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## The "Monster" in All of Us: When Victims Become Perpetrators

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### The "Monster" in All of Us: When Victims Become Perpetrators

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# The “Monster” in all of Us: When Victims Become Perpetrators

Abbe Smith<sup>†</sup>

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*I and the public know  
What all school children learn,  
Those to whom evil is done  
Do evil in return.*<sup>1</sup>

## I. INTRODUCTION

At the end of Katherine Hepburn’s closing argument on behalf of a woman charged with trying to kill her philandering husband in the 1949 film *Adam’s Rib*,<sup>2</sup> Hepburn tells the jury about an ancient South American civilization in which the men, “made weak and puny by years of subservience,” are ruled by women. She offers this anthropological anecdote in order to move the jury to understand why a woman, whose “natural” feminine constitution should render her incapable of murder,<sup>3</sup> might turn to violence. Lest the jury not understand the point, she makes it plainer. “Every living being is capable of attack if sufficiently provoked,” she argues. “Assault lies dormant within us all. It requires only circumstance to set it in violent motion.”<sup>4</sup>

Spencer Tracy, who is both the prosecuting attorney and Hepburn’s husband, is horrified by this argument. They fight about it later at home.<sup>5</sup>

In Alice Sebold’s achingly sad and oddly uplifting novel *The Lovely Bones*,<sup>6</sup> the narrator is Susie Salmon, a fourteen-year-old girl who was raped and murdered. The neighborhood man who lured her to her brutal death manages to dispose of most of her remains without detection.<sup>7</sup> Susie’s body is never

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1. W.H. Auden, *September 1, 1939*, in COLLECTED POEMS 86 (Edward Mendelson ed., 1991).

2. ADAM’S RIB (Metro-Goldwyn-Mayer 1949).

3. *Id.*; see Phyllis Chesler, *A Woman’s Right to Self-Defense: The Case of Aileen Carol Wuornos*, 66 ST. JOHN’S L. REV. 933, 938 (1993) (noting “[w]omen are held to higher and different standards than men”). “People expect men to be violent.” Chesler, *supra*, at 938.

4. ADAM’S RIB, *supra* note 2.

5. ADAM’S RIB, *supra* note 2.

6. ALICE SEBOLD, *THE LOVELY BONES* (2002).

7. *Id.* at 20. Appallingly, a lone arm is later discovered. *Id.*

found and her killer never captured. From heaven, Susie tells about the aftermath of her death—the struggle of her family and friends to hold on to hope that she will be found alive, and then to accept the unthinkable—and her own adjustment to her new “life.” She describes her killer’s efforts to cover his tracks for what he did to her and other girls before and after. She occasionally speaks of a desire for revenge:

Part of me wished swift vengeance, wanted my father to turn into the man he could never have been—a man violent in rage. That’s what you see in movies, that’s what happens in the books people read. An everyman takes a gun or a knife and stalks the murderer of his family; he does a Bronson on them and everyone cheers.<sup>8</sup>

In the end there is a kind of biblical vengeance: the murderer is struck dead by an icicle outside a bus station after a failed attempt to entice yet another girl.<sup>9</sup>

Then comes the haunting face of Charlize Theron, transformed into multiple killer Aileen Wuornos in the recent feature film, *Monster*.<sup>10</sup> Although some facts of the Wuornos case remain in dispute,<sup>11</sup> this much is true: before she was two years old, Wuornos was abandoned by her mother; her father, whom she never knew, killed himself in prison while serving time for the rape of a seven-year-old girl; she was raised by alcoholic grandparents who physically and emotionally abused her; she began engaging in prostitution by the time she was eleven or twelve; at thirteen, she was raped by a family friend; when she became pregnant she was forced to give up the baby and was kicked out of the house; at fourteen, she was living in the woods outside her house; by sixteen, she was totally on her own; and she was working as a “highway hooker” in Florida by the time she was twenty.<sup>12</sup> Her crimes were seemingly cold-

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8. *Id.* at 58.

9. *See id.* at 327 (describing death of Susie’s murderer). “A moment later, the icicle fell. The heavy coldness of it threw him off balance just enough for him to stumble and pitch forward. It would be weeks before the snow in the ravine melted enough to uncover him.” *Id.* In the novel, we also learn a little about Susie’s abuser and killer. When still a young child, he was abandoned by his mother, and left in the clutches of a brutal, unfeeling father. *See id.* at 97.

10. *MONSTER* (MPD Worldwide 2003); *see also* AILEEN: LIFE AND DEATH OF A SERIAL KILLER (Strand Releasing 2003); AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER (Strand Releasing 1992) (featuring scenes from Wuornos’ videotaped statements to police and her sentencing hearing). Theron was named best actress for her performance in *Monster* at both the Golden Globe and the Academy Awards. Calling Theron’s performance “remarkable,” *New Yorker* film critic David Denby urged the Academy to do what is just. *See* David Denby, *Killer: Two Views of Aileen Wuornos*, *NEW YORKER*, Jan. 26, 2004, at 84, 86. Denby suggested that “if the notoriously squeamish and slumberous members of the Academy can pull themselves together and face ‘Monster,’ they should know whom to vote for as the best actress of the year.” Denby, *supra*, at 86.

11. *See* Sue Russell, *More of a Monster Than Hollywood Could Picture*, *WASH. POST*, Feb. 8, 2004, at B3 (describing Wuornos as “wounded but vicious”). Russell, a reporter who covered the Wuornos case, argues that the movie “transforms [Wuornos] into something we can stomach . . . more easily than . . . a woman who’s a ruthless robber and murderer.” *Id.*

12. *See also* Chesler, *supra* note 3, at 954-55; Chimene I. Keitner, *Victim or Vamp? Images of Violent Women in the Criminal Justice System*, 11 *COLUM. J. GENDER & L.* 39, 63 (2002). *See generally* DOLORES KENNEDY, *ON A KILLING DAY* (1994); SUE RUSSELL, *LETHAL INTENT* (2003).

blooded: she shot and killed seven men, shooting them multiple times, sometimes in the back as they were fleeing.<sup>13</sup> She then stole their cars and cash.<sup>14</sup>

Although victims do not always become perpetrators, a truism repeated by prosecutors at sentencing as if it were a profound revelation never before put into words, it is the rare serious perpetrator who was not also a victim. Of course, there are people who commit crime out of self-indulgence,<sup>15</sup> self-interest,<sup>16</sup> meanness,<sup>17</sup> or madness.<sup>18</sup> But among those who have committed serious crime, it is the rare perpetrator who has not also suffered. It is the rare death row inmate whose life does not read like a case study of extreme deprivation and abuse.<sup>19</sup> It is the rare juvenile incarcerated in an adult prison for rape or murder who has had anything other than the cruelest of childhoods.<sup>20</sup>

As a career indigent criminal defense lawyer,<sup>21</sup> I live in the world of victims-turned-perpetrators. I am often more surprised by my damaged clients who do *not* commit serious, violent crimes than by those who do. Some might say that this is strange work for a feminist; I spend my time representing mostly men and boys accused of crime and violence, often against women.<sup>22</sup>

But, to me, it is all of a piece.<sup>23</sup> I am concerned about inequality, poverty, social injustice, and access to justice.<sup>24</sup> I have written before about being a feminist criminal defense lawyer.<sup>25</sup> To me, the stranger thing is for someone to

13. See Keitner, *supra* note 12, at 58-59.

14. See Russell, *supra* note 11, at B3.

15. See Monica Davey, *Lawmaker Guilty of Manslaughter; Says He'll Resign*, N.Y. TIMES, Dec. 9, 2003, at A1 (reporting on U.S. Representative Bill Janklow's manslaughter conviction for striking and killing motorcyclist on South Dakota road). Apparently, Janklow liked to drive fast and made no bones about it. *Id.*

16. See Alex Berenson, *There's a Reason Your Mother Told You Not to Lie*, N.Y. TIMES, Mar. 7, 2004, at WK 14 (reporting on Martha Stewart's conviction for obstruction of justice and making false statements to federal law enforcement agents investigating insider trading).

17. See BRUCE SPRINGSTEEN, *Nebraska, on NEBRASKA* (Columbia Records 1982). "They declared me unfit to live said into that great void my soul'd be hurled/ They wanted to know why I did what I did/ Well sir I guess there's just a meanness in this world." *Id.*

18. See generally DOROTHY OTNOW LEWIS, *GUILTY BY REASON OF INSANITY: A PSYCHIATRIST EXPLORES THE MINDS OF KILLERS* (1998).

19. See Phyllis Crocker, *Feminism and Defending Men on Death Row*, 29 ST. MARY'S L.J. 981, 986-87 (1998).

20. See *infra* Part II.A (discussing Wuornos' childhood); *infra* Part IV (discussing Antoine). See generally JAMES GARBARINO, *CHILDREN IN DANGER: COPING WITH THE CONSEQUENCES OF COMMUNITY VIOLENCE* (1992) (exploring link between growing up amid violence and danger, and subsequent criminal violence).

21. See generally Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Heroic, Empathic Public Defender*, 37 U.C. DAVIS L. REV. 1203 (discussing sustaining motivations for public defenders).

22. See generally Abbe Smith & Ilene Seidman, *Lawyers for the Abused and Lawyers for the Accused: An Interfaith Marriage*, 47 LOY. L. REV. 415 (2001).

23. See generally Crocker, *supra* note 19.

24. See Crocker, *supra* note 19, at 991-92.

25. See Smith & Seidman, *supra* note 22, at 420 n.22 (describing author as "relatively sensitive, feminist

be a feminist and a prosecutor.<sup>26</sup>

In this Essay, I will discuss the “cycle of violence”<sup>27</sup> that transforms victims into perpetrators, focusing on the Aileen Wuornos case. I will examine the odd lack of support for Wuornos and others like her as soon as they become perpetrators. I will then talk about men and boys who have been sexually abused and become perpetrators. I will conclude by arguing that the prevailing feminist approach to crime and violence has been too narrowly focused on victims, and has—witting or not—contributed to the nation’s extraordinary and exclusive turn to punishment over the past three decades.<sup>28</sup>

## II. AILEEN WUORNOS: VICTIM AND PERPETRATOR

### A. Her Life

She was not born a “bad seed”<sup>29</sup>—I do not believe that such a thing exists<sup>30</sup>—but, Aileen Wuornos’ fate was sealed early on.<sup>31</sup> She never stood a chance against the destructive forces in her life. Wuornos’ abandonment by her parents before she could speak suggests that she was rejected (or at the very

criminal defense lawyer”). See generally Abbe Smith, *Criminal Responsibility, Social Responsibility, and Angry Young Men: Reflections of a Feminist Criminal Defense Lawyer*, 21 N.Y.U. REV. L. & SOC. CHANGE 433 (1994); Abbe Smith, *Rosie O’Neill Goes to Law School: The Clinical Education of a Sensitive, New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1 (1993).

26. See MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS’ ETHICS 339-40 (3d ed. 2004) (disagreeing over whether single “conscientious prosecutor” does more good than ten zealous defenders). See generally Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?*, 14 GEO. J. LEGAL ETHICS 355 (2001).

27. See generally Cathy Spatz Widom, *Understanding the Consequences of Childhood Victimization*, in THE TREATMENT OF CHILD ABUSE (R.M. Reece ed., 2000); CATHY S. WIDOM & MICHAEL G. MAXFIELD, NAT’L INST. OF JUSTICE, AN UPDATE ON THE CYCLE OF VIOLENCE (Feb. 2001); Jeanne G. Kaufman & Cathy Spatz Widom, *Childhood Victimization, Running Away, and Delinquency*, 36 J. RES. CRIME & DELINQUENCY 347 (1999); Helene Raskin White & Cathy Spatz Widom, *Intimate Partner Violence Among Abused and Neglected Children in Early Adulthood: The Mediating Effects of Early Aggression, Antisocial Personality, Hostility, and Alcohol Problems*, 29 AGGRESSIVE BEHAVIOR 332 (2003); Cathy Spatz Widom, *Motivations and Mechanisms in the “Cycle of Violence,”* in NEBRASKA SYMPOSIUM ON MOTIVATION 37 (2000).

28. See also ELLIOT CURRIE, CRIME AND PUNISHMENT IN AMERICA 3 (1998) (noting United States built world’s largest prison system in past twenty-five years). See generally MARC MAUER, RACE TO INCARCERATE 50-80 (1999) (documenting the dramatic rise in incarceration in United States and critically examining politics behind it). As researcher Marc Mauer notes, the United States is witnessing a “wave of building and filling prisons virtually unprecedented in human history.” MAUER, *supra*, at 9. As of 2003, the United States has the highest incarceration rate in the world. See Gail Russell Chaddock, *US Notches World’s Highest Incarceration Rate*, CHRISTIAN SCI. MONITOR, Aug. 18, 2003, at 2.

29. See THE BAD SEED (Warner Brothers 1956) (depicting child descendant of cold-blooded multiple murderer); see also MAXWELL ANDERSON, THE BAD SEED (1955).

30. See GITA SERENY, CRIES UNHEARD: WHEN CHILDREN KILL (1998) (examining young Mary Bell, who killed two toddlers in England in early 1970s); GITA SERENY, THE CASE OF MARY BELL (1972) (looking at same case at earlier point in time).

31. See Denby, *supra* note 10, at 84 (noting in 2003 documentary, *Aileen: Life and Death of a Serial Killer*, Wuornos “bears all the marks of a spectacularly awful life as an abused kid, an itinerant prostitute, and a longtime convict”).

least unwanted and neglected) from the moment of birth. No doubt she received little care or affection in her earliest, most formative months and years. Her later years were no better.<sup>32</sup>

Aileen Wuornos was born on February 29, 1956, in Troy, Michigan.<sup>33</sup> Her mother Diane, an unhappily married sixteen-year-old with one child already, was horrified to find herself pregnant again.<sup>34</sup> It was enough that she was in an increasingly abusive marriage that featured almost daily beatings, even when she was pregnant.<sup>35</sup> She went through with the pregnancy, but divorced Aileen's father, Leo Pittman, with whom she had eloped when she was fourteen, before Aileen was born.<sup>36</sup> Diane abandoned Aileen and her slightly older brother Keith only months after Aileen's birth.<sup>37</sup> Neither child was terribly well cared for during the short time they spent with their biological mother. When Aileen was six months and Keith not quite a year and a half, the children were discovered alone in an attic covered with feces and flies.<sup>38</sup>

Aileen never knew her father Leo Pittman, a man with mental problems and a history of violent behavior.<sup>39</sup> Following his conviction for child rape and kidnapping, he was sent to a psychiatric hospital and eventually prison, where he hanged himself.<sup>40</sup>

Aileen's maternal grandparents, Lauri and Britta Wuornos, reluctantly raised her and Keith as their own children, eventually adopting them.<sup>41</sup> Although her grandmother wanted to care for the children, her grandfather resented the

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32. The biographical information about Aileen Wuornos that follows has been culled from a variety of sources, including court papers, two documentary films and two books about Wuornos. See Initial Brief of Appellant at 16, *Wuornos v. Florida*, 644 So. 2d 1000 (Fla. 1994) (No. 79,484) [hereinafter Brief Challenging Conviction and Sentence in Richard Mallory Case]; Initial Brief of Appellant at 12, *Wuornos v. Florida*, 644 So. 2d 1012 (Fla. 1994) (No. 81,059) [hereinafter Brief Challenging Death Sentences in Three Murder Cases]; Initial Brief of Appellant at 6, *Wuornos v. Florida*, 676 So. 2d 972 (Fla. 1996) (No. 81,498) [hereinafter Brief Challenging Conviction and Sentence in Walter Antonio Case]. See generally AILEEN: LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10; AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER, *supra* note 10; KENNEDY, *supra* note 12; RUSSELL, *supra* note 12.

33. Jeff Brazil, *Childhood, Police Profile Follow Wuornos to Court*, ORLANDO SENTINEL TRIB., Dec. 8, 1991, at 1.

34. *Id.*

35. RUSSELL, *supra* note 12, at 61-64.

36. RUSSELL, *supra* note 12, at 61-64.

37. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 16; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 11-12. Keith was only eleven months older than Aileen. See RUSSELL, *supra* note 12, at 21.

38. Brief Challenging Death Sentence in Three Murder Cases, *supra* note 32, at 12.

39. Aside from the rape and sodomy of a seven-year-old girl in Kansas, Aileen Wuornos' biological father Leo Pittman was suspected of sexually assaulting two ten-year-old girls and killing another child in Michigan. See RUSSELL, *supra* note 12, at 72.

40. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 16; RUSSELL, *supra* note 12, at 76.

41. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 16; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12. Aileen did not find out that she was adopted and that her "parents" were in fact her grandparents until she was ten. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 16.

financial burden and associated Aileen and Keith, especially Aileen, with their wayward, promiscuous mother, who had brought shame to the family.<sup>42</sup> Aileen was told she was “worthless,” “wicked,” and unwanted from the start.<sup>43</sup> Her grandfather told her that she “[s]hould never have been born.”<sup>44</sup>

Aileen’s grandfather made it clear that he favored his own biological children, Lori and Barry, who were still living in the house.<sup>45</sup> Though Aileen’s grandfather was known to be a harsh and intimidating authoritarian, he spared his “real children” the physical and emotional abuse he heaped upon Aileen and Keith.<sup>46</sup>

Aileen’s grandparents, especially her grandfather, were strict disciplinarians who believed in brutal corporal punishment for the slightest transgressions, imagined or real.<sup>47</sup> Her grandfather—believed by some to be Aileen’s true biological father, which might explain Diane’s behavior<sup>48</sup>—was an alcoholic who lashed out at Aileen at the slightest provocation. He was an ugly, angry drunk who was described by his own daughter as “the meanest man in town.”<sup>49</sup>

One night when Aileen was seven, she failed to eat her baked potato at dinner. When her grandfather found the potato in the garbage, he forced Aileen to fish it out and eat it. He then took Aileen to the bathroom, stripped her from the waist down, and beat her with a belt so severely that she was unable to attend school the next day.<sup>50</sup>

A childhood friend of Aileen’s recounted skipping school with Aileen and coming home to Aileen’s grandfather’s wrath. On this particular occasion, Aileen’s grandfather beat Aileen with his belt for at least five minutes, while the friend stood by and watched.<sup>51</sup>

There is evidence that Aileen was sexually, as well as physically, abused by her grandfather. As a young child, Aileen was made to pull down her shorts and underpants and bend over a wooden table in the middle of the kitchen

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42. Brief challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12. Diane moved to Texas shortly after abandoning Aileen and Keith. See RUSSELL, *supra* note 12, at 66.

43. RUSSELL, *supra* note 12, at 20.

44. RUSSELL, *supra* note 12, at 20.

45. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12. Aileen regarded Lori and Barry as siblings, not as aunt and uncle. *Id.*

46. See RUSSELL, *supra* note 12, at 21.

47. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12.

48. Some believe that Lauri Wuornos first abused Diane and later Aileen. See Brief Challenging Conviction and Sentence in Walter Antonio Case, *supra* note 32, at 6 n.1 (noting that Wuornos’ mother acknowledged sexual and physical abuse by her father). But see RUSSELL, *supra* note 12, at 67-68 (stating Diane denied “full-blown sexual abuse” by her father but admitted her father kissed her “like a man would kiss a woman”). Both mother and daughter engaged in behavior consistent with child sexual abuse: promiscuity at a young age, running away, and drug and alcohol use. See Kaufman & Widom, *supra* note 27, at 348-50.

49. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17 (quoting Aileen’s mother Diane).

50. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12.

51. AILEEN: LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10.



while her grandfather viciously spanked her bare buttocks with a wide, folded over, western-style leather belt. Other times he made her lay face down, spread-eagle and naked on the bed for whippings.<sup>52</sup> Although Aileen later downplayed the idea that her grandfather had sexually abused her, she did tell a friend when she was in her early teens (someone she liked a lot and wanted as a boyfriend) that she had had sex with her grandfather.<sup>53</sup> Later, she also recounted a sexual incident that was eerily similar to something her mother had experienced.<sup>54</sup> She said that when she was in her early teens, her grandfather grabbed her, in front of her grandmother, and kissed her on the mouth, forcing his tongue down her throat.<sup>55</sup>

When Aileen was not being abused, she was doing self-destructive, dangerous things. When Aileen was nine she was badly injured while playing with gasoline and matches. She poured a mix of gasoline and oil onto the ground and lit it, setting fire to her head and hair.<sup>56</sup> Her face and hands were badly burned, resulting in permanent scarring which only added to her feelings of shame and estrangement.<sup>57</sup> She started selling her body—showing her breasts to boys for money—when she barely had breasts to show.<sup>58</sup> She hung out with much older people, including an older couple who gave alcohol and drugs to kids and engaged in sex with them.<sup>59</sup>

It was clear at an early age that Aileen was a troubled child. A 1970 school report ended with a warning: "It is vital for this girl's welfare that she receive counseling immediately."<sup>60</sup> Instead of receiving counseling, or any other therapeutic intervention, Wuornos turned to drugs, alcohol, and sex by the time she was in her early adolescence. She attempted suicide at least twice, and possibly as many as six times.<sup>61</sup> On one occasion, she shot herself in the abdomen with a gun.<sup>62</sup>

When she was raped at age thirteen, her grandfather held her responsible. She received no medical or psychological treatment after the assault. She hid her subsequent pregnancy until she began to show because she was scared of her grandfather's reaction. She was right to be frightened. When her grandfather found out, he forced her to live in a home for unwed mothers and

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52. See RUSSELL, *supra* note 12, at 20.

53. See RUSSELL, *supra* note 12, at 29.

54. See RUSSELL, *supra* note 12, at 68.

55. See RUSSELL, *supra* note 12, at 57.

56. See RUSSELL, *supra* note 12, at 37.

57. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17; RUSSELL, *supra* note 12, at 37.

58. See Brazil, *supra* note 33, at 1.

59. See RUSSELL, *supra* note 12, at 42-45.

60. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17.

61. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 18.

62. See RUSSELL, *supra* note 12, at 112.

give the baby up for adoption.<sup>63</sup> Although she very much wanted to, she was not allowed to even see the baby.<sup>64</sup> At her grandmother's insistence, Aileen was allowed to return home. When her grandfather continued to abuse her, however, Aileen ran away. Aileen's grandmother died shortly thereafter and her grandfather put Aileen in the juvenile home. When she was released, he refused to allow her back in the house.<sup>65</sup>

While she was alive, Aileen's grandmother was an ineffectual caretaker at best. She may have loved Aileen, but she failed to protect her. She was a depressed and passive woman who could not stand up to her husband. She was also an alcoholic, who eventually died of a liver disorder.<sup>66</sup>

Aileen's older "siblings" were no help. When Aileen began to show signs of abuse—when she engaged in sexual conduct at a very young age and attempted suicide—her sister/aunt threatened to commit her to a mental hospital.<sup>67</sup> Her brother/uncle testified against Aileen at the penalty phase of one of her capital trials, describing Aileen's childhood as "normal," minimizing his father's temper, disputing Aileen's claim that his father had beaten Aileen, and calling his father a "man you could really look up to."<sup>68</sup> Her sister/aunt supported the brother/uncle's claims.<sup>69</sup> Aileen's brother/uncle never spoke to Aileen after her arrest for murder, saying "there [i]s no reason for me to talk to her."<sup>70</sup> He never even asked how she was doing.<sup>71</sup>

Aileen was closest to her biological brother Keith, who died of cancer when he was just twenty-one.<sup>72</sup> Some say she had an incestuous relationship with Keith.<sup>73</sup> She was crushed by Keith's death.<sup>74</sup>

By fourteen, Aileen was living on the streets. She was abusing alcohol and drugs. She slept in the woods behind her house, usually by herself and occasionally with another troubled youth. She would make a lean-to or sleep in abandoned cars.<sup>75</sup> She took showers at friends' houses.<sup>76</sup> It is impossible to

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63. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17-18.

64. See RUSSELL, *supra* note 12, at 79. "Given her tender age, there was really no decision to be made about whether or not she would keep the baby, but she did want to see it just once before it was taken away and put up for adoption. [Her grandfather], however, wouldn't hear of it." *Id.*

65. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17-18.

66. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17-18.

67. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 18.

68. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 19-20; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 17.

69. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 17.

70. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 20.

71. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 20.

72. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 13. Aileen's grandfather eventually committed suicide—prior to Aileen's notoriety. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17.

73. See RUSSELL, *supra* note 12, at 29-30.

74. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17.

75. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 13; AILEEN: LIFE

imagine what such a life must have been like for a fourteen-year-old girl. She had already endured terrible trauma. Now, she was living outside during the long, cold Michigan winter.

But Aileen was not skilled at stirring sympathy in others. She wasn't very likeable. As a child and adolescent, she had a fierce and unpredictable temper.<sup>77</sup> She didn't seem capable of holding her tongue and would lash out at people—peers, adults, teachers—for no clear reason.<sup>78</sup> Although she tried to fit in by being "nice," by buying other kids cigarettes and food, and by offering sex to boys, she only succeeded in being an object of ridicule.<sup>79</sup> People called her names—bitch, slut, whore, ugly bitch, and "Cigarette Pig" (because she smoked at an early age and because she was willing to give sexual favors to boys in exchange for cigarettes).<sup>80</sup>

By the time she was sixteen, Aileen was a ninth-grade dropout<sup>81</sup> and a "throwaway,"<sup>82</sup> making it on her own by panhandling and prostitution. A good trick meant a night in a warm motel and a bath.<sup>83</sup> No matter how hard she tried, she was rejected and exploited by her peers and her family.<sup>84</sup> Eventually, she left town, hitchhiked around the country, and became more heavily involved in drugs and alcohol. Drawn by the warm climate, she made her way down to Florida.<sup>85</sup>

Necessity made Aileen streetwise, guarded, and tough; life on the streets for a young woman can be treacherous.<sup>86</sup> As a prostitute, Aileen was often attacked by clients. Early on, she tried to fend off her attackers using mace. On each occasion, the men grabbed the mace from Aileen, used it against her, raped her, and left her in the woods for dead.<sup>87</sup> Throughout her career, she was raped many times and gang-raped at least once.<sup>88</sup> Aileen's sort of prostitution

AND DEATH OF A SERIAL KILLER, *supra* note 10.

76. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 13; see also Paul Lomartire, *Aileen & Dawn: A Sisterhood Haunted by Memories and Madness*, PALM BEACH POST, Feb. 29, 2004, at 1A.

77. See RUSSELL, *supra* note 12, at 21.

78. See RUSSELL, *supra* note 12, at 91-95.

79. See RUSSELL, *supra* note 12, at 23, 26.

80. See RUSSELL, *supra* note 12, at 26-27.

81. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 18.

82. Candice Skrapec, *The Female Serial Killer: An Evolving Criminality*, in MOVING TARGETS: WOMEN, MURDER AND REPRESENTATION 242 (Helen Birch ed., 1994).

83. See AILEEN: THE LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10.

84. See Brazil, *supra* note 33, at 1 (recounting incident). Wuornos once threw a party and the boys who came threw her in the snow and locked her out of her own house. *Id.* Regarding her family, Wuornos often used money she made peddling sex to buy things for her brother Keith and sister/aunt Lori, who accepted her cash but had little else to do with her. *Id.*

85. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 18.

86. See Chesler, *supra* note 3, at 947 (referring to Wuornos as "a seriously abused child and a serially raped and beaten teenage and adult prostitute, [who] has been under attack all her life, probably more than any soldier in any real war"). See generally Skrapec, *supra* note 82.

87. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 13.

88. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 13.

was the most dangerous: she made her living picking up strangers on the road who would drive her to a secluded area to have sex.

Had Wuornos' story ended there—had she been killed by a john, brutalized and discarded like the typical serial murder victim<sup>89</sup>—she would likely have been regarded as just that: a victim.<sup>90</sup> She might have been a poster girl epitomizing male violence against women. But her story becomes more complicated.

### B. Her Crimes

A few months before her first killing, Aileen Wuornos began carrying a gun.<sup>91</sup> As Wuornos would later say to the police, "I've been beat up so bad that you couldn't describe me. So I got to the point where I needed a gun and that's why I got this gun."<sup>92</sup> Although she had a prior criminal record,<sup>93</sup> her former crimes did not suggest a future killing spree.

The prosecution's theory when she was tried for the murders was that Wuornos killed her victims for money or to prevent apprehension—that she killed in order to rob and get away with it—but Wuornos always maintained that the killings were in self-defense and that the robberies were an afterthought. When she was asked by the police to explain what motivated her to take the men's property, Wuornos replied:

I guess it was after, it was pure hatred. Yea, I think afterward, it was like, You bastard, you woulda hurt me and, uh, I'll take the stuff and get my money's

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89. See James Alan Fox & Jack Levin, *Multiple Homicide: Patterns of Serial and Mass Murder*, 23 CRIME & JUST. 407, 424 (1998) (noting "extremely high rate of victimization" of prostitutes by serial killers); see also Brazil, *supra* note 33, at 1 (quoting Dawn Botkins, one of Wuornos' only childhood friends). Botkins stated that she "'always thought Aileen would be involved in something like this, but I figured it would have been her who would have been the one killed, not the other way around.'" Brazil, *supra* note 33, at 1.

90. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 20. (quoting Dawn Neiman, friend of Aileen Wuornos). Neiman wrote that Wuornos' "life [was] one tragedy after another. All she ever wanted was to be loved and to be at peace and to not have anyone hurt her anymore." *Id.*

91. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 12 (noting Wuornos carried gun for protection for approximately six months when she met up with Mallory, the first victim).

92. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 61 (quoting from appellate record, at 593).

93. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 14. She had been convicted of robbery with a deadly weapon. *Id.* The genesis of Wuornos' prior "violent felony," aggravating circumstances in her later crimes under Florida statute § 921.141(5)(b), was a drunken fight with her live-in boyfriend, who had rejected her. *Id.* After consuming a case of beer, a half-pint of liquor, and four Librium, Wuornos, clad in a bikini, grabbed a gun and headed for the beach with a plan to commit suicide there. *Id.* She stopped at a convenience store and put her purse on the counter. *Id.* Although she had no plan to rob the store, a frightened clerk saw the gun in her purse. *Id.* In a self-destructive, attention-getting move, she impulsively robbed the clerk at gunpoint and was arrested almost immediately. *Id.* She told a psychiatrist that she decided to test her boyfriend's love by getting arrested. See Brazil, *supra* note 33, at 1. If he got her out of jail, it meant that he loved her and she wouldn't have to kill herself. *Id.* If he let her there, it meant that he was like all the others and she would have no choice but to commit suicide. *Id.*

worth because some of 'em didn't even hardly have any money . . . some of 'em didn't have *any* money . . . . I think I took 'em just for the fact that, you bastards, you were gonna hurt me, you were gonna rape me, or whatever you were gonna do, well, I'll just, you know, keep these little items so I don't have to buy 'em or something'. I don't know. I just . . .

Q. It was like a final revenge?

A. Yea. Okay. That would do.<sup>94</sup>

It is important to recognize that Wuornos was not a genius. Her IQ was in the low 80s.<sup>95</sup> She repeatedly took and failed the aptitude test required for joining the armed forces.<sup>96</sup> She tried but could not get legitimate work, so she kept working as a prostitute.<sup>97</sup> She was hardly capable of cooking up an elaborate story in order to fool the police and prosecution. Her three-hour police statement, which was the product of a lengthy interrogation, rings true:

Q. [D]id you tell them beforehand that you were gonna kill 'em?

A. Oh, no. No, I didn't . . . I had no intentions of killing anybody . . . it wasn't intentional killing. It wasn't just kill somebody. It was because they physically attacked me . . . . I was afraid that if I shot 'em one time and they survived, my face and all that, description of me. Would be all over the place and the only way I could make money was to hustle. And I knew these guys would probably . . . rat on me if they survived . . . I was hoping . . . that I wouldn't of had gotten caught for it because I figured that these guys deserved it. Because these guys were gonna either rape, kill—I don't know what they were gonna do to me . . . .

Q. . . . [Y]ou had to go ahead and kill these men so that they couldn't testify against you . . . ?

A. Oh, no, I didn't even think that either. I shot 'em 'cause it was like to me, a self defending thing because I felt that if I didn't shoot 'em and I didn't kill 'em, first of all, if they survived, my ass would be gettin' in trouble for attempted murder, so I'm up shit creek on that one anyway, . . . I mean I had to kill 'em—or it's retaliation, too. It's like, you bastards. You were gonna—you were gonna hurt me.<sup>98</sup>

Whether or not it was justifiable homicide, or justifiable only in Wuornos' .

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94. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 62 (quoting from the appellate record, at 626-28).

95. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 17 (noting that Wuornos' IQ was eighty-one, placing her in low, dull-normal range, only one point away from borderline retarded).

96. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 12.

97. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 12.

98. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 63 (quoting from appellate record, at 628-29).

mind, Wuornos always maintained that the killings were sudden and unplanned, and not the product of premeditation, as the State maintained. Nor were the killings a diabolical scheme to wipe out men who pay for sex, a favorite media theory. As Wuornos told the police:

Q. . . . [No]ne of this was planned?

A. No . . . I was definitely gonna shoot 'em to let 'em die, because they . . . in my head . . . they were gonna rape me, kill me, strangle me, . . . they were crossing my line . . . I don't know if they were gonna strangle me, – if they had a gun . . . . Oh, god, I was pretty drunk then, too. Uh, every time these guys would get me loaded, that's what it is. They'd get me wiped out so they could have the better end of me . . . get me so loaded that they could, you know, physically fuck with me.<sup>99</sup>

Although she was dubbed the nation's first female serial killer by the media, Wuornos' conduct did not fit the prototype.<sup>100</sup> Indeed, her conduct was unlike that of any previous serial killer: unlike the calm, controlled, and deliberate serial killer, Wuornos was drunk during the killings, claimed to have killed in self-defense, and expressed genuine remorse about what she had done. As she said to the police:

I'm very sorry about this. I didn't mean to do what I did. I just – I don't think I knew what I was doing . . . I'm a good person inside but when I get drunk I don't know what happens when somebody messes with me . . . . When somebody hassles me, I mean, I'm like, don't fuck with me . . . I never woulda hurt anybody unless I had to and I had to at the time . . . .<sup>101</sup>

She added pitifully: “[m]aybe it was self defense, maybe it was stupid, . . . maybe I [could have] got away from them . . . .”<sup>102</sup> Nothing here sounds like a

99. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 63 (quoting from the appellate record, at 639, 644).

100. See Chesler, *supra* note 3, at 946 (noting that serial killers are mainly white male loners who hate women, are obsessed with pomography, and sexually abuse their victims either before or after killing them); Fox & Levin, *supra* note 89, at 413-14 (describing the profile of the typical serial killer as a white man in his late twenties or thirties who targets strangers at or near his home or workplace based on some sexual fantasy involving capture and control). As Fox and Levin note, serial murder is a form of “expressive, rather than instrumental violence . . . . Not only do [serial murderers] savor the act of murder itself, but they rejoice as their victims scream and beg for mercy.” Fox & Levin, *supra* note 89, at 415. This is at odds with the State's theory that Wuornos killed in order to rob. Also, according to the research on serial homicide, serial killers hardly ever use a firearm, while Wuornos never used anything but a gun. Fox & Levin, *supra* note 89, at 416. *But see* Julie Cluff et al., *Feminist Perspectives on Serial Murder: A Critical Analysis*, in SERIAL MURDER: MODERN SCIENTIFIC PERSPECTIVES 533, 546 (Elliott Leyton ed., 2000) (calling Wuornos serial killer). *See generally* SERIAL MURDER: MODERN SCIENTIFIC PERSPECTIVES (Elliott Leyton ed., 2000); Skrapec, *supra* note 82. Cluff argued that Wuornos killed for a “sense of power” and in order to “tak[e] control of situations in which she feared she had either lost control or was in danger of losing control.” Cluff, *supra*, at 546.

101. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 60-61 (quoting from appellate record, at 553, 564).

102. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 61 (quoting from appellate record, at 604).

serial killer.

At worst, Wuornos offered a story of imperfect self-defense in the face of anticipated physical assault or rape,<sup>103</sup> excessive force to collect for services rendered when the recipient reneged on payment ("self-help"), or homicide while intoxicated. None of these scenarios is exonerating, but each could be said to be mitigating.<sup>104</sup> Upon reading Wuornos' lengthy statement to the police, one would never think of *capital murder* except for the number dead. As Wuornos explained to the police:

if you're a hooker, and you get somebody who starts messin' with you, then you get pissed off. And I'm sorry 'cause I've been raped 9 times in my life. And I wasn't about to let somebody skip out on my money that I'm working for . . . I wasn't about to let somebody rape me either. So when they got really huffy with me, which I had gone through over 250,000 men, and they got – (inaudible) – I got 6 guys. That's because they got rough with me and I defended myself . . . Most of the times I was drunk. 'Cause I'll admit, I'm an alcoholic. I mean [twenty four] hours a day I was drunk. . . . I killed 'em 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. And I'm sure if they found out I had a weapon . . . I always had it in plain view . . . if after the fightin' they found it, they would've shot me. So I just shot them. But I'm glad because I feel very guilty. I don't think I should live. I think I should die . . . I should die because I killed all those people. Well, I think it was like self defense, myself, but no one can judge that but God. 'Cause nobody was there but me . . . . See, one guy, he was tryin' to screw me in the ass . . . I might as well just keep on shootin' 'em. Because I gotta kill the guy 'cause [he would] go and tell somebody if he lives . . . this dirty bastard deserves to die anyway because of what he was tryin' to do to me. So those three things went in my mind for every guy I shot . . . . I've dealt with 100,000 guys. But these guys are the only ones that gave me a problem . . . I still say that it was in self defense. Because most of 'em either were gonna start to beat me up or were gonna screw me in the ass, . . . and they'd get rough with me, so I'd fight 'em and I'd get away from 'em. . . . I'd run to the front of the car or jump over the

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103. See WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* 463 (2d ed. Hornbook Series, 1986) (defining imperfect self-defense). Imperfect self-defense is when one "uses force against another with an honest but unreasonable belief that he must use force to defend himself from an imminent attack by his adversary." *Id.*; JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* 231-32 (3d ed. 2001) (defining imperfect self-defense as "an honest, albeit mistaken, belief" of imminent attack). *But see* GEORGE FLETCHER, *RETHINKING CRIMINAL LAW* 762-63 (1978) (calling mistaken belief that one is being attacked "putative justification" and arguing it undermines actual justification). Jurisdictions differ as to whether a defendant who proves imperfect self-defense would be guilty of murder or manslaughter. LAFAVE & SCOTT, *supra*, at 463.

104. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 19. She was also diagnosed by both defense and state mental health experts as suffering from an emotional and/or mental disturbance at the time of the offenses and having an impaired ability to conform her conduct to the requirements of law. *Id.* Both of these, as well as her history of physical and sexual abuse and alcoholism, could have been considered mitigating circumstances for sentencing purposes. *Id.*

seat or whatever, grab my gun and just start shootin.’<sup>105</sup>

On the other hand, Wuornos killed a lot of men. On December 1, 1989, Richard Mallory’s abandoned car was found in a wooded area in Volusia County, Florida. On December 13, 1989, police found Mallory’s body in a wooded area several miles away. He had been shot four times, twice in the left lung.<sup>106</sup>

Charles E. Carskaddon was last seen alive on May 31, 1990. Police found his decomposed body on June 6, 1990, covered with a green blanket in Pasco County.<sup>107</sup> Eight bullets had been fired into his lower chest and upper abdomen.<sup>108</sup>

In June, 1990, police found the decomposed body of David Spears in a remote, wooded area in Citrus County. He died of multiple gun shot wounds inflicted by six bullets fired into his torso. One and possibly two of the gunshots were to the back.<sup>109</sup>

On July 4, 1990, Peter Siem’s car was found in Orange Springs, Florida. His body has never been found.<sup>110</sup>

On August 4, 1990, police found the body of Troy Burress in a wooded area in Marion County. The body was in an advanced state of decomposition; he had been shot twice, once in the middle of his chest and once in the back.<sup>111</sup> His truck had been found four days before.<sup>112</sup>

On September 12, 1990, Charles Richard Humphreys’ body was found in Marion County, Florida. Humphreys died as a result of gun shot wounds inflicted by seven bullets fired at his head and torso. His car was found in another County.<sup>113</sup>

On November 19, 1990, Walter Jenio Antonio’s body was found near a remote logging road in Dixie county. He had three bullet wounds to his back and one to the base of his head. His car was found later in Brevard County.<sup>114</sup>

All of the victims were white, middle-aged men. They were killed after they picked up Wuornos on or near the I-75 expressway in Central Florida.<sup>115</sup>

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105. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 60 (quoting from appellate record, at 555-58).

106. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 4-9.

107. *See* Wuornos v. Florida, 676 So. 2d 966, 967 (Fla. 1995).

108. *Id.*

109. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 10; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 8.

110. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 9-10.

111. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 10; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 7.

112. Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 7.

113. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 9; Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 6-7.

114. Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 10; Brief Challenging Conviction and Sentence in Walter Antonio Case, *supra* note 32, at 4-5.

115. *See* Wuornos v. Florida, 676 So. 2d. 966, 967 (Fla. 1995).



Wuornos was not convicted for all seven murders; she was tried and convicted for the Richard Mallory murder only. She pled guilty to killing Charles Humphreys, Troy Burrell, David Spears, Walter Antonio, and Charles Carskaddon. Wuornos was never prosecuted for the death of Peter Siem. She received the death penalty in all six cases and was executed by lethal injection in 1992.

Because the Richard Mallory case was the only case that went to trial, we know more about it than the others. We may also know more about the Mallory case because Mallory was the first man Wuornos killed—in self-defense, after being raped and brutalized by him, according to Wuornos' testimony at trial—which made it memorable to her.<sup>116</sup> Although the jury rejected Wuornos' testimony when it found her guilty, Wuornos maintained that Mallory tied her up and anally raped her in a violent rage. Wuornos testified that, after the rape:

[H]e 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 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 . . . . Then I thought to myself, well, this dirty bastard deserved to die anyway because of what he was trying 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>117</sup>

Unfortunately, the jury never heard evidence that Mallory had a prior record of sexual violence.<sup>118</sup> The prosecution knew about a rape conviction, but failed to disclose it to the defense despite their obligation to do so.<sup>119</sup> Wuornos' own lawyers, public defenders who meant well, failed to uncover this critical information and also failed to talk to Mallory's former girlfriends, who would have confirmed his history of violence toward women.<sup>120</sup>

Whether Wuornos truly acted in self-defense, as she claimed she did with Mallory and those who came after,<sup>121</sup> or "snapped" after the Mallory incident

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116. In my admittedly inexpert view, Wuornos had her wits about her during the Mallory incident, but thereafter was in a dissociative state brought about by the trauma of the Mallory incident and years of victimization.

117. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 24.

118. See Sean Somerville, *Wuornos First Victim a Sex Offender; Defense Attorneys Hope the News About Mallory Will Win the Convicted Killer a New Trial*, ORLANDO SUN SENTINEL, Oct. 14, 1992, at B1.

119. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding prosecution suppressing exculpatory evidence violates due process).

120. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 22 (referring to Mallory's history of sexual abuse).

121. Wuornos insisted she killed in self-defense and said so at least fifty times during her three-hour, videotaped confession to the police on January 16, 1992. See Chesler, *supra* note 3, at 947. She said she believed she was going to be beaten or raped or killed by each of her victims. See *id.*

and killed six more men out of a distorted sense of danger,<sup>122</sup> or simply had had enough after years of prostitution and killed and robbed in “retaliation,”<sup>123</sup> we will never know. But there is a palpably sympathetic underbelly to Wuornos’ crimes that was largely unremarked until after her execution. Indeed, it was not until the release of the feature film *Monster* that Wuornos began to be regarded as a full, complicated person, and not just America’s First Female Serial Killer,<sup>124</sup> the Damsel of Death,<sup>125</sup> or Lesbian, Man-Hating, Cold-Blooded Serial Killer.<sup>126</sup>

### III. THE LACK OF SUPPORT FOR WUORNOS

With the exception of Phyllis Chesler, best known for her influential book *Women and Madness*,<sup>127</sup> mainstream feminists were silent on the capital prosecution of Wuornos. Instead of embracing Wuornos as an example of what happens to abused and neglected girls—it is well documented that these girls grow up to become the vast majority of women in prison<sup>128</sup>—they expressed no interest at all.<sup>129</sup> Instead of engaging in public discourse about what happens to girls and young women who have no choice but to turn to the streets—and the hazards of prostitution, especially for poor, substance-dependent women<sup>130</sup>—they said nothing. Instead of making the connection between Wuornos’ victimization by men and her subsequent homicidal acts against them—whether or not she acted in self-defense, as she maintained<sup>131</sup>—they avoided all

122. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 59-64.

123. See AILEEN: THE LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10. This was the prosecutor’s position, and later became Wuornos’ after many years on death row and becoming “born again.” *Id.* Wuornos’ mental state had plainly deteriorated when she retracted her self-defense position. *Id.* She also seemed to prefer death to life on death row. See *id.*

124. See Lomartire, *supra* note 76, at 1A (noting reporters called Wuornos “damsel of death”); Paul Pinkham, “Damsel of Death” Aileen Wuornos Executed, *FLORIDA TIMES-UNION* (Jacksonville), Oct. 10, 2002, at 1.

125. Lomartire, *supra* note 76, at 1A.

126. Lomartire, *supra* note 76, at 1A.

127. PHYLLIS CHESLER, *WOMEN AND MADNESS* (1972).

128. See Widom & Maxfield, *supra* note 27, at 3 (finding abused or neglected girls 73% more likely than other girls and women to be arrested for property, drug, and alcohol crimes, and also at increased risk of arrest for violent crimes as juveniles and adults).

129. See generally Chesler, *supra* note 3 (searching revealed no prominent feminist, except for Chesler, wrote op-ed articles or columns about subject).

130. See Chesler, *supra* note 3, at 950-51 (noting rape incidents among prostitutes in study). In a 1991 study, 78% of prostitutes questioned reported being raped on average sixteen times annually by their pimps and thirty-three times yearly by johns; 53% were victims of sexual torture at the hands of both pimps and johns. *Id.*

131. Keitner, *supra* note 12, at 41 n.139 (raising issue of fairness and adequacy of self-defense as a “legal term of art” in relation to “lived experience of women like Aileen Wuornos”); Chris Lavin, *Judge Agrees Wuornos Must Die*, *ST. PETERSBURG TIMES*, Feb. 2, 1992, at 1B (reporting Wuornos insisted repeatedly: “What I did is what anyone would do . . . I defended myself”). Wuornos later changed her story, because she wanted to die, saying her motive was robbery and that she would kill again. See Michele Mandel, *Victim or Monster? She Has Been Living With a Death Penalty Since She Was 12, a Friend Said of Aileen Wuornos*, *TORONTO SUN*, Jan. 16, 2004, at 32.

connection with the case.

Even when Wuornos was pronounced the "first female serial killer," despite the fact that neither her conduct in the killings nor her claim of self-defense fit the usual definition of a serial killer,<sup>132</sup> there was no feminist outcry. Even when she was sentenced to death, there was no feminist outcry. No one seemed to notice or care that jury deliberation in the Wuornos case was frighteningly brief. On January 30, 1992, her jury of five men and seven women needed only an hour and a half to find her guilty, and only an hour and forty-eight minutes to recommend that she be put to death. By comparison, the jury for Ted Bundy, who was tried in Florida for having killed more than twenty women,<sup>133</sup> took seven hours to find him guilty and seven and a half more hours to sentence him to death.<sup>134</sup>

Lack of interest by feminists and victims' rights activists left Wuornos in the hands of scoundrels: tabloid reporters, evangelical "Born-Again," and a sleazy lawyer with no interest whatsoever in his client.<sup>135</sup> The Born-Again was a woman named Arlene Pralle, who befriended and then adopted Wuornos after her first trial, supposedly in order to see her more easily in prison. The lawyer was a man with no capital trial experience who urged Wuornos to plead guilty and put on no case at the penalty phase.<sup>136</sup> Although she received better than adequate representation on appeal as a matter of right, by then it was too late.<sup>137</sup>

I do not know exactly why Wuornos did not attract support from the feminist or victims' rights movements.<sup>138</sup> But, this is not the first time that these groups have turned their backs on women who are both victims and perpetrators. There is seldom an outcry by feminists or victims' rights activists on behalf of women who are in prison, all of whom are serving longer and longer sentences,<sup>139</sup> and the majority of whom have experienced lives of victimization. Wuornos is not the first woman to kill a john in the course of prostitution<sup>140</sup> with little feminist reaction.

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132. See *supra* note 100 and accompanying text (discussing profile of "typical" serial killer).

133. See generally LEWIS, *supra* note 18.

134. See Chesler, *supra* note 3, at 963-67.

135. See AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER, *supra* note 10.

136. See Brief Challenging Death Sentences in Three Murder Cases, *supra* note 32, at 12-28. Attorney Steven Glazer did not provide Wuornos with any legal advice, but simply "acceded to her wish to plead guilty." *Id.* at 27. His services amounted to no more than "stand[ing] by his client while she bumble[d] through a plea hearing." *Id.*

137. See generally *Wuornos v. State*, 676 So. 2d 972 (Fla. 1996); *Wuornos v. State*, 676 So. 2d 966 (Fla. 1995); *Wuornos v. State*, 644 So. 2d 1012 (Fla. 1994); *Wuornos v. State*, 644 So. 2d 1000 (Fla. 1994).

138. See generally WENDY KAMINER, I'M DYSFUNCTIONAL, YOU'RE DYSFUNCTIONAL: THE RECOVERY MOVEMENT AND OTHER SELF HELP (1993); WENDY KAMINER, IT'S ALL THE RAGE: CRIME AND CULTURE (1995).

139. See Abbe Smith, *The Burdens of Representing the Accused in an Age of Harsh Punishment*, 18 NOTRE DAME J.L. ETHICS & PUB. POL'Y 451, 452 (2004).

140. See WHAT I WANT MY WORDS TO DO TO YOU (Borrowed Light LLC 2003). The documentary features Cynthia Berry, a former prostitute serving twenty-five years to life for stabbing to death a seventy-one year old john. *Id.* Like Wuornos, Berry had been sexually and physically abused as a child. *Id.*

Only when battered women kill their abusive partners and are charged with murder do feminists and victims' rights activists make the connection. This is when I get a call late at night at home—the caller sick with worry and concern, breathlessly telling me that her client has been arrested and charged with homicide, inquiring about representation. Oddly, I have seldom been contacted by anyone connected with the battered women's movement when a battered woman is charged with anything less than murder; lesser charges—even felony assault—do not seem to capture the attention of battered women's advocates.

I am glad to get these calls. Representing battered women who kill or assault abusive partners unambiguously joins the feminist and criminal defender in me.<sup>141</sup> Also, unlike many of my male colleagues, who regard female defendants as too needy and too talkative,<sup>142</sup> I like representing women accused of crime. They often embody the clearest connection between deprivation, poverty, and crime. I confess to having something of a chip on my shoulder when I get these urgent calls for help from acquaintances and associates who are not entirely comfortable with my life's work. Suddenly, they *get it*. Suddenly, it comes in handy to know a criminal defense lawyer.

On the other hand, these cases are not so different from other cases. Though they are called "battered women's self-defense" cases,<sup>143</sup> sometimes it is a stretch to use that term. But, frankly, it does not matter to me whether the accused is "sufficiently battered" to merit being called a battered woman, or whether she has truly acted to defend herself consistent with controlling law. This may be heresy to some, both within and without the battered women's movement,<sup>144</sup> but it can be a comfort to the client. It is also consistent with the

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141. Cf. Crocker, *supra* note 19, at 982-84 (discussing tension between feminism and defending men on death row). Crocker writes:

The dissonance for a feminist occurs because, on the one hand, the law has for so long trivialized women's experience of being battered, and on the other hand, she is asked, as a lawyer, to defend a man whose actions exemplify the very real consequences a battered woman faces. Thus, when the State seeks the most extreme punishment for a man charged with killing a woman he physically abused, it provides a reason to feel vindicated because the State is demonstrating that it takes seriously the problem of violence against women. To then ask a feminist to represent the defendant creates a conflict between approving of the State's strong response to the violence against the woman, and yet, in defending the man who committed that violence, fighting against the ultimate punishment. The challenge arises in understanding that representing such a defendant does not discount the very real horror faced by women who are physically abused by their partners.

*Id.*

142. When I was a public defender, it was understood that one of the worst assignments was interviewing clients in the women's section of the jail. The men in the office (and a few of the women) complained that the interviews took twice as long because the women were so chatty and wanted to tell you *everything*.

143. See generally ANGELA BROWNE, WHEN BATTERED WOMEN KILL (1987) (examining social and psychological factors that cause battered women to kill); WOMEN'S SELF-DEFENSE CASES: THEORY AND PRACTICE (Elizabeth Bochnak ed., 1981) (discussing theory and practice of representing women who defend themselves in response to physical or sexual assault).

144. Unfortunately, not every battered women's self-defense case is a very good case. See WOMEN'S SELF-DEFENSE CASES, *supra* note 143, at 67-71 (discussing damaging evidence in self-defense cases, such as defendant's post-homicide statements and actions, drugs or alcohol abuse, or possession of illegal weapons).

central ethic of criminal defense: the guilt or innocence of a client has nothing to do with the zealotry of the defense.<sup>145</sup> Or, put another way, who are we to judge?<sup>146</sup> It is also consistent with the nature of the work: things are seldom what they seem to be.

But, I am admitting to something more here. I can understand why a woman who has been victimized and mistreated might lash out. I can understand why an abused woman might lash out with a level of violence that seems excessive in the immediate context. I can understand why the violence did not seem excessive to her. It is not that I am advocating some sort of armed revolt by victimized women everywhere. But, I understand why a woman who has been seriously victimized—a woman like Aileen Wuornos—might finally lose control and explode in violence.<sup>147</sup>

It is, of course, easier to maintain and urge this perspective when the person against whom a victimized woman lashes out is her actual victimizer. When third parties are the target—when the woman assaults or kills someone other than the man who has been abusing her, especially if he is a stranger—they are regarded as classic “innocent victims.” This is how Aileen Wuornos’ victims were portrayed,<sup>148</sup> and it’s easy to see why. No one likes to speak ill of the dead. But, we will never know—except for Wuornos’ own account and the competing assertions by the families of the men killed that they had the highest moral character<sup>149</sup>—what actually happened. We can only imagine.

The question is why those who purport to care deeply about misused and maltreated women did not even bother to *imagine* when it came to Aileen

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Some legal scholars complain about the use of weak justification defenses. See FLETCHER, *supra* note 103, at 762-63. See generally ALAN M. DERSHOWITZ, *THE ABUSE EXCUSE: AND OTHER COP-OUTS, SOB STORIES, AND EVASIONS OF RESPONSIBILITY* (1994); JAMES Q. WILSON, *MORAL JUDGMENT: DOES THE ABUSE EXCUSE THREATEN OUR LEGAL SYSTEM?* (1998).

145. See Abbe Smith, *Defending Defending: The Case for Unmitigated Zeal on Behalf of People Who Do Terrible Things*, 28 HOFSTRA L. REV. 925, 958-61 (2002) (stating every accused has right to a lawyer willing to do everything within the bounds of law on his or her behalf, no matter what crime alleged, whether guilty or innocent, or harm to third parties). Clarence Darrow puts it more plainly: “Every criminal trial is a man-hunt where the object of the pack is to get the prey. The purpose of the defense is to effect his escape.” CLARENCE DARROW, *THE STORY OF MY LIFE* 332-33 (1934). Charles Curtis makes it sound more virtuous, noting that the lawyer who is devoted to the client above all others acts in consonance with the pre-platonic ethic that “justice consists of doing good to your friends and harm to your enemies.” Charles P. Curtis, *The Ethics of Advocacy*, 4 STAN. L. REV. 3, 5-6 (1951).

146. See Smith, *supra* note 21, at 1242 (cautioning that “we are in no position to judge those whose lives are often much harder than our own”); Abbe Smith and William Montross, *The Calling of Criminal Defense*, 50 MERCER L. REV. 443, 531 (1999) (arguing defense lawyers should forgo judgment about their clients conduct or character); see also Fred Kaplan, *Lawyer for NYC Officers Says He Loves the Challenge*, BOSTON GLOBE, June 27, 1999, at A14 (quoting Marvyn Kornberg, who represented the police officer convicted of sexually assaulting Haitian immigrant Abner Louima: “I don’t judge my clients. I represent them. It’s my job.”).

147. See generally ANNE CAMPBELL, *MEN, WOMEN, AND AGGRESSION* (1993) (arguing women’s aggression results from loss of self-control, while men’s aggression acts as way to gain control).

148. See generally RUSSELL, *supra* note 12 (portraying all of Wuornos’ victims, even Richard Mallory, as innocent victims who had misfortune to meet up with Wuornos on highways of central Florida).

149. See RUSSELL, *supra* note 12, at 399-400.

Wuornos. Why did feminists, battered women's advocates, or sexual assault victims' rights advocates not get involved in the Wuornos case? Why did they not help her to obtain counsel, raise money for expert testimony, visit her in jail, attend her trial, and, especially, protest her execution? Why did they not at least write an op-ed piece?<sup>150</sup>

I do not know why; I can only speculate. But, it seems to me that this is something we ought to at least speculate about. Moreover, it is something we should recognize as inconsistent, if not downright hypocritical: feminists and others who claim to care about raped and abused women suddenly jump ship and head for the hills the minute a raped and abused woman becomes a perpetrator. I have come up with several possible reasons for why this happened in the Wuornos case, but there could, of course, be more.

First, Aileen Wuornos was not especially appealing. She was angry, abrasive, hostile, and scowling.<sup>151</sup> With her "wild eyes" and unpredictable temper, she "inspired more hate than heart" when she was arrested in 1991 and confessed to killing seven men.<sup>152</sup> She was volatile: one moment she could be charming and the next raging.<sup>153</sup> She had a habit of lashing out verbally at the media, judge, prosecutor, and police.<sup>154</sup> She lacked the piety and contrition of Karla Faye Tucker,<sup>155</sup> the fragility of Andrea Yates,<sup>156</sup> and the soft femininity of Susan Smith.<sup>157</sup>

For these other women, a history of mental, physical, and sexual abuse, as well as dysfunctional and frayed family relationships, served to mitigate their culpability. They were maltreated, severely depressed, traumatized, and drug addicted, not bad or evil or *monstrous*. As Susan Smith's lawyer Judy Clarke

150. See *supra* note 129 and accompanying text. I found no op-ed articles on Wuornos—not on her crimes or her capital prosecution—by a self-identified feminist, battered women's advocate, or victims' rights activist in any major newspaper.

151. Ted Bundy might be Wuornos' opposite in this regard. Though he killed three times as many people as Wuornos, he managed to captivate people with his good looks, impish smile, and charming disposition. See generally LEWIS, *supra* note 18 (discussing Ted Bundy).

152. See Lomartire, *supra* note 76, at 1A.

153. See AILEEN: THE LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10; AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER, *supra* note 10.

154. See AILEEN: THE LIFE AND DEATH OF A SERIAL KILLER, *supra* note 10.

155. See E. J. Dionne Jr., *The Tucker Execution*, WASH. POST, Feb. 10, 1998, at A19 (noting Tucker, executed in 1998 for killing two people with pickax, became born-again Christian and truly repented for her crime). Tucker converted shortly after her arrest for killing two people in 1983, and was genuinely remorseful for her crime. *Id.*

156. See Sheryl McCarthy, *Culpability in Yates Case is a Family Affair*, NEWSDAY, Mar. 21, 2002, at A44 (discussing Andrea Yates case). McCarthy argues that Yates, a mentally fragile woman who killed her five children, should have been better cared for by her husband and other relatives who had reason to know she was collapsing under the weight of too much responsibility. *Id.*

157. See Robert Davis & Kevin Johnson, *Smith Case Points to Gender's Role in Capital Punishment*, USA TODAY, July 25, 1995, at 1A (noting that Smith's "chilling crime"—drowning her two children while strapped inside her car—contrasted her vulnerability and femininity). As Professor Victor Streib remarked, "This is not the face of a mad dog we're talking about here. Prosecutors like to present the image of a monster in these kinds of cases, but Susan Smith [doesn't] . . . fit that image." *Id.*

argued during the penalty phase of Smith's capital trial, "This is not a case about evil . . . . It is about despair and sadness."<sup>158</sup> Although these women were all multiple killers, they were not known as "serial killers"—not even Yates, who killed five children.

Wuornos was at once tawdry and ordinary. She was loud, rude, profane, and vulgar, but, she was also drearily ordinary. Her talk was ordinary; even her outbursts of angry profanity felt ordinary.<sup>159</sup> She wrote ordinary, girlish, chatty letters to her oldest friend from Troy, Dawn Botkins. She even made her execution seem ordinary. In one letter to Dawn, she writes about what she wants Dawn to do with her body after she is executed:

Please have a smile put on my face. Hair loose and lying relaxed around pillow and shoulders. Also I'd like a cross in my hands, like a small wooden one also a Bible tucked between my arm and rib cage, as my hands are folded holding the cross. Please put a single rose alongside my arm . . . . Coffin—my taste is brown wood one, with light red or white satin exterior design. Also my body and coffin sprayed with [Emeraude] perfume. Hook up a sound system at the wake or any ceremony deal you may have of me. Like a cook-out. And please play these if you can gather them up. Two [songs] I love most are Time by Allen Parsons Project and Ordinary World by Duran Duran. Any Moody Blues stuff, except I'm Just a Singer in a Rock and Roll Band. UK! Can't stand that song!<sup>160</sup>

What to make of such a woman? She could be anyone. She had likes and dislikes: a favorite perfume, a couple of favorite rock and roll songs, a dreaded rock and roll song. She had a best friend in whom she could confide. She had a screwed up, difficult life to be sure, but she could be anyone. Except for her crimes.

First, those who might have otherwise supported Wuornos may have simply found her and the nature of her case distasteful. The whole thing was entirely too tawdry. Yes, Wuornos could be anyone, but she was also larger-than-life. She was *too much*.<sup>161</sup> She was a prostitute who had no problem referring to herself as a "hooker,"<sup>162</sup> who picked up strangers on the highway, and, for (not very much) money, did all kinds of sexual things to them, and let them do all kinds of things to her. She freely associated with the kind of men most girls and women are told to avoid: the kind who would pay for sex on the Florida interstate. She talked about sex—anal sex, oral sex, "regular sex"—in the crudest of terms and as if it were nothing. She carried a gun and knew how to

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158. *Id.*

159. See AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER, *supra* note 10.

160. Lomartire, *supra* note 76, at 1A.

161. See Denby, *supra* note 10 (reviewing Nick Broomfield's documentary *Aileen: The Life and Death of a Serial Killer* and noting clips of Wuornos on eve of her execution almost too much to take).

162. See AILEEN WUORNOS: THE SELLING OF A SERIAL KILLER, *supra* note 10 (featuring Wuornos' videotaped statements to police in which she uses "hooker" to describe herself).

use it. She killed in the most intimate setting: she shot naked men, men with their pants down, men with whom she had just had sex.<sup>163</sup> All of this made people, including feminists, uncomfortable.<sup>164</sup>

Second, Wuornos' crimes did not have an explicitly "feminist touch." She simply shot her victims and robbed them, much like a man might. Had she maimed her victims in the spirit of Lorena Bobbitt's "Freudian snip"<sup>165</sup>—Bobbitt cut her abusive husband's penis off<sup>166</sup>—she might have garnered more feminist support. Bobbitt became an unwitting feminist icon.<sup>167</sup> Had Wuornos killed herself after killing men who were irrefutably abusive<sup>168</sup> or at least *obnoxious*,<sup>169</sup> she might have become something of a cultural hero—at least to some.<sup>170</sup> Some people enjoy a tale of feminist retaliation.<sup>171</sup>

Third, Wuornos was a prostitute. Though feminists have struggled with the issue of prostitution, they remain troubled by it. They don't readily connect prostitution with domestic violence and other violence against women, perhaps because it's too painful: "the carnage: the scale of it, the dailiness of it, the seeming inevitability of it; the torture, the rapes, the murders, the beatings, the despair, the hollowing out of the personality, the near extinguishment of hope commonly suffered by women in prostitution."<sup>172</sup> Feminists do not know what to do with women who "choose" to engage in prostitution.<sup>173</sup>

However uncomfortable or ambivalent feminists might be about prostitution, there is no excuse for failing to recognize that prostitutes are a uniquely

163. *But see* RUSSELL, *supra* note 12, at 1-19 (noting this situation not true in all cases by depicting killing of fully clothed Dick Humphreys).

164. *See generally* Susan Bromberg, *Feminist Issues in Prostitution*, in *PROSTITUTION: ON WHORES, HUSTLERS, AND JOHNS* (James E. Elias ed., 1998) (discussing mixed feminist views on prostitution). As Bromberg points out, radical feminists oppose prostitution on the grounds that it degrades women and furthers male domination. *Id.* Liberal feminists are supportive of "sex workers" though they disapprove of the work itself. *Id.* Existential feminists are less judgmental about sex work and attempt to consider the diversity of experiences, values, and beliefs of individual prostitutes. *See id.*

165. Henry Allen, *One Nation Under O.J.'s Spell*, WASH. POST, Sept. 26, 1994, at D1.

166. *See* Tom Mashberg, *Of Men and Women, Crime and Punishment*, BOSTON GLOBE, Jan. 22, 1994, at 1.

167. *See id.* This was not necessarily at the behest of the feminist movement.

168. Unfortunately, as every trial lawyer knows, next to nothing is irrefutable.

169. *See* *THELMA & LOUISE* (Metro-Goldwyn-Mayer 1991) (depicting housewife and waitress' violent crime spree that included killing a rapist, and targeting sexist or otherwise loathsome men).

170. *See generally* ELAYNE RAPPING, *MEDIA-TIONS: FORAYS INTO THE CULTURE AND GENDER WARS* (1994); WENDY KAMINER, *IT'S ALL THE RAGE: CRIME AND CULTURE* (1995).

171. *See* *NINE TO FIVE* (20th Century Fox 1980) (featuring Jane Fonda, Lily Tomlin and Dolly Parton as office workers who turn tables on their sexist, bigoted, and egotistical boss, played by Dabney Coleman); *see also* *A QUESTION OF SILENCE* (Sigma Film Productions 1982) (showing three women, all strangers, who attack and kill a male proprietor of a boutique after he accuses one of shoplifting); *THELMA & LOUISE*, *supra*, note 169. All three of these films were popular and generated generally favorable feminist commentary.

172. Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 *YALE J.L. & FEMINISM* 47, 49 (1992).

173. *See generally* D. KELLY WEISBERG, *CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION* (1985) (posing serious question about choice and volition). Wuornos, however, was not exactly a "happy hooker." *See generally* XAVIERA HOLLANDER, *THE HAPPY HOOKER* (1975) (describing Hollander's life as hooker and madam).



victimized group. First, there is a well-documented connection between childhood sexual abuse, running away, and prostitution.<sup>174</sup> Prostitution during adolescence, which is when Wuornos began to sell herself, is strongly associated with childhood sexual abuse.<sup>175</sup> Second, prostitution is uniquely dangerous to women. Most prostitutes have been raped<sup>176</sup> and physically assaulted.<sup>177</sup> A special commission on prostitution in Canada found that girls and women in prostitution have a mortality rate forty times higher than the national average.<sup>178</sup>

Third, prostitutes, like combat veterans, suffer from post-traumatic stress disorder (PTSD), a reaction to extreme physical and emotional trauma.<sup>179</sup> Symptoms include anxiety, depression, insomnia, irritability, flashbacks, emotional numbing, and being in a state of emotional and physical hypervigilance.<sup>180</sup> One study found that women engaged in prostitution had more acute symptoms of PTSD than victims of child abuse and Persian Gulf War veterans.<sup>181</sup>

174. See generally WEISBERG, *supra* note 173; C. Bagley & L. Young, *Juvenile Prostitution and Child Sexual Abuse: A Controlled Study*, 6 CAN. J. COMM. MENTAL HEALTH 5 (1987). The 1991 Annual Report of the Council for Prostitution Alternatives, Portland, Oregon, stated that 85% of prostitutes reported a history of sexual abuse in childhood. See MELISSA FARLEY, PROSTITUTION: FACTSHEET ON HUMAN RIGHTS VIOLATIONS 1, 4 (Apr. 2, 2000), at <http://www.prostitutionresearch.com>. (last visited May 15, 2004) [hereinafter PROSTITUTION FACTSHEET]. Estimates of the prevalence of incest among prostitutes range from a low of 65%. See *id.*

175. See generally Bagley & Young, *supra* note 174. The average age of entry into prostitution is thirteen years old. See M.H. Silbert & A.M. Pines, *Victimization of Street Prostitutes*, 7 VICTIMOLOGY: INT'L J. 122-33 (1982).

176. See M. Silbert, *Compounding Factors in the Rape of Street Prostitutes*, in RAPE AND SEXUAL ASSAULT II (Ann Wolbert Burgess ed., 1988); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) WOMEN & HEALTH 37-49 (1998) (finding 68% of those who participated in San Francisco study reported being raped, and 48% raped more than five times.)

177. See Farley & Barkan, *supra* note 176, at 37-49 (reporting that 82% of respondents in San Francisco had been physically assaulted). In Farley and Barkan's study, 88% of prostitutes had been threatened with bodily harm and 83% had been threatened with a weapon. *Id.*; Evelina Giobbe, *Juvenile Prostitution: Profile of Recruitment*, in CHILD TRAUMA: ISSUES & RESEARCH 126 (Ann Wolbert Burgess ed., 1992) (describing prostitute's health as consequence of years of physical assault). One woman interviewed by Giobbe described her prostitution-related wounds:

I've had three broken arms, nose broken twice, [and] I'm partially deaf in one ear . . . I have a small fragment of a bone floating in my head that gives me migraines. I've had a fractured skull. My legs ain't worth shit no more; my toes have been broken. My feet, bottom of my feet, have been burned; they've been whopped with a hot iron and clothes hanger . . . the hair on my pussy had been burned off at one time . . . I have scars. I've been cut with a knife, beat with guns, two by fours. There hasn't been a place on my body that hasn't been bruised somehow, some way, some big, some small.

Giobbe, *supra*, at 126.

178. See SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION, PORNOGRAPHY AND PROSTITUTION IN CANADA (1985), cited in PROSTITUTION FACTSHEET, *supra* note 174, at 7.

179. See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL 463 (4th-TR ed. 2000).

180. See *id.* at 424-25.

181. Farley & Barkan, *supra* note 176, at 37-49.

Wuornos, who said she had been raped and assaulted many times,<sup>182</sup> suffered from all of the symptoms associated with PTSD.<sup>183</sup> She also seemed to suffer from an inability to regulate her mood and affect, which is no doubt related to the trauma she experienced when she was rejected as a baby and child.<sup>184</sup>

Fourth, Wuornos was a lesbian.<sup>185</sup> When she committed her crimes she was living with a woman named Tyria Moore.<sup>186</sup> Though lesbianism has long been accepted and even embraced in feminist theory,<sup>187</sup> mainstream feminists were not eager to be associated with a “man-hating” lesbian prostitute who killed seven men. Wuornos presented the worst possible image of a lesbian killer. As one commentator declared, her crimes were “‘male’ in their commission—predatory, cold-blooded, premeditated, and malicious.”<sup>188</sup>

Even though women generally benefit from gender bias when it comes to the death penalty,<sup>189</sup> lesbians facing the death penalty have not fared well.<sup>190</sup>

182. See Brief Challenging Conviction and Sentence in Richard Mallory Case, *supra* note 32, at 13-14.

183. See generally RUSSELL, *supra* note 12.

184. Cf. Elisabeth Bumiller, *Was a Tyrant Prefigured by Baby Saddam?*, N.Y. TIMES, May 15, 2004, at A17 (discussing the work of Jerrold M. Post, the founder of the Center for the Analysis of Personality and Political Behavior at the CIA). See generally ALLAN N. SCHORE, *AFFECT REGULATION AND THE ORIGIN OF THE SELF: THE NEUROBIOLOGY OF EMOTIONAL DEVELOPMENT* (1994) (discussing the impact of early trauma on brain development and the ability to regulate mood and affect). Post believes that Saddam Hussein's rejection by his mother and abuse by his stepfather set the stage for his later tyrannical and violent behavior. Bumiller, *supra*, at A17. According to Post, Saddam Hussein's mother tried to abort him and kill herself after losing her husband and twelve year old son to cancer within a few months of each other. *Id.* When Saddam was born, she wanted nothing to do with him and sent him away to an uncle. *Id.* At three, Saddam was reunited with his mother, who had remarried, but he was then physically and psychologically abused by his new stepfather. See *id.* See generally JERROLD M. POST, *LEADERS AND THEIR FOLLOWERS IN A DANGEROUS WORLD* (2004).

185. Actually, it is not entirely clear how Wuornos identified in terms of sexual orientation. She had romantic relationships with both men and women. See RUSSELL, *supra* note 12, at 108-16 (recounting Wuornos' relationship with Jay Watts); *id.* at 132-82 (recounting Wuornos' relationship with Tyria Moore).

186. See RUSSELL, *supra* note 12, at 132-82. Tyria Moore may have been the first person in Wuornos' life to truly love her. The film *Monster*, which was based partly upon Wuornos' letters to childhood friend Dawn Botkins, largely portrayed the relationship as mutual and loving. See Lomartire, *supra* note 76, at 1A.

187. See Martha Shelly, *Notes of a Radical Lesbian*, in *SISTERHOOD IS POWERFUL* 343-48 (Robin Morgan ed., 1970).

188. Sharon Krum, *Women: Lady Killer: America's Worst Female Serial Killer Wants to be Executed—but Unlike Other Women on Death Row, No One is Trying to Save Her*, GUARDIAN (London), Aug. 2, 2001, at 6 (quoting Professor Casey Jordan of John Jay School of Criminal Justice).

189. See Laura Mansnerus, *Soft Touch; Sometimes, the Punishment Fits the Gender*, N.Y. TIMES, Nov. 16, 1997, at D1 (stating “Americans are reluctant to put women to death”); Jenny Staletovich, *Death Row's Gender Gap; Why Women Who Kill are Rarely Executed*, PALM BEACH POST, Dec. 28, 1997, at 1A. Staletovich wrote:

Women, because of cultural influences, legal biases, nature or any number of theories, almost are never executed. Of the 114 death sentences imposed on women since 1976, only North Carolina's Velma Barfield, a nurse who poisoned four people including her mother, was put to death. One in eight killers is a woman, but only one in 370 executed was a woman.

Staletovich, *supra*, at 1A.

190. See Staletovich, *supra* note 189, at 1A (noting lesbian Ana Cardona sentenced to death in Florida for killing her son, whereas Susan Smith, wholesome, heterosexual, married woman, received life sentence in South Carolina for killing her two sons); see also Richard Goldstein, *Queer on Death Row*, VILLAGE VOICE,

Though gay rights organizations have worked on behalf of gays and lesbians on death row,<sup>191</sup> to my knowledge no feminist organization has done so. Meanwhile, no gay or feminists groups opposed Wuornos' execution. No one seemed to oppose her execution.<sup>192</sup>

Fifth, there is simply the matter of a woman intentionally committing acts of violence. Aileen Wuornos killed a lot of men—one at a time, deliberately, and without much remorse. This is hard for feminists and victims' rights advocates to comprehend. Wuornos has done something that women just do not do; women are not supposed to act like that.<sup>193</sup> It is a frightening prospect: women erupting in violence instead of enduring violence. For some reason it is easier to identify with being a victim<sup>194</sup> than it is to contemplate being a perpetrator. We do not *want* to identify with Wuornos.

Could it be that Katherine Hepburn had a deeper understanding than modern feminists of the "monster" in all of us that could emerge if "sufficiently provoked"?<sup>195</sup> Whatever one thinks of Aileen Wuornos and her crimes,<sup>196</sup> surely she was a victim; surely she was "provoked."

#### IV. MALE VICTIMS AND PERPETRATORS

It is one thing to talk about women who have been horribly victimized and who subsequently kill a potential victimizer. I may have moved some feminists, battered women's advocates, and sexual assault victims' advocates to think differently about female victims turned perpetrators like Aileen Wuornos. But, it is something else to talk about men and boys who have been horribly victimized and who then rape or kill women.

This need not be so. Many of the same factors that give rise to women

Mar. 20, 2001, at 38 (discussing Wanda Jean Allen, poor, black lesbian, executed in Oklahoma for killing her lover in front of police station notwithstanding evidence of self-defense).

191. See generally David Kirby, *Was Justice Served? The Execution of a Lesbian Raises Tough Questions About the Death Penalty*, *ADVOCATE*, Feb. 27, 2001 (discussing amicus brief in Wanda Jean Allen case). The Lambda Legal Defense and Education Fund, joined by the National Gay and Lesbian Task Force, the National Center for Lesbian Rights, Gay Men of African Descent, and the International Gay and Lesbian Human Rights Commission, submitted an amicus brief opposing Allen's execution. *Id.*

192. See Krum, *supra* note 188, at 6. Krum wrote, "[w]hen Texas killer Karla Faye Tucker was put to death three years ago, public revulsion at the idea of executing a woman was palpable. Demonstrations went on for weeks. . . . But Wuornos's X chromosome is definitely not doing her any favours. . . . Everyone seems to want Wuornos to die." *Id.*

193. See Krum, *supra* note 188, at 6 (quoting psychologist Robert Butterworth). Butterworth noted, "[w]e instinctively see women as gentle, maternal, incapable of violence and give female criminals the benefit of the doubt. But when they discard that femininity, [as] Wuornos did, they lose our built in reserve of sympathy." *Id.*

194. See generally WENDY KAMINER, *I'M DYSFUNCTIONAL*, *supra* note 138 (examining recovery movement, with its emphasis on victimization, critically).

195. See *ADAM'S RIB*, *supra* note 2.

196. See generally RUSSELL, *supra* note 12 (portraying Wuornos as ill-tempered man-hater who killed for money and possibly attention). Though Russell acknowledges that Wuornos had a difficult childhood, she doesn't dwell on it. See generally *id.*

committing acts of violence apply to boys and men. Family violence is a shared root cause of subsequent violence.<sup>197</sup> The same social and political conditions that give rise to violence against women give rise to violence by men.<sup>198</sup>

I represented a young man who I will call Antoine.<sup>199</sup> Antoine was a diminutive fifteen-year-old boy who looked more like twelve. He was charged with breaking into the home of a twenty-year-old woman and raping her at gunpoint. The crime was ugly, as typical of these crimes. The victim was traumatized by what happened; the incident was her worst nightmare. Upon being arrested, Antoine confessed to the crime, expressed regret, and said he did not know why he had done it. He had never done anything like this before. Antoine admitted to having smoked a substantial amount of PCP laced marijuana before he committed the offense.

It turns out that Antoine had himself been sexually abused at a young age, before he was able to speak. He was abandoned by his mother when he was two-years-old. His body revealed old and new wounds, including signs of anal penetration. He was placed in foster care but did not fare well there. He was sexually abused for months by his foster mother's uncle, who was a frequent presence in the household. Antoine did not tell anyone out of fear that he would be put out of the house. He eventually disclosed the abuse to a teacher. I first met him at the local juvenile jail. He was visibly frightened. His small size and air of vulnerability made him an easy target for frequent sexual assault and humiliation by his peers.

It takes nothing away from Antoine's crime or Antoine's victim to say that I felt for him. It does not deny the viciousness of the crime or the lifelong harm to the victim to say that Antoine has suffered, too. Antoine was a young man, a

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197. See ELLIOT CURRIE, *CONFRONTING CRIME: AN AMERICAN CHALLENGE* 182-221 (1985) (discussing connection between family violence and criminal violence); see also Crocker, *supra* note 19, at 985. See generally JAMES GILLIGAN, *VIOLENCE: OUR DEADLY EPIDEMIC AND ITS CAUSES* (1992) (discussing violence from psychoanalytic perspective and focusing on what happens in families). Crocker argues that the "necessity of placing both the woman's experience of battering and the man's perpetration of abuse and murder in the broader social and legal context of how our society addresses, or fails to address, family violence." Crocker, *supra* note 19, at 985.

198. See Crocker, *supra* note 19, at 984.

What occurs to a woman on a personal level is not merely individual but informed by and part of political, social, and cultural beliefs and forces. Thus, when a man repeatedly batters his wife, it is not simply a private matter arising out of their unique circumstances, but instead reflects a broader dynamic of the relationship between men and women in this culture and the way the law responds to that situation . . . . Representing a man on death row is . . . personal because it is about the life of the defendant, the woman he killed, and the circumstances surrounding the crime. These factors also make it very political because how the defendant came to be the person who committed this kind of murder, and why he is on death row, are intimately affected by the social and legal policies of this country.

*Id.*

199. The names and some of the factual details of the case have been changed to protect the client's privacy.

boy really, who was terribly victimized and never had a chance to recover. He never had a chance, period. He was abused pre-verbal, which is the worst kind of abuse to untangle and rise above.<sup>200</sup> He went from one abusive home to another, never feeling safe as a child. He was right to not feel safe; he was not safe. He turned to drugs to hide from his life and dull his pain. The drugs no doubt facilitated the violent attack, but Antoine's crime also came from his own experience. He did to another what was done to him.<sup>201</sup>

It should not be so difficult to reconcile feelings for victims and feelings for perpetrators in view of what we know about the cycle of violence.<sup>202</sup> Why can feminists, battered women's advocates, sexual assault victims' advocates, and criminal defense lawyers not feel outrage at the offense but still muster some compassion for the offender?<sup>203</sup> Why is it so hard to feel for both the abused and the accused?<sup>204</sup>

## V. CONCLUSION

Aileen Wuornos was both victim and perpetrator. She is not unique in this dual identity: many girls and women—and boys and men—are first victims and then become perpetrators.<sup>205</sup> My purpose in writing this paper is to challenge the belief that there is a great divide between people to whom terrible things are done and people who do terrible things.<sup>206</sup> They are often the same people. Those who claim to care about victims of child abuse, sexual assault, and domestic violence and who abandon them when they repeat the behavior by acting out against others fail to make these critical connections. Further, it

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200. See generally ALLAN N. SCHORE, *AFFECT REGULATION AND THE ORIGIN OF THE SELF: THE NEUROBIOLOGY OF EMOTIONAL DEVELOPMENT* (1994) (discussing impact of early trauma on brain development and ability to regulate mood and affect); T.J. Gaensbauer, *Trauma in the Preverbal Period: Symptoms, Memories, and Developmental Impact*, 50 *PSYCHOANALYTIC STUDY OF THE CHILD* 122 (1995) (reporting developmental implications of early trauma, particularly if severe, appears significant).

201. See Auden, *supra* note 1.

202. See Nancy L. Rosenblum, *Memory, Law, and Repair*, in *BREAKING THE CYCLES OF HATRED* 1, 3 (Martha Minow ed., 2002). "Perpetrators of domestic violence and sexual abuse were often victims themselves, who experienced as children the dehumanization they inflict in turn." *Id.*; see also STEPHEN ADLY GUIRGIS, *JESUS HOPPED THE A TRAIN* (2002) (discussing theatrical treatment of same point). Guirgis' play depicts two prisoners, one of whom was badly abused as a child and went on to kill multiple times. GUIRGIS, *supra*.

203. GUIRGIS, *supra* note 202. Feminist and capital defender Phyllis Crocker manages to feel "outrage at the defendant for committing the murder, and compassion for the defendant when considering his deserved punishment." *Id.*

204. See generally Smith & Seidman, *supra* note 22.

205. See Abby Goodnough, *Youth Who Won Abuse Suit is Held in Daughter's Killing*, N.Y. TIMES, May 19, 2004, at A18. Another recent high profile example is Yusimil Herrera, who was arrested and charged with beating her three-year-old daughter to death in May, 2004. *Id.* Herrera won a lawsuit against the Florida Department of Children and Family Services for putting her in fourteen different foster homes and institutions where she was beaten, sexually abused, and "battered with psychiatric medications." *Id.* (quoting Karen Gievers, who represented Herrera in her civil case). Herrera had been in state custody since she was abandoned by her mother at age two. *Id.*

206. See generally Smith, *supra* note 145.

is hypocritical to embrace people when they are “victims” and blindly declare them to be “predators” and “criminals,” when they become “perpetrators.” Yet, sadly, this is what many prosecutors do. Even more disappointing is when thoughtful critics of the current system, including feminists and advocates for victims—those whose life work is devoted to social reform—do this. They, of all people, should know better.