

SERIAL SENTENCING OF AMERICA’S MENTAL MONSTER: THE CRIMINAL JUSTICE  
SYSTEM’S CAPITAL PUNISHMENT OF THE ‘FIRST’ FEMALE SERIAL KILLER

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By

Grace O’Toole

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**SERIAL SENTENCING OF AMERICA’S MENTAL MONSTER: THE CRIMINAL JUSTICE SYSTEM’S CAPITAL PUNISHMENT OF THE ‘FIRST’ FEMALE SERIAL KILLER**

Grace O’Toole

Thesis Adviser: Marc Morjé Howard, Ph.D., J.D.

**ABSTRACT**

This senior thesis explores the issues underlying the relationship between mental health policy and the criminal justice system in a study of the capital case of America’s “first” female serial killer—Aileen Wuornos, who was convicted of six capital crimes and subsequently executed on October 9, 2002. As a woman suffering from multiple mental health issues, Wuornos’ case study provides a lens into the larger issue of integrating psychological research into law. Through examining the context of the case in the latter part of the 20<sup>th</sup> century, it is clear the American landscape’s context influenced a sensationalized media frenzy of Wuornos’ case. The 1980s-1990s experienced cultural and political shifts influencing the treatment of the mentally ill within the criminal justice system: (1) the cultural consumption of media, (2) political platforms of “crime and punishment,” and (3) contraction of prisoner rights in the correctional system complex. In surveying cultural representations of Wuornos’ case, the author situates this case study within the crime trends of the time period using an interdisciplinary method of connecting psychological research and legal standards. A key finding emerged from this research: there are mechanisms influencing and within the criminal justice system that limit the incorporation of mental health policy.

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## INTRODUCTION

In 1989 and 1990 the bodies of six white, naked middle-aged men were found off Highway 75 in Florida. Abandoned vehicles were left near the corpses with empty condom wrappers on site. The location of the crime scenes ranged in jurisdiction, but all of the bodies were riddled with bullets from the same .22 caliber murder weapon. All of the bodies were found in remote areas off of the Florida interstate highway in various positions suggesting a lure of a sex act. After months of speculation, law enforcement linked this as the work of the same perpetrator—the buzz-word of American culture: serial killer. When speculation of a sex worker as the culprit of the 1989-1990 interstate murders mushroomed, the local media swarmed to warn Floridians about the Sunshine State’s lurid criminal:

Two women are being sought as possible suspects in the shooting deaths of eight to twelve middle-aged men who were lured to their deaths on the Florida Highways. Suspect #1 is a white female, five feet eight to five feet ten, with blonde hair, who is twenty to thirty years old. She may have a heart tattoo on her upper arm. Suspect #2 is also a white female, five feet four to five feet six, with a heavy build and short brown hair. She may be wearing a baseball cap. These women are armed and dangerous and may be our nation’s first female serial killers. Investigators [feel] compelled to warn the public, particularly middle-aged white men travelling alone.<sup>1</sup>

However, was this “Damsel of Death” or “Highway Hooker” preying on men, really able to be a woman? Once Aileen Carol “Lee” Wuornos was identified as the perpetrator of these heinous crimes she was labeled America’s “first” female serial killer, and as the national trial-by-public-opinion condemned her she became the “Monster.” In retrospect, this media attention fed

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<sup>1</sup> Jean Dubail, “Police Seek Clues Along Trail of 8 Deaths,” *Orlando Sentinel*, December 9, 1990, at B1; Tom Lyons, “Two Sets of North Florida Killings Differ Markedly,” *Gainesville Sun*, Dec. 7, 1990, at 1A; “Marion Police Fear Someone's Stalking, Killing Middle-Aged Men,” *Orlando Sentinel*, Dec. 1, 1990, at D9; Rick Tonyan, “Volusia Police Hunt for 2 Linked to Killings,” *Orlando Sentinel*, Dec. 19, 1990, at D3. At the time Aileen Wuornos’ ex-girlfriend, Tyria Moore, was also seen at a car accident where a witness saw both women alluding to two possible perpetrators for the highway murders.

rising serial killer speculation, and increased public perception of an epidemic created a moral panic.

Between the media and academic pundits, there is a wide scope of literature on the “first” female serial killer’s childhood, murder-spree, trial, and ultimate execution. Much of the work on Wuornos specifically focuses on the role the label of “first female serial killer” and how that branding led to the way she is culturally represented and how women became labeled in the criminal typology, such as Margo Note’s Master’s thesis of Sarah Lawrence College.<sup>2</sup> Another study focuses on her experience during her trial, such as feminist psychologist Phyllis Chesler, whose attempts to gather expert testimonies in Wuornos’ defense were denied.<sup>3</sup> Alternatively, criminal psychology scholar and expert Dr. Bruce A. Arrigo’s “Serial Murder and the Case of Aileen Wuornos” examines how trauma in early childhood may have transited her adult mental health from antisocial behavior into violent aggression during adolescence and adulthood.<sup>4</sup> As seen from the study of Wuornos, politics and culture compete to construct a dominant narrative of high-profile cases.

This thesis explains how Wuornos’ mental health status was evaluated by, and understood within, the criminal justice system of her time. The complex intersection of mental health policy and the traditional criminal and common law is of interest to this study, as

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<sup>2</sup> Margo Note, “Monster-Making: Narrative/Metanarrative in the Representation of Aileen Wuornos.” Master’s thesis, Sarah Lawrence College, 2004. Available from ProQuest Dissertations & Theses Global. Available from ProQuest. Accessed 9/20/2017. [search.proquest.com](http://search.proquest.com).

<sup>3</sup> Phyllis Chesler, “A Woman’s Right to Self-Defense: The Cause of Aileen Carol Wuornos,” *St. John’s Law Review: Women in the Criminal Justice System* 66, no. 4 (Fall-Winter 1993): 933-77, accessed 11/20/2017, <https://scholarship.law.stjohns.edu/lawreview/vol66/iss4/1>. This work aids in evaluating her experience during the trial period from a gendered lens, and uniquely how Chesler took an active engagement in the case in attempts to recruit expert witnesses for testimony and interviewing Wuornos.

<sup>4</sup> Bruce A. Arrigo, “Serial Murder and the Case of Aileen Wuornos: Attachment Theory, Psychopathy, and Predatory Aggression,” *Behavioral Science and the Law*, no. 22 (2004): 375-393, available from *Wiley Online Library*, accessed 9/23/2017, [onlinelibrary.wiley.com/](http://onlinelibrary.wiley.com/).

psychology has played a vital role in understanding the nature of serial killers and the violent crimes they commit. It became apparent that fusing these two fields—law and psychology—is extremely complex with the different legal definitions that codified mental health based upon legislative, policy compared to the intellectual research-based approach of psychological study. This subject is largely informed by the work of *Psychology and Law*, co-authored by psychology expert Curt R. Bartol and criminal justice scholar Anne M. Bartol in this thesis.<sup>5</sup> The separate fields intersect, but the system has historically struggled to meaningfully incorporate the research from the field of psychology into the law’s conviction of mentally ill offenders for punishment, rather than rehabilitation. While psychological research may aid in explaining a certain phenomenon, it is the law that ultimately decides what to do with that explanation. For example, insanity is a legal determination, not a clinical one and is thus different from the clinical field in comparison to legal standards. The U.S. Supreme Court ruled that the execution of an intellectually disabled individual (*Atkins v. Virginia*, 2002) or one so severely mentally ill that they could not understand why there being executed (*Ford v. Wainwright*, 1986) to be cruel and unusual punishment.

Rather than cataloguing the entirety of mental health policy in the late 20<sup>th</sup> century, this case study provides a lens into the relationship between mental health policy and the criminal law and its strengths and weaknesses into how it accounts for the mentally ill committing violent offenses. Additionally, this examination does not intend to vindicate Wuornos or justify the deaths of her victims, but to highlight the influences that contextual layers of American politics and culture play in this case, with a conscientious analysis of how inverted lenses permit a more holistic understanding in hindsight.

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<sup>5</sup> Curt R. Bartol and Anne M. Bartol, *Psychology and Law: Research and Practice* (Thousand Oaks, CA: Sage, 2015).

The context of the time period informs the way that the Wuornos' experience in the criminal justice system. The rise of the serial killer phenomenon during the 1970s introduced a distorted view of offenders as deviant psychopaths according to historian Philip Jenkins.<sup>6</sup> This may have contributed to a cultural and institutional prejudice to treat all of the mentally ill as "psychos." During the 1960s-1990s, simultaneous developments in criminal justice system occurred: rising tough-on-crime politics; stringent legal reform on mental health policy in the criminal justice system; and the deinstitutionalization of state-run psychiatric institutions. These cultural and political shifts resulted in deemphasized attention to more holistic mental health policy in favor of increased incarceration of criminal offenders. Thus, the correctional institution complex was met with overcrowding from rising incarceration rates, resulting in worsening jail and prison conditions from limited resources.

This thesis argues that over the latter part of the 20<sup>th</sup> century, substantive cultural, legal and political shifts influenced the American criminal justice system's increasingly punitive treatment of the mentally ill in capital cases. The rationale for using Aileen Wuornos as the primary case study stems from the major attention it has garnered in film, press and the courts—its iconography as the "first" serial killings by a female predator. This case is a fascinating web of the cultural, political, and legal systems that have entrapped the mentally ill into a potentially unfair case of villain, when victim might be more appropriate.

This research will explore how this case study reveals tensions in the criminal justice system regarding the treatment of the mentally ill and how these tensions were influenced by events in America during the late 20<sup>th</sup> century. Building on prior scholarship, this study further

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<sup>6</sup> Philip Jenkins, *Using Murder: The Social Construction of Serial Homicide* (New York: Aldine De Gruyter, 1994).

examines how this time period fostered an environment that blocked the incorporation of mental health policy into the modern application of criminal justice process, consistent with constitutional principles. Benefiting from an interdisciplinary scholarship necessary to put these two fields in conversation, this study will more precisely focus on how the relevance of mental health policy in this case was deemphasized, and if this prejudiced Wuornos' complicated story.

Tracking Wuornos' three trials in Florida counties, the appeals process, and her time on death row, the case was re-mediated to American society through various cultural representations. These include true crime texts, documentaries, films, television series, and even an opera. A majority of the representations of Wuornos have either deemphasized the state of her mental health as a factor in her treatment in the criminal justice system or employed her relatively novel status as a trope to portray dangerous behavior to justify her risk to American society. Looking at Wuornos through various media, it is clear that the story of the "Monster" seized America's attention continuously and predictably for decades since her arrest in the 1990s.

It is the unique feature of Wuornos' representation in documentaries that influenced this study, notably British documentarian Nick Broomfield's depiction of Aileen Wuornos in two of his films.<sup>7</sup> Although, Broomfield is merely one of dozens who seized upon this story to feed to an eager media, the close relationship he fostered with Wuornos distinguishes his work with the trust he fostered with the death row inmate. The father of the documentary genre, John Grierson, describes documentaries as the "creative treatment of actuality," but in evaluating Broomfield's

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<sup>7</sup> Nick Broomfield, *Aileen Wuornos: The Selling of a Serial Killer* (Channel 4 Television Corporation, 1992), accessed September 20, 2017, amazon.com; *Aileen: Life and Death of a Serial Killer* (Channel 4 Television Corporation, 2003), accessed September 20, 2017, amazon.com.

work an inherent tension emerges in the appropriation of Wuornos' narrative as a reality.<sup>8</sup>

The arch of Broomfield's argument was left out of his documentaries, but he returns to his premise from the benefit of hindsight in his interviews of the failure of the American criminal justice system to execute a mentally ill woman when the law states this to be illegal. This thread of Wuornos' story that Broomfield's documentaries dance around is probably the most compelling: if it is in violation of the legal statutes to execute a mentally ill individual for a capital crime, then *why* and *how* this happened to Aileen Wuornos?

Through a post-mortem exploration of this case study, it is suggested that various influences of Wuornos' treatment in the criminal justice system to be layered with the fascination of serial killers based on crime statistics, legal standards, and psychological studies. Reports from the FBI and Department of Justice (DOJ) focus on the prevalence of homicide and serial killer trends, including gender differences in homicidal offenders. These sources revealed crime trends in historical context and suggested the influence of underlying developments with the fascination of serial killers during the 1980s and 1990s. Case law from the United States Supreme Court and Florida Supreme Court serve as precedents for the standards of the Wuornos' convictions and contextualize treatment in her case. When aiming to address the overlooked aspects of mental health in the American criminal justice system, early childhood psychological studies inform how her adulthood behavior may have developed during her youth. Specifically,

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<sup>8</sup> John Grieson, "The First Principles of Documentary," *Forsythe Hardy*, edited by Grierson Documentary (London: Faber & Faber, 1966); Theatrical Trailer for Nick Broomfield, *Aileen: Life & Death of a Serial Killer*, available from Youtube, accessed January 2, 2017, [https://www.youtube.com/watch?v=EG2\\_oetIGIo](https://www.youtube.com/watch?v=EG2_oetIGIo).

psychological articles focusing on the life-span development of antisocial and psychopathic behavior to aid in framing Wuornos' early trauma.

The research findings reveal that institutional mechanisms worked to disenfranchise Wuornos throughout her experience in the American criminal justice system: the cultural consumption of media, political influence upon legal proceedings, and the destructive conditions for inmates in the correctional institution. The failure to effectively integrate psychology into the American criminal justice system is transient throughout Wuornos' case. Finding that Wuornos' mental health was either overlooked, misunderstood, or ignored during her experience in Florida's criminal justice system, this thesis suggests this occurrence to be prevalent on a national scale.

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My thesis is organized into three chapters encapsulating how the seriously mentally ill committing violent crimes have been repositioned as threatening monsters in society, rather than individuals suffering from uncontrollable disorders without treatment. In the first section, I will observe how the serial killer phenomenon became a societal fear with the fascination of nefarious psychopaths. The second chapter will consist of an examination into the changes that resulted from the increasingly punitive trend in the political and legal arenas of promoting "crime and punishment." In my third chapter, I will evaluate how these policies influenced the criminal justice to contract prisoner rights in refocusing the correctional system for punishment, not rehabilitation. Woven throughout these chapters are key examples from research on the case of Aileen Wuornos.

## CONSTRUCTING THE MONSTER: RISE OF THE SERIAL KILLER

The transmission of the crimes from across the country of cannibalism, predators, murder, and stalking created a hysteria. Jenkins contends that the Department of Justice perpetuated this moral panic in the 1980s-1990s to bolster fear in society about serial murder to increase the influence and scope of the FBI's investigative capabilities.<sup>9</sup>

This criminal typology of serial killers has been defined as “a person who murders in “three or more separate events in three or more separate locations with an emotional cooling-off period between homicides.”<sup>10</sup> Jenkins has indicated two periods of the serialist moral panic: 1983-1985 and 1991-1992, in which Wuornos' arrest was in the midst of the second wave.<sup>11</sup> Serial killings experienced an increase during the 20<sup>th</sup> century, which may be even greater with the updated definition of a serial killing as “2 or more” victims, rather than the previous accepted “3 or more” definition.<sup>12</sup> The FBI does not have a comprehensive record to determine the exact number of serial killers in the United States, but experts in the field of criminology have supplemented this gap. For example, Professor of Criminology at Northeastern University, James Alan Fox has constructed a database confirming all of the serial killings dating back from 1900 that have occurred based on newspaper clippings, books, and Web sources.<sup>13</sup> Fox and Professor

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<sup>9</sup> Jenkins, *Using Murder*.

<sup>10</sup> John E. Douglass, Ann W. Burgess, and Robert K. Ressler, *Crime Classification Manual* (New York: Lexington Books, 1992), 20-21. The standard for “three or more” has since been updated to “two or more” by the FBI.

<sup>11</sup> Jenkins, *Using Murder*, 63-67.

<sup>12</sup> M.G. Aamodt, “Serial Killer Statistics,” Radford University (2016): 5, accessed October 18, 2017, [http://maamodt.asp.radford.edu/serial\\_killer/](http://maamodt.asp.radford.edu/serial_killer/).

<sup>13</sup> James Alan Fox (2011), Interview by Christopher Beam, “Blood Loss: The Decline of the Serial Killer,” *Slate*, 12/5/2011, accessed October 25, 2017, [http://www.slate.com/articles/news\\_and\\_politics/crime/2011/01/blood\\_loss.html](http://www.slate.com/articles/news_and_politics/crime/2011/01/blood_loss.html). Fox avoids double-counting by assigning serial killers to the decade in the mid-point of their “careers.”

Emeritus at Northeastern University Jack Levin found that the trends of serial killing jumped radically from 19 in the 1960s to 191 in the 1970s, until its modern zenith of 200 in the 1980s.<sup>14</sup> The record high of the 1980s have explanations with improvements in data collection and record-keeping improvements to expedite tracking cases, more sophisticated law enforcement methods of investigation to connect cases, and increasing experiential knowledge in the field of criminal profiling. There has been an average of at least five serial killers each year in the United States during the 1970s—the mass majority being men with approximately 170 male offenders.<sup>15</sup>

Harold Schechter—Professor of Crime at Queens College of the City University of New York—has suggested that the “golden age of serial murders is probably past.”<sup>16</sup> For example, statistics support a downturn of serial killings: from the 1990s and 2000s of only 141 and 61 serial killings, respectively.<sup>17</sup> Additionally, murder rates for both male and female offenders declined in the 1990s—the lowest in 1998 since these statistics were first collected in 1976.<sup>18</sup> Reasons for this vary, but *Time* magazine cites some general possibilities for the overall decrease in crime rates since the 1980s: improved law enforcement training for investigations; the culprits are “behind bars,” or they are have not been caught yet.<sup>19</sup> From a counter perspective, Kevin D.

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<sup>14</sup> James Alan Fox and Jack Levin, *Extreme Killing: Understanding Serial and Mass Murder* (Thousand Oaks, CA: Sage Publications, 2011); 32-33. Fox and Levin’s definition of serial killings is “a string of four or more homicides committed by one or a few perpetrators that spans a period of days, weeks, months, or even years,” which differs from the FBI and possibly underrepresenting unreported occurrences.

<sup>15</sup> Eric W. Hickey, *Serial Murderers and their Victims*, (Pacific Grove, CA: Brooks/Cole, 1991): 86.

<sup>16</sup> Harold Schechter, *The A to Z Encyclopedia of Serial Killers* (New York: Simon and Schuster, 2012).

<sup>17</sup> Schechter, *The A to Z Encyclopedia of Serial Killers*, 73-80.

<sup>18</sup> Lawrence A. Greenfeld and Tracy L. Snell, “Women Offenders,” *U.S. Department of Justice: Bureau of Justice Statistics* (Dec 1999): 4, accessed September 20, 2017, <https://www.bjs.gov/content/pub/pdf/wo.pdf>. The estimated female and male murder rates in 1998 were 1.3 and 11.5 per 100,000 residents, respectively.

<sup>19</sup> David Von Drehle, “What’s Behind America’s Falling Crime Rate,” *Time*, 2/22/2010, accessed 11/20/2018, <http://content.time.com/time/magazine/article/0,9171,1963761,00.html>.

Haggerty—Professor of Sociology and Criminology at the University of Alberta—has argued that serial killings are a distinctly modern phenomenon, based on “modernity setting the parameters of what it means to be a serial killer, and establishing the preconditions for serial murder to emerge in its distinctive contemporary guise.”<sup>20</sup> He outlines six factors to support this argument:

(a) the mass media and the attendant rise of a celebrity culture; (b) a society of strangers; (c) a type of mean/ends rationality that is largely divorced from value considerations; (d) cultural frameworks of denigration which tend to implicitly single out some groups for greater predation; (e) particular opportunity structures for victimization; and finally (f) the notion that society can be engineered.<sup>21</sup>

After almost two decades of the “first” female serial killer’s capture—there was still a male-centric focus on approaching serial investigations by 2005.<sup>22</sup> In attempts to further aid in conducting serial killer investigation, the FBI issued a holistic report on best tactics and relevant research on the subject.<sup>23</sup> The causality for serial killings a majority of the time is the main determinant of one’s personal decision, and biological predispositions that are modeled during early social development with determinants of childhood neglect and abuse, alongside substance abuse.<sup>24</sup> Furthermore, psychopathy is a usual characteristic for serial killers, lacking

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<sup>20</sup> Kevin D. Haggerty, “Modern Serial Killers,” *Crime, Media, Culture* 5, no. 2 (Aug 2009): 168-87, available from Sage Journals, accessed 11/1/2017, <https://doi.org/10.1177/1741659009335714>.

<sup>21</sup> Haggerty, “Modern Serial Killers,” 168-87.

<sup>22</sup> “Serial Murder: Multi-Disciplinary Perspectives for Investigators,” *U.S. Department of Justice, Federal Bureau of Investigation* (2005), edited by Robert J. Morton, accessed September 28, 2017, <https://www.fbi.gov/stats-services/publications/serial-murder>. This report was produced following a symposium comprised of interdisciplinary experts in various fields on the subject of serial killers, there was a consensus on some factors for the best approach in conducting serial killer investigations and debunking the common misconceptions on the subject.

<sup>23</sup> “Serial Murder” *U.S. Department of Justice, Federal Bureau of Investigation* (2005).

<sup>24</sup> “Serial Murder” *U.S. Department of Justice, Federal Bureau of Investigation* (2005), 11-12.

interpersonal skills with affective traits indicate of non-integrative lifestyles of the anti-social nature.<sup>25</sup> Furthermore some of the myths on serial killers that are not true include: dysfunctional loners, white male profile, sexual motivation, traveler, unable to stop killing, evil genius of insanity, desire to be caught.<sup>26</sup> The serial killer definition that has been utilized from the symposium is holistic, but is still today focused upon a masculine definition.

### Criminal Profiling

The psyches of these individual were identifiably distinct from other offenders, prompting continuous attempts to categorize the profile of serial killers through repeated characteristics to aid law enforcement when investigating violent crimes. A budding field was created in the FBI's training academy at Quantico forming a specialized task force, the Behavioral Sciences Unit (BSU), composed of behavioral criminologists and special agents John E. Douglass and Robert K. Ressler and crime victim expert Dr. Ann W. Burgess.<sup>27</sup> The team published *Crime Classification Manual: A Standard System for Investigating and Classifying Violent Crimes* to compile the findings on their work, such as the infamous cases of criminal history including Charles Manson, the Son of Sam, Richard Speck and Ted Bundy. This unit originated as a research project by special agents John Douglass and Robert Ressler—accompanied later by crime victim expert Dr. Ann Burgess—the pioneering team for the American criminal profiling model. Although, forms of offender profiling existed prior to this research, Douglas, Ressler and Burgess are often credited as aiding in the establishment of the FBI's distinctive behavioral science method of profiling criminals.<sup>28</sup> In an interview for

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<sup>25</sup> “Serial Murder” *U.S. Department of Justice, Federal Bureau of Investigation* (2005), 14-15.

<sup>26</sup> “Serial Murder” *U.S. Department of Justice, Federal Bureau of Investigation* (2005), 4-6.

<sup>27</sup> Douglass, Ann W. Burgess, and Robert K. Ressler, *Crime Classification Manual*, 20-21.

<sup>28</sup> There are three basic types of crime scene profiling: clinical, statistical, and a combination method of the formers. Distinct from the clinically produced profiling is the “statistical, research-based profiling” that is largely

*Huffington Post*, Dr. Burgess discusses the team’s experience with profiling as looking for patterns in the cases they encountered to file into categories of “victimology, crime scenes and forensics” or other information “condensed into numerical figures” for data; the agents “gleaned” information from their profiles they created, for example, crime scenes was theorized by the agents as either an “organized” or “disorganized” classification.<sup>29</sup>

The team grew to a “large-scale initiative” in order to “document, study, and investigate repeat killers” in their establishment of a categorization of a “trichotomy of multiple murder” distinct from “mass” or “spree” murders:

. . . the FBI’s Behavioral Sciences Unit (BSU) defined mass killings (or massacres) as homicides involving the murder of four or more victims in a single episode. . . Repeat murderers were then classified by the BSU as either serial or spree killers based on whether or not the offender ‘cools off’ between attacks. Operationally, the spree killer launches a swatch of destruction, usually over a period of several days, wherein most of his activity surrounds planning or executing his crimes and evading the police. By contrast, the serial killer, who may continue to kill over a period or months or years, often has long time lapses between homicides, during which he maintains a more or less ordinary life, going to work and spending time with friends and family.<sup>30</sup>

Using a fusion of academic study and law enforcement experience, criminal profiling aimed to begin attempts at understanding and analyzing the behavior of the rising frequency of multiple murders committed by a single individual. Investigations for murders committed by serial killers

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based on empirical and systematic analysis of offenders who have previously committed crimes that are considered similar to those being investigated, while the combination includes features of both (Bartol and Bartol, *Psychology and Law*, 252-53).

<sup>29</sup> Sara Boboltz, “How Netflix’s Serial Killer Drama ‘Mindhunter’ Draws From Real Life,” *Huffington Post*, Oct. 21st, 2017, <https://www.huffingtonpost.com/entry/netflix-mindhunter/>. This article was written based off of an interview with Dr. Ann Burgess.

<sup>30</sup> Fox and Levin, *Extreme Killing*, 17. For further reference on the development of the FBI’s BSU—now referred to as the Behavioral Analysis Unit (BAU) see John E. Douglas, *Mind Hunter: Inside the FBI’s Elite Serial Crime Unit*, 1<sup>st</sup> edition (NY: Scribner), 1995. Douglas is considered the father of criminal profilers, in which he references the process of forming the unit in his work, later based upon the *Netflix* television series released in 2017.

has been offered by the “experts” in the field of criminal profiling to contain specific elements to accurately determine the nature of the crime based on available forensic evidence at the crime scene.<sup>31</sup> Criminal profilers gather all relevant information to make informed hypotheses about the suspect for law enforcement using the scientific discipline of “investigative psychology” (IP) concerned with “the psychological principles, theories and empirical findings that may be applied to investigations and the legal process with the aim of improving the effectiveness of criminal detection and the appropriateness of the work of the courts.”<sup>32</sup>

However, the field of criminal profiling in America is a controversial investigation tactic due to the reliance on experience of the investigator, rather than logical statistics and empirical analysis.<sup>33</sup> In analyzing FBI data, Ronald M. Holmes—a scholar on the topic of criminal profiling—found that the FBI claims of the success of profiling is exaggerated, citing that 192 cases of profile construction resulted in 88 arrests, but offender profiling has only aided in 17% of the arrests.<sup>34</sup> This was supported by Ressler in his memoir conceding issues with the investigative method: “In feeding the frenzy, we were just using an old tactic in Washington, playing up the problem as a way of getting Congress and the higher-ups in the executive branch to pay attention to it.”<sup>35</sup> The FBI’s contribution to the serial killer craze in the media, has been analyzed to be motivated by re-establishing credibility for the Bureau, access to national

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<sup>31</sup> Bartol and Bartol, *Psychology and Law*, 253.

<sup>32</sup> Fox and Levin, *Extreme Killing*, 17-19; D. Youngs, “Psychology and Investigations,” in *Criminal Psychology*, editor D. Canter (London: Hodder Education, 2008). Youngs indicates that preceding studies have demonstrated that there are links between offending style and offender characteristics are present and may be established.

<sup>33</sup> Bartol and Bartol, *Psychology and Law*, 252-59; D. Youngs, “Psychology and Investigations.”

<sup>34</sup> Ronald M. Holmes, *Profiling Violent Crimes* (Newbury Park, CA: Sage, 1989).

<sup>35</sup> Robert Ressler and Tom Shactman, *Whoever Fights Monsters* (New York: St. Martin’s Press, 1992), 203.

jurisdiction over crimes, and receive more federal assistance in the tracking, arresting, and conviction of serial killers.<sup>36</sup> Scholar Julie Harrower contends that offender profiling has potential if used properly if used by professionals, but that without statistical evidence and reliance on the “gut” feeling there is little evidence of it as an effective method.<sup>37</sup>

In understanding this burgeoning genre of criminology, it was imperative to integrate abnormal psychology into the law. There was a rising importance to comprehend the development of the serial killer mind from early childhood to their killings in order to better understand the various *modus operandi* and motives of each case.<sup>38</sup> In this context, the media fascination heightened Wuornos’ case, especially when she was labeled—incorrectly—as the ‘first’ female to fit this developing criminal profiling criteria.<sup>39</sup> Sociologist and criminologist Eric W. Hickey reveals the incorrect label determines that Wuornos was in fact not the first serial killer in a comprehensive study revealing predecessors dating back to the 19<sup>th</sup> century.<sup>40</sup>

The detectives of Florida relied on traditional techniques in their investigation of the interstate killings without the tools that the time’s budding field of criminal profiling had yet to incorporate a female profile in their suspect characteristics. The crime scenes were in isolated areas, where the victims were middle-aged white men shot at close range near their automobiles

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<sup>36</sup> Jenkins, *Using Murder*, 55-57.

<sup>37</sup> Julie Harrower, *Applying Psychology in Crime* (London: Hodder & Stoughton, 1998).

<sup>38</sup> Abnormal psychology is referred in this thesis as the branch of psychology dealing with the study, explanation, and treatment of behavior, which is considered a deviation from that which is normal. This is addressed more in a clinical context ranging from behaviors, emotions and cognition that may prompt an exploration by mental health professionals (J.W. Bridges, “What is Abnormal Psychology?” *The Journal of Abnormal and Social Psychology* 24, no. 4 (1930): 430-32, accessed on 12/4/2018, <https://doi.10.1037/h0074965>).

<sup>39</sup> Eric W. Hickey, *Serial Murderers and their Victims*, (Pacific Grove, CA: Brooks/Cole, 1991). Hickey determines that Wuornos was in fact not the first serial killer in a minor discussion of predecessors with the label.

<sup>40</sup> Hickey, *Serial Murderers and their Victims*.

from the same murder weapon, a .22 caliber firearm.<sup>41</sup> In an interview with true crime documentary series *Investigation Discovery*, Detective Brian Jarvis of Marion County comments on the investigation that connecting the murder weapon to the crimes was the first major link of the trans-jurisdictional murders as a lesser used weapon from its smaller size.<sup>42</sup>

The sex differences in crime have long favored a trend for males as the vast majority of homicide convicts in the United States, representing 90.5% of total offenders, while white females of all ages had the lowest conviction rate compared to offenders in other racial and sexual categories.<sup>43</sup> It has been found that men are predominantly the offenders of crimes making up 99% of mass, sexual, and serial murder with about 90% of all violent crime, although there have been increasing rates of female offenders.<sup>44</sup>

Aileen Wuornos was representative of criminal trends in rising serial killings in the late 1980s, but arguably does not neatly fit into FBI's gendered criteria. For example, Wuornos emerged as the anomaly to the previous characteristics of female murdering in "sprees."<sup>45</sup> Fox states that "Wuornos is unique in that she killed in the style of male serial killers . . . She killed

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<sup>41</sup> "Monster," *Investigation Discovery*, season 1, episode 2 (May 29, 2012), accessed 2/15/2018, <https://www.investigationdiscovery.com/tv-shows/reel-crime-real-story/full-episodes/monster>.

<sup>42</sup> Brian Jarvis. (2012), Interview in "Monster," *Investigative Discovery*.

<sup>43</sup> Alexia Cooper and Erica L. Smith, "Homicide Trends in the United States, 1980-2008," *U.S. Department of Justice* (Nov. 2011). Further information from this study showed that victimization rates for both males and females have been relatively stable since 2000: males are most likely to be murder victims of 76.8%; women are more likely to be victims of domestic homicides (63.7%) and sex-related homicides (81.7%).

<sup>44</sup> U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics—1990* (Washington, DC: The Hindelang Criminal Justice Research Center, 1991), eds. Kathleen Maguire & Timothy Flanagan, accessed October 13, 2018, <https://bjs.gov/content/pub/pdf/scjs90.pdf>, 422; Lawrence A. Greenfeld and Tracy L. Snell, "Women Offenders," *U.S. Department of Justice: Bureau of Justice Statistics*, 2000. Accessed 9/20/2017, <https://www.bjs.gov/content/pub/pdf/wo.pdf>; Eagley, Alice H. and Valerie Steffen, "Gender and Aggressive Behavior: A Meta-Analytic Review of the Social Psychological Literature," Volume 100 (3) p. 309-30, 1986, *Psychological Bulletin*, APA, ovidsp.txovid.com/.

<sup>45</sup> "Serial Murder," *U.S. Department of Justice, Federal Bureau of Investigation*.

strangers selected at random. Women generally don't kill people they don't know."<sup>46</sup> Hickey's study debunked Wuornos' title of the "first," revealing there were an estimated 34 female serial killers existing between 1800-1988—a trend was increasing during the 1990s—in contrast with an estimated 30 male serial killers on the loose as of the late 1980s.<sup>47</sup> For example, Belle Gunness did not receive the label for murdering a suspected 25-40 victims, including suitors, boyfriends, and her two daughters, of whom she kept in her hog pen from 1900-1908. However, Professor of Communication Studies at Loyola Marymount University, Kyra Pearson discusses this as a "trouble" with understanding her transgressions through the field of criminology—already a "spatial and gendered category."<sup>48</sup>

There have been alternative discussions that Wuornos just does not fit the mold of the serial killer for multiple reasons in contrast with the accepted classification. Phyllis Chesler questions the categorization all together: "Wuornos was not a pornography addict, she did not eroticize her hatred of women (or men); she did not stalk women, or male or female prostitutes; in fact, she *was* a prostituted women. The men she killed fit the profile of johns, those who frequent prostitutes."<sup>49</sup> Chesler argues that serial killers do not usually claim their murders were committed in self-defense, which she repeats at least fifty times during her three-hour "psychologically manipulated confession" on January 16<sup>th</sup>, 1991 in her belief she was going to

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<sup>46</sup> John-Thor Dahlburg, "Serial Killer's Life Still Intrigues on the Eve of Her Death," *Los Angeles Times*, 9 October 2002, <http://articles.latimes.com/2002/oct/09/na-wuornos9>.

<sup>47</sup> Hickey, *Serial Murderers and their Victims*, 86.

<sup>48</sup> Kyra Pearson, "The Trouble with Aileen Wuornos, Feminism's 'First Serial Killer,'" *Communication and Critical/Cultural Studies* 4, no. 3 (September 2007): 256-75, available from Taylor & Francis Online, accessed 9/20/2017, <https://doi.org/10.1080/14791420701472791>.

<sup>49</sup> Chesler, "A Woman's Right to Self-Defense," 946-47.

be “beaten or raped or killed” by her victims.<sup>50</sup> Although six separate occurrences seem implausible, Chesler expands how a “seriously abused child and a serially raped and beaten teen and adult prostitute” is under immense stress following the trigger alleged attack of Mallory.<sup>51</sup> As living her life “on dangerous grounds at all times,” Wuornos has thus been considered by many experts in the field of clinical psychology to have been vulnerable to a psychotic break.<sup>52</sup>

Chesler cites the occurrences in the 19<sup>th</sup> and 20<sup>th</sup> centuries when women, specifically prostitutes, “injured or killed” their “pimps, or johns” to avoid abuse such as “being beaten, raped, or killed, or because they *had* been seduced and abandoned, beaten, prostituted, or raped” in their past.<sup>53</sup> A special report from the Department of Justice in 1999 found that a majority of female offenders in state prisons had experienced physical or sexual abuse in the past with just less than a quarter of female inmates reporting prior abuse by a family member.<sup>54</sup>

### Pathological Pathway to Violence

Although thorough in their coverage of Aileen Wuornos’ life in crime and violence, the media lacked to integrate the burgeoning field of criminal profiling’s focus on the development of the individual from early childhood, and if they contain warning signs. The focus on a subject’s early childhood development was a reason why critics were wary of criminal profiling, however from a psychological perspective Wuornos’ youth is exemplary of a pathological pathway to violence. Her traumatic childhood experiences serve as a window into the dynamic

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<sup>50</sup> Chesler, “A Woman’s Right to Self-Defense,” 947. The author quotes the confession of Aileen Carol Wuornos on January 16, 1991 from a transcript/videotape on file.

<sup>51</sup> *Ibid.*, 947.

<sup>52</sup> Aileen Carol Wuornos. (1991) Telephone Interview by Phyllis Chesler, “A Woman’s Right to Self-Defense,” 954.

<sup>53</sup> Chesler, “A Woman’s Right to Self-Defense,” 935-36.

<sup>54</sup> Greenfeld and Snell, “Women Offenders.”

factors influencing a possible pathway towards adult violent behavior. A multitude of factors influenced Wuornos to develop into a mentally disturbed woman: biological predisposition, early attachment failures from abandonment issues, abusive ‘parenting styles’ by her grandparents, and the repeated physical and mental abuse.

The abusive trauma began before Wuornos found herself living in the woods of Michigan after her abusive grandfather threw her out of the house for “getting pregnant”—very likely to be the product of a rape from the town’s notorious pedophile.<sup>55</sup> She was sent away during her pregnancy and forced to give the child up for adoption until upturned as a homeless teenager drifting as a 14-year-old sex-worker—in her first year as a “runaway,” Wuornos was raped four times.

Wuornos were raised by her maternal grandparents—an abusive man and alcoholic woman—who she believed to be her biological parents when she a young teenager until informed at 13-years-old that her father committed suicide in prison for the molestation of a young boy. Abandoned by her mother when she was 6-months-old with her brother, Keith, Wuornos underwent a tumultuous childhood of physical and mental abuse and neglect. Some of these tragedies include: being scarred in a fire at the age of 9; suffering from untreated hearing impairment since childhood; selling sexual favors to neighborhood boys for cigarettes and money during her adolescence; engaging in sexual acts with her brother and his friends as a child; consistently was beaten by her grandfather.

The development of antisocial behaviors from the onset of childhood-onset delinquency result from pathological characteristics—parenting style, neuro-cognitive issues, and specific

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<sup>55</sup> Broomfield, *Aileen*, 2003.

emotional and behaviors—that are found to have a life-course persistence, as discussed in Terrie E. Moffitt and Avshalom Caspi’s study.<sup>56</sup> Furthermore, some theories have found genetic factors for violent, antisocial behavior. This “nature” argument is considered to be able overcome with a secure environment and family support system—two features at a disadvantage to Wuornos’ early life, as discussed by British journalist and businessmen Matt Ridley.<sup>57</sup> From birth, the influence of her genes put Wuornos as an at-risk candidate for inheriting her family history’s predisposition for violence but was not an inevitable pathway. Wuornos was deprived of protective mechanisms to combat her biological vulnerability, and faced developmental setbacks raised by her coercive grandparents due her abandonment of both biological parents.

The departure of her biological mother at the pivotal “sensitive period” of early childhood is also seen as dysfunctional development based upon the developmental psychologist Mary D. Salter Ainsworth’s theory of attachment.<sup>58</sup> Psychiatrist, psychologist, and psychoanalyst John Bowlby outlines that the disruption of the early foundational relationship formation between the mother and infant influence all succeeding social relationships.<sup>59</sup> Psychologists Cindy Hazan and Phillip Shaver found that these early attachment interactions inform and influences an individual’s future engagement in relationships for friendship and

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<sup>56</sup> Terrie E. Moffitt and Avshalom Caspi, “Childhood Predictors Differentiate Life-Course Persistent and Adolescence-Limited Antisocial Pathways among Males and Females,” *Development and Psychopathology* 13, no. 2 (2001): 355–375, accessed November 1, 2017, <https://www.cambridge.org/core/journals/development-and-psychopathology/article/childhood-predictors-differentiate-life-course-persistent-and-adolescence-limited-antisocial-pathways-among-males-and-females/9C56830680C091AFD617995169572ED3>.

<sup>57</sup> Matt Ridley, “The Madness of Causes,” in *Nature via Nurture: Genes, Experience and What Makes Us Human* (London: Harper Perennial, 2003): 98-125.

<sup>58</sup> Mary D. Salter Ainsworth, Mary C. Blehar, Everett Waters, and Sally Wall, “Patterns of Attachment: A Psychological Study of the Strange Situation,” (Hillsdale, NJ: Lawrence Erlbaum, 1978), available from Wiley Online Library, [https://doi.org/10.1002/1097-0355\(198021\)1:1<68::AID-IMHJ2280010110>3.0.CO;2-3](https://doi.org/10.1002/1097-0355(198021)1:1<68::AID-IMHJ2280010110>3.0.CO;2-3).

<sup>59</sup> John Bowlby, *Attachment and Loss*, 2<sup>nd</sup> ed. (New York: Basic Books, 1982).

romance.<sup>60</sup> Furthermore Wuornos' early failure for meaningful relationships from abusive grandparents resulted in a dysfunctional development and the lack of emotional security in a household results in problems for the child, as offered by psychologists E. Mark Cummings, Patrick T. Davies, and Susan B. Campbell.<sup>61</sup>

During a testimony from a childhood friend on appeal, it was revealed that Wuornos' grandfather would beat her violently with a belt for an infraction, such as skipping school.<sup>62</sup> A child that is exposed to poor quality of parental figures experiences an "intergenerational transmission" with a higher tendency for an insecure or dysfunctional childhood development, leading to a "Chronically Activated System" where an incoherent view of one's childhood, anger towards parents, and hypervigilance and sensitivity is commonly found in these "preoccupied" individuals in adulthood.<sup>63</sup> Furthermore, psychologist Paul J. Frick's study found the longevity of this early experience influenced development as a pathway of children that demonstrate "callous-emotional-traits" and "emotional problems."<sup>64</sup> This perspective is useful in informing

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<sup>60</sup> Cindy Hazan and Phillip Shaver, "Romantic Love Conceptualized as an Attachment Process," *Journal of Personality and Social Psychology* 52, no. 3 (1987): 511-24. <https://public.psych.iastate.edu/ccutrona/psych592a/articles>; "Attachment as an Organizational Framework for Research on Close Relationship," *Psychological Inquiry* 5, (1994): 1-22, accessed November 2nd, 2017, doi.org/10.1207/ s15327965pli0501\_1;

<sup>61</sup> Susan B. Campbell, E. Mark Cummings, and Patrick T. Davies, "Developmental Psychopathology and Family Process: Theory, Research, and Clinical Implications (New York: Guilford Press, 2002).

<sup>62</sup> Broomfield, *Aileen* (2003).

<sup>63</sup> Cathy Spatz Widom, Sally J. Czaja, and Kimberly A. DuMont, "Intergenerational Transmission of Child Abuse and Neglect: Real or Detection Bias?" *Science* 347, no. 6229 (March 2015): 1480-85, accessed September 22, 2018, doi:10.1126/science.1259917; G.R. Patterson, B. DeBaryshe, and E. Ramsey, *American Psychologist* 44, no. 2 (1989): 329-35, accessed September 22, 2018, <http://dx.doi.org/10.1037/0003-066X.44.2.329>.

<sup>64</sup> Paul J. Frick, "Developmental Pathways to Conduct Disorder: Implications for Future Directions in Research, Assessment, and Treatment," *Journal of Clinical Child & Adolescent Psychology* 41, no. 3 (May 2012): 378-389, accessed October 30<sup>th</sup>, 2017, <http://dx.doi.org/10.1080/15374416.2012.664815>.

the way that nature and nurture dually affected the trajectory of Wuornos, whose family had a history of violence.

Like many female victims of serious childhood abuse, Wuornos later developed into using alcohol as a crutch during her works as a sex-worker, who was forced to support herself as a run-away teenager drifting between Michigan and Florida from 1971 to 1991, and spending time in reform school in Michigan and in jail in Florida.<sup>65</sup>

Clinical psychiatrists diagnosed Wuornos with several mental health disorders, including borderline personality disorder (BPD), bipolar disorder, and scored a high 32 on the *Hare Psychopathy Checklist – Revised (PCL-R)*.<sup>66</sup> The PCL-R measures two distinct but correlated factors, but describe a selfish, callous and remorseless use of others, and chronically unstable, antisocial and socially deviant lifestyle offered by psychology experts Robert D. Hare, Stephen D. Hart, and Timothy J. Harpur.<sup>67</sup> Multiple studies have found that individuals scoring high on the PCL-R checklist are more likely to be aggressive, uncaring, troublesome, inhumane, insensitive to others' needs and feelings, who tend to not experience guilt, prefer strange and unusual things with impulsivity and tending to be uncooperative, rigid and lack sensitivity.<sup>68</sup>

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<sup>65</sup> Broomfield, *Aileen* (2003); Chesler, "A Woman's Right to Self-Defense," 955.

<sup>66</sup> Myers et al., "The Role of Psychopathy and Sexuality in a Female Serial Killer." An individual with impulsivity, anger, and outbursts of violence indicates forensic evaluations for borderline personality disorder ("Borderline Personality Disorder," *National Institute of Mental Health* (Dec 17), accessed April 1, 2018, <https://www.nimh.nih.gov/health/topics/borderline-personality-disorder/index.shtml>); William H. Reid, "Borderline Personality Disorder and Related Traits in Forensic Psychiatry," *Journal of Psychiatric Practice* accessed January 5, 2018, <https://doi.org/10.1097/01.pra.0000351882.75754.0c>.

<sup>67</sup> Robert D. Hare, Stephen D. Hart, and Timothy J. Harpur, "Psychopathy and the DSM-IV Criteria for Antisocial Personality Disorder," in *Journal of Abnormal Psychology* 100, no. 3 (Aug 1991): 391-98, accessed January 4, 2018, <http://dx.doi.org/10.1037/0021-843X.100.3.391>.

<sup>68</sup> Adrian Furnham and Patrick Heaven, *Personality and Social Behavior* (London: Arnold, 1999); Eysenck, *Crime and Personality* (London: Paladin, 1970); E. Howarth, "What Does Eysenck's Psychoticism Scale Really Measure?" in *British Journal of Psychology*, 77 (1986): 223-27, accessed December 1, 2017, <https://doi.org/10.1111/j.2044-8295.1986.tb01996.x>.

BPD is the common mental illness of adults who were victimized as children, consistent with Wuornos background where an individual suffers from a strained borderline between anxiety and psychosis. In this case, the alleged violent rape of Wuornos by first victim Richard Mallory on the night of November 30, 1989 suggests the trigger of a psychotic break from her early childhood sexual and psychological abuses.

### The Media & Commodification of Narratives

As the media's growing obsession with serial killers increased in the 1970s and 1980s, it has been suggested that the creation of a “minor snowball effect” offered a “short path to celebrity” for the public consumption of these stories.<sup>69</sup> The cultural fascination with serial killings became an American fear for murderous individuals to functionally disguise themselves in society while having the capacity to commit depraved crimes. The sensational, horrific stories of “sex-addled psychopaths” embedded itself in the “popular imagination” of American culture:

These crimes caused media frenzies in part because of the way they tapped into the obsessions and fears of the time: [Ted] Bundy, a golden boy who worked on Nelson Rockefeller's presidential campaign in Seattle, seemed to represent the evil lurking beneath America's cheery exterior. [John Wayne] Gacy, who dressed up as a clown and preyed on teenage boys, was every parent's nightmare. ‘Son of Sam’ David Berkowitz milked—and, in so doing, mocked—the media's obsession with serial killers by sending a letter to *New York Daily News*...infamous crimes almost always needle the anxieties of their periods.<sup>70</sup>

Academia and the FBI were not the only fields to be fascinated with Wuornos: the media and Hollywood seized upon this fascination as the new trope for society to culturally consume. Cultural representations of Aileen Wuornos proliferated following her arrest, which may have

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<sup>69</sup> Beam, “Blood Loss,” *Slate*.

<sup>70</sup> *Ibid*.

resulted in a misleading but dominant narrative of the case. Usually, the case's notoriety in the media is understood, perhaps mistakenly, by Charlize Theron's Oscar-winning performance in the 2003 block-buster *Monster*.<sup>71</sup>

Numerous "true crime" biographies emerged in the first few years of her trials to investigate her life. Prominent works include those of investigative journalists Michael Reynolds's *Dead Ends: The Pursuit, Conviction, and Execution of Serial Killer Aileen Wuornos*, and Sue Russell's *Lethal Intent*; both provide perspectives that aid in understanding the background of Aileen Wuornos' development from her childhood trauma and teenage prostitution to the middle-age hardships that were prologue to her murders.<sup>72</sup>

The case was also remediated to the American public on cable television network and multiple entertainment features, such as *Dateline*, *Investigate Discovery*, and tabloid programs. When it became public information that not only was the perpetrator a female sex worker, but also a homosexual, homeless woman with a history of violence, the tone in both local newspapers and national reports were almost unanimously demeaning to Wuornos. The descriptive headlines of reports revealed prejudicial biases, such as "Florida Shocked by Case of Lesbian Accused of Serial Murders."<sup>73</sup> Note explores how, as a widely covered case, Aileen Wuornos was the cause of immense media speculation and cultural representation.<sup>74</sup> Seen as an

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<sup>71</sup> Peggy Jenkins, *Monster* (Dolby Digital DVD, 2003); Grierson, "The First Principles of Documentary."

<sup>72</sup> Michael Reynolds, *Dead Ends: The Pursuit, Conviction, and Execution of Serial Killer Aileen Wuornos* (2016); Dolores Kennedy and Robert Nolin, *On a Killing Day* (Chicago: Bonus Books, 1992). Both Reynolds and Russell released multiple editions to their works. Reynolds initially published his first edition in 1992 then in 2004 following Wuornos' execution. Russell released a second edition to her investigative biography in 2010.

<sup>73</sup> John Bankston, "Florida Shocked by Case of Lesbian Accused of Serial Murders," *Advocate*, 21 May 1991, 50-52.

<sup>74</sup> Note, "Monster-Making."

outsider, Wuornos received harsh media scrutiny due to her intersectional identity, and was frequently labeled as “hooker,” “white-trash,” “psychopath,” “lesbian,” “serial killer,” and ultimately “monster.”<sup>75</sup>

This was accessing an anxiety in American culture of fear and marginalizing an outside figure with intersectional identities that don’t fit into an idealistic mold of the 1980s conservative values of gender, sexuality, and morality. In psychologist Anne Campbell’s work on sex differences in crime, she explores the difference in the public’s consumption of defying gender norms: “cultural interpretations have ‘enhanced’ evolutionarily based sex differences by a process of imposition which stigmatizes the expression of aggression by females and causes women to offer exculpatory, rather than justifiable, accounts of their own aggression.”<sup>76</sup> Furthermore, when women commit violent crimes there is a dual assault on society because “they are seen to have breached two laws: the law of the land which forbids violence and natural law which says women are passive careers not active aggressors.”<sup>77</sup>

Broomfield remarks the motivation to begin his project was due to the expansive media coverage it generated. In an interview with *The Village Voice*, he stated he wished to explore “the commercial exploitation of the notion of a serial killer.”<sup>78</sup> Professor of English at the

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<sup>75</sup> Ibid.

<sup>76</sup> Anne Campbell, “Staying Alive: Evolution, Culture, and Women’s Intrasexual Aggression,” *Behavioral and Brain Sciences* 22, no. 2 (1999): 203-14, accessed September 20 2017, [www.cambridge.org/](http://www.cambridge.org/). For further discussion on the gendered perspective of crime see Alice H. Eagly and Valerie J. Steffen, “Gender and Aggressive Behavior: A Meta-Analytic Review of the Social Psychological Literature.” Volume 100 (3), p. 309-30. 1986. Psychological Bulletin of American Psychological Association. [ovidsp.tx.ovid.com/](http://ovidsp.tx.ovid.com/)

<sup>77</sup> Ann Lloyd, *Doubly Deviant, Doubly Damned: Society’s Treatment of Violent Women* (London: Harmondsworth Penguin, 1995).

<sup>78</sup> Laura Sinagra, “Blown Away by Aileen: Broomfield Takes a Second Shot at Figuring Out a Serial Killer,” *The Village Voice* (December 30, 2003), accessed October 16th, 2017, <https://theatlantic.com>.

University of Rhode Island, Valerie Karno, finds that Broomfield's first documentary in 1992 demonstrated that the narrative construction of alternative forms of exploitation provides a lens to view Wuornos as a form of victim in British filmmaker's critique of the parasitic figures attempting to gain from the commodification of her story.<sup>79</sup>

Wuornos was unable to gain monetary compensation from the multiple film and book deals that attempted to desired information about her story due to laws against convicted offenders profiting from their crimes.<sup>80</sup> The Son of Sam Laws state involve the use of the proceeds of a criminal earnings from recounting one's crime in a book, movie, television show, or other depiction.<sup>81</sup> In Florida, the legal decision in *Rolling* permitted this loophole, and further allowed the media, American criminal justice system, former friends, and even documentarian Nick Broomfield to gain profits from the acts Wuornos committed.<sup>82</sup>

However, her mental disorders, low IQ, and general vulnerability on death row may left her Wuornos vulnerable to manipulation from parasitic figures to find legal loopholes in the profits

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<sup>79</sup> Valerie Karno, "Between Victim and Offender: Aileen Wuornos and the Representation of Self-Defense," *Critical Matrix* 11, no. 2 (June 1999), available from ProQuest, accessed October 10, 2017, <http://proxy.library.georgetown.edu/login?url=https://search.proquest.com/docview/89070611?accountid=11091>.

<sup>80</sup> National Center for Victims of Crime. "Notoriety for Profit/'Son of Sam' Legislation." Accessed 11/5/2017. [www.ncvc.org/notorietyforprofit/](http://www.ncvc.org/notorietyforprofit/); *Rolling v. State of Florida*, 741 So. 627 (Dist. Ct. App., Fl. 1st Dist. 1999).

<sup>81</sup> "Son of Sam Laws," West's Encyclopedia of America Law, edition 2 (Detroit: Gail Group, 2008), available from Legal Dictionary, accessed October 2, 2017, <https://legal-dictionary.thefreedictionary.com/Son+of+Sam+law>. The laws were named after serial killer David Berkowitz after New York legislature learned his plan to sell his story. The Supreme Court ruled on the constitutionality of these laws in questions of First Amendment rights in *Simon and Schuster, Inc. v. New York Victims Crime Board*, 502 U.S. 105 (1991), involving profits from the book *Wiseguy: Life in a Mafia Family*. The Court did not strike all Son of Sam laws, and many states have modified statutes to designate profits of the offender be subject to attachment, not just those directly derived from selling the crime story.

<sup>82</sup> *Rolling v. State of Florida*, 741 So. 627 (Dist. Ct. App., Fl. 1st Dist. 1999).

of her story, such as private interviews. Wuornos was adopted by a middle-aged Born-Again Christian Arlene Pralle under the guise it would facilitate visits during her time in prison.<sup>83</sup> As her maternal guardian, Pralle and her ‘agent’ Stephen Glazer—a defense attorney advertising her services on billboards—brokered deals for rights to the story and access to Wuornos in prison using loop-holes around criminal profiteering laws.<sup>84</sup> Chesler reveals in the parasitic ways that Pralle and Glazer team capitalized—albeit exploited—Wuornos on death row. Broomfield discusses how Pralle refers to Glazer as her agent, who Chesler concurred that the billboard attorney “negotiated with and pocketed the relatively small amounts of money paid by the media” and larger amounts between \$7,500 and \$10,000 that Glazer claims Montel Williams, BBC, and Geraldo Rivera each paid to interview Wuornos on death row.<sup>85</sup>

An alternative perspective to Broomfield’s work is offered by film critic Paul Ward, who indicates that Broomfield ultimately constructed the “same” story of other representations through differing versions of “the truth” through dramatization in the “name of dramatic license.”<sup>86</sup> This results in an ascribed “meta-narrative” about the case, or when culture constructs a dominant discourse as one’s interpretation of reality. Broomfield complicates this when he blurs the distinction from stating the documentary “is her story,” putting him as the orchestrator

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<sup>83</sup> Broomfield, *Aileen Wuornos* (1992).

<sup>84</sup> *Rolling v. State of Florida*, 741 So. 627 (Dist. Ct. App., Fl. 1<sup>st</sup> Dist. 1999).

<sup>85</sup> Broomfield, *Aileen Wuornos* (1992); Chesler, “A Woman’s Right to Self-Defense,” 961.

<sup>86</sup> Paul Ward, *Documentary: The Margins of Reality* (London: Wallflower Press, 2005), 2. The main tension of documentaries lays within the cinematic decisions in documenting real-life experiences: “In all of these attempts to adequately capture the meaning of documentary, there is the same dilemma: how to deal with and understand something that quite clearly is attempting to represent *reality* (or some part of reality), but as it does so, uses specific *aesthetic* devices. A commonsense suggestion is that the aesthetics somehow *distort* or *change* the reality being represent. This central issue has troubled documentary filmmakers and theorists. . .and has arguably had a debilitating effect on understanding documentaries” (2).

of the film, but also as the voice of Wuornos.<sup>87</sup> Broomfield's documentaries includes Wuornos' background as a risk factor to her development, but problematically removes or deemphasizes a key aspect of her story: mental health.

For the law enforcement officials, the "fear" of a serial killer in the trans-jurisdiction crime proved advantageous from media attention, which they used to their advantage to control public opinion by strategically giving reporters case facts.<sup>88</sup> The police and media worked simultaneously to construct a dominant narrative of "monster" that would allow for a sensational story with financial success. Thus, primed for biased treatment from the media, it was evidence the case would never receive an impartial proceeding from law enforcement's desire for gaining film rights.

Wuornos became a suspect after a witness gave her description to Detective John Wisnieski of the Jupiter Police Department following fleeing the scene of a car accident of a stolen vehicle with Tyria Moore.<sup>89</sup> The police realized Wuornos was wanted for an outstanding warrant for an arms charge—the murder weapon. Florida law enforcement arrested Wuornos from an outstanding warrant and used ex-girlfriend Tyria Moore to coax Wuornos to confessing to committing the murders.<sup>90</sup> Moore was promised by Florida's district attorney's office to not be

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<sup>87</sup> Paul Ward, *Documentary: The Margins of Reality* (London: Wallflower Press, 2005). This quotation is taken from Nick Broomfield's theatrical trailer for the second Wuornos documentary, *Aileen: Life & Death of a Serial Killer*. [https://www.youtube.com/watch?v=EG2\\_oetIGIo](https://www.youtube.com/watch?v=EG2_oetIGIo).

<sup>88</sup> *Death Row Prostitute*, as quoted in Phyllis Chesler's "A Woman's Right to Self-Defense."

<sup>89</sup> Reynolds, *Dead Ends*, 59-60.

<sup>90</sup> "Monster," *Investigative Discovery*.

prosecuted for felony murder in knowledge of the crimes, in exchange for testifying as the lead witness against Wuornos at trial.<sup>91</sup>

The popularity and fascination of Wuornos prompted the entertainment industry to see great promise in Wuornos as not only the next serial killer fascination, but also the anti-femme fatale for a character America would love to hate from her intersectional, marginalized identity with severe mental health issues.<sup>92</sup> The Hollywood and television specials were at the ready for getting individuals with intimate knowledge and facts about Wuornos' story to reveal how this story unraveled. The previous lapse in ethical duties in extracting a confession from Wuornos became increasingly problematic when the detectives and the primary witness—Moore—ultimately capitalized from the popularity of the case. As reported in the *Miami Herald* and *Sun Sentinel*, three of the investigation's sheriffs in Marion County-- Major Dan Henry, Sergeant Bruce Munster, and Captain Steve Binegar—and Wuornos' ex-girlfriend Tyria Moore allegedly sold their version of the story to CBS/Republic Pictures of Aileen Wuornos' crimes.<sup>93</sup>

However, the mental illness of Aileen Wuornos became marginalized during her investigation when the commodification of her story eclipsed the duties of Florida's law enforcement to handle the case impartially. The detectives were later dismissed from the department for violating ethical duties conduct by selling film rights to Hollywood companies, however there was never a follow-up to the “pending” investigation.<sup>94</sup> A film rights deal with the detectives and key witness should have been grounds for appeal to overturn her case as a breach

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<sup>91</sup> Broomfield, *Aileen Wuornos* (1992).

<sup>92</sup> Note, “Monster-Making,”

<sup>93</sup> “Movie Deal ‘Didn’t Prejudice’ Probe,” *Miami Herald* (Dec. 4, 1991); “Highway Slayings May Go Hollywood,” *Sun Sentinel* (Feb. 10, 1991).

<sup>94</sup> Broomfield, *Aileen Wuornos* (1992).

of ethical duties to create a biased investigation with opportunities to sensationalize the story for a profit. Wuornos reverberates this accusation as the main cruel injustice of her treatment in her first interview with Nick Broomfield.

In hindsight, these media representations reflect the public's unwillingness to view Wuornos as a human, rather a reproduction of deviant criminality, of which currently plagued America. Media reporting such as this high-profile case that are known from a national scope, makes an impartial trial virtually impossible. Throughout her experience in the American criminal justice system, Wuornos was viewed from a constructed lens of violent monster, purported by the close relationship the media and law enforcement fostered during her investigation. Conscious of the way her case was understood in American popular culture, Wuornos stated in 1991 *Orlando Sentinel* "The media has discredited me so much, make me look like a creep. I'm not a man-hater . . . I am a decent person."<sup>95</sup> Wide media coverage and reproductions of true crime stories influence public opinion to view high profile cases as the domestic threat of terror that must be caught, convicted, and executed.

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<sup>95</sup> Bankston, "Florida Shocked by Case of Lesbian Accused of Serial Murders."

## CRIME & PUNISHMENT OF THE MENTALLY ILL

“I say it's the principle, they say it's the number. Self-defense is self-defense, I don't care how many times it is. I still have to 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 . . . I am sorry that my acts of self-defense ended up in court like this but it was them or me. I never provoked those guys. Never. There was no need for them to look for the closest weapon in the vehicle and try to use it on me. Two did. Five tried.”<sup>96</sup>

The rising reporting of serial killers in American society begun to bolster a pervasive fear of violence encircling an intangible paranoia of serial killings; public opinion would thus support locking up the monsters and psychopaths if a candidate was a proponent of a “crime and punishment” agenda. In Wuornos’ case study, the high-profile feature of her story prompted Florida statements to bolster crime and punishment platforms with ensuring a capital conviction even by means of departing from procedures and statutes.

The rise of “crime and punishment” as a dominating policy approach for decades in American culture was engendered by political and legal influences. A main consequence of this resulted in the criminalization of the mentally ill leaving them vulnerable to abuses by the criminal justice system. President Nixon purported this pledge with his policy to wage a “War on Crime.” Tightened restrictions on involuntary commitment prevailed in the 1960s and 1970s, allowing for individuals with serious mental illnesses, such as schizophrenia and bipolar disorder, to be living in the community without mental health services treatment.

Critics argued that the failure to monitor the rising usage of guilty pleas became a main factor in contributing to the influx of mentally disordered individuals in jails and prisons. This

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<sup>96</sup> Aileen Wuornos’ testimony in Richard Mallory’s trial.

escalated in the 1980s when other trends began to emerge: increasing homeless population demographics and “deinstitutionalization,” or the movement of people with severe mental illness out of psychiatric institutions. Professor of Psychology at the University of South Florida, Vincent Mark Durand, and Professor of Psychology and Psychiatry Emeritus at the University of Vermont, David H. Barlow articulate a dual goal of this movement: “(1) to close the large state mental hospitals and (2) to create a network of community mental health centers where the released individuals would be treated.”<sup>97</sup> However, the goal to provide alternative community care was never attained, resulting in the eventual transfer of the now displaced homeless population with serious mental illness to the criminal justice system, considered a “transinstitutionalization.”<sup>98</sup> The Substance Abuse and Mental Health Services Administration (SAMHSA) found in January 2016 that one in five people experiencing homelessness had a serious mental illness.<sup>99</sup>

The reversal of previous standards on treating mentally ill was heavily influenced from the cultural attitudes towards a “tough on crime” mentality but is demarcated with a key turning point on the federal level. With the crime and punishment perspective dominating it was political suicide to seem “soft” on crime. For example, the devolution of the use of Not Guilty by Reason

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<sup>97</sup> Vincent Mark Durand and Barlow, “Mental Health Services: Legal and Ethical Issues,” in *Essentials of Abnormal Psychology* (Boston: Cengage Learning, 2016): 536.

<sup>98</sup> D.J. Jaffee, *Insane Consequences: How the Mental Health Industry Failed the Mentally Ill* (Amherst, New York: Prometheus Books, 2017); H. Richard Lamb and Linda E. Weinberger, “The Shift of Psychiatric Inpatient Care from Hospitals to Jails and Prisons,” *Journal of American Academic Psychiatry Law* 33, no. 4 (2005): 529-34, <http://jaapl.org/content/33/4/529>; University of South California School of Medicine Professor of Psychiatry at Dr. H. Richard Lamb & Professor of Clinical Psychiatry at the Dr. Linda E. Weinberger refer to this as a “transinstitutionalization,” during which the movement of people with severe mental illness from state psychiatric hospitals resulted in the transfer of the mentally ill to jails and prisons. Lamb and Weinberger also reference the transfer to nursing homes or other group residences, but for the sake of this study the movement to jails and prisons is more pertinent to discussion.

<sup>99</sup> “Homelessness and Housing,” Substance Abuse and Mental Health Services Administration, last updated 9/15/2017, <https://www.samhsa.gov/homelessness-housing>.

of Insanity (NGRI)—commonly referred to as the insanity defense—in the legal system resulted in reformed, more strident standard.<sup>100</sup> The insanity defense underwent strict reform following its controversial use during the famous John Hinckley Jr. trial for the attempted assassination attempt on President Ronald Reagan in 1981 can be seen as a monumental moment for change.<sup>101</sup> The Hinckley disposition became infamous of the defendant’s ability to successfully plead NGRI, and was institutionalized in the nation’s capital psychiatric St. Elizabeth’s mental hospital.<sup>102</sup> The decision sparked a fury among Reagan’s supporters accusing injustice of an acquittal for the failed assassin of the President. There was a perception of that the insanity defense is utilized by deranged criminals to evade punishment before an early release from psychiatric institutionalization.<sup>103</sup>

A debate was underway between the fields of psychology and the law on viewing mentally ill offenders as “willful transgressors” or “unfortunate sufferers.”<sup>104</sup> This provided virtually an impossible outcome other than incarceration for the now displaced population of mentally ill Americans, who began flooding prisons and jails. The use of NGRI became obsolete in law. In the decade following the Hinkley trial, misperceptions perpetuated false assumptions that the

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<sup>100</sup> Bartol and Bartol, *Psychology and the Law*.

<sup>101</sup> Thomas Maeder, *Crime and Madness: The Origins and Evolution of the Insanity Defense* (New York: Harper & Row, 1985).

<sup>102</sup> Maeder, *Crime and Madness*, xiv.

<sup>103</sup> *Ibid.*, xiii-xiv. Maeder includes the data problems involved in the Reagan supporters’ accusation against mentally ill institutionalized following NGRI into society where acquittals are not recorded well during insanity plea—especially prior to the use of more modernized forms of data collection in the 1980s when this text was published. Scott K. Elmore, “The Insanity Defense: Public Opinion and the Public’s Tendency to Implicate Mental Illness in High-Profile Crimes,” PhD diss. (Alliant International University, 2013), accessed September 11th, 2017, <https://search.proquest.com/pqdtglobal/docview/1520021550/215D71F52FB14017PQ/3?accountid=11091>.

<sup>104</sup> Maeder, *Crime and Madness*, xvi-xvii.

insanity defense was frequently used to avoid punishment for crimes.<sup>105</sup> Sociologist Dr. Rita J. Simon and Professor of Law at American University David E. Aaronson discuss a backlash against mental health policy, which rolled back previous standards on the requirements to be considered insane by legislative standards, culminated by Congress's Insanity Defense Reform Act (IDRA) of 1984.<sup>106</sup> In a study from the American Academy of Psychiatry and the Law findings showed the volume and use of the insanity defense plea amounted to only a quarter of acquittals for the not guilty by reason of insanity defense in 1991.<sup>107</sup>

Crime and punishment policies have historically superseded mental health factors in determining criminal justice procedures, not only on a federal level, but with state and local statesmen. For example, judges are prone to be more strident in elections in their decisions on the state of criminals. A study conducted by the Brennan Center for Justice reveals the impact judicial elections have on criminal justice outcomes: "judges were more likely to impose longer sentences, affirm death sentences, and even override sentences of life imprisonment to impose the death penalty."<sup>108</sup> Although judges are tasked with the duty to remain arbitrary and impartial

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<sup>105</sup> Henry J. Steadman, Margaret A. McGreevy, Joseph P. Morrissey, Lisa A. Callahan, Pamela Clark Robbins, and Carmen Cirincione, *Before and After Hinckley: Evaluating Insanity Defense Reform* (New York: Guilford Press, 1993).

<sup>106</sup> Rita J. Simon and David E. Aaronson, *The Insanity Defense: A Critical Assessment of Law and Policy in the Post-Hinckley Era* (New York: Praeger Publishers, 1988).

<sup>107</sup> Lisa A. Callahan, Henry J. Steadman, Margaret A. McGreevy, and Pamela Clark Robbins, "The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study" *Bulletin of the American Academy of Psychiatry and the Law* 19, no. 4 (1991): 331-38, accessed September 5th, 2017, <https://www.researchgate.net/publication/21370218>. Although the study does note that not all of the non-acquitted individuals were convicted with 10% discharged, withdrawn or not guilty, while 64% were guilty, but not all receiving a prison sentencing. The types of trials that were used for insanity defense cases were 77.2% trial by Judge with 15.8% using plea negotiations.

<sup>108</sup> Kate Berry, "How Judicial Elections Impact Criminal Cases," *Brennan Center for Justice* (Dec. 2, 2015) <https://www.brennancenter.org/publication/how-judicial-elections-impact-criminal-cases>; "New Analysis: Judicial Re-Election Pressures Tied to Harsher Criminal Sentencing," *Brennan Center for Justice* (Dec. 2, 2015), <https://www.brennancenter.org/press-release/new-analysis-judicial-re-election-pressures-tied-harsher-criminal-sentencing>.

in their interpretations of the law, their ability for discretion permits their authority to be largely unchecked; harsher sentences or refusal to permit stays of execution in capital cases has been an occurrence when justices wish to retain their positions.<sup>109</sup> The study found related factors of states that retain judges through elections have a more supportive public of capital punishment, and thus the more likely appellate judges were to affirm death sentences.<sup>110</sup> In Florida, the appellate judges undergo a process of assisted appointment, which selects justices.<sup>111</sup>

The State of Florida adhered to the increasingly conservative mental health standards during the 1980s and adopted the strident competency and insanity defenses standards.<sup>112</sup> In recent years this is still a present reality in Florida, as seen from the standard for competency in 2008 to include:

(1) experts shall first consider factors related to the issue of whether the defendant meets the criteria for competence to proceed (e.g. competency to stand trial); that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings. (2) In considering the issue of competence to proceed (competency to stand trial), the examining experts shall consider and include in their report: (A) Competency to Proceed or Competency to Stand Trial evaluations evaluated the defendant's capacity to: (i) appreciate the charges or allegations against the defendant; (ii) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant; (iii) Understand the adversary nature of the legal process; (iv) Disclose to counsel facts pertinent to the proceedings at issue; (v)

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<sup>109</sup> Berry, "How Judicial Elections Impact Criminal Cases."

<sup>110</sup> Ibid.

<sup>111</sup> Judicial Selection in Florida," *Ballotpedia*, accessed March 8, 2018, [https://ballotpedia.org/Judicial\\_selection\\_in\\_Florida](https://ballotpedia.org/Judicial_selection_in_Florida).

<sup>112</sup> "Criminal Procedures and Corrections: Mentally Deficient and Mentally Ill Defendants," *The Florida Legislature*, 916. 12, (2017), <http://www.leg.state.fl.us/Statutes>; "Crimes: Insanity Defense," *The Florida Senate*, 775.027 (2012), <https://www.flsenate.gov/Laws/Statutes/2012>.

Manifest appropriate courtroom behavior; (vi) Testify relevantly; and (B) Any other factors deemed relevant by the experts.<sup>113</sup>

A main factor in the defendant's waving *Miranda* rights without determining one's capacity to meaningfully understand what these constitutional protections entail. Unable to have Wuornos offer incriminating knowledge of the crimes during interviews, the detectives implemented psychologically coercive measures to pressure a confession through recruiting Tyria Moore to aid them in forcing a confession from the mentally ill woman.<sup>114</sup> The police officers tasked with extracting a confession from Wuornos at the time of her capture, used Wuornos' ex-girlfriend, Tyria Moore to coax a wire-taped confession through threats of her lover's suicide. Under this psychological duress of feigned suicidal threats, Wuornos conceded to six murders in a three-hour long confession—not implicating Moore of any involvement.<sup>115</sup>

For indigent defendants the plea-bargaining period is a time when individuals are at serious risk from taking deals with the prosecution for the sake of streamlining the process for an overburdened defense attorney than for the best-case scenario of the defendant. The landmark Supreme Court decision in *Dusky v. United States* in 1960 reaffirmed a defendant's right to receive an evaluation for competency, ruling that there were qualifications a defendant must meet to be deemed competent: "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...rational as well as factual understanding of the proceedings against him."<sup>116</sup> However this standard was not to be confused that the psychiatrist's

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<sup>113</sup> "Florida (Florida Rules of Criminal Procedure 2008)," <https://psycholegalassessments.com/areas-of-expertise/competency-to-stand-trial/>.

<sup>114</sup> "Monster," *Investigation Discovery*; Broomfield, *Aileen Wuornos* (1992).

<sup>115</sup> *Ibid.*

<sup>116</sup> *Dusky v. United States*, 362 U.S. 402 (1960).

role was not to determine social questions of guilt and responsibility, although the fear of mystifying a jury with expertise concerned legal scholars.<sup>117</sup> This was replaced following the IDRA to place the burden on the defense to prove that “the defendant, as a result of *severe* mental disease or defect, was unable to appreciate *the nature and quality or the wrongfulness of his acts,*” also altering the wording to read “not guilty *only* by reason of insanity.”<sup>118</sup>

The importance of *mens rea*, or a guilty mind at the time of the offense, became important in the shift towards more strident policies. Maeder discusses, this feature in the use of the insanity defense: “a guilty intent is an element of a crime, without that intent there would be no crime, and the defendant would be acquitted, and would then, if appropriate, be subject only to civil commitment procedures.”<sup>119</sup> However, as Attorney General William French Smith proclaimed to the Senate Judicial Committee in 1982, under this test or formula of *mens rea*

Mental disease or defect would be no defense if the defendant knew he was shooting at a human being to kill him—even if the defendant acted out of an irrational or insane belief. Mental disease or defect would not constitute a defense only if the defendant did not even know he had gun in his hand, or thought, for example, that he was shooting at a tree. This would abolish the insanity defense to the maximum extent permitted under the Constitution and would make mental illness a factor to be considered at the time of sentencing, just like any other mitigating factor. It would eliminate entirely as a test whether a defendant knew his actions were morally wrong and whether he could control his behavior. It would also, of course, eliminate entirely the presentation at trial of confusing psychiatric testimony on this issue.<sup>120</sup>

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<sup>117</sup> Maeder, *Crime and Madness*, 144-145.

<sup>118</sup> *Ibid.*, 147.

<sup>119</sup> *Ibid.*, 149-150.

<sup>120</sup> Statement of Hon. William French Smith, *The Insanity Defense*, Hearings before the Committee on the Judiciary, United States Senate (Washington, D.C.: U.S. Government Printing Office, 1972), 30.

Mental illness is not completely discounted as a factor in Wuornos' case, evident from her numerous evaluations by mental health professionals to evaluate competency and/or sanity. However, the difficulty in integrating both psychology and law in the criminal justice system allowed for the forensic evaluations and assessments to be either dismissed or removed from relevancy in legal proceedings.

### A Woman's Right to Self-Defense

At trial opportunities for incorporating mental health policy into an individual's defense are rarely successful. During Wuornos' trials for the murders of the six men, she was arguably put at a disadvantage from deficient legal representation and overt institutional blockades during her trials to result in unsuccessful defense strategies that marginalized her mental health issues. Chesler argues in a "A Woman's Right to Self-Defense" that Wuornos was mistreated in the criminal justice system on the grounds of misogynist bias due to the inability to be considered as acting in self-defense with a sex worker vocation.<sup>121</sup> As seen from an article in *Psychology Today* written shortly after Wuornos confessed: "Women are becoming more stereotypically male in their reasons for murdering...Have they taken 'women's liberation' one step too far—or are they just showing their natural killer instinct?"<sup>122</sup> The feminist psychologist finds both the "psychological double standards" between male and female offenders results in a "double standard of punishment" for more punitive measures against women:

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<sup>121</sup> Chesler, "A Woman's Right to Self-Defense, 933-77.

<sup>122</sup> Barry Yeoman, "Bad Girls," in *Psychology Today* (Nov 1991), accessed March 15, 2018, <https://www.psychologytoday.com/us/articles/199911/bad-girls>.

In a way, such double standards already constitute punishment, as they poisonously permeate and circumscribe a woman's daily life...women are often punished more severely for less, primarily 'female' crimes, such as prostitution than men are for more violent 'male' crimes of femicide and homicide. When women commit 'male' crimes...in self-defense...they are usually punished more harshly than their male so-called counterparts.<sup>123</sup>

This claim is supported by the Florida State Supreme Court 1990 Gender Bias Report on the treatment of female offenders. The state's Supreme Court found that "despite the perception that the criminal justice system is lenient to women," women in Florida "are treated more harshly than similarly situated male offenders."<sup>124</sup> This stereotype cannot be farther from the truth in Florida's executive summary's findings:

Women and men tend to commit different types of criminal offenses. Women tend to commit economic crimes. Arrest patterns show an increase in female arrests for economic crimes. Women involved in violent crime generally act...against someone who has physically abused them or their children. Frequently, women incarcerated for homicide have been victims of physical and sexual abuse.<sup>125</sup>

In the first trial for the murder of Richard Mallory, Chesler organized multiple pro bono expert witnesses willing to testify on behalf of Wuornos regarding the role that trauma of sexual and psychological abuse influences sex workers' response to the threat of violence, including: "a psychologist, a psychiatrist, experts in prostitution and violence against prostitutes, experts in child abuse, battery, rape trauma syndrome, lesbianism, lesbian battery, female alcoholism, and

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<sup>123</sup> Chesler, "A Woman's Right to Self-Defense," 940. For further discussion of violence against women see John MacDonald, *Rape: Controversial Issues* (Springfield, IL: Charles C. Thomas, 1995).

<sup>124</sup> Florida Supreme Court, "Report of the Florida Supreme Court Gender Bias Study Commission," 11.

<sup>125</sup> Florida Supreme Court, "Report of the Florida Supreme Court Gender Bias Study Commission," 11-12.

the psychology of adoption.”<sup>126</sup> Public defenders, Trish Jenkins and Ed Bonnett, did not permit this testimony, leaving Wuornos the only witness in her defense. The refusal for Chesler’s witnesses becomes problematic with the knowledge that during discovery Jenkins was provided incriminating evidence of Richard Mallory’s criminal history of sexual assault and sadism by the prosecution.

Mallory’s past criminal history and abusive behavior would have aided in corroborating Wuornos’ testimony of self-defense, which Chesler puts in context to a pre-disposition to both deny and over-react to all abuse from serial-rape and abuse throughout her life. She cites the introduction of under-age girls into prostitution stems from a variety of influences, such as abusive home-life, sexual encounters of incest, early rapes in childhood, which disrupt healthy development and leading them out of the domestic sphere onto the streets.<sup>127</sup> The suppression of evidence never allowed for this opportunity to holistically inform the juryas grounds for the violation of ineffective assistance of counsel:

In my view, such experts were needed to educate the jury about the routine and horrendous violence against prostituted women, including Wuornos, the long-term consequences of extreme trauma, and a woman’s right to self-defense. If the people on Wuornos’ jury had been allowed to hear about such experts, perhaps, just perhaps, they’d have been better able to understand that, as Wuornos has said, she lived ‘on dangerous ground at all times,’ and that she killed Richard Mallory in self-defense... Let’s assume that Wuornos’ attorneys decided not to use any pro bono experts. What else might they have done? If a prostituted woman (or anyone) alleges rape and self-defense, and there are no eye-witnesses other than the accused, it is appropriate to

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<sup>126</sup> Chesler, “A Woman’s Right to Self-Defense,” 953; 963. For further reference on the gendered issue of legal representation on death row see Joan W. Howarth, “Review Essay: Feminism, Lawyering, and Death Row,” *Michigan State University College of Law 2*, (1992): 401-25, accessed December 3, 2018, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1209&context=facpubs>.

<sup>127</sup> Chesler, “A Woman’s Right to Self-Defense.”

review the murdered man's past history of violence towards both prostitutes and non-prostitutes.<sup>128</sup>

In Florida the “Stand Your Ground” Law permits an individual to use or threaten to use deadly force against a prospective assaulter and does not require the individual to retreat before using such force.<sup>129</sup> Due to Florida’s *Williams* rule to permit the admission of similar fact evidence from related crimes, the six other murders were permitted in the prosecution’s argument during trial, which was cited in her video-taped confession but conveniently excluding her repeated self-defense claims.<sup>130</sup> Presiding Judge Blount—recently returning from retirement to hear Wuornos’ case—permitted the prosecution’s evidence, but denied the defense a change of venue despite the publicity from the pre-trial and local biases present in the jury. Chesler notes that Ted Bundy did receive a change of venue during his trial from Tallahassee to Miami for similar circumstances.<sup>131</sup> Furthermore, as Wuornos’ appeals attorney Raag Singhal indicated “Ted Bundy was offered life to resolve his cases,” of killing 23 women and girls, which the Fort Lauderdale Special Counsel hypothesized in an interview with *Los Angeles Times* that “gender had been a handicap” in his criticism of Florida’s law enforcement and state justice system’s mishandling of her case.<sup>132</sup>

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<sup>128</sup> Ibid., 953-55.

<sup>129</sup> “Florida Stand Your Ground Law,” <https://resources.lawinfo.com/criminal-defense/florida/>. This defense strategy was used to justify George Zimmerman fatal shooting of Trayvon Martin in 2012, and sparking controversy to his acquittal based on this law.

<sup>130</sup> *Williams v. Florida*, 110 So. 2d 654 (Fla., 1959).

<sup>131</sup> Chesler, 964.

<sup>132</sup> Dahlburg, “Serial Killer’s Life Still Intrigues on the Eve of Her Death,” *Los Angeles Times*.

The prosecution also played a hand in a disadvantaged trial for Wuornos with knowledge of Mallory's abusive behavior to his ex-girlfriend.<sup>133</sup> The disclosure of this evidence to the defense occurred on January 10, 1992 three days before the trial for Mallory's murder, and was ultimately denied the testimony or a continuance to question the witness again.<sup>134</sup> Chesler hired a former Marion County police officer to conduct a computer search for Mallory's history of sexual abuse, but came up blank from alleged blockades by "certain Florida officials."<sup>135</sup>

Even Florida prosecutor of the 1992 trial, John Tanner, admitted in an episode of television series *Dateline* that the prosecution's preparation had been "incomplete," and the Florida courts "may have to try the case again."<sup>136</sup> Previously, Tanner delivered a slamming prosecution argument against Wuornos at trial as a "homicidal predatory prostitute . . . like a spider on the side road, waiting for prey—men" with an "appetite for lust and control [that] had taken a lethal turn . . . kill[ing] for power, for full and ultimate control."<sup>137</sup> Even with arguably insufficient legal representation, the case was never retried. During Wuornos' decade-long appeals, her deteriorating mental state on death row worsened.

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<sup>133</sup> Robert Nolin, "Jurors Seated for Wuornos Trial," *Daytona Beach News*, January 15, 1992, at B1, as quoted in Chesler, "A Woman's Right to Self-Defense," 956.

<sup>134</sup> Chesler, "A Woman's Right to Self-Defense," 956.

<sup>135</sup> Chesler, "A Woman's Right to Self-Defense," 958.

<sup>136</sup> John Tanner (1992) *NBC-Dateline*, November 10, as quoted in Chesler, "A Woman's Right to Self-Defense," 958.

<sup>137</sup> Phil Long, "Prostitute Called Abused Victim, Enraged Killer," *Miami Herald* (Jan 16, 1992); John-Thor Dahlburg, "Serial Killer's Life Still Intrigues on the Eve of Her Death," *Los Angeles Times*, 9 October 2002, <http://articles.latimes.com/2002/oct/09/na-wuornos9>.

The issues of Wuornos' legal representation during her trials include the absence of her mental health and background as factors in her sentencing. The structural mechanisms in the legal system operated to remove the role that Wuornos' mental health issues, which played a crucial role in creating an antisocial, dangerous personality that was exacerbated by traumatic life events. The amalgamation of complex psychology issues was not permitted to be presented to the jury, thereby deemphasizing the prospect for the relevancy of mitigating factors during her experience. The mitigating factors at trial do not always incorporate a mental health background as relevant in determining guilt, which is due to importance of the mental state at the time of the offense for *mens rea*.<sup>138</sup>

Focusing on the rights of the offender, rather than those of the victim may be problematic in the view this may promote a narrative of a woman, who "earned her place in history" through the murder of men but is designed to show the difficulty in integrating the fields of mental health and law. Wuornos' legal proceedings became problematic from the failure to fully integrate psychology and the legal system in a meaningful way to holistically determine the case in context with her history. The importance of connecting these two spheres is crucial in preventing the execution of individuals that suffer from mental disorders that have been exacerbated by years of trauma. Ultimately, Wuornos was found guilty of six capital offenses, making her the highest convicted death row inmate in America.

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<sup>138</sup> Bartol and Bartol, *Psychology and Law*.



## DEATH ROW DESTRUCTION

On the morning of October 9<sup>th</sup>, 2002 state of Florida issued their 2<sup>nd</sup> capital execution of a woman. After spending over a decade on death row in Florida's correctional system, Aileen "Carol" Wuornos received a lethal injection. The procedural requirements were met: offering her last meal—of which she declined, preferring a black coffee—and permission for last rites by a priest—of which she declined. Rather, her last request was to listen to her favorite song during the injection--Natalie Merchant's "Wonder." During her time on death row Wuornos began to exhibit behavior characteristic of death row inmates with decreased cognitive and mental capacity. For example, she claimed the prison guards were trying to poison her food and she was undergoing torture from sonic pressure in her cell. However, these few examples of Wuornos decreased mental functions did not halt the Sunshine State from permitting the execution with her clinical psychiatric evaluations deeming her fit for execution after an hour and a half.

A crucial reason why the mental illness of Aileen Wuornos is marginalized in the American criminal justice system was the need for Florida statesmen to use Wuornos' case to fulfill 'crime and punishment' platforms, which forced an inevitable execution. A caveat to this political environment resulted in limiting death row prisoners' rights for basic human care, which further exacerbated the deterioration of incapacitated death row inmates' mental health for inmates on death row. Wuornos' capital punishment became a political prop during her time on death row, where her case was a *pro forma* process that would inevitably lead to her execution. Politicians' rising sensitivity to seeming "soft on crime" prompted a lesser likelihood for the exercise of discretion on capital crimes committed by the seriously mentally ill.<sup>139</sup> The execution

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<sup>139</sup> For further discussion on the death penalty see Jonathan Glover, "Execution and Assassination," in *The Moral Problems of Abortion, Infanticide, Suicide, Euthanasia, Capital Punishment, War, and Other Life-or-Death Choices* (Middlesex, England: Penguin Books, 1977): 228-41.

of the mentally ill is an assault on American principles to protect one from “cruel and unusual punishment.”<sup>140</sup> Consequently, this constitutional violation has occurred—and still continues—in the United States of America’s criminal justice system. The discourse on the standards for competency to be executed reveals the disconnect between the legal definition and the field of psychology.

Another key development occurred in 1986, a convicted felon named Willie Horton—who was serving a life sentence for murder—was released from a Massachusetts prison on a weekend furlough program, during which time he allegedly escaped and raped a white woman.<sup>141</sup> The sitting Governor Michael Dukakis of Massachusetts had supported the prison furlough program from the advantages for rehabilitating inmates in society and productivity; however, this case was used against him in the 1988 presidency against George H. W. Bush as a “soft” on crime individual.<sup>142</sup>

Although, Republican candidates, such as the Bush family politicians are known today for tough on crime policies, Democrats also were also guilty of permitting stringent policies in the criminal justice system during reelections. As reported in a 1993 article from *The New Yorker*, Governor of Arkansas Bill Clinton also refused a stay of execution for a death row

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<sup>140</sup> The 8<sup>th</sup> Amendment of the United States Constitution prohibits the federal government from imposing excessive bail, excessive fines, or cruel and unusual punishments.

<sup>141</sup> “Willie Horton Ad,” available from Encyclopedia Britannica, accessed October 2, 2017, <https://www.britannica.com/topic/Willie-Horton-ad>.

<sup>142</sup> Top 10 Campaign Ads: Willie Horton,” *Time*, <http://content.time.com/time/specials/packages/completelist/0,29569,1842516,00.html>. Also known as the “Revolving Door” advertisement, Horton’s name is never mentioned, but the connection was clear and the advertisement received considerable news coverage.

inmate that was supposedly incoherently incompetent during his run for presidential election of 1992.<sup>143</sup>

### Prison Conditions

Previous goals and programs to rehabilitate criminal offenders were “defunded, downsized, or closed” where the displaced mentally ill from psychiatric hospitals were fundamentally transferred to the correctional institution from the removal of mental health’s relevancy in the criminal justice system.<sup>144</sup> This change was heavily influenced by the 1974 report of American sociologist Robert Martinson, which was influential in perpetuating the conception that the prison system’s rehabilitation model is ineffective in changing offender’s future conduct.<sup>145</sup> Although this was not Martinson’s intention, this became the justifying body of work to scale back prisoners’ rights in the correctional institution.

The dehumanized approach to the correctional institution resulted in the limiting of prisoner’ rights for basic human care with the crucial effect of exacerbating the deterioration of incapacitated death row inmates’ mental health. The mental health of individuals in prison, especially death row, undergo further and fundamental deterioration of psyche from conditions that exacerbate quality of life, such as solitary confinement. The correctional system flooded with mentally ill inmates with the likely outcome of further psychological deterioration from the

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<sup>143</sup> Marshall Frady, “Death in Arkansas,” *The New Yorker* (February 22, 1993), accessed November 4, 2017, <https://www.newyorker.com/magazine/1993/02/22/death-in-arkansas>.

<sup>144</sup> Terry A. Kupers, “Prison and the Decimation of Pro-Social Life Skills,” in *The Trauma of Psychological Torture*, ed. Almerindo E. Ojeda (Westport, CT: Praeger, 2008): 130; Dominic A. Sisti, Andrea G. Segal, and Ezekiel J. Emanuel, “Improving Long-term Psychiatric Care: Bring Back the Asylum,” *JAMA* 313, no. 3 (2015): 243-44, accessed 11/15/2017, doi:10.1001/jama.2014.16088.

<sup>145</sup> Robert Martinson, “What Works?—Questions and Answers about Prison Reform,” *The Public Interest* (Spring 1974): 22-54, accessed on November 15, 2017, [http://www.pbpp.pa.gov/research\\_statistics/Documents/Martinson-What%20Works%201974.pdf](http://www.pbpp.pa.gov/research_statistics/Documents/Martinson-What%20Works%201974.pdf).

prison environment. Even though the Supreme Court ruled in *Brown v. Plata* (2011) that not providing substantial basic quality of needs for inmates is a health risk and unconstitutional, the overstretched services of the system has amounted into little change on a national scale.<sup>146</sup>

Mental health in prisons has a deleterious effect on inmates suffering from pre-existing mental illness. An individual with a predisposition to mental illness—especially a serious mental illness—has been shown by numerous studies to result in the deterioration of their mental and physical health from the environment and practices of prison.<sup>147</sup>

The inability to adhere to the guidelines of corrections institution from violating rules, disruptive behavior, or violence, provides an excuse for lower level security units to filter the mentally ill to the supermaximum security prisons, or “supermax” to make room for the increasing pressure of more inmates arriving.<sup>148</sup> Ultimately, with predisposition for behaviors that are antithetical to low level or moderate level security units results in the almost inevitable transfer of a mentally ill inmate to a heightened security facility. There is an assumed inevitable transfer of SMI to a maximum-security unit where the use of solitary confinement is high. Ideally, the maximum-security facilities have heightened security for inmates unable to abide by the standards of less or moderate security, but realistically they become the housing of previously mentally ill inmates with a plethora of harmful consequences. The “supermax” units

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<sup>146</sup> *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>147</sup> H.J. Steadman, D. W. McCarty, and J. P. Morrissey, *The Mentally Ill in Jail: Planning for Essential Services* (New York: Guilford Press, 1989). For further reading on the unique needs of female inmates see Barbara Bloom, Barbara Owen, and Stephanie Covington, “Women Offenders and the Gendered Effects of Public Policy,” *Review of Policy Research* 21, no. 1 (2004): 31-48.

<sup>148</sup> Kupers, “Prison and the Decimation of Pro-Social Life Skills.”

are also referred to as “control units,” based on “the total control staff have over even the smallest details of the prisoner’s life.”

During her time on death row, Wuornos’ prior mental disorders were exacerbated from the prison environment resulting in a further psyche deterioration. The prison conditions on death row propagated the severity of her mental illness, which was not considered in evaluating her competency to be executed. Wuornos isolated herself on death row following skirmishes with fellow inmates, which resulted in a further devolution of her mental health.<sup>149</sup>

Wuornos deterioration of her mental health is seen in her final interview with Nick Broomfield hours before her execution, in which she stated that the correctional institution was using psychological torture of sonic waves in her cell. Even with clear signs of insanity, Wuornos was deemed by clinical psychologists to be competent to be executed—a violation of one’s 8<sup>th</sup> Amendment to protection against “cruel and unusual punishment” after only about an hour evaluation.

Wuornos was separate from fellow female inmates following “incidents” that prompted her to remain in perpetual isolation during her time on death row. Solitary confinement in a Solitary Housing Unit, or the “SHU,” consists of a series of psychologically tortuous elements resulting in the destruction of psychological functioning: isolation; deprivation of food, water, sleep; spatial disorientation through confinement in small places with nonfunctional windows; temporal disorientation due to denial of natural light; sensory deprivation or overstimulation; induced desperation through indefinite detention.<sup>150</sup> These negative psychological consequences,

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<sup>149</sup> Nick Broomfield (2017). Interview by Louis Theroux, *BBC*, Oct. 5, accessed Oct. 10, 2017, <https://youtube.com>.

<sup>150</sup> Kupers, “Prison and the Decimation of Pro-Social Life Skills,” 128. This constitutes what Dr. Almerindo Ojeda defines as the theoretical approach to psychological torture: “The aim of torture is to destroy the individual’s will, to break the individual down and obliterate a sense of autonomy and agency, thus turning that

referred to as the “SHU Syndrome” include: an impaired sense of identity; self-harm; cognitive dysfunction; irritability, anger, aggression, rage; other- directed violence, such as attacks on staff; lethargy, helplessness and hopelessness.<sup>151</sup>

Complemented with pre-existing mental disorders, it is virtually impossible to deem an individual such as Wuornos competent to be executed from this nature of treatment. Singhal stated in an interview with *Polk*, that “Ms. Wuornos just really wants to have proper treatment, humane treatment until the day she’s executed,” in response to the allegations of abuse in prison including strip searches, being handcuffed so tightly her wrists bruise, door kicking and frequent window checks by guards, low water pressure, mildew on her mattress and “cat calling...in distaste and a pure hatred towards [Wuornos].”<sup>152</sup>

Wuornos received more capable defense representation by Fort Lauderdale attorney, Raag Singhal a Special Counsel from law offices of Kaplan & Singhal. Multiple attempts from Singhal worked to file motions regarding her previous trials on the grounds of insufficient legal representation, and later on motions for stay of execution under Habeus Corpus and incompetency to be executed. Wuornos repeatedly sabotaged their attempts, such as dismissing her legal services before her execution. Thus, to combat this Saaghal attempted to appeal that Wuornos was not of sound mind to dismiss her defense team but was dismissed. Exploring various options, the defense team filed a notice to petition Habeas Corpus and Memorandum of

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individual into a shell of a person who lacks the will to resist, or even to be human in the sense that being human requires personal agency” (127).

<sup>151</sup> Craig Haney, “The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment,” in *Prisoners Once Removed*, edited by Jeremy Travis and Michele Waul (Washington, D.C.: The Urban Institute Press, 2004): 85, accessed November 15, 2017, <https://www.urban.org/sites/>.

<sup>152</sup> Catherine Wilson, “Aileen Wuornos Says Prison Guards Abusing Her,” *Polk Online* (July 13, 20002), accessed February 2, 2017, [https://web.archive.org/web/20071023174550/http://www.polkonline.com/stories/071302/sta\\_wuornos.shtml](https://web.archive.org/web/20071023174550/http://www.polkonline.com/stories/071302/sta_wuornos.shtml).

Law in the summer of 2002, alleging mistreatment and abuse, as a prisoner at Broward Correctional Institute (BCI) in a letter on appeal.<sup>153</sup> These allegations included physical and mental harassment with threats of rape, tampering with food trays, round the clock harassment and non-resolution of property filed grievances.<sup>154</sup> However, this was dismissed in the argument that Wuornos' petition fails to suffice for habeas corpus and memorandum of law claims: "(1) there are no issues appropriate for Habeas Corpus relief, (2) the petition is insufficient to state a claim for mandamus relief, and, (3) the petition is insufficient to allege an Eighth Amendment violation."<sup>155</sup> In the response to the dismissal of her motion, the defense team offers how the claims whether true or false suffice to contradict Wuornos' competency for execution:

They [claims of prison abuse and mistreatment] are either true or false. They are clearly believed to be true by Petitioner based upon her writings and behavior in Court on July 12, 2002. If true, Petitioner's claims must be resolved and corrected. If false, Petitioner's claims further support previous expert findings that she is delusional and mentally ill.<sup>156</sup>

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<sup>153</sup> "Notice of Filing," *Aileen C. Wuornos, Petitioner, vs. Michael W. Moore, et al., Respondent*. July 12<sup>th</sup>, 2002. Case No: CACE02-012251. Judge: Paul Backman of Broward Country, Florida in 17<sup>th</sup> Judicial Circuit Court. The document included twenty-five pages of prison harassment and abuse of authority hand-written by Wuornos. Habeas Corpus proceedings serve the purpose to inquire into the legality of a Petitioner's present detention. The response mentions Florida case law for stare decisis on the argument: *Amador v. State* (1998), *Hendrick v. Florida Hospital Medical Center* (1994), *McNeal v. Culver* (1961). Memorandum of law, or a writ of mandamus, is an order from the judiciary to an inferior government institution or official, ordering one to properly fulfill their duties or correct an abuse of discretion, such as the "clear legal right to be confined in an institution free of victimization" by Correctional officials. The response mentions Florida case law for stare decisis on the argument *Graham v. Vann* (1981), *Moore v. Florida Parole & Probation Commission* (1974); Linda Trischitta, Ariel Barkhurst, and Kathleen Haughney "Broward Women's Prison to Close May 1," *Sun Sentinel*, 1/12/2012, accessed 11/5/2017, [articles.sun-sentinel.com/](http://articles.sun-sentinel.com/).

<sup>154</sup> Wilson, "Aileen Wuornos says prison guards abusing her."

<sup>155</sup> "Petitioner's Response to Motion to Dismiss Petition for Habeas Corpus and Memorandum of Law." *Aileen C. Wuornos, Petitioner, vs. Michael W. Moore, et al., Respondent*. September 13<sup>th</sup>, 2002. Case No: CACE02-012251. Judge: Paul Backman of Broward Country, Florida in 17<sup>th</sup> Judicial Circuit Court.

<sup>156</sup> "Petitioner's Response to Motion to Dismiss Petition for Habeas Corpus and Memorandum of Law." *Aileen C. Wuornos, Petitioner, vs. Michael W. Moore, et al., Respondent*.

This defense strategy highlights the conundrum integral in viewing complexities between mental health policy and the law of either Wuornos is abused by the prison system, and thereby her habeas corpus protections are violated, or she is delusional mentally ill disqualifying her from execution on death row. On appeal of the trial court's conclusion that Wuornos was competent to stand trial, the Supreme Court of Florida ruled with the lower court based on the "Faretta-like hearing" standard that Wuornos "has made a knowing, voluntary, and intelligent decision to waive her collateral counsel and also waive any further post-conviction proceedings."<sup>157</sup>

Multiple amicus briefs were filed, which the Supreme Court of Florida interpreted as an attempt to intervene in their order to deny the motion for a petition of a Motion for a Stay of Execution.<sup>158</sup> For example, the *Los Angeles Times* reported that the week of Wuornos' execution an amicus brief was filed by challenging Wuornos' execution on the grounds she is mentally incompetent and "borderline psychotic."<sup>159</sup> In an interview with *Los Angeles Times*, Singhal commented that "Aileen is someone they always sought the death penalty for."<sup>160</sup> An active pursuit of convictions and capital punishment for Wuornos was occurring during the gubernatorial reelection of Governor Jeb Bush.

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<sup>157</sup> Thomas D. Hall, "Aileen Carol Wuornos vs. State of Florida, Aileen Carol Wuornos vs. Michael W. Moore, etc.," *Supreme Court of Florida*, April 1, 2002. The reference of competency to proceed is based upon the inquiry from *Faretta v. California* (1975), of which concurs with Florida Court decisions in *Durocher v. Singletary* (1993). Hall is a clerk of the Supreme Court of Florida, and this source is from a decision that was written by Hall in serving the justices.

<sup>158</sup> Ibid.

<sup>159</sup> Dahlburg, "Serial Killer's Life Still Intrigues on the Eve of Her Death."

<sup>160</sup> Ibid.

Governor Jeb Bush signed a warrant of for Wuornos' death on September 5<sup>th</sup>, 1992, which he suspended pending the findings of the psychiatric evaluation.<sup>161</sup> Her competency evaluations were conducted by a panel of three psychiatrists who delivered their opinions to Governor Bush after only an hour and half of evaluating Wuornos stating.

The panel concluded the prisoner understood she was facing the death penalty and what the application of it meant: "Therefore she is competent to be executed" under Florida state law, as reported by the *Los Angeles Times*.<sup>162</sup> This is crucial to how there is the complex relationship with mental health policy and law when the recommendation to the court on competency relies upon a clinical psychiatric evaluation in which the law and psychology have separate definitions and standards for what deems someone competent or insane. Furthermore this reveals an ethical dilemma of psychiatrists offering opinions that influence the execution of an individual—antithetical to the practice of medicine's oath to preserve life.<sup>163</sup>

Ultimately, Governor Bush reinstated his earlier September death warrant.<sup>164</sup> The pressure of the political climate in Florida at the time and the minimal integration of mental health policy and the law in the legal codes. The Republican campaign of Florida's Governor Jeb

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<sup>161</sup> "Briefs & Other Documents in the Aileen Wuornos Case: Death Warrant State of Florida for Aileen Carol Wuornos," *Supreme Court of Florida*, September 5th, 2002, [http://www.floridasupremecourt.org/pub\\_info/death-warrants/Filed\\_09-05-2002\\_WuornosWarrant.pdf](http://www.floridasupremecourt.org/pub_info/death-warrants/Filed_09-05-2002_WuornosWarrant.pdf);

<sup>162</sup> Dahlburg, "Serial Killer's Life Still Intrigues on the Eve of Her Death," *Los Angeles Times*. Preceding United States Supreme Court rulings on the violation of executing an individual deemed incompetent include *Ford v. Wainwright*, 477 U.S. 399 (1986); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Panetti v. Quarterman*, 551 U.S. 930 (2007).

<sup>163</sup> Bartol and Bartol, *Psychology and Law*.

<sup>164</sup> "Briefs & Other Documents in the Aileen Wuornos Case: Governor's Order Dissolving Stay," *Supreme Court of Florida*, October 2nd, 2002, [http://www.floridasupremecourt.org/pub\\_info/deathwarrants](http://www.floridasupremecourt.org/pub_info/deathwarrants); Supreme Court of Florida, "Corrected Opinion: Louis B. Gaskin, Appellant, vs. State of Florida, et al., Appellees.," *Supreme Court of Florida*, October 18<sup>th</sup>, 2001. Besides Aileen Wuornos, the other appellees included Louis B. Gaskin and James Eugene Hunter.

Bush, who was supported by an electorate of “crime and punishment” ideals. The numerous attempts for Wuornos to file motions on the way her case was unfair dissipated with her frustration in the ineffectual nature of the system, such as repeated dismissals.<sup>165</sup>

As included in a contemporary national report, “death penalty critics” accused the governor of making “capital punishment a political issue” in seeking re-election in November.<sup>166</sup> This contributes to providing a reason how Governor Bush issued the final nail in the proverbial coffin.

The Department of Justice’s Bureau of Justice Statistics offered a data selection and analysis on the use of capital punishment in 2002—the year Aileen Wuornos was executed.<sup>167</sup> In 2002, 13 states executed 71 prisoners on average of spending 10 years and 7 months on death row, while by the end of the year 3,557 prisoners were under sentence of death nationally.<sup>168</sup> By the end of 2002, 366 prisoners were on death row in Florida, rivaled only by the California and Texas with 614 and 450 inmates respectively, composing 40% of the nation’s death row population.<sup>169</sup> Florida executed 3 inmates in 2002 of which Aileen Wuornos was one. Only 3 women were executed in the United States in 2002—of which Wuornos was one. The mentally

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<sup>165</sup> Aileen Wuornos, “Letter to Judge Charles T. Wells,” June 11th, 2001, <http://www.flcourts.org/pubinfo/deathwarrants/WuornosLetter>.

<sup>166</sup> Associated Press, “Florida’s Jeb Bush signs death warrants for killers,” *Dearest News* (September 6, 2002), <https://www.deseretnews.com/article/935345/Floridas-Jeb-Bush-signs-death-warrants-for-killers.html>.

<sup>167</sup> Greenfeld and Snell, “Women Offenders.”

<sup>168</sup> Thomas P. Bonczar and Tracy L. Snell, “Capital Punishment, 2002,” *U.S. Department of Justice: Office of Justice Programs* (Nov 2003), 1-17, accessed on October 20, 2017, <https://www.bjs.gov/content/pub/pdf/cp02.pdf>, 1.

<sup>169</sup> Bonczar and Snell, “Capital Punishment, 2002.”

ill that have been funneled into the criminal justice system in bulk has resulted in severe consequences for prisoners, the corrections system, and the American public.

## CONCLUSION

“I’d just like to say I’m sailing with the Rock and I’ll be back like ‘Independence Day’ with Jesus, June 6, like the movie, big mother ship and all. I’ll be back.”<sup>170</sup>

Dawn Botkins hometown friend of Wuornos, who stayed in close contact throughout her time on death row told one local newspaper that Wuornos had become prepared for her execution: “She was looking forward to being home with God and getting off this Earth. She prayed that the guys she killed are saved . . . She was more than willing to go. It was what she wanted.”<sup>171</sup> Film critic Christopher Orr finds the documentarian’s fundamental flaw as never developing an ultimate question; thus not providing any sort of answer that is “no clearer at the end” of Broomfield’s documentary than at the start.”<sup>172</sup> However, he concedes the video footage of Wuornos before her execution to be the saving grace of the film—alternating between “charming and enraged” in a mania of insanity: “It’s clear she has by now descended into madness.”<sup>173</sup> Nick Broomfield’s final interview with Wuornos the day before the execution, encapsulates the extent of her insanity, in which she becomes paranoid, manic, and claims to see visions.

Broomfield is forced to address this in an interview, citing the main reasons are related to his own conflicts in resolving a documentarians’ multiple ethical duties to the audience, subject,

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<sup>170</sup> Broomfield, *Aileen* (2003).

<sup>171</sup> Paul Pinkham, “‘Damsel of Death’ Aileen Wuornos Executed,” *The Florida Times-Union* (October 2002), accessed through LexisNexis on October 19, 2017.

<sup>172</sup> Christopher Orr, “The Movie Review: ‘Monster’ and ‘Aileen: Life and Death of a Serial Killer,’” *The Atlantic*, June 2nd, 2004, accessed October 9th, 2017, <https://www.theatlantic.com>.

<sup>173</sup> Orr, “The Movie Review.”

and film—not necessarily in that order. He ultimately garnered fame in the documentary industry from the raw footage he was able to tape of Wuornos during her interviews, which a review for the 2003 in *The Atlantic* indicated as “the only redeeming part of the film.”<sup>174</sup>

Seemingly composed throughout Broomfield’s live interviews, it is clear in comparing his commentary of a perceptive rehearsed inauthenticity with almost scripted in responses to questions—verbatim at times.<sup>175</sup> His composure breaks down when an audience member inquired about central issues that makes him perceivably uncomfortable—stuttering and hesitating, or deflecting to change the subject. An example is seen in a back-and-forth between an audience member who inquires if this is a story more constructed by Broomfield, or true to his subject.<sup>176</sup> Broomfield provides an ambiguous “no, but yes” answer, denying Wuornos’ credibility as a subject: “Aileen was obsessed with lots of different things,” such as the case detectives stalling her capture to have a larger body count for the media.<sup>177</sup> Broomfield affirms the film rights’ controversy, yet highlights a key issue: “No—I think she was right about the movie deals, but the thing about being mad is there is a degree of a threshold of what you’re talking about, until you’re bonkers.”<sup>178</sup> This answer allows Broomfield to avoid a definitive answers to the core issue of his documentary: if she was “bonkers” then did your filming her in this state exploit a woman unable to consent?

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<sup>174</sup> Orr, *The Atlantic*.

<sup>175</sup> Broomfield. *DocHouse* Interview.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

One may cynically postulate: did Broomfield drag his feet in a thorough exploration to also profit from fame for Aileen’s final interview before her execution? Although, he justifies his hands were tied with a “pro forma” legal proceedings from the gubernatorial reelection, did Broomfield need the execution to be the dramatic climax to his work? If the legal process would refuse to acquit her and put him into the success stories of social justice documentaries, perhaps he created a different method. In a scene in the second documentary, Broomfield probes Wuornos on her decision to change her self-defense claims against Richard Mallory to which her reply consists of affirming guilt of committing the murders in cold-blood.<sup>179</sup>

Subsequently, Broomfield deceives Wuornos that he is not filming when the camera and audio continue to record, where she confides her true motivation to feign guilt to expedite her execution after more than a decade on death row with deplorable prison conditions.<sup>180</sup> Thus, Broomfield arguably exploited his subject in two ways: creating a situation for her to admit her changed motive under false pretenses and elevating the obligations of the film and audience over that of his subject—an incompetent woman. Broomfield focusing upon Wuornos’ mental health in some footage leading up to her execution, but a lacking investigation into the role this had throughout her treatment in the criminal justice system.

Broomfield claims his motivation for the second documentary was grounded in attempts to “try and understand the way she perceived reality, to understand what had formed Aileen

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<sup>179</sup> *Aileen Wuornos*, Broomfield (2003).

<sup>180</sup> *Aileen Wuornos*, Broomfield (2003). A moderator of one interview probed the ethical implications including this footage in the documentary, to which Broomfield clearly demonstrates these conflicting ethical duties: there was a “moral decision” to include her true statement of “self-defense,” and a “practical decision” he felt the audience needed to know (Broomfield, interview by Wood, *DccHouse*).

Wuornos,” but fails to execute this pledge. Mental illness is not completely discounted as a factor in Wuornos’ case, evident from her numerous evaluations by mental health professionals to evaluate competency and/or sanity. However, the difficulty in integrating both psychology and law in the criminal justice system allowed for the forensic evaluations and assessments to be either dismissed or removed from relevancy in legal proceedings.

Today the United States has functioned to transfer the mentally ill into the prison-industrial complex for health care, making the correctional institutions the largest mental health care facilities. Trapped in a “revolving door” for relatively minor transgressions in the criminal justice system, there has been no interruption in the cycle of recidivism without asylums or proper outpatient programs. Although this may offer an “illusory” option to marginalize this community into a seemingly inexpensive solution of prisons that house and ‘treat’ the mentally ill, individuals are not receiving adequate care for their disorders. Treatment for mentally ill patients reaches the bare minimum of legal and clinical requirements, even with *Brown v. Plata*, where jurisdictional courts are able to set the standards. The shift from rehabilitation to punishment in the criminal justice system’s tough on crime has led to a departure from aiding those with mental illness that may have benefited from the treatment of psychiatric institution than in the penal system.<sup>181</sup>

The numerous systems and institutions that an individual is not able to access for a safety net early in development, and how mechanizations of the legal system fail to incorporate those mental health issues. Injustice in the system is not relieved as a nexus, but piece by piece. In the

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<sup>181</sup> Josiah D. Rich, Dumont, Dora M., Brockmann, Brad, and Nicole Alexander, “Public Health and the Epidemic of Incarceration,” *The Annual Review of Public Health*, no. 33 (2012): 325-39, accessed 11/16/2017, [www.annualreviews.org](http://www.annualreviews.org).

post mortem of Wuornos case there is the lure to view in hindsight how Supreme Court decisions, such as *Hall v. Florida* (2014) may have influenced the appeals Wuornos in her low IQ as a possible incompetency standard.<sup>182</sup> However, the amalgamation of factors demonstrated to weave Wuornos into a web of her time leads an ambiguous window into how the political and authoritative influences used her as an example—without the objective to remain in legal impartiality.

Although this study focuses upon the rights of offender, rather than victim's rights of the men who were murdered, the author urges for further research to supplement this work for a more holistic perspective. In acknowledging how this focus undercuts a perspective from the victims and their families, with the possible problematic result of promoting a narrative of a woman, who “earned her place in history” through the murder of six men.-

The criminal justice system, mental health industry, political propaganda, and cultural fears of the “other” has fundamentally charged those in society suffering from serious mental disorders as guilty. Today, the mental health industry fails the seriously mentally ill—not from lack of funding, but through a misallocation of resources for those that suffer from serious mental illnesses who have transferred in a re-institutionalization following the failed mental hospital reform; the mental health industry and criminal justice system relied on a pharmaceutical approach for the seriously mentally ill that do become institutionalized that does not require an effective outpatient mandate of patients taking antipsychotics, permitting a cycle

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<sup>182</sup> *Hall v. Florida* (2014). For further research see Lise E. Rahdert, “*Hall v. Florida* and Ending the Death Penalty for Severely Mentally Ill Defendants,” *Yale Law Journal*, July 21st, 2014, accessed January 11, 2018, [https://www.yalelawjournal.org/forum/hall-v-florida-and-ending-the-death-penalty-for-severely-mentally-ill-defendants#\\_ftnref25](https://www.yalelawjournal.org/forum/hall-v-florida-and-ending-the-death-penalty-for-severely-mentally-ill-defendants#_ftnref25).

of crime, incarceration, and release.<sup>183</sup> Another larger ethical issue in the role of psychiatry in a prison system is the dual loyalties to the corrections facility and the patient, who lives in an environment “anathema” to psychological recovery: “it is often unsafe, violent, and designed to both control and punish.”<sup>184</sup>

Mental illness was re-conceptualized by the health industry, political leaders, and criminal justice system as a characteristic that increased the likelihood to commit a crime, rather than a health issue for Americans.

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<sup>183</sup> Jaffe, *Insane Consequences*. Jaffe includes how the deinstitutionalization of mental hospitals has heavily influenced increased incarceration rates in America known as mass incarceration, and the increased suicidal deaths.

<sup>184</sup> Sisti, Andrea G. Segal, and Ezekiel J. Emanuel, “Improving Long-term Psychiatric Care,” 243-44.

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