for the admission of evidence of a defendant's other crimes or alleged crimes if the court determines that the facts are sufficiently similar to show a common scheme or pattern. *Id.*

<sup>117</sup> James G. Driscoll, *In Smith Trial, Legal System Forced Jurors to Operate Partially in the Dark*, SUN-SENTINEL, Dec. 15, 1991, at 7G.

<sup>118</sup> According to Florida law, the jury first determines guilt or innocence and, if guilty, then makes an initial sentencing recommendation to the judge, who may override that recommendation. See *Parker v. Dugger*, 111 S.Ct. 731, 735 (1991); FLA. STAT. ch. 921 (1991).

never called her back.<sup>119</sup> As previously noted, Wuornos was the only one who took the stand on her own behalf, a dubious strategy considering her vulnerability to impeachment.

The prosecution's legal theory was replete with misogynist stereotypes: Lead prosecutor John Tanner, a Born-Again Christian, had been Ted Bundy's deathrow "minister" and had tried to have Bundy's execution delayed.<sup>120</sup> In his opening and closing arguments, Tanner portrayed Wuornos as a "predatory prostitute" whose "appetite for lust and control had taken a lethal turn," who "had been exercising control for years over men," and who "killed for power, for full and ultimate control."<sup>121</sup>

In the penalty phase of the trial, the jury heard from defense psychologists Elizabeth McMahon and Harry Krop, two experts more experienced in testifying for *male* killers than for female killers on trial. According to McMahon: "Lee [Wuornos] is such a classic textbook example of a borderline personality . . . she calls almost everybody a 'fucker.' I don't know that Lee can get a sentence out without that . . . she is a child, developmentally and emotionally."<sup>122</sup> Krop also diagnosed Wuornos as a "borderline personality" suffering from "organic dysfunction in the brain cortex."<sup>123</sup>

The defense presented no family members or friends in mitigation. Many of Wuornos's childhood relatives and friends either were never asked to testify for the defense; were asked but never called; or allegedly were, in their view, *paid* to keep silent by Hollywood producer Jacqui Giroux.

When men are accused of crimes, even terrible crimes, their families invariably back them. The wives of the "Big Dan" gang-rapists in New Bedford, Massachusetts, the Kennedy women, Mike Tyson's adoptive mother, the families of the young men accused and exonerated in the gang-rape of a St. John's University student, and those of the gang-rapists of a young woman with an IQ of 64 in Glen Ridge, New Jersey, all stood by their men.

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<sup>119</sup> Telephone Interview with Dr. Lenore Walker, author of *Terrifying Love: Why Battered Women Kill and How Society Responds* and *The Battered Woman* (Dec. 1991).

<sup>120</sup> See *Prosecutor Who Prayed With Bundy To Leave Ministry*, SUN-SENTINEL, Jan. 29, 1989, at 17A.

<sup>121</sup> See Phil Long, *Prostitute Called Abused Victim, Enraged Killer*, MIAMI HERALD, Jan. 16, 1992, at 1A.

<sup>122</sup> Deposition of Elizabeth McMahon (Jan. 8, 1991), *State v. Wuornos*, (7th Jud. Cir., Volusia Co., Fla. 1992)(No. 91-0257).

<sup>123</sup> Robert Nolin, *Wuornos Described as "Borderline"*, DAYTONA NEWS JOURNAL, Jan. 29, 1992, at 1B.

Even Ted Bundy had enormous emotional and secretarial/public-relations support from his mother, Louise, and from his 32-year-old "fiancee" Carol Ann Boone, whom he would marry and later impregnate. Both Louise and Carol Ann testified for Bundy. Scores of young women attended the trial and openly flirted with Bundy in court.<sup>124</sup>

Impoverished (and non-impooverished) women do not usually have anyone willing to speak for them, nor do they routinely have "supportive" families. They're lucky if they don't die at the hands of a family intimate. Often, the families of female outlaws are the ones who turn them in and testify against them. Wuornos's lesbian ex-lover, Tyria Moore, was the star prosecution witness against her. Wuornos's uncle, twelve years her senior, with whom she'd been raised as a sibling, and whom she hadn't seen for at least twenty years, testified for the *prosecution*. He claimed that Wuornos had never been abused at home and therefore had no "reason" to kill anyone.<sup>125</sup>

Wuornos did have the support of Arlene Pralle, the woman who contacted Wuornos after her arrest and who is now her legal mother. Pralle accepted countless collect calls from Wuornos in jail, and facilitated countless telephone interviews between Wuornos and the media by inviting the journalists most attentive to *Pralle*, to her home, and then putting them on the phone with Wuornos.

Although Pralle "meant well," her own need to talk, mainly about herself, and about her love for both Jesus and Wuornos, posed grave dangers to the defense. For example, the telephone calls could be taped or the prosecution could read "all about it" in newspapers and magazines. At first, Pralle insisted that Wuornos was a "good" person and that she couldn't have killed in cold blood; Pralle also said she expected Jesus to perform a miracle. Once Wuornos was sentenced to death, Pralle publicly supported Wuornos's desire to die and to "go home to Jesus."

Pralle and Wuornos engaged in a folie a deux, a "you and me, babe, against the world," which both women must have experienced as supportive, even thrilling, given the intense media attention being focused on them. (Like Wuornos, Pralle was also aban-

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<sup>124</sup> See Phyllis Chesler, *Sex, Death & the Double Standard*, ON THE ISSUES (Summer 1992)(comparing Wuornos' treatment with that of Bundy).

<sup>125</sup> See Laura Kauffmann, *Wuornos' Brother Disputes Abuse Tale*, OCALA-STAR BANNER, Jan. 30, 1992, at 1A.

done by her biological mother and had seriously attempted suicide). However, the fact that a "traditional" woman stood up for Wuornos is as moving as it is bizarre.

Wuornos also had the (questionable) support of Steven Glazer, Pralle's own lawyer, who helped Wuornos achieve four more death sentences, and who, as previously noted, charged the media for Death Row interviews with his client, disbursing the money to Wuornos, Pralle, and to himself.<sup>126</sup>

Jury deliberation in the Wuornos case was surprisingly brief: on January 30, 1992, her jury of five men and seven women needed only 1 hour and 31 minutes to find her guilty, and only 1 hour and 48 minutes to recommend the death penalty. (In Ted Bundy's case, the jury took seven hours to find him guilty and seven and a half hours to sentence him to death). On January 31, 1992, Judge Blount, who could have overridden the jury's recommendation, ordered that Wuornos die in the electric chair for the murder of fifty-one-year-old ex-convict Richard Mallory. She was immediately taken to Death Row at the Broward County Correctional Facility for Women.

If the state of Florida could, it would electrocute Wuornos once for each man she's accused of killing. (She has so far been sentenced to death five times). But what are Wuornos's true crimes? Wuornos stands accused of being a man-hating lesbian, a description that could not endear her to the sheriffs, wardens, lawyers, judges, or jurors in an area of Florida where the local abortion clinic was burned right down to the ground not once, but twice in the years between 1989 and 1991; where crosses have been burned with alarming regularity on the lawns of African-American families; and where residents were responsible for the third largest individual, out-of-state contribution to David Duke's most recent gubernatorial campaign. Someone like Wuornos has little support in the state known as the "Buckle of the Death Sentence Belt."

Is Wuornos guilty of being a prostitute? Or is she guilty of not having killed herself—the way all "good" sexual abuse victims and prostituted women are supposed to do? Or—shades of "Thelma and Louise" and the backlash against clemency for battered women who kill in self-defense—is Wuornos guilty of daring to de-

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<sup>126</sup> Telephone Interview with Steven Glazer, Defense Attorney for Aileen Carol Wuornos (Mar. 1, 1992). While Glazer's behavior may be legal, I must question whether it is ethical—especially since Glazer agreed to represent Wuornos civilly as well as criminally.

fend herself in a violent struggle with a man and, by example, encouraging other prostitutes (and non-prostitutes) to do likewise?

### A WOMAN'S RIGHT TO SELF-DEFENSE

As previously noted, in the nineteenth and twentieth centuries, both prostituted and non-prostituted women, and slaves, sometimes injured and killed violent male non-intimates in self-defense.<sup>127</sup> From 1970 to 1992, both prostituted and non-prostituted women have charged rape and battery or attempted rape and battery and claimed they killed in self-defense.<sup>128</sup> Only a handful have ever been believed.

In the early 1970s, grass-roots feminists, civil rights activists, the Center for Constitutional Rights, and the Southern Poverty Law Center focused on three cases in which women of color had killed violent male non-intimates in self-defense. I am referring to the cases of Yvonne Wanrow,<sup>129</sup> Joan Little<sup>130</sup> and Inez Garcia.<sup>131</sup> At this time, I will discuss only the decision of *State v. Wanrow*,<sup>132</sup> in which the Supreme Court of Washington affirmed the reversal of the conviction of Yvonne Wanrow for second-degree murder and first-degree assault with a deadly weapon.<sup>133</sup>

The facts of *Wanrow* were as follows: On the afternoon of August 11, 1972, Yvonne Wanrow, a Colville Indian woman who

<sup>127</sup> See *supra* note 6 and accompanying text.

<sup>128</sup> See, e.g., *People v. Matthews*, 154 Cal. Rptr. 628, 629-30 (Ct. App. 1979); *People v. Taylor*, 9 Cal. Rptr. 390, 391-93 (Ct. App. 1960); *State v. Harris*, 222 N.W.2d 462 (Iowa 1974); *Commonwealth v. Lamrini*, 467 N.E.2d 95, 97-98 (Mass. 1984); *People v. Hefin*, 456 N.E.2d 10, 12-13 (Mich. 1990), *rev'g* *People v. Landrum*, 407 N.W.2d 614, 615-16 (Mich. Ct. App. 1986); *People v. Barker*, 446 N.W.2d 549, 550 (Mich. Ct. App. 1989), *aff'd* 468 N.W.2d 492, 493 (Mich. 1991); *State v. Goodseal*, 183 N.W.2d 258, 260-61 (Neb. 1971), *cert. denied*, 404 U.S. 845 (1971); *People v. Williams*, 553 N.Y.S.2d 818, 819 (N.Y. App. Div. 1990); *Commonwealth v. Carbone*, 544 A.2d 462, 463-64 (Pa. Super. Ct. 1988), *rev'd*, 574 A.2d 584, 588 (Pa. 1990); *Thomas v. State*, 578 S.W. 2d 691, 694-95 (Tex. Crim. App. 1979).

<sup>129</sup> See *State v. Wanrow*, 538 P.2d 849 (Wash. Ct. App. 1975), *aff'd*, 559 P.2d 548 (Wash. 1977) (en banc).

<sup>130</sup> See MORRIS DEES, *A SEASON FOR JUSTICE: A LAWYER'S OWN STORY OF VICTORY OVER AMERICA'S HATE GROUPS* (1991). Joan Little was a black woman who killed a white jail guard who attempted to rape her in the jail cell in which she was incarcerated for a burglary conviction. She was acquitted in 1975 following a capital murder trial that attracted national attention. *State v. Little*, 74 Cr. No. 4176 (Superior Court, Beaufort County, N.C. 1975).

<sup>131</sup> See *People v. Garcia*, 126 Cal. Rptr. 275 (Ct. App. 1976), *cert. denied*, 426 U.S. 911 (1976); see also KENNETH W. SALTER, *THE TRIAL OF INEZ GARCIA* (1976).

<sup>132</sup> 559 P.2d 548 (Wash. 1977).

<sup>133</sup> *Id.* at 559.

was a single mother and an artist, left her two children at the home of her friend, Ms. Hooper. After playing in the neighborhood, Ms. Wanrow's son returned to Ms. Hooper's home and told her that a man had tried to pull him off his bicycle and drag him into a house. A few months prior to this incident, Ms. Hooper's seven-year-old daughter had suffered from a venereal disease, contracted after being molested by a man whose identity she would not reveal to her mother. A few minutes after Ms. Wanrow's son told his story to Ms. Hooper, the decedent, William Wesler, appeared at Ms. Hooper's house and stated through the door, "I didn't touch the kid, I didn't touch the kid."<sup>134</sup> At that moment, Ms. Hooper's daughter, seeing Wesler at the door, identified Wesler as the man who had molested her. Ms. Hooper's landlord then informed her that Wesler, a 6' 2" white man who had been committed to an institution for the mentally ill, had molested another child who had previously lived in the same house.<sup>135</sup> Ms. Hooper immediately summoned the police, who arrived shortly thereafter and advised Ms. Hooper to wait until Monday to get a warrant for Wesler's arrest.

That evening, Ms. Hooper called Ms. Wanrow, related the incident and asked her to spend the night. Ms. Wanrow arrived sometime after 6 p.m. with a pistol in her handbag. Still afraid to stay alone, Ms. Hooper and Ms. Wanrow called Ms. Wanrow's sister and brother-in-law, Angie and Chuck Mitchell, who agreed to spend the night. At approximately 5 a.m., Chuck Mitchell, without informing the women, went to Wesler's home with a baseball bat and accused Wesler of molesting children. Wesler then suggested they all discuss the incident, and together with a third man, Wesler and Mitchell returned to Ms. Hooper's home to straighten out the problem. Wesler, however, was the only man to enter the house.

Wesler, then visibly intoxicated, entered Ms. Hooper's home and refused to leave when asked to do so. Confusion and shouting followed, and a young child—one of eight then staying at the house—awoke crying. Testimony indicated that Wesler approached the child, stating, "My what a cute little boy," and Ms.

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<sup>134</sup> *Id.* at 550.

<sup>135</sup> *Id.* Additionally, Ms. Hooper had noticed someone prowling around her house at night a week earlier, and someone had slashed her bedroom window screens in an attempt to enter the house only two days before; Ms. Hooper suspected that Wesler was responsible. *Id.* at 551-55.

Hooper began screaming for Wesler to get out.<sup>136</sup> Wanrow, 5' 4" with a broken leg and using a crutch, went to the door to ask Mitchell for help. When Ms. Wanrow turned around, Wesler was standing directly behind her. Startled by her situation, Ms. Wanrow testified as to having shot Wesler in what amounted to a reflex action.

At trial, Ms. Wanrow argued that she had acted in self-defense. The jury was instructed that in evaluating the gravity of the danger to Ms. Wanrow, the jury was to consider only those acts and circumstances occurring "at or immediately before the killing."<sup>137</sup> Ms. Wanrow was convicted of second-degree murder and first-degree assault with a deadly weapon.<sup>138</sup>

In affirming the reversal of Ms. Wanrow's conviction, the Supreme Court of Washington held that the trial court had erred in limiting the jury instruction on self-defense.<sup>139</sup> Instead, the jury should have been instructed to evaluate the justification of self-defense "in light of *all* the facts and circumstances known to [Ms. Wanrow], including those known substantially before the killing."<sup>140</sup> The court stated that the jury should have been instructed to consider Ms. Wanrow's knowledge of Wesler's reputation for aggressive behavior, despite the fact that Wesler's reputation was based on events which had occurred over a period of years and that Ms. Wanrow had received this information several hours before the incident. This information would aid in the "critical determination of the 'degree of force which . . . a reasonable person in the same situation . . . seeing what (s)he sees and knowing what (s)he knows, then would believe to be necessary.'" <sup>141</sup>

In addition, the court held that Ms. Wanrow's actions were to be judged against her own "subjective impressions [of danger] and not those which a detached jury might determine to be objectively reasonable."<sup>142</sup> In recognizing the special circumstances which often accompany a woman's assertion of self-defense, the court acknowledged that "women suffer from a conspicuous lack of access to training in and the means of developing those skills neces-

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<sup>136</sup> *Id.* at 551.

<sup>137</sup> *Id.* at 555.

<sup>138</sup> *Id.* at 550.

<sup>139</sup> *Id.* at 558-59.

<sup>140</sup> *Id.* at 555.

<sup>141</sup> *Id.* at 557.

<sup>142</sup> *Id.* at 558.

sary to effectively repel a male assailant without resorting to the use of deadly weapons."<sup>143</sup> With respect to the delivery of jury instructions, the court cautioned that

the persistent use of the masculine gender leaves the jury with the impression the objective standard to be applied is that applicable to an altercation between two men. The impression created—that a 5-foot 4-inch woman with a cast on her leg and using a crutch must, under the law, somehow repel an assault by a 6-foot 2-inch intoxicated man without employing weapons in her defense, unless the jury finds her determination of the degree of danger to be objectively reasonable—constitutes a separate and distinct misstatement of the law and, in the context of this case, violates the respondent's right to equal protection of the law. [Ms. Wanrow] was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's 'long and unfortunate history of sex discrimination.' Until such time as the effects of that history are eradicated, care must be taken to assure that our self-defense instructions afford women the right to have their conduct judged in light of the individual physical handicaps which are the product of sex discrimination. To fail to do so is to deny the right of the individual woman involved to trial by the same rules which are applicable to male defendants.<sup>144</sup>

Since the *Wanrow* decision, a number of articles on feminist jurisprudence have appeared, attempting to further clarify the circumstances under which a *reasonable woman* can argue self-defense, especially after she has been sexually and physically assaulted, or has killed to avoid being assaulted or killed.<sup>145</sup> In 1978,

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 558-59. According to papers on file at the Center for Constitutional Rights in New York, Wanrow's second trial never happened. Wanrow pled guilty to reduced charges of manslaughter and second degree assault. She received two concurrent sentences of 10 and 20 years, which were simultaneously suspended, the period of suspension and termination being five years conditioned upon probation during this time—which probation apparently also eliminated a concurrent 12-month sentence. The Center for Constitutional Rights, 853 Broadway, New York, New York 10003.

<sup>145</sup> At the risk of frustrating the reader, I have chosen to summarize and evaluate most of these articles at a later date. See generally Fabricant, *supra* note 86; Kates & Engberg, *supra* note 86; Mackinnon, *infra* note 148; Taylor, *supra* note 86; Reece, *supra* note 86; Schneider, *infra* note 154; Lita Furby, et al., *Judged Effectiveness of Common Rape Prevention and Self-Defense Strategies*, in 4 J. INTERPERSONAL VIOLENCE 44 (1989); Julie Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill*, 9 WOMEN'S RTS. L. REP. 227 (1986); Morrison Torrey, *When Will*



Elizabeth Schneider, who was Wanrow's lawyer in the successful appeal to the Washington Supreme Court, and co-author Susan Jordan, commented on the Wanrow case, noting that the

[c]ircumstances under which women are forced to defend themselves [are] entirely different from those which cause men to commit homicides, [and] the woman's state of mind is different as well. Presenting the individual woman's perspective in the trial means educating the judge and jury about the incidence and severity of the problems of rape, wife-assault, and child abuse and molestation. . . . It also means educating them about the lack of judicial and social alternatives available to women in these situations and combating specific myths, for example, that a woman who kills a man is insane or that women enjoy rape.

*State v. Wanrow* is an example of successful implementation of this strategy.

In a landmark decision, [the *Wanrow* court] . . . acknowledged the threat to equal protection inherent in the failure to include a woman's perspective in the law of self-defense . . . .<sup>146</sup>

According to Schneider and Jordan, despite the fact that women are targets for male violence, and tend to be shorter and to weigh less than men, women are not socialized to defend themselves, generally have no experience of combat, tackle sports or street fighting, and are actually dissuaded from using violence against men as a cultural imperative.<sup>147</sup> Thus, at this point in history, when women perceive themselves to be in mortal danger, perhaps they should be or are entitled to use weapons as the only way to exert comparable force against a male assailant.

In 1982, Catharine MacKinnon also commented on Wanrow. She wrote:

Wanrow is an exceptional woman because she fought back. She, therefore, receives the benefit of the history of all women who have not, presumably because they were disabled from doing so. It seems that you have to behave more like a man to get the benefit of being considered as a woman. The rationale predicated upon the situation of the unexceptional is available only to help the exceptional . . . . Is it only to the extent that women presumptively cannot respond that we are allowed to do so? *Wanrow*, in

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*We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV., 1013, 1013-71.

<sup>146</sup> See Schneider & Jordan, *supra* note 39, at 156.

<sup>147</sup> *Id.*

this light, is not about fighting back, although that is what its result supports. It is more as if the state will help keep women from being walked on so long as we struggle while down, but it may not support us if we stand up.<sup>148</sup>

MacKinnon discussed the *Wanrow* court's consideration of the substantive history of sexual inequality. MacKinnon concluded that

[t]he reasonable woman's subjectivity is equivalent to women's point of view under conditions of sex discrimination. The *Wanrow* court thus uses a subjective test to place the jury in the defendant's immediate surroundings but goes well beyond traditional notions of subjectivity (without becoming objective) in attributing to her a consciousness for acting that first sets her in the concrete historical context of gender and then attributes the meaning of that context to her mentality and physicality.<sup>149</sup>

Burning questions remain. They include: Does a woman have the right to kill to prevent herself from being raped? In the past, courts have refused to impose the death penalty on rape<sup>150</sup> or to hold that forced sex constitutes "great bodily injury" to trigger penalty enhancement<sup>151</sup>—despite the fact that the consequences of rape are often life-long and extremely debilitating. If a woman only has the right to use whatever force, *short of homicide*, necessary to prevent rape, how can she know exactly how much or how little force to employ to make her escape? *How does a woman know that a rapist will stop at rape?* Does a woman have the same right to "heat-of-passion" and rage to protect her bodily integrity and "honor" that men do? Does a man's Fourteenth Amendment right to use deadly force to prevent burglary or other invasions of his home and castle cover a woman's right to prevent any unwanted invasion of her body? Is a woman's "right to equality" a right to have inequality taken into account?

From about 1967 on, in addition to fighting for women's right to abortion and to equal pay for equal work, grass-roots feminists focused on the sexual objectification of women, and on issues of sexual violence towards women, such as stranger-rape and sexual harassment on the job and on the street. Only after a decade were

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<sup>148</sup> See Catharine MacKinnon, *Toward Feminist Jurisprudence*, 34 STAN. L. REV. 703, 729-30 (1982) (book review).

<sup>149</sup> *Id.* at 734.

<sup>150</sup> See *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

<sup>151</sup> See *People v. Caudillo*, 580 P.2d 274, 289 (Cal. 1978).

feminist activists able to expand their focus to include marital rape, date rape, domestic battery, and incest. During the 1980s, it became clear (to feminists working in the area) that most prostituted women were also incest victims, that many battered wives were treated as if they were their husband's or boyfriend's prostitutes, that both wife-batterers and serial killers of women were addicted to pornography, and that *all* women, whether they were prostitutes (the so-called "bad girls") or non-prostitutes (the so-called "good girls"), who dared to kill in self-defense were treated as if they were prostitutes, i.e., demon terrorists from hell who deserved no mercy.

No radical feminist equivalent to the Center for Constitutional Rights or the Southern Poverty Law Center existed; nor does it now exist. Feminist movement support for women who killed in self-defense was scattershot, local, and heartbreakingly under-financed. The media decided which cases the nation would follow, not the feminists, who were increasingly without resources and had been suffering a prolonged and exhausting siege on every front. The Battered Woman's Syndrome Defense was developed to help explain to juries how, for example, a woman could kill her batterer *when he is sleeping* and still claim "self-defense." However, this approach is highly controversial among feminists.<sup>152</sup> Critics say: If a woman defends herself in order to save her life, why view (or explain) female self-defense as a form of "diminished capacity," as "temporary insanity," or as "post-traumatic stress syndrome?" Either the woman's life was being threatened—or not; either, as a reasonable woman, she believed her life to be in danger and she acted in self-defense—or she didn't. Why view a woman's exercise of a legal right as a psychiatric disability?<sup>153</sup>

Although I will not go into this here, it is my understanding that the Battered Woman's Syndrome Defense is not necessarily meant to suggest a psychiatric disability. Rather, as Schneider and Jordan, Walker, and others, have suggested, this defense is meant to educate the jury about how widespread anti-woman domestic and sexual violence is and about what the *normal* human (female)

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<sup>152</sup> The government-subsidized "takeover" of the grass-roots shelter movement for battered women, with the cooperation of mental health professionals, made an open exchange of ideas even more difficult.

<sup>153</sup> Based on an interview with G. Kristan Miccio, Director and Attorney-in-Charge, Sanctuary for Families & Center for Battered Women Legal Services, New York, NY.

response to prolonged violence is.<sup>154</sup>

Given what we now know about how often prostituted women are raped, gang-raped, beaten, robbed, tortured and killed, Wuornos's claim that she killed six out of hundreds or thousands of violent johns, in self-defense, is plausible. Wuornos's claim certainly merited far more thought and consideration than the deliberate neglect it received from those who heard and tried her case.

#### LATEST DEVELOPMENTS

As disappointed as I was in Jenkins's defense of Wuornos, Jenkins and co-counsel, Billy Nolas and William Miller, look radiantly efficient compared to her next and current lawyer, Steven Glazer of Gainesville. Glazer, a civil lawyer, was originally recommended by Trish Jenkins not as a defense attorney, but to handle Wuornos's adoption by Pralle.<sup>155</sup>

I phoned Glazer for the first time on March 1, 1992. He told me he was not interested in having me or any other pro bono expert testify for the defense in upcoming trials two through six, nor was he interested in handling Wuornos's appeal of the Mallory conviction or in a future campaign for clemency. Glazer said he was only interested in how much money I was willing to pay for the right to interview Wuornos on Death Row, that his client had empowered him to do this and no more. Glazer told me that Dolores Kennedy, together with Robert Nolin, who have since published *On A Killing Day*, (and who ultimately never got to interview Wuornos), had offered \$10,000 cash up front with an additional percentage of the paperback monies.<sup>156</sup>

Glazer further told me that because he saw a "career" for himself in attracting criminals with stories to sell, his association with Wuornos would definitely be a "good advertisement." He added that he needed the money the media was willing to pay to interview Wuornos in order to fund his fight against the state of Florida if and when, despite the recent Supreme Court ruling over-turning

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<sup>154</sup> See Schneider & Jordan, *supra* note 39; WALKER, THE BATTERED WOMAN, *supra* note 4; WALKER, TERRIFYING LOVE, *supra* note 4; see also Elizabeth Schneider, *Equal Rights To Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 622, 630-47 (1980).

<sup>155</sup> Communications with Arlene Pralle and Aileen Wuornos (1991).

<sup>156</sup> Telephone Interview with Steven Glazer, Defense Attorney for Aileen Wuornos (Mar. 1, 1992).

New York's Son-of-Sam law,<sup>157</sup> Florida officials tried to interfere with Wuornos's ability to profit from her crimes and to assist her in her criminal cases as best he could. Also, Glazer pointed out, money was needed to pay for Arlene Pralle's visits to Death Row and to save Pralle's heavily mortgaged horse-farm.<sup>158</sup>

When I called Glazer a "pimp," he hung up on me and instructed Wuornos to cease communicating with me—which she did from mid-March to mid-June, 1992 and again from mid-August to October, 1992.<sup>159</sup>

In March of 1992, shortly after our conversation, Glazer had Wuornos plead "no contest" in Marion County in three additional trials. In open court, Glazer likened himself to the "Dr. Jack Kevorkian of the legal world," and asked Judge Thomas Sawaya to "assist him in helping his client to commit suicide."<sup>160</sup> (What next? A lawyer who offers to pull the switch? A lawyer who scalps tickets for front-row seats in the execution chamber?)

Wuornos was sentenced to death three more times.

In late October and early November, 1992, Glazer called and asked me to find a competent lawyer for Wuornos. He admitted that although he "meant well" and would "do anything to help Lee," he might not have done "right" by his client, and that he had a heart condition that required surgery.

Christopher Quarles, of the Marion County Public Defender's Office, filed the state-level appeal of Wuornos' first conviction in October, 1992. (This appeal was re-filed in January of 1993). Steven Glazer, however, never filed notice that he or his client wished to appeal the second, third, and fourth death sentences. Chief Assistant State Attorney Ric Ridgway, who prosecuted Wuornos, said that Glazer's

failure to file the appeals could lead Wuornos to claim Glazer was

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<sup>157</sup> See *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 112 S.Ct. 501, 503 (1991) (holding New York's Son-of-Sam Law, which prevented people "accused or convicted of a crime" from profiting from their stories, as inconsistent with the First Amendment).

<sup>158</sup> From April to July of 1991, Pralle often, and her husband once, asked me to provide Pralle with money to pay for Wuornos's collect phone calls. Pralle also asked me for valium for "bodily pains," for money to pay someone to help her with the horse-farm-work, and to consider moving in with her myself.

<sup>159</sup> Wuornos stopped writing to me again as of December, 1992. Although she has complained bitterly about Steven Glazer, she has not fired him as her lawyer.

<sup>160</sup> Laura Kauffmann, *Wuornos Asks Judge To End It All*, Ocala Star-Banner, Apr. 1, 1992, at 1A, 6A.

“ineffective.”

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Ridgway said that he doesn't know whether Wuornos wants to appeal, but that her counsel inadvertently has prevented her from exercising that right.

“Glazer, evidently, was operating under the impression that this court would appoint the public defender's office to handle the appeal,” Ridgway wrote in his motion to force Glazer to appeal.

Glazer said he got a phone call from Tallahassee about a month ago asking for Wuornos' paperwork.

“(Lee) doesn't want to appeal, but she doesn't have a choice,” Glazer said. “I told the judge my client has ordered me not to appeal, that's why the judge appointed the public defender because it seems like I have a natural conflict.”<sup>161</sup>

In November of 1992, just after asking for my help in obtaining another lawyer, Glazer pled Wuornos “guilty” in the fifth case in Dixie County—and renegotiated (or “upgraded”) her contract with Hollywood producer Giroux.<sup>162</sup>

From the start, people consistently asked me if Wuornos was “crazy.” (Never if she was “guilty”; most were convinced she was). It probably wouldn't be hard to diagnose Wuornos as a “borderline,” or “multiple” or “addictive” personality. But, according to most recent studies, such diagnoses are simply ways of *stigmatizing* Wuornos for the consequences of being an incest, child abuse, and serial rape victim.<sup>163</sup> The truth is, neither I nor any other mental health professional can know if Wuornos is “really” crazy until and unless she's no longer being abused—or no longer *afraid* of ever being abused again.

Everyone in Wuornos's life—her family of origin, her childhood neighbors, teachers, the home for unwed mothers, the Michigan juvenile and Florida adult correctional facilities, her lesbian lover, and the entire cast of “serial killer” characters: the prosecution, the defense, the private lawyers, the judges, the juries, the investigating police officers, Hollywood and the media, even We, the People—conspired, through acts of commission, omission, indifference, and negligence, to deprive Wuornos of the most minimal justice.

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<sup>161</sup> Laura Kauffmann, *Wuornos To Return For Appeals*, OCALA STAR-BANNER, Nov. 22, 1992, at 1A, 4A.

<sup>162</sup> Communications with Aileen Wuornos, Steven Glazer, and Jaqui Giroux (1992).

<sup>163</sup> See generally HERMAN, *supra* note 85.

