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Black Women's Post-Slavery Silence Syndrome: A Twenty-First Century Remnant of Slavery, Jim Crow, and Systemic Racism--Who Will Tell Her Stories?

Patricia A. Broussard
patricia.broussard@famu.edu

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Black Women’s Post-Slavery Silence
Syndrome: A Twenty-First Century Remnant
of Slavery, Jim Crow, and Systemic Racism—
Who Will Tell Her Stories?

Patricia A. Broussard*

One hot summer’s day in the late 1950s, a young mother put her three young children down for a nap. She also bathed and prepared four of her sister’s children for naptime. This young woman had volunteered to care for her nephew and nieces while their mother, her younger sister, was in the hospital delivering her fifth child. A short while after putting all of the children in their beds, the children’s father, her brother-in-law, knocked on the door. The young woman assumed that he had come over to see his children and to bring them news of their mother and newest sibling. Instead, he pulled out a gun, threatened to kill her and all the children, even his own, and proceeded to forcibly rape the young woman. The distraught young woman did not know where to turn for help. She could not tell her estranged husband, so she instead went to her mother. Her mother told her that if she made a big fuss about the rape, she would destroy her sister’s marriage, and further, if her brother-in-law landed in jail, her sister would be left to support five children by herself, and her husband might be unduly harmed.

The young woman was urged to just forget what happened and go on with her life. She did just that, until she decided to break her silence thirty years later by telling me this story. That young woman was my mother.

This Article is dedicated to my mother and all of the other Black women who had to “be silent and just forget what had happened.”

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I. INTRODUCTION

I write for those women who do not speak, for those who do not have a voice because they/we were so terrified, because we are taught to respect fear more than ourselves. We've been taught that silence would save us, but it won't. – Audre Lorde¹

To say that the American justice system² has done an insufficient job of protecting Black women over the last two hundred years is an understatement of epic proportions. The twenty-first century, post-slavery and post-Jim Crow world of Black women continues to reverberate from the detrimental psychological remnants of the dehumanizing institution of slavery.³ Some pundits, when commenting on the current status of Black Americans, subscribe to the theory that time heals all wounds, and therefore, Black folks should just get over slavery and Jim Crow and quit using them as excuses for the current status of the Black psyche.⁴ The flaw in that logic is that a wound that is not treated may fester, form a keloid, become infected, or cause the entire body to become septic. It can be argued that because, metaphorically speaking, no medical attention has been administered to the psyches of Blacks in the United States, four-hundred-year-old injuries continue to infect the collective body.⁵ If this in fact is the

* Patricia A. Broussard is an Associate Professor at the Florida A & M College of Law, and has a J.D., cum laude from Howard University School of Law and a B.S. from Northwestern University. She writes about human rights issues that impact women. I want to give a special thank you to my research assistant, Stacy Hane, and to Karen Gingold, Librarian at FAMU College of Law. You are greatly appreciated.

1. BLACK WOMEN WRITERS AT WORK 105 (Claudia Tate ed., 1983).

2. This is meant to include the legislative, judicial, and executive branches of the United States government.

3. Charles J. Ogletree, Jr., *Tulsa Reparations: The Survivors' Story*, 24 B.C. THIRD WORLD L.J. 13, 28 (2004).

4. 'Get Over' Slavery Remark Draws New Fire in Va.; Lawmaker Faces Call for Censure from Other Legislators, MSNBC.COM (Jan. 18, 2007, 6:52 PM), http://www.msnbc.msn.com/id/16695114/ns/us_news-life/t/get-over-slavery-remark-draws-new-fire-va/. "In a newspaper interview . . . Del. Frank D. Hargrove said slavery ended nearly 140 years ago with the Civil War and added that 'our black citizens should get over it.'" *Id.*

5. This references not only the physical bodies of Black women, but also their psyches. See generally Roxanne Donovan & Michelle Williams, *Living at the Intersection: The Effects of Racism and Sexism on Black Rape Survivors*, 25 WOMEN & THERAPY 95 (2002) (discussing the long-lasting psychological impact of violence on Black women).

case, the question becomes who bears the responsibility for the original injury and what remedy will render the injured parties whole again?

To be sure, many groups have suffered collective traumatic events, and without getting into a contentious discourse on whose scars are longer and deeper, it is clear one wound that has yet to heal is that of Black women. Black women continue to suffer from trauma they endured as a result of the dynamics of the societal structure of their world during and after slavery.⁶ Moreover, that social structure, by its very nature, imposed a code of silence upon Black women, which continues to exist to this day.⁷ There are some aspects of life one does not share and there are aspects that silence protects. As a result of this culture of secrecy, Black women, through their silence, have unwittingly enabled and protected those who have abused them for decades.

There are many societies that embrace a culture of silence, but they do not have a history of slavery and Jim Crow.⁸ Therefore, there are clearly other factors and dynamics responsible for shaping silent behavior in those societies.⁹ This Article is not about them and is not intended to examine those factors, even where there may be some overlap. Rather, the premise of this Article is that the veil of silence still worn by Black women is a remnant of survival tactics adopted to survive slavery and Jim Crow.

There was and remains an unspoken sisterhood of "don't tell" that pervades the Black community even today as a result of the imposition of centuries-old silence. This is akin to the culture of not "snitching" to the cops or any other authority figure, but distinguishable to the extent that Black women's silence has largely resulted in the protection of two main

6. Barbara Jones Warren writes:

However, I think that a contextual depression theory provides a more meaningful explanation for the occurrence of depression within African-American women. This contextual focus incorporates the neurochemical, genetic perspectives of biological theory; the impact of losses, stressors, and control/coping strategies of psychosocial theory; the conditioning patterns, social support systems, and social, political, and economic perspectives of sociological theory; and the ethnic and cultural influences which affect the physical and psychological development and health of African-American women.

Barbara Jones Warren, *Examining Depression Among African-American Women from a Psychiatric Mental Health Nursing Perspective*, HEALTHYPLACE (Dec. 30, 2008), <http://www.healthyplace.com/depression/articles/examining-depression-among-african-american-women-from-a-psychiatric-mental-health-nursing-perspective/> (last updated Apr. 5, 2013) (citations omitted).

7. Carla Wilson, *Black Women's Narrative of Slavery, the Civil War and Reconstruction*, WORKERS VANGUARD, Feb. 4, 2005, <http://www.icl-fi.org/english/wv/archives/oldsite/2005/Slavery-841.html>.

8. As an extreme example, the Finns have a culture of silence. See Maria Carling, *Global Psyche: No Need for Words*, PSYCHOL. TODAY, Jan. 7, 2007, <http://www.psychologytoday.com/articles/200701/global-psyche-no-need-words>.

9. *Id.*

groups: Black and White men. The muted tongues of Black women have protected Black men because the women do not want their voices to be an instrument that further neuters Black men,¹⁰ while White men have been empowered by the silence of Black women as well as the silence of the American justice system. Anyone who doubts this first assertion regarding Black men should examine newspaper and magazine articles from the mid-1980s to review the exhortations from Black men¹¹ that Alice Walker received as a result of describing the physical, sexual, and psychological abuse endured by her main character, Celie, when her novel entitled *The Color Purple*¹² was made into a film. Alice Walker violated the code of silence surrounding physical, emotional, and sexual abuse in the Black community.¹³ When the film version of the novel was released, several

10. "We bear the burden of reconciling our desire to see the guilty punished with our fear of racism and injustice." Darci E. Burrell, *Myth, Stereotype, and the Rape of Black Women*, 4 UCLA WOMEN'S L.J. 87, 88 (1993). In other words, Black women share a common history of racism, injustice, and abuse with Black men. Black men have been labeled as oversexed, violent, and stupid, just to name a few. *Id.* at 90. Is it possible that Black women have protected their abusive fathers, husbands, and lovers in an attempt to protect their sons—the fruit of their wombs—from the labels that might fall from their own lips?

11. See E.R. Shipp, *Some Protest 'Color Purple' Portrait of Black Men*, WILMINGTON MORNING STAR, Feb. 1, 1986, at 1D, available at <http://news.google.com/newspapers?nid=1454&dat=19860201&id=AQIzAAAAIbAJ&sjid=1BMEAAAAIbAJ&pg=6359,131778>. See also Ronda Racha Penrice, Op-Ed., 'The Color Purple' 25 Years Later: From Controversy to Classic, THEGRIO (Dec. 17, 2010, 8:18 AM), <http://www.thegrio.com/entertainment/the-color-purple-25-years-later-from-controversy-to-classic.php>. Penrice, writing about the film version of the novel, wrote about the reaction of two leading Black male critics' reactions to it:

The now largely forgotten Tony Brown, who, for years, hosted *Tony Brown's Journal*, a [B]lack issues-oriented program once seen weekly on PBS, even dedicated an entire show to denouncing the film. Brown called *The Color Purple* "the most racist depiction of [B]lack men since *The Birth of a Nation* and the most anti-Black family film of the modern film era."

Courtland Milloy, who scathingly criticized *For Colored Girls* in *The Washington Post*, did the same when *The Color Purple* came out. Milloy, as paraphrased by feminist academic Jacqueline Bobo in her 1988 critical essay "Black Women's Responses to *The Color Purple*" in the journal *Jump Cut: A Review of Contemporary Media*, insisted that "some [B]lack women would enjoy seeing [B]lack men shown as 'brutal bastards.'" At the film's premiere in Los Angeles, [B]lack men even mounted a protest.

Id.

12. ALICE WALKER, *THE COLOR PURPLE* (1982).

13. Salamishah Tillet recounts the tale of what happened on her college campus when a few Black students had the courage to come forward and report their abuse:

As these women courageously stepped forward with their stories of domestic violence and attempted sexual assault, they were socially scorned within our African American community on campus. Some people automatically dismissed their stories as made-up, and they were considered bitter, angry women. Very few people came to their aid. Although most people took a stance of communal indifference, there were those who spat words of disbelief in their faces because they saw these women as rabble-rousers.

articles criticized Walker because they believed that she painted Black men in a false light.¹⁴

Walker's main character, Celie, was abused by her husband and by her "father" before him.¹⁵ Long before the general public was singing, clapping, and crying over the heart-wrenching Broadway stage version of her novel, critics skewered Alice Walker for revealing some dirty little secrets of the Black community in her novel and subsequent film.¹⁶ In the Broadway rendition of the novel and film, the character Sophia was hit by her husband, Harpo, fought back and beat him down, then loudly announced to Celie, "I love Harpo. God knows I do. But I'll kill him dead 'fo I let him or anybody beat me!"¹⁷ to which Celie replied, "But Harpo yo' husband."¹⁸ In other

Troublemakers. Man haters. Many of the more politically active Black men on campus said they were taking no sides and often never listened to, talked to, or believed these women. Many of the more politically active Black women on campus took a stance of silence and continued to critique the blatant racism on our campus without critiquing the sexism.

Salamishah Tillet, *Fragmented Silhouettes*, 25 WOMEN & THERAPY 161, 166 (2002).

14. THE COLOR PURPLE (Amblin Entertainment 1985).

15. See WALKER, *supra* note 12, at 11, 30.

16. See, e.g., Penrice, *supra* note 11.

Just like the recent *For Colored Girls*, [B]lack men were among *The Color Purple*'s loudest critics. Basically there were [B]lack men who saw the film as only a story about a poor black woman in Georgia who was molested and impregnated as a child by the man she believed to be her father and later beaten and tormented by her much older husband Mister. They claimed that *The Color Purple* was an assault on the [B]lack male image. "It is degrading to [B]lack men . . . makes us all look like wife beaters and rapists," one [B]lack man told the *Los Angeles Times*.

Id. See also Jacqueline Bobo, *Black Women's Responses to The Color Purple*, 33 JUMP CUT 43 (1988), available at <http://www.ejumpcut.org/archive/onlinessays/JC33folder/CIPurpleBobo.html>. Ms. Bobo noted:

Tony Brown, a syndicated columnist and the host of the television program *Tony Brown's Journal* has called the film THE COLOR PURPLE "the most racist depiction of Black men since THE BIRTH OF A NATION and the most anti-Black family film of the modern film era." Ishmael Reed, a Black novelist, has labeled the film and the book "a Nazi conspiracy." Since its premiere in December 1985, THE COLOR PURPLE provoked constant controversy, debate, and appraisals of its effects on the image of Black people in this country.

Id.

17. See *Hell No!*, on THE COLOR PURPLE: ORIGINAL BROADWAY CAST RECORDING (Angel Records 2006).

Sofia: You told Harpo to beat me?

Celie: I'm sorry.

Sofia: I love Harpo. God knows I do. But I'll kill him dead, 'fo I let him or anybody beat me!

Id.

18. See *id.*

words, Celie was verbalizing the custom that if a man is your husband, you are his property, and he has a right to mistreat you.¹⁹ Sophia was the anomaly, the rare woman who would speak up. She was “rewarded” for her spunk and rare trait of speaking up for herself by getting arrested towards the middle of the novel.²⁰

The clear message to Black women has been to shut up and suffer in silence. Likewise, Black women’s silence has empowered White men because in the past, Black women have feared repercussions against them and those they love.²¹ This knowledge, coupled with the lack of laws protecting Black women, empowered White men to continue the physical and sexual abuse of Black women for centuries.

Most often, stories of rape in slavery involve Black male slaves and White women.²² Even when stories are told of the harms inflicted on Blacks as a result of the remnants of slavery and Jim Crow, researchers exclude Black women from the analysis;²³ it is as if they do not exist and are not impacted by the processions of wrongs upon them. Who will lift the historical veil of silence and tell their stories?

In 2011, the *Huffington Post* printed an article in which it revealed a

Celie: What you gon’ do now?

Sophia: My sisters comin’ to get me. I think I need a vacation on up and away from here.

Celie: But Harpo yo’ husband. You got to stay wit’ him. I know you love ‘im.

Id.

19. See WALKER, *supra* note 12, at 40–41.

20. *Id.* at 84–87.

21. Gayle Pollard-Terry, *For African American Rape Victims, A Culture of Silence*, L.A. TIMES (July 20, 2004), <http://articles.latimes.com/2004/jul/20/entertainment/et-pollard20>.

“Remember, in this country [B]lack women had to come to the aid of [B]lack men who were falsely being accused of sexual assault. Remember the movie ‘Rosewood’? That’s what it was all about” It wasn’t just a movie, it was history: In 1923, in Florida, the [B]lack town of Rosewood was obliterated by a [W]hite mob after a [W]hite woman claimed she’d been attacked by a [B]lack man.

Id. (quoting Sharon Shelton, “the senior program manager of the YWCA Greater Los Angeles Sexual Assault Crisis Program in Compton”).

22. See DIANE MILLER SOMMERVILLE, *RAPE AND RACE IN THE NINETEENTH CENTURY SOUTH* (2004). For a further discussion of incidences of rape during a period of slavery highlighting a notable absence of references to the numerous rapes of Black slave women, see generally SHARON BLOCK, *RAPE AND SEXUAL POWER IN EARLY AMERICA* (2006) (using colonial newspapers to demonstrate that race played a major part in how rapes were reported); Jason A. Gillmer, *Poor Whites, Benevolent Masters, and the Ideologies of Slavery: The Local Trial of a Slave Accused of Rape*, 85 N.C. L. REV. 489 (2007) (writing about a specific case where a Black male slave was tried for raping a White woman).

23. Janette Y. Taylor, *Talking Back: Research as an Act of Resistance and Healing for African American Women Survivors of Intimate Male Partner Violence*, 25 WOMEN & THERAPY 145, 148 (2002).

rape attempt against a teenage Rosa Parks by her White next-door neighbor in 1932.²⁴ Mrs. Parks wrote about this attempted rape in her diary and reportedly never intended that it become public information. As a result of this revelation, and the subsequent fight to keep the information private, one is able to conclude that Mrs. Parks experienced fear and shame from the incident and knew enough to maintain her silence if she wanted to keep her job and to prevent a backlash against her community.

It is curious that when faced with gender-neutral, race-based discrimination and abuse, Rosa Parks stood shoulder-to-shoulder with many of her male counterparts in the civil rights movement advocating for justice and fighting vigorously, while risking similar repercussions of jail, water hoses, and dog attacks.²⁵ However, when it came to the very specific, gender-based act perpetrated against her, she remained silent. As a Black woman, did she instinctively understand that charging a White man with attempted rape in the United States in 1932 would inflict even greater harm upon herself than upon him? Did she understand the silence?

It is not the contention of this Article that Black women are "victims," but quite the contrary. Black women are strong, industrious, and survivors of a system that would have destroyed a less-enduring people. But, they have been victimized, and arguably society owes them space to heal from the past and present pain suffered. The pain is not only the physical pain of rape and abuse, but a larger wound inflicted by the societal structure and legal system which dictated the value Black women had in society. Did the constant psychological battering of Black women that occurred as a result of them bearing witness to their men being killed for minor offenses result in a culture of silence and protection of Black men that continues to exist

24. Ula Linytzky, *Rosa Parks Essay Reveals Rape Attempt*, HUFFINGTON POST (July 29, 2011, 9:11 AM), http://www.huffingtonpost.com/2011/07/29/rosa-parks-essay-rape_n_912997.html.

Rosa Parks's diary entry read:

He offered me a drink of whiskey, which I promptly and vehemently refused. He said I should'nt [sic] be afraid to take a drink. Jones would'nt [sic] miss it. I told him that I did'nt [sic] drink whiskey and I did'nt [sic] want him there to visit me. He moved nearer to me and put his hand on my waist. I was very frightened by now (or just plain scared nearly to death. [sic] At his touch, I jumped away as quickly as an unbridled filly. He was a bit startled and asked me not to be afraid. He would not hurt me. He liked me. He didn't want me to be lonely and would I be sweet to him. [sic] He had money to give me for accepting his attentions.

Now, I knew Sam's mission here was not a forgotten coat. I was trapped and helpless. I was hurt, and sickened through with anger and disgust.

Journal Entry of Rosa Parks (undated), *reprinted in* linytzky, *supra*.

25. *Id.* See also Glenn T. Eskew, *Birmingham Campaign of 1963*, ENCYCLOPEDIA ALA., <http://www.encyclopediaofalabama.org/face/Article.jsp?id=h-1358> (last updated Aug. 15, 2012).

today?²⁶ Is there a collective consciousness that has survived both slavery and Jim Crow that prompts Black women to protect themselves, while unwittingly and simultaneously protecting their abusers? The law must fashion remedies to repay the debt that was allowed to accumulate for centuries to the detriment of Black women.

The first remedy to the systemic silence would be an acknowledgment that a Black woman needs to be able to tell “her story” and allow a collective exorcism of the pain that has lingered just below the consciousness of Black women for centuries. Second, the law must fashion “reparations”²⁷ to provide for repayment of the debt. A logical question to ask is why society should pay a debt to Black women when at least part of the debt is based on abuse by Black men. In other words, if this is merely Black-on-Black abuse, both during and after slavery, why should the entire society be held accountable? Moreover, have Black women been complicit in their own suffering because of their silence? Both questions fail to address who created and maintained a system that allowed and perpetuated the sexual abuse of Black women.

The silence that this Article references is three-fold: (1) silence of Black women stemming from the vestiges of slavery and their societal status; (2) silence of a legal system that has ignored them; and (3) the silence implicit in the failure of today’s society to fully tell her story. Although there have been a myriad of abuses heaped upon Black women, the most illustrative way to demonstrate the failure is to examine the issues of rape and sexual abuse, first within the context of the institution of slavery, and later in post-slavery times.²⁸

The judicial system rarely addressed the physical and psychological abuse of Black women, but rape was and remains a statistically or

26. Pollard-Terry, *supra* note 21 (“There’s an old saying in the African American community: Black women raise their daughters and love their sons. A legacy of the atrocities of slavery, it signifies a communal protectiveness of [B]lack men, from the coddling of toddling boys to a reluctance to report rape and incest.”).

27. See Pamela D. Bridgewater, *Ain’t I a Slave: Slavery, Reproductive Abuse, and Reparations*, 14 UCLA WOMEN’S L.J. 89, 106–12 (2005) (outlining current strategies for reparations which have been presented by groups discussing the issue).

28. Jennifer Hallam, *The Slave Experience: Men, Women, and Gender*, PBS, <http://www.pbs.org/wnet/slavery/experience/gender/history2.html> (last visited Sept. 24, 2012).

The slave owner’s exploitation of the [B]lack woman’s sexuality was one of the most significant factors differentiating the experience of slavery for males and females. The [W]hite man’s claim to the slave body, male as well as female, was inherent in the concept of the slave trade and was tangibly realized perhaps no where more than on the auction block, where captive Africans were stripped of their clothing, oiled down, and poked and prodded by potential buyers. The erotic undertones of such scenes were particularly pronounced in the case of [B]lack women.

Id.

anecdotally reportable statutory offense. Historically, these statistics are lacking when it comes to Black women²⁹ and that fact helps to support the assertion that the judicial system has been silent on both prosecuting and reporting the rapes of Black women. As a result, Black women were silent about the most basic right that human beings have—bodily integrity.

This Article will explore the genesis and perpetuation of such silence through the lens of statutes, case law, and narratives culled from 1776 to the present day. Rape and sexual abuse will provide the backdrop for an examination of the silence of Black women's voices, the silence of the judicial system, and the silence of the storytellers. It is time to end the historical silence and to give voice to the voiceless.

Part II of this Article will discuss the history of silence in Black society, from slavery through Emancipation, focusing not only on the silence of Black women, but also on the silence of the laws of society in general. Part III will also reveal stories of just how violent and dangerous this silence has been throughout the decades. Part IV details how Black women have been marginalized by the failure of storytellers to give voice to the history of their plight. Finally, Part V offers a few solutions of how to start the healing process for Black women's pain which has been internalized for centuries because of an ineffective, and many times unresponsive, judicial system.

II. MUTED TONGUES, MUTED LAWS

Silence has been a part of life in American Black society since its beginning. This Part will detail the history of this silence, as well as provide fictional and nonfictional narrative accounts of its impact. This Part will address today's silence and its impact on today's Black America.

A. Silence During Slavery

*The crime of rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the [W]hite race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be a mere assault and battery.*³⁰

29. Brooke Axtell, *Black Women, Sexual Assault and the Art of Resistance*, FORBES (Apr. 25, 2012, 2:15 AM), <http://www.forbes.com/sites/shenegotiates/2012/04/25/black-women-sexual-assault-and-the-art-of-resistance/> (“[F]or every African-American woman that reports her rape, at least 15 African-American women do not report theirs.”).

30. *George v. State*, 37 Miss. 317, 317 (1859).

There is no dispute that during slavery, Blacks were not considered human beings, but merely chattel property, and as such, were subject to the wishes and whims of their owners.³¹ The Founders drafted the venerated United States Constitution in a manner intended to ensure that this non-person status be maintained and protected.³² Consequently, since Blacks were the property of slave owners, they had no recourse for any criminal acts committed against them by their White owners.³³ One of the many ironies of slavery was, although Blacks were not deemed human beings for the purposes of civil and human rights, they were elevated to full human status for purposes of criminal law.³⁴ In other words, these “inhuman Blacks” could stand trial for committing crimes and be faced with the full force and effect of the law. Moreover, there was no right to trial by jury and no right to appeal.³⁵ Likewise, there were no three-fifth sentences³⁶ imposed upon Blacks who were “convicted” of crimes, and no mitigation for their supposed lack of intellect.

This stance was ludicrous, since a Black person was the equivalent of a chair, a horse, a plow, or any other such property of the slave owner. Certainly a plow could not commit a crime; yet, Blacks, who were the legal equivalent of that same plow, could.³⁷ In addition, behavior that would not be deemed criminal if committed by a White person would be punishable if committed by a slave and resulted in swift and unrelenting punishment by the slave owner.³⁸ Moreover, presumably, a slave owner could not commit a

31. *Id.* at 319.

32. The original text of Article I, Section 2 of the United States Constitution reads:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

U.S. CONST. art. I, § 2, cl. 3, *amended* by U.S. CONST. amends. XIV, XVI.

33. JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 141–43 (8th ed. 2000).

34. Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. PA. J. CONST. L. 561, 572 (2012).

35. *Id.*

36. Although slaves were deemed three-fifths of a person during slavery for political reasons, this was not a mitigating factor in meting out punishment under the criminal justice system. *See id.*

37. Daniel J. Flanagan, *Criminal Procedure in Slave Trials in the Antebellum South*, 50 J. S. HIST. 537, 537–38 (1974).

38. Ben Simpson recounts the story of how his “massa” walked a group of slaves from Georgia to Texas. JULIUS LESTER, *TO BE A SLAVE* 55 (1968). He routinely whipped anyone who fell behind. *Id.* Simpson’s mother collapsed along the way and the “massa” took out a gun and shot her and would not bury her. *Id.*

crime against his own property. Therefore, there was rarely an expectation that slaves could attain relief for the atrocious acts committed against them by their owners or anyone else.³⁹ Jennifer Mason McAward writes:

Scholars of the law of slavery also have used the term “incident” to refer to the legal aspects of the slave system. First published in 1856, the second chapter of George Stroud’s *Sketch of the Laws Relating to Slavery* is entitled “Of the Incidents of Slavery—the Relation of Master and Slave.” In that chapter, Stroud discusses laws governing the power of the master to control a slave’s labor, food, clothing, and punishment; the slave’s status as chattel owned by the master; the slave’s lack of enforceable property and contract rights; and the slave’s lack of standing to sue the master or to obtain redress for cruel treatment.⁴⁰

However, because slaves were seen as a valuable commodity that needed some modicum of protection to insure the property rights of the owner, the law protected slaves’ owners from abuses to their slaves committed by the general public.⁴¹ These protections had nothing to do with the slaves themselves, but merely their value as property. Thus, other Whites could be punished for damaging a slave based on property law and the damages would inure to the benefit of the owner, not the slave.⁴² There are many cases that address slave-stealing as a crime for violating an owner’s property rights, but none of these cases mention the rights of the slaves.⁴³

39. See FRANKLIN & MOSS, JR., *supra* note 33. The authors state:

All over the South, however, there emerged a body of laws generally regarded as the Slave Codes, which covered every aspect of the life of a slave. There were variations from state to state, but the general point of view expressed in most of them was the same: slaves are not people but property; laws should protect the ownership of such property and should protect [W]hites against any dangers that might arise from the presence of large numbers of slaves.

Id. at 140–41. “Slaves had no standing in the courts: they could not be a party to a lawsuit; they could not offer testimony, except against another slave or a free [B]lack” *Id.* at 141. The authors added:

Since slaves were always regarded with suspicion and since some crimes were viewed as threats to the social order, they were frequently punished for crimes they did not commit and were helpless before a panic-stricken group of slaveholders who saw in the rumor of an insurrection the slow but certain undermining of the entire system.

Id. at 143.

40. McAward, *supra* note 34, at 572 (citations omitted).

41. A. Leon Higginbotham, Jr. & Anne F. Jacobs, *The “Law Only as an Enemy”: The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Laws of Virginia*, 70 N.C. L. REV. 969, 1036 (1992).

42. *Id.*

43. See *Dave v. State*, 22 Ala. 23 (1853); *Murray v. State*, 18 Ala. 727 (1851); *Williams v.*

Moreover, slaves were also subject to punishment for non-criminal behavior and were whipped for the most trifling incidents—the slave owner’s wife just as often wielded the whip as the slave owner himself.⁴⁴ For example, slaves who were taught to read or write were subject to beatings and amputations if their masters found out they were literate.⁴⁵ Professor Leon Higginbotham noted that: “Although a survey of statutes and cases offers significant revelations of [B]lacks’ degraded status under the law, it simply cannot portray the magnitude of the cruelty that confronted slaves and free [B]lacks in their daily lives.”⁴⁶

B. Silence After Emancipation

There was a presumption, however rebuttable it has proven to be, that once the slaves were freed via the Emancipation Proclamation, and certainly after the enactment of the Thirteenth, Fourteenth, and Fifteenth Amendments, Blacks could assert a cause of action for violations against their persons because they had finally been declared both whole human beings and citizens within the context of the United States Constitution.⁴⁷ However, Emancipation did not solve this problem because, before the notion of freedom could take root, Black Codes and the lynching years were firmly in place.⁴⁸ Black Codes enacted in Southern jurisdictions had the net effect of continuing many of the same atrocities as slavery and came to be known as “Jim Crow laws.”⁴⁹ Though Emancipation appeared to bestow

State, 15 Ala. 259 (1849).

44. See generally WILLIAM J. BOWERS, *LEGAL HOMICIDE: DEATH AS PUNISHMENT IN AMERICA 1864–1882* (1984) (discussing how Blacks were executed for relatively petty crimes).

45. HEATHER ANDREA WILLIAMS, *SELF-TAUGHT: AMERICAN EDUCATION IN SLAVERY AND FREEDOM* 18 (2005).

46. Higginbotham, Jr. & Jacobs, *supra* note 41, at 979.

47. U.S. CONST. amends. XIII, XIV, XV.

48. *Jim Crow Law*, *ENCYCLOPEDIA BRITANNICA*, <http://www.britannica.com/EBchecked/topic/303897/Jim-Crow-law> (last visited Dec. 31, 2012).

Jim Crow law[s], in U.S. history, [refer to] any of the laws that enforced racial segregation in the South between the end of the formal Reconstruction period in 1877 and the beginning of a strong civil rights movement in the 1950s. *Jim Crow* was the name of a minstrel routine (actually Jump Jim Crow) performed beginning in 1828 by its author, Thomas Dartmouth (“Daddy”) Rice, and by many imitators, including actor Joseph Jefferson. The term came to be a derogatory epithet for [B]lacks and a designation for their segregated life.

Id.

49. *The Rise and Fall of Jim Crow* (PBS television broadcast 2002). Jim Crow was not a person, yet affected the lives of millions of people. *Id.* Named after a popular nineteenth-century minstrel song that stereotyped African Americans, “Jim Crow” came to personify the system of government-sanctioned racial oppression and segregation in the United States. *Id.*

constitutional rights upon Blacks, civil redress was lacking.⁵⁰ Also, because of the lynch-mob mentality of Jim Crow, death was the most common penalty used to punish Blacks for real or imagined crimes.⁵¹ Punishment for stealing a horse could be death.⁵² Resisting the "advances" of a White man could elicit death.⁵³ Whistle at a White woman and the penalty was death.⁵⁴ How many times did Black women witness Black men being led off by Whites for the commission of some offense, never to see them again? When Billie Holiday sang of *Strange Fruit*, Black women nodded in agreement because she sang of matters of which they had first-hand knowledge.⁵⁵

50. McAward, *supra* note 34.

51. LESTER, *supra* note 38, at 32–33.

52. Higginbotham, Jr. & Jacobs, *supra* note 41, at 979–80.

Philip Schwarz has highlighted the problem of concentrating solely upon evidence from slave trials, stressing that masters often resorted to private executions and beatings of slaves. Similarly, Eugene D. Genovese has noted: "Despite the efforts of the authorities and the courts, masters and overseers undoubtedly murdered more slaves than we shall ever know. . . ."

....

There are, therefore, great dangers of underestimating the cruelty that reigned on the plantations.

Id. at 979 (citations omitted).

53. The Act of 1669 read:

WHEREAS the only law in force for the punishment of refractory servants resisting their master, mistress [sic] or overseer cannot be inflicted upon negroes, nor the obstinacy of many of them by other then violent means suppress, *Be it enacted and declared by this grand assembly*, if any slave resist his master (or other by his masters order correcting him) and by the extremity of the correction should chance to die, that his death shall not be accounted felony [sic], but the master (or that other person appointed by the master to punish him) be acquit from molestation, since it cannot be presumed that prepensed malice (which alone makes murder felony [sic]) should induce any man to destroy his owne [sic] estate.

1669 Va. Acts 270, reprinted in *Antonio a Slave: A Diminishing Progress from Father to Son*, HIST. SCENE INVESTIGATION, <http://web.wm.edu/hsi/cases/anthony/documents.html> (last visited Mar. 9, 2013).

54. See THE MURDER OF EMMETT TILL (Firelight Media 2003).

55. Dorothy E. Roberts, *Rape, Violence, and Women's Autonomy*, 69 CHI.-KENT L. REV. 359, 366 (1993) ("Black men's supposed propensity to rape [W]hite women became the pretext for thousands of brutal lynchings in the South."). See also BILLIE HOLIDAY, *STRANGE FRUIT* (Commodore 1939).

Southern trees bear a strange fruit,
Blood on the leaves and blood at the root,
Black body swinging in the Southern breeze,
Strange fruit hanging from the poplar trees.

Pastoral scene of the gallant South,
The bulging eyes and the twisted mouth,

C. Silence as Protection

The silence that has accompanied the abuses Black women have endured for centuries is a practiced silence, necessary to their survival. The genesis of this silence is rooted in slavery and can be found by the absence of legal protections for slaves in general and for female slaves in particular.⁵⁶ When Black women spoke of the abuse visited upon them, not only was there no justice, but many times there were dire consequences to pay for having revealed the abuse.⁵⁷ Nonetheless, “Black women used many strategies to resist sexual victimization. They ran away, fought back, engaged in activism, and developed a culture of silence.”⁵⁸

Professor Pamela Bridgewater summed up the plight of female slaves in her article entitled, *Ain't I a Slave: Slavery, Reproductive Abuse and Reparations*, explaining that

[a]lthough female slaves endured intense and extreme physical labor, they were also vulnerable to a gender-specific form of slavery—sexual abuse. Given their social and legal status as

Scent of magnolia sweet and fresh,
And the sudden smell of burning flesh!

Here is a fruit for the crows to pluck,
For the rain to gather, for the wind to suck,
For the sun to rot, for a tree to drop,
Here is a strange and bitter crop.

Elizabeth Blair, *The Strange Story of the Man Behind 'Strange Fruit'*, NPR (Sept. 5, 2012, 3:24 AM), <http://www.npr.org/2012/09/05/158933012/the-strange-story-of-the-man-behind-strange-fruit> (quoting HOLIDAY, *supra*).

56. CAROLYN M. WEST, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN: RISKS, RESPONSE, AND RESILIENCE 1 (2006), available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_SVAAWomen.pdf. Dr. West writes:

To summarize, several points can be gleaned from this historical overview: (1) Throughout much of U.S. history, the rape of Black women was widespread and institutionalized through economic and labor systems. (2) Regardless of the perpetrators' race, the legal system often failed to protect Black women from sexual violence. (3) The Jezebel stereotype, which stigmatized Black women as promiscuous, was created to justify their rape. (4) Black women developed a culture of silence and secrecy to cope with their sexual assault. (5) Black women have a long history of resilience and anti-rape activism, which includes a sense of racial loyalty that encourages them to protect Black men from an unjust legal system.

Id. at 2.

57. Roberts, *supra* note 55, at 365–69. Professor Roberts wrote: “White men exploited Black women sexually before and after slavery as a means of subjugating the entire Black community.” *Id.* at 366. One can infer from this statement that it became necessary for Black women to remain silent in order to protect the community, which would pay dearly if it reacted to the wide-scale rape of its women like any other community would react.

58. WEST, *supra* note 56, at 2.

property, they were without means to deny their owners, or their owner's agents, sexual access to their bodies. Socially, there was no available shelter for sexually abused female slaves, nor were there moral sanctions against owners who sexually abused or allowed sexual abuse of their female slaves. Legally, enslaved women had no standing under civil or criminal law to accuse their owners of rape.⁵⁹

This quote sets the tone for the discussion on how the law, in its silence, has failed Black women and set the stage for many of the ills that continue to beset the psyche of Black women in twenty-first century America.⁶⁰ How does one justify a nation that touts its Judeo-Christian origins while allowing generations of Black women to be abused, denigrated, and sexually exploited by men—both White and Black? One way in which this was accomplished was to dehumanize Black female slaves,⁶¹ while others oversexualized them.⁶² In the first instance, if Black women were not human, then they could not be violated; in the second instance, they did not deserve protection because “they asked for it,” and were promiscuous and immoral.⁶³ In the words of Professor Dorothy Roberts, “America has always defined rape in terms of race.”⁶⁴

59. Bridgewater, *supra* note 27, at 115–16 (citations omitted).

60. Donovan & Williams, *supra* note 5, at 97 (suggesting that Black women's long history of sexual victimization, coupled with racial stereotypes, exacerbated their rape experiences).

61. Roberts, *supra* note 55, at 366. Professor Roberts summarized the attitude that White men had towards Black women during slavery by saying: “During slavery, White slave masters raped Black women both for pleasure and profit. They considered slave women to be purely sexual objects, to be raped, bred or abused.” *Id.* (citations omitted).

62. *Id.* at 365. “At the same time, the image of Jezebel, a woman governed by her sexual desires, legitimated [W]hite men's sexual abuse of Black women.” *Id.*

63. Jeffrey J. Pokorak, *Rape as a Badge of Slavery: The Legal History of, and Remedies, for Prosecutorial Race-of-Victims Charging Disparities*, 7 NEV. L.J. 1, 9 (2006) (citations omitted) (“These two doctrines combined to create a powerful myth of slave sexuality: Black men were lascivious and must be kept from unrestrained sexual intercourse and assault, while Black women were portrayed as lascivious and therefore incapable of being raped.”).

64. Roberts, *supra* note 55, at 364–65.

Race is not a peculiar aspect of rape; race helps to determine what rape means. The racialized history of rape does not diminish rape's roots in ordinary heterosexual relations; in America, rape's racial and sexual origins are inseparably intertwined. This history also clarifies how both the practice and legal interpretation of rape are essentially political. First, the social meaning of rape has centered on a racialized sexual mythology arising from slavery. This mythology defines Black women as sexual objects, while it defines Black men as sexual predators. The image of the sexually loose woman who is unrapable, who always consents, and who is therefore unprotected by the law, is a Black woman.

The silence surrounding the conversations about America's treatment of Black women during slavery is palpable. While scholars have written about the fact that there was inhumane and disparate treatment with respect to rape and race, few have articulated a view on how those centuries-old crimes against Black women continue to have reverberations today.⁶⁵ Dr. Carolyn West states, "[t]his historical trauma is intergenerational and continues to live in the collective memories of contemporary African American women."⁶⁶ She adds that the following message has been clearly transmitted: "Rape was described as something that could happen to you just because you were Black and female."⁶⁷

D. Narratives and Cases

Clearly, the law has failed Black women, and it is important and necessary to give an overview of how the law operated to their detriment. The law gave Black female slaves the "silent treatment."⁶⁸ Although the incidents described below are anecdotal and come from a critical race feminist viewpoint, in their totality, they give a view of life, which when extrapolated to the female slave population, impacted untold numbers of Black women over the centuries.⁶⁹

1. Early America – Virginia

[I]f a any persons whatsoever shall hereafter, without marrying, carnally know, or have copulation with, any person within the degrees aforesaid, each and every person so offending, and being thereof convicted, in any court of record within this colony, shall be fined according to the

65. Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance*, 14 SIGNS 912, 912 (1989).

I suggest that rape and the threat of rape influenced the development of a culture of dissemblance among Black women. By dissemblance I mean the behavior and attitudes of Black women that created the appearance of openness and disclosure but actually shielded the truth of their inner lives and selves from their oppressors.

Id.

66. WEST, *supra* note 56, at 2.

67. *Id.* (internal quotation marks omitted).

68. "Silent" is being used here to mean that the law ignored Black women.

69. BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 25 (1981) [hereinafter HOOKS, *AIN'T I A WOMAN*]. hooks writes: "Black female slaves were usually sexually assaulted [at the hands of their masters] between the ages of thirteen and sixteen." *Id.* at 25. Common practice on plantations consisted of the female house slave sleeping in the same room as the master and mistress. *Id.* This provided a convenient setting for rape. *Id.*

*discretion of such court . . .*⁷⁰

The statutory recognition of slavery came in 1661 in Virginia and 1663 in Maryland.⁷¹ Initially, Colonial America was governed by the common law from England.⁷² Rape was one of the crimes that made the journey from England to the New World and was prosecuted as such.⁷³ The common law defined rape as the carnal knowledge of a woman forcibly and against her will.⁷⁴ Colonial laws regarding statutory rape were not applied to Blacks and Native Americans.⁷⁵ If one does the simple math, it is clear that the failure to apply the law to them occurred before the actual date that slavery was recognized by the colonies.⁷⁶ This suggests that there was a pre-conceived notion of the value of Black people in the New World.

Information about rape victims and the perpetrators of rape during that time period has been gathered by scholars by examining the newspaper articles of both the seventeenth and early eighteenth centuries.⁷⁷ Rapes were reported and categorized in many newspapers by race.⁷⁸ The papers always reported the race of the perpetrator, but they *only* reported the crime if the victim was White; "rapes of non-[W]hite women, whether Indian or [B]lack, were not generally considered newsworthy."⁷⁹ More currently, books have been published that explore race, rape, and the myths of Black sexuality, but many of these tomes are from the perspective of Black male slaves and White women. Much of the literature is silent on the long-term effects of abuse on Black women.⁸⁰ Is their story not worth telling?

70. 1730 Va. Acts 246 (William Waller Hening ed., vol. IV 1820).

71. FRANKLIN & MOSS, JR., *supra* note 33, at 65–69.

72. PAUL SAMUEL REINSCH, *ENGLISH COMMON LAW IN THE EARLY AMERICAN COLONIES* 398 (1899).

73. SHARON BLOCK, *RAPE AND SEXUAL POWER IN EARLY AMERICA* 6–7 (2006).

74. WAYNE R. LAFAVE, *CRIMINAL LAW* 752–56 (3d ed. 2000).

75. Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 118 (1983).

76. *Id.*

77. See, e.g., Sharon Block, *Rape and Race in Colonial Newspapers, 1728-1776*, 27 JOURNALISM HIST. 146 (2001) (discussing colonial newspaper articles that deal with the rapes of White women—Black women are notably absent from articles discussing the crime of rape, and one can only conclude that this is because they were considered unrapeable).

78. *Id.* at 151.

79. *Id.*

80. See Bridgewater, *supra* note 27. "Approximately ten books, forty-one law review articles, and countless websites and manifestoes [sic] have been written on reparations for slavery in the United States. However, less than one-tenth of one percent of this literature mentions the experience of female slaves." *Id.* at 91.

2. Virginia – 1819

Not all Whites owned slaves and not all Blacks were slaves; however, the social, economic, and political systems constructed to protect slavery permeated the larger society and became inseparable from American life.⁸¹ The codes that provided the parameters around life on the plantation or on the farm were institutionalized and became the norm for the country.⁸² An illustration of this phenomenon is reflected in the following quote:

“I consider a woman who brings a child every two years as more profitable than the best man on the farm . . . what she produces is an addition to the capital. . . . [While a male slave’s labor disappears] . . . in mere consumption.”⁸³

This quote comes from one of the most venerated Founding Fathers of this nation, Thomas Jefferson. Jefferson was a man of his times, and as such, he embraced the code of behavior surrounding slavery.⁸⁴ Annette Gordon-Reed, in her novel entitled *Thomas Jefferson and Sally Hemings: An American Controversy*, makes a convincing argument that Jefferson and his slave, Sally Hemings, had a sexual relationship.⁸⁵ Whether the relationship was consensual or forced has been debated and will continue to be debated.⁸⁶

81. Higginbotham, Jr. & Jacobs, *supra* note 41, at 978.

“Free [B]lacks would logically stand a greater chance of being convicted for the same kind of behavior [as slaves] since they—‘slaves without masters’—suffered from racial subordination in the courts yet did not have the benefit of owners’ self-interested intervention.” Perhaps the most profound example of free [B]lacks’ precarious and unique legal status was the fact that as punishment for committing what was for [W]hites a noncapital crime, free [B]lacks could be sold into slavery. Such enslavement of [W]hites was inconceivable. In those rare instances when [W]hites could be forced to satisfy debts with indentured servitude for a term of years, a [B]lack person born a free man could end up a slave by virtue of the color of his skin.

Id. (citations omitted) (quoting PHILIP J. SCHWARZ, *TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA 1705–1865*, at 317–18 (1988)).

82. The Jim Crow laws were institutionalized by *Plessy v. Ferguson*, 163 U.S. 537 (1896).

83. Wilma King, “*Suffer With Them Till Death*”: *Slave Women and Their Children in Nineteenth Century America*, in *MORE THAN CHATTEL: BLACK WOMEN AND SLAVERY IN THE AMERICAS* 147 (David Barry Gasper & Darlene Clark Hine eds., 1996) (internal quotation marks omitted).

84. As evidenced by his ownership of slaves.

85. See generally ANNETTE GORDON-REED, *THOMAS JEFFERSON AND SALLY HEMINGS: AN AMERICAN CONTROVERSY* (1998) (adding to the scholarship written about Jefferson by humanizing him in a manner that other biographers had hesitated to do, and therefore, through the author’s analysis of Jefferson’s relationship with Sally Hemings, places Jefferson in the position of many of the men of his time).

86. Some historians and biographers continued to debate the actual existence of the relationship. They attribute the Hemings’ long line of caramel-colored descendants to another

However, historians generally agree that Hemings was approximately fifteen years old when the relationship began.⁸⁷ If a Founding Father could have a

Jefferson relative or some other White man, but the current availability of DNA evidence has corroborated Gordon Reed's thesis. For an example of a naysayer, see Douglass Adair, *The Jefferson Scandals*, in *FAME AND THE FOUNDING FATHERS 160-91* (1974). Adair opined:

Why did Sally do it? Why did she mislead her children and conceal their true father's name from them?

An easy answer, of course, is Sally's vanity. It was flattering to her, as it would have been to most women, to have her name linked so intimately with one of the truly great men of the age. The widespread newspaper discussion of her supposed affair with Jefferson, which she undoubtedly was aware of, provided a tempting opportunity to elevate simultaneously her status in her own children's eyes and to give them as high a pride of ancestry as their situation as slaves allowed. Sally would have been less than human if the opportunity here offered had not been grasped. Hence, the overdramatized report of her trip to France and the supposed adventures there. Every man's knowledge of his paternity rests on hearsay. Thus, though it is impossible to believe that Eston, Madison, Harriet, and Beverly did not hear remarks by the other servants on some occasions indicating that Jefferson was *not* their father, pride encouraged them to believe their mother's story, with its wealth of circumstantial detail.

Id. at 187. See also *The History of a Secret: A Chronology of How the Jefferson-Hemings Story was Long Dismissed by Historians as Legend, Lie, or Worse*, FRONTLINE (May 2000), <http://www.pbs.org/wgbh/pages/frontline/shows/jefferson/cron/>.

Henry S. Randall, a Jefferson biographer and relative, writes to James Parton, who is working on his own Jefferson biography. Randall reports a conversation he had with Jefferson's oldest grandson many years earlier, in which the grandson tells Randall that one of the Carr brothers, Peter or Samuel, was the father of Sally Hemings's children.

Id.

87. Beverly J. Gray, *The Hemings Family of Monticello*, RECORDER (Ross County Historical Society), Feb. 1994, available at <http://www.angelfire.com/oh/chillicothe/formerslaves.html> (updated 1998). Gray writes:

After the death of his wife in 1782, Jefferson went to Europe as the United States Minister to France. Accompanying Jefferson was his daughter, Martha and his slave Jamie Hemings, the brother of Sally. Jefferson intended that Jamie should learn French cookery. In 1785, Jefferson learned of the death of his daughter, Lucy, who was living with an aunt (Elizabeth Eppes) in Virginia, and decided it was time to bring his remaining daughter, Maria, to France. He instructed his sister-in-law, Elizabeth, to select a trusted slave woman to accompany Maria. Sally Hemings, who was approximately 14 years of age at the time, was sent with Maria. Maria and Sally set sail in July, 1787 going first to England where she was met by Abigail Addams then escorted across the channel to France by Jefferson's French butler, Adrien Petit.

While in France, Sally was trained as a lady's maid, and in addition was tutored in the French language. She most probably felt at home there because of the presence of her brother, Jamie. Some of Sally's duties included "waiting on" Jefferson's daughter, Martha and seeing to the needs of young Maria. She was paid the equivalent of \$2.00 per month for her services. She attended Martha in public society and was accordingly dressed.

At some point, according to Madison, Sally's son, a relationship between Jefferson and Sally developed. [sic] Sally, you will remember, was the half sister of Jefferson's late wife and bore a striking resemblance to her. Isaac Jefferson, [sic] another slave, wrote that Sally, "had hair way down her back and that she was mighty near White".

sexual relationship with a fifteen-year-old Black slave, certainly the local plantation owner, overseer, or any other White man who desired, could avail themselves to the many Black women who had no choice in the matter.

3. North Carolina – 1829

To be sure, *all* slaves were denigrated and abused during and after slavery; however, female slaves had a much harder row to hoe than male slaves.⁸⁸ In the case of *State v. Mann*, the defendant was accused of shooting a slave, Lydia.⁸⁹ Mann said that he beat Lydia because he felt that she showed resentment towards him.⁹⁰ Lydia's "resentment" stemmed from the fact that her master sent her to work for another for a year without informing her of this arrangement beforehand.⁹¹ Upset by the beating, she attempted to flee the whipping, but was shot by Mann.⁹² It is important to know that these facts were Mann's version of events. Lydia was silent on the matter,

[sic] By all accounts, she was quite beautiful. Her son Madison, related that Sally became pregnant some time in late 1789. The amazing fact of the matter is, that as long as Sally remained in France, she was a free person. Her brother Jamie was also free. Even so, Sally and her brother were convinced to return to America and to slavery being promised that any children Sally might have would be freed at age 21 and that she and her brother Jamie would be treated favorably.

Sixteen year old Sally returned to Monticello, according to her son Madison, armed with a promise of freedom for her child. Back at Monticello, Sally worked as a housemaid and as a maid to ten year old Maria.(1799). [sic] The child, Thomas was born in 1790 after her return to Virginia.

James Callender, a newspaper reporter, published accounts in 1802 of a slave at Monticello looked so much like Jefferson that he proved to be an embarrassment to the Master of Monticello. Jefferson's political foes made up songs about the slave children of Monticello and Sally Hemings. Two of the ballads were "Long Tom" an "Dusky Sally". [sic] It is said that the poet, William Cullen Bryant, was the author one the poems [sic] printed about Sally and TJ.

Id.

88. HARRIET A. JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL WRITTEN BY HERSELF 119 (L. Maria Child ed., 1861) ("Slavery is terrible for men; but it is far more terrible for women. Superadded to the burden common to all, *they* have wrongs, and sufferings, and mortifications peculiarly their own."). See also Taylor, *supra* note 23, at 148. Professor Taylor writes:

During slavery in the antebellum South, Black women continued to be forced participants in scientific experiments. Many of these procedures attempted to manipulate Black women's reproductive capacity. For example, some owners engaged in slave breeding, which was an experimental selective process that forced enslaved women and men to reproduce for the purpose of creating efficient workers.

Id. (citation omitted).

89. *State v. Mann*, 13 N.C. (2 Dev.) 263, 263 (1829).

90. *Id.*

91. *Id.*

92. *Id.*

permanently. To the credit of North Carolina, a trial was held, but, as was expected, Mann was acquitted and the court reiterated the fact that slaves had no rights:

I repeat, that I would gladly have avoided this ungrateful question. But being brought to it, the Court is compelled to declare, that while slavery exists amongst us in its present state, or until it shall seem fit to the Legislature to interpose express enactments to the contrary, it will be the imperative duty of the Judges to recognise [sic] the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute. And this we do upon the ground, that this dominion is essential to the value of slaves as property, to the security of the master, and the public tranquillity [sic], greatly dependent upon their subordination; and in fine, as most effectually securing the general protection and comfort of the slaves themselves.⁹³

Around the same time that the *Mann* case was being tried, Harriet Jacobs, a slave, took refuge from her master's sexual advances by hiding in a crawl space underneath her grandmother's roof, where she stayed for seven years.⁹⁴ Harriet Jacobs wrote the first slave narrative authenticated as having been written by a Black woman and not a White abolitionist author writing in the third person about Black women's lot in life during slavery.⁹⁵ Jacobs's autobiography, entitled *Incidents in the Life of a Slave Girl*, detailed what life was like for a Black female slave in North Carolina from around 1813 to 1839.⁹⁶ She wrote:

But I now entered on my fifteenth year—a sad epoch in the life of a slave girl. My master began to whisper foul words in my ear. Young as I was, I could not remain ignorant of their import. I tried to treat them with indifference or contempt. The master's age, my extreme youth, and the fear that his conduct would be reported to my grandmother, made him bear this treatment for many months. He was a crafty man, and resorted to many means to accomplish his purposes. Sometimes he had stormy, terrific ways, that made his victims tremble; sometimes he assumed a gentleness that he thought must surely subdue. Of the two, I preferred his stormy moods, although they left me trembling. He tried his utmost to corrupt the pure principles my grandmother had instilled. He peopled my young mind with unclean images, such as only a vile

93. *Id.* at 268.

94. JACOBS, *supra* note 88, at 224.

95. Wilson, *supra* note 7.

96. *Id.*

monster could think of. I turned from him with disgust and hatred. But he was my master. I was compelled to live under the same roof with him—where I saw a man forty years my senior daily violating the most sacred commandments of nature. He told me I was his property; that I must be subject to his will in all things. My soul revolted against the mean tyranny. But where could I turn for protection? No matter whether the slave girl be as black as ebony or as fair as her mistress. In either case, there is no shadow of law to protect her from insult, from violence, or even from death; all these are inflicted by fiends who bear the shape of men.⁹⁷

Jacobs implored the readers of her autobiography to have compassion for her and for all the other slave women who were placed in a position of sexual surrender. Jacobs had no one to confide in and no system of justice to protect her from her master's advances. She alone bore the shame of bearing children whose existence fulfilled the myth of Black women's looseness and immorality.⁹⁸

Pity me, and pardon me, O virtuous reader! You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another. You never exhausted your ingenuity in avoiding the snares, and eluding the power of a hated tyrant; you never shuddered at the sound of his footsteps, and trembled within hearing of his voice. I know I did wrong. No one can feel it more sensibly than I do. The painful and humiliating memory will haunt me to my dying day. Still, in looking back, calmly, on the events of my life, I feel that the slave woman ought not to be judged by the same standard as others.⁹⁹

Jacobs's words clearly and eloquently described the situation so many slave women endured. She had no way to protect herself from the situation that had befallen her. In addition, silence was her only option to protect her from the jealous rages of the mistress of the house who believed that her husband had fathered Jacobs's two children.¹⁰⁰ One can only imagine the

97. JACOBS, *supra* note 88, at 44–45.

98. *Id.*

99. *Id.* at 86.

100. *Id.* at 51.

I had entered my sixteenth year, and every day it became more apparent that my presence was intolerable to Mrs. Flint. Angry words frequently passed between her and her husband. He had never punished me himself, and he would not allow anybody else to punish me. In that respect, she was never satisfied; but, in her angry moods, no terms were too vile for her to bestow upon me. Yet I, whom she detested so bitterly, had far more pity for her than he had, whose duty it was to make her life happy. I never

dread Jacobs felt upon learning that her second child was a girl, who would undoubtedly be subjected to the same sexual exploitation that she had endured herself. When modern-day pregnant Black women proclaim that they want to have a male child, could that proclamation be caused by some distant, unspoken memory that floats just around the edges of their consciousness and compels them to protect future generations of Black women from abuse? One can only speculate.

4. Virginia – 1830

Another compelling case was that of Peggy and Patrick—slaves on a plantation in New Kent County, Virginia who fell in love.¹⁰¹ Peggy and Patrick were tried and sentenced to death by hanging for killing their master.¹⁰² The facts of the case simply state that Peggy refused to have sexual relations with her master, and as a result of her refusal, the master kept Peggy chained to a block in his meat house.¹⁰³ The master had threatened to beat Peggy nearly to death if she did not consent to have relations with him.¹⁰⁴ He promised he would then send her broken body to New Orleans, far from any family or familiar faces.¹⁰⁵ He also threatened to force Patrick to hold Peggy down so that he could have sex with her.¹⁰⁶ Peggy testified that she did not consent to the master's advances because *her master was also her father*.¹⁰⁷ Peggy and Patrick were hanged¹⁰⁸ and there is no question that their story repeated itself again and again throughout the centuries of slavery.

To complicate Black women's lives even more, if that was possible, in 1849, Virginia passed a law preventing a Black person from testifying against a White defendant.¹⁰⁹ This excluded Blacks from testifying as witnesses to crimes that they observed White persons committing, and most

wronged her, or wished to wrong her; and one word of kindness from her would have brought me to her feet.

Id.

101. JAMES HUGO JOHNSTON, *RACE RELATIONS IN VIRGINIA AND MISCEGENATION IN THE SOUTH 1776–1860*, at 307 (1970).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. JOHNSTON, *supra* note 101.

108. *Id.*

109. 54 Va. Code Chap. CC Sec. 8 (1854).

importantly, it prevented a Black female victim from testifying against a crime committed by a White person against her person.¹¹⁰

5. Missouri – 1850

*Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female child, under the age of ten years, or by forcibly ravishing any woman of the age of ten years or upwards, shall be punished by imprisonment in the penitentiary not less than five years.*¹¹¹

All that is missing from this 1835 Missouri rape statute are the words, “does not apply to Black women.”

Celia, A Slave tells the story of a young Black female slave who was put on trial for the murder of her master in Callaway County, Missouri in 1855.¹¹² Robert Newsom purchased Celia when she was approximately fourteen years old.¹¹³ Records indicate that while returning to his home after purchasing her, Newsom pulled to the side of the road and raped Celia.¹¹⁴ It is believed that she may have served as a cook for the family, but it appears that her true function was to serve Newsom’s sexual needs.¹¹⁵ Newsom, a widower, had relocated, along with his sons, daughters, and their children, to Missouri from Virginia as part of the westward migration that occurred after the Louisiana Purchase.¹¹⁶ Celia bore three children assumed to all belong to

110. Higginbotham, Jr. & Jacobs, *supra* note 41, at 993.

Perhaps one of the most basic procedural deprivations that [B]lacks, enslaved and free, suffered was their preclusion from testifying against [W]hites and, during certain periods, from testifying against other [B]lacks, mulattoes, and Indians. With one stroke of the pen, the slave was denied the right to be heard, to call witnesses on his behalf, and to confront the witnesses against him.

Id. (citations omitted). See also MELTON A. MCLAURIN, CELIA, A SLAVE (1991) [hereinafter CELIA, A SLAVE]; *Conditions of Antebellum Slavery 1830–1860*, PBS, <http://www.pbs.org/wgbh/aia/part4/4p2956.html> (last visited Sept. 24, 2012).

111. MO. REV. STAT., CRIM. & PUNISHMENT § 11.23 (1835). As discussed in the annotations following the current Missouri rape statute (§ 566.030), the statute in effect in 1850 was R.S. §§ 9, 10, p. 283 (1825). MO. ANN. STAT. § 566.030 (West 2012). The statute was initially passed by Act Nov. 4, 1808, 1 Terr. L., p. 211, § 8, and amended in 1825, with no further amendments until 1879. The text of the statute is not available electronically.

112. See CELIA, A SLAVE, *supra* note 110.

113. *Id.* at 9, 20.

114. *Id.* at 20–21.

115. *Id.* at 24.

116. *Id.* at 2–3.

Newsom.¹¹⁷ It appears to the Author that Celia made a few key mistakes that ultimately resulted in her death by hanging.

First, Celia fell in love with another slave named George,¹¹⁸ who was also owned by Newsom.¹¹⁹ Celia and George were in love and wanted to lead a life together.¹²⁰ In 1855, Celia was pregnant with her third child and did not know if the father of the child was Newsom or George.¹²¹ George, a slave himself, demanded that Celia stop sleeping with Newsom and remain loyal only to him.¹²² He told her "he would have nothing more to do with her if she did not quit the old man."¹²³ George was a slave, but he was also a man with pride.

Celia's second mistake was that she attempted to abide by George's wishes. There is some speculation that Celia first tried to fix the situation by appealing to Newsom's daughters to speak to their father.¹²⁴ Celia possibly hoped that other women would understand the strain of being pregnant and feeling ill while attempting to rebuff sexual advances.¹²⁵ Appealing to Newsom's daughters might have appeared risky on Celia's part, but Newsom's relationship with Celia had to be patently clear to the entire family; her cabin was sixty paces from the back of the main house and Newsom could be seen "visiting" it on many nights.¹²⁶ Therefore, it seems logical that she would ask them to intercede on her behalf.

On June 23, 1855, Newsom entered Celia's cabin to have sex with her.¹²⁷ Celia, at George's behest, had previously warned Newsom not to come to her cabin again for that purpose because she was pregnant, tired, and feeling ill all the time.¹²⁸ Newsom came anyway, and when he attempted to make sexual advances towards her, Celia hit Newsom over the head with a stick twice, killing him with the second blow.¹²⁹ Celia then shoved

117. *Id.* at 24–25.

118. CELIA, A SLAVE, *supra* note 110, at 24.

119. *Id.*

120. *Id.* at 28–29.

121. *Id.* at 25.

122. *Id.* at 28–29.

123. *Id.* at 25 (internal quotation marks omitted).

124. CELIA, A SLAVE, *supra* note 110, at 27.

125. *Id.*

126. *Id.* at 24–25, 29.

127. *Id.* at 29.

128. *Id.* at 28–29.

129. *Id.* at 29–30.

Newsom's body into the fireplace and, over the course of the evening, burned him to ashes.¹³⁰ The next morning, when the family could not locate Newsom, they searched the property looking for him.¹³¹ One of the first persons encountered during this search was George.¹³² After some prompting, George told the search party that he had last seen Newsom entering Celia's cabin on the night before.¹³³ George gave Celia up to the group.¹³⁴

By all accounts, Celia was a small woman; in addition, she was pregnant and sick most of the time.¹³⁵ Celia lived in a one-story cabin that she shared with her two children—they were also present on the night of June 23, 1855.¹³⁶ Notwithstanding these facts, Celia alone was charged with Newsom's murder.¹³⁷ One would have to believe that Celia, and Celia alone, murdered Newsom, rolled his body into the fireplace, and stoked a fire the entire night so that it could reach and maintain a temperature hot enough to cremate Newsom.¹³⁸ Celia remained adamant in insisting that she committed the crime without any assistance from anyone in particular, vehemently denying that George was involved.¹³⁹ Shortly after her arrest, George ran away, never to be heard from again.¹⁴⁰

In spite of using the aforementioned rape statute to establish a defense of self-defense, it proved to be useless to Celia—"[b]y sustaining the prosecution's objections to defense questions about Newsom's possible threats against Celia's life, Judge Hall had removed all grounds for a plea of self-defense."¹⁴¹ Although Celia and her attorney argued that the law allowed a woman who was subject to an attempted rape to use the force necessary to repel the attack,¹⁴² Judge Hall found that Missouri's self-defense laws did not apply to slave women because they were not "persons"

130. CELIA, A SLAVE, *supra* note 110, at 30–31.

131. *Id.* at 33–38.

132. *Id.* at 33–34.

133. *Id.* at 36.

134. *Id.*

135. *Id.* at 45, 48–49.

136. CELIA, A SLAVE, *supra* note 110, at 24, 29, 49.

137. *Id.* at 44.

138. *Id.* at 49.

139. *Id.* at 48.

140. *Id.* at 50.

141. *Id.* at 90.

142. CELIA, A SLAVE, *supra* note 110, at 93.

within the meaning of the statute.¹⁴³ In Missouri, the rape of a slave woman was considered a trespass, therefore "an owner could hardly be charged with trespassing upon his own property."¹⁴⁴ If there was no rape, there could be no assertion of self-defense; therefore, the defense of self-defense could not apply to Celia.¹⁴⁵

Celia's story was a well-known case in its day and word spread far and wide on the trial coverage.¹⁴⁶ Once again, the verdict reaffirmed that Black women were valueless as human beings, seemingly void of feelings and incapable of being violated. This lesson had to have become embedded in the psyches of any slave woman who heard about the events in Missouri.

6. Mississippi – 1859

*Raping a Black woman was not a crime for a majority of this Nation's history. . . . In fact, a White defendant could argue that his indictment ought to be dismissed for failing to state the victim was White. . . . The Court concluded that a male slave could only "commit a rape upon a [W]hite woman."*¹⁴⁷

The court in the case of *George v. State* bore out this quote when it outlined and decided the question before the court.¹⁴⁸ George, a slave (not to be confused with Celia's George), was accused of raping a girl slave under the age of ten.¹⁴⁹ He was indicted, tried, found guilty and sentenced to be hung.¹⁵⁰ George sued on a writ of error to overturn his conviction.¹⁵¹ The conviction was reversed, and George was discharged from jail.¹⁵² To the credit of the State of Mississippi, there was at least a trial; however, that is where acknowledgement of the incident ends. One can only imagine the impact this case had on the morale of Black female slaves. They were not protected from the sexual abuses of Whites, and the court then declared that

143. *Id.* at 90, 93–94.

144. *Id.* at 93.

145. *Id.* at 93–94.

146. *Id.* at 44–45, 69.

147. Pokorak, *supra* note 63, at 8 (citations omitted).

148. *George v. State*, 37 Miss. 316, 317 (1859).

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

they were also not protected from the sexual assaults of other slaves.¹⁵³ There are no records indicating how George's owner and other slaves reacted to the original verdict. Surely, the owner was angered by the prospect of losing his property (the male slave), while the community may have ostracized the rape victim for telling of the rape.¹⁵⁴ If the owner was angered, this probably filtered down to the slaves. In George's case, the court held that

[t]he crime of rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the [W]hite race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse . . . would be a mere assault and battery.¹⁵⁵

Thus, it was clear that the only rape that was prosecuted was when the victim was White. Black women were under siege from men of all races.

The State of Mississippi made it clear that its laws did not protect Black slave women—not from abuse by White men, nor from abuse at the hands of another slave, since “. . . a [Black male] slave [could] only commit a rape upon a [W]hite woman[.]”¹⁵⁶ The law failed Black women in a fundamental way and on many levels. This case made it clear to the Black female slaves who knew of it that there was no protection of law for them and they were subject to abuse at the hands of many.

In *Alfred v. State*, Defendant Alfred was convicted of the murder of Coleman, his overseer.¹⁵⁷ At his trial, the court would not allow Alfred to introduce evidence showing that a few hours before the murder, Coleman had raped his wife.¹⁵⁸

The prisoner introduced as a witness in his behalf a slave named Charlotte, who stated that . . . [at] about nine or ten o'clock in the morning of the day in which the killing took place, that Coleman “had forced her (witness) to submit to sexual intercourse with him; and that she had communicated that fact to the prisoner before the killing. The district attorney objected to the introduction of this evidence, and his objection was sustained, and the prisoner

153. Wriggins, *supra* note 75, at 106.

154. Tillet, *supra* note 13, at 166 (writing, regarding how this phenomena occurs today, “[a]s these women courageously stepped forward with their stories of domestic violence and attempted sexual assault, they were socially scorned within our African American community on campus”).

155. *George*, 37 Miss. at 317.

156. *Id.*

157. *Alfred v. State*, 37 Miss. 296 (1859).

158. *Id.* at 299.

excepted.”¹⁵⁹

Charlotte, the witness, was also the victim and the wife of Alfred. Her testimony was excluded from the trial by the lower court.¹⁶⁰ Alfred appealed his conviction on two grounds: first, that the jury pool came from another county, and second, that he had a right to present Charlotte as a witness in his defense.¹⁶¹ Alfred asserted these grounds amounted to violations of his rights, and further alleged that one of the jurors was biased.¹⁶² The court held that there was no error in excluding Charlotte's testimony.¹⁶³

One can only imagine that Charlotte undoubtedly felt that by breaking her silence and telling her husband what Coleman had done to her, she was responsible for Coleman's death and for Alfred's subsequent conviction. Did she feel that if only she had remained silent, events might have transpired differently and Alfred may have been spared death by hanging? Charlotte was presented with the dilemma of telling her husband that she had been raped and facing the consequences of her husband's actions against their master, or remaining silent, with the knowledge that her silence would possibly lead to more sexual abuse. She chose to speak and the result was the death of both her master and her husband.

Although these cases and narratives are anecdotal, when taken in their totality, it is easy to discern why Black women decided to take a vow of silence to protect themselves and their community from the very system that promised them justice. None of these cases or events took place in a vacuum and word spread of what the outcome would be if one chose to tell of the abuses visited upon them. Moreover, all of these cases demonstrate that the societal status of Black women,¹⁶⁴ coupled with a justice system that did not contemplate them as being persons under it, silenced the voices of Black women.

E. Jim Crow and Beyond

The passage of the Thirteenth and Fourteenth Amendments purported to raise Blacks to the status of full personhood.¹⁶⁵ And in fact, by these

159. *Id.*

160. *Id.*

161. *Id.* at 299, 306.

162. *Id.* at 297–98.

163. *Alfred v. State*, 37 Miss. 296, 297–98 (1859).

164. Black women are included, not just Black female slaves, because even free Black women risked the danger of being subjected to the same treatment as female slaves if a crime occurred against them in any of the above-mentioned jurisdictions

165. The Thirteenth Amendment states:

Amendments, the law was made applicable to all;¹⁶⁶ however, the unjust application of the law in some areas of the United States resulted in a less than favorable outcome, and the status of Black women remained largely as it had been during slavery. Consequently, the fate of Black women did not change much after the end of slavery.¹⁶⁷ Full personhood had barely taken hold when Jim Crow laws were enacted throughout the South and had the net effect of maintaining the status quo of slavery.¹⁶⁸ As a consequence of Jim Crow and the continued sexual abuse of Black women, silence became a necessary tool for their survival. After passage of the Thirteenth and Fourteenth Amendments, the law was no longer silent on the issue of whether Black women were included among those persons protected by it; rather, the law imposed a new silence by failing to apply the law to them in a just and equitable manner, using mitigating factors to deny them justice.¹⁶⁹

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend. XIII.

The Fourteenth Amendment states:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

166. U.S. CONST. amend. XIV ("All persons born or naturalized in the United States . . . are citizens of the United States . . .").

167. HOOKS, *AIN'T I A WOMAN*, *supra* note 69. hooks writes in a chapter entitled "Continued Devaluation of Black Womanhood":

While Brownmiller successfully impresses upon readers the fact that [W]hite men brutally assaulted [B]lack women during slavery, she minimizes the impact that oppression has had on all [B]lack women in America by placing it solely in the limited historical context of an "institutionalized crime" during slavery. In so doing she fails to see that the significance of the rape of enslaved [B]lack women was not simply that it "deliberately crushed" their sexual integrity for economic ends but that it led to a devaluation of [B]lack womanhood that permeated the psyches of all Americans and shaped the social status of all [B]lack women once slavery ended.

Id. at 52. She added that "[a] devaluation of [B]lack womanhood occurred as a result of the sexual exploitation of [B]lack women during slavery that has not altered in the course of hundreds of years." *Id.* at 53.

168. See *supra* note 49.

169. For a series of cases where the court found a way to rule against the victim despite the passage of the Amendments allegedly recognizing the humanity of Blacks, see, e.g., *Alfred v. State*, 37 Miss. 296 (1859); *Anschicks v. State*, 6 Tex. Ct. App. 524 (1879); *Jenkins v. State*, 1 Tex. Ct.

Mary Frances Berry, in her book entitled *The Pig Farmer's Daughter and Other Tales of American Justice*,¹⁷⁰ relates the story of *Anschicks v. State*, an 1876 Texas case.¹⁷¹ In *Anschicks*, a White man, Anschicks, raped a young Black girl named Liney King.¹⁷² The story is somewhat convoluted and confusing, but the basic facts are that Liney was short in stature (around three and a half feet tall) and presumably young in age.¹⁷³ Liney's age was in question because her father, a former slave, had no formal records that indicated when she was born.¹⁷⁴ Liney was around nine or ten and worked as a housemaid for Anschicks and boarded across the street from him with two White women.¹⁷⁵ Anschicks's live-in lover feared he might attempt to have intercourse with Liney, but instead of chastising Anschicks to avoid sexual contact with the child, she warned Liney that she would whip her if Liney had intercourse with him.¹⁷⁶ Anschicks asked Liney to have intercourse with him, and she refused, citing her age and size, but he forcibly raped her anyway.¹⁷⁷ After Anschicks raped her, Liney returned to the house where she boarded, and the women questioned her about the blood on her clothing; at first, she denied that she had been raped because she feared repercussions from Anschicks's lover.¹⁷⁸ Eventually, Liney told the women that Anschicks had raped her.¹⁷⁹ When the women confronted Anschicks, he replied "[s]omeone had to be first."¹⁸⁰

Initially, the two White women with whom Liney boarded cooperated with the State in the prosecution of Anschicks because Liney had been so severely physically damaged by the rape they feared she would die and they would be implicated in her death.¹⁸¹ When they realized Liney would

App. 346 (1876).

170. MARY FRANCES BERRY, *THE PIG FARMER'S DAUGHTER AND OTHER TALES OF AMERICAN JUSTICE: EPISODES OF RACISM AND SEXISM IN THE COURTS FROM 1865 TO THE PRESENT* 180 (1999).

171. *Anschicks v. State*, 6 Tex. Ct. App. 524 (1879).

172. BERRY, *supra* note 170, at 180–81.

173. *Id.* at 180.

174. *Id.* at 181.

175. *Id.* at 180.

176. *Id.*

177. *Id.* at 180–81.

178. BERRY, *supra* note 170, at 181.

179. *Id.*

180. *Id.*

181. *Id.*

survive the rape, their support shifted to Anschicks.¹⁸² Anschicks was indicted in Robertson County, Texas, but avoided a statutory rape charge because the age of consent in Texas was ten, and Liney's father had no record of her true age.¹⁸³ The two White women testified that Liney seemed very "forward" around Anschicks, fixed her hair up, and dressed like a woman.¹⁸⁴

Anschicks was convicted and sentenced to twenty years in prison.¹⁸⁵ He appealed, received a new trial, was convicted again,¹⁸⁶ and was sentenced to five years in prison.¹⁸⁷ Once again, he appealed and this time the court reversed his conviction.¹⁸⁸ Berry summed up the court's rationale in this case:

[W]ithout firm proof that she was underage, Liney had to prove that she could not consent. She had failed to complain promptly after the injury, behavior acceptable for a child below the age of consent but not for an adult woman. The court knew she could not prove her age, because slaves lacked records to prove the birth of their children. Liney King's rape went unpunished.¹⁸⁹

Ultimately, there was no justice for Liney. The law allowed a child to be turned into a "forward" woman who invited the act of forced intercourse. Berry reports the only reason the case was even prosecuted was because the town's people already knew Anschicks as a shady character and because the town in which the rape took place had a majority Black population that essentially ran the town.¹⁹⁰ Anschicks's lawyer understood that the further up the court system he appealed the case, the farther he could remove it from the influence of the town's Black majority, and the better his client's chances were of having his conviction overturned.¹⁹¹ Would Liney have

182. *Id.*

183. *Id.*

184. BERRY, *supra* note 170, at 181.

185. *Id.*

186. *Id.* at 181–82.

187. *Id.* at 182.

188. *Id.*

189. *Id.*

190. BERRY, *supra* note 170, at 182.

191. *Id.*

The case was prosecuted because Anschicks and his entourage were disreputable and they lived in a community with a politically empowered [B]lack majority. Otherwise, Liney would have been completely ignored. The local court, telling the story of [B]lack exploitation, would not let Liney suffer simply because slaves had no birth

been better off if she had remained silent?

There is a great deal of case law in which courts apply the law to the detriment of Black women; one other such incident which supports this assertion occurred in 1870 in *Thompson v. Commonwealth*.¹⁹² In *Thompson*, Willie Thompson, a "colored" boy, was indicted for the rape and murder of Alice Brown, a "colored" girl.¹⁹³ Willie "ravished" Alice and choked her to death by forcing dirt down her throat.¹⁹⁴ Willie confessed and was sentenced to death.¹⁹⁵ The Virginia Supreme Court threw out his first confession and reversed his conviction, although he had offered numerous other confessions at different times.¹⁹⁶ This case is notable because "few men were ever arrested, much less tried, for the rape of an African American woman. . . . Appeals courts usually reversed the convictions of both [W]hite and [B]lack men who were convicted of raping [B]lack women."¹⁹⁷

Likewise, in *Favors v. State*, an 1885 Texas case, the law victimized Eliza McGee when the appellate court overturned her rapist's conviction.¹⁹⁸ Eliza stated that Joe Favors stopped her as she crossed a field and raped her.¹⁹⁹ Charley Johnson was the first person to find Eliza in the field after the rape and Eliza, accompanied by Charley Johnson, immediately reported the incident to Ward, the owner of the facility where both she and Johnson lived and worked.²⁰⁰ Johnson corroborated Eliza's story stating that he had heard

records. The high courts, uninfluenced by [B]lacks as political actors, repeated the story of [W]hite male power and indulgence and the subordination of African Americans.

Id.

192. *Thompson v. Commonwealth*, 61 Va. (20 Gratt.) 724 (1870).

193. *Id.*

194. *Id.* at 724–25.

195. *Id.* at 725.

196. *Id.* at 726.

197. BERRY, *supra* note 170, at 212–13.

Where enfranchised [B]lacks were a majority of the population, trial courts willingly convicted accused rapists, but the higher courts reversed these decisions. However, very few men were ever arrested, much less tried, for the rape of an African American woman. African American men were objects instead of persons and so were "their" African American women, unprotected by a powerful [W]hite person. Appeals courts usually reversed the convictions of both [W]hite and [B]lack men who were convicted of raping [B]lack women.

Id.

198. *Favors v. State*, 20 Tex. Ct. App. 155 (1886).

199. *Id.* at 156.

200. *Id.* at 157.

her cry out before he came upon her in the field.²⁰¹

At trial, Favors claimed the intercourse was consensual and moreover, his brother, Sam, testified that he, too, had intercourse with Eliza earlier that day.²⁰² Notwithstanding Eliza and Johnson corroborating the account of the event, their employer, Ward, showed no interest in protecting Eliza and testified that she was a “simple, silly-minded, childish negro.”²⁰³ The appellate court noted without objection that the district attorney had asked Ward whether McGee’s reputation resembled that of other “unmarried darkies.”²⁰⁴ He answered that McGee’s reputation for chastity was “about on an average with that of other unmarried negro women.”²⁰⁵ The court of appeals reversed Favors’s conviction.²⁰⁶ Eliza McGee was further victimized by a legal system that not only saw her as less than worthy of protection, but also perpetuated the stereotype of Black women as lustful, immoral, and willing to have intercourse with anyone who asked.

In contrast, in the 1889 case of *Mingo v. Commonwealth*, the court upheld the conviction of an attempted rape of a sixteen-year-old Black girl by a Black man.²⁰⁷ This verdict is troubling because Mingo was actually charged with rape, not attempted rape.²⁰⁸ The court said that “[i]t is true no bruises or marks were found on her person when examined by her mother, although she says the prisoner’s private parts penetrated her private parts, and that she never had connection with a man before. We do not think, however, that this circumstance affects the case.”²⁰⁹ Even when a conviction was upheld, the victim was perceived to be a liar, less than chaste, and certainly worthy of only minimal benefits of the law.

Time and time again, since slavery, the judicial system has worked to undermine the laws that purportedly applied to Black women.²¹⁰ In cases

201. *Id.* at 159.

202. *Id.* at 158.

203. *Id.* at 159.

204. *Favors v. State*, 20 Tex. Ct. App. 155, 160 (1886).

205. *Id.* at 159.

206. *Id.* at 161. White men did not care what “promiscuous” African Americans did among themselves. African-American men could freely satisfy their lust for a Black woman without worrying about complaints that the sex was involuntary. The court believed that Mr. Ward was in a better position to know his “darkies.” BERRY, *supra* note 170, at 214.

207. *Mingo v. Commonwealth*, 8 S.E. 474 (Va. 1889).

208. *Id.* at 475.

209. *Id.* at 476.

210. The above-cited cases illustrate this point. That is not to say that individual Black women have never received justice from the American judicial system; rather, it is to make a point that Black women’s “non-personhood” transcended slavery and continued to exist in the collective

where Black women were murdered after being raped, the issue of the victim's lack of morality could no longer do harm to the deceased, but it could and did send a chilling message to those she left behind—be silent or be labeled a Jezebel, incapable of being violated, and a willing participant in the sexual act. If a Black woman survived the physical and the subsequent judicial rape, then she was labeled a temptress, damaged goods, and a loose and immoral woman with no virtue. That same Black woman had to return to her community, often the same community as her rapist, whether he was Black or White, and attempt to carry on her life. Here again, the message to Black women was to be silent about the violations visited upon them if they wanted to live any type of bearable life thereafter.

The lynching years,²¹¹ which lasted from the 1880s to the 1960s,²¹² ushered in a new era of horror for Black people. If Black women did not understand the necessity of silence in the past, they certainly understood it during these horrific years. If local authorities were involved with the vigilantes who rounded up and became the judge, jury, and executioner of Blacks for some perceived “wrong,” why would a woman ever report any crime committed against her? It is clear why rape, incest, domestic violence, as well as other offenses against one's person went unreported. Why would anyone risk bringing attention to the Black men in the Black community?²¹³

Throughout the Jim Crow era and the first half of the twentieth century, Black women remained in the lower end of the socio-economic spectrum.²¹⁴ As such, they were the most vulnerable and least protected members of society.²¹⁵ They worked the most menial jobs, which positioned them for physical and sexual abuse.²¹⁶ Women who worked to support a family could

psyche of Americans. This is why it is so easy to believe in a Black welfare queen, or a lying Duke stripper, hired by a White fraternity for some clean fun. Americans are pre-disposed to viewing Black women as inferior. Even in 2013, this message resonates loud and clear with Black women.

211. About 3500 Black people were lynched during this period. See Wiggins, *supra* note 75, at 107. Lynching was used to control the Black community after the Constitution was made applicable to all citizens. CHRISTOPHER WALDREP, *AFRICAN AMERICANS CONFRONT LYNCHING: STRATEGIES OF RESISTANCE FROM THE CIVIL WAR TO THE CIVIL RIGHTS ERA* 4–11 (2009). In the late nineteenth century, Southerners justified lynching as the will of the people. *Id.* at 9.

212. See RALPH GINZBURG, *100 YEARS OF LYNCHING* (1962) (compiling newspaper articles about lynching throughout the United States from the 1880s to 1960s).

213. “For African-American women, the rape conviction of an African-American man is never simply a question of guilt or innocence. We bear the burden of reconciling our desire to see the guilty punished with our fear of racism and injustice.” Burrell, *supra* note 10, at 88.

214. Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9, 27 (1989).

215. Barbara Omolade, *Black Women, Black Men, and Tawana Brawley—The Shared Condition*, 12 HARV. WOMEN'S L.J. 11, 13–14 (1989).

216. Scales-Trent, *supra* note 214, at 27–28. Barbara Omolade noted the following:

Black women domestic servants in every region of the country have complained of the

not complain about sexual abuse and harassment or would risk losing their jobs.²¹⁷

The rape and abuse of Black women continued well into the twentieth century. Barbara Omolade describes what often occurred in Black communities when the Ku Klux Klan would ride into town:

A third layer of silence grew around Black women during the early and mid-twentieth century as the rape of Black women by [W]hite men continued. These rapes were not widely publicized, especially when compared with the public discourse, debate, and protest against lynching. The Black community always pointed to lynchings as the most blatant and vicious aspect of [W]hite males' attack on the Black community, but no such discourse and protest surrounded the rape of Black women by [W]hite men. Yet, rape was frequently part of [W]hite males' attacks on the Black community.²¹⁸

Is it any wonder that the musical genre called the Blues grew in popularity around this time?²¹⁹ Were the famous female Blues singers who emerged during that period using songs to speak truth to power and to sing what they could not say? In April 2000, 135 years after slavery was abolished, activist Angela Davis gave the keynote address at *The Color of Violence: Conference on Violence Against Women of Color*, at which she recounted the following episode:

Many years ago when I was a student in San Diego, I was driving down the freeway with a friend when we encountered a [B]lack

sexual "harassment" that went along with domestic work, especially as a "sleep-in maid." One maid explained: "I believe nearly all [W]hite men take and expect to take undue liberties with their colored female servants, not only the fathers, but in many cases the sons also."

Omolade, *supra* note 215, at 14.

217. JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT* 3–4 (rev. ed. 2010).

218. Omolade, *supra* note 215, at 14.

219. Piero Scaruffi explained how music became central to the lives of Blacks throughout the years. He stated:

Music remained the main vehicle to vent the frustration of a people, but the end of slavery introduced the individual: instead of being defined by a group (the faithful or the workers), the [B]lack singer was now free to and capable of defining himself as an individual. His words and mood still echoed the condition of an entire people, but solo singers represented a new take on that condition, the view of a man finally enabled to travel, and no longer a prisoner of his community, although, sometimes, more lonely. The songs of a negro were the diary of his life (road, train, prison, saloon, sex), often an itinerant life, as opposed to the diary of a community (plantation, church).

Piero Scaruffi, *A Brief History of Blues Music*, SCARUFFI.COM (2005), <http://www.scaruffi.com/history/blues.html> (citing PIERO SCARUFFI, *A HISTORY OF POPULAR MUSIC* (2003)).

woman wandering along the shoulder. Her story was extremely disturbing. Despite her uncontrollable weeping, we were able to surmise that she had been raped and dumped along the side of the road. After a while, she was able to wave down a police car, thinking that they would help her. However, when the [W]hite policeman picked her up, he did not comfort her, but rather seized upon the opportunity to rape her once more.²²⁰

What happened to the pain, humiliation, and degradation visited upon Black women generation after generation? Did it become interred in their bones and leave a scar on the collective consciousness of Black women? Do the vestiges of slavery, Jim Crow, and segregation still remain in the psyches of Black women?²²¹ Current psychological studies about the effect of today's violence and abuse on Black women may shed some light on how past physical, psychological, and sexual abuse from slavery might continue to impact them. Charlotte Pierce-Baker writes, "Black women have survived by keeping quiet, not solely out of shame, but out of a need to preserve the race and its image. In our attempts to preserve racial pride, we [B]lack women have often sacrificed our own souls."²²² Is this a recent phenomenon, or learned behavior from past generations?

Psychology Professor Esther J. Jenkins writes on the effects of community violence on Black women. In her article, she describes the numerous possible reactions that Black women may have from witnessing and experiencing violence.²²³ The list ranged from Post-Traumatic Stress Disorder (PTSD) to "Panic, Major Depressive, Phobia, Somatization, and Substance Related disorders . . ."²²⁴ Her studies about how violence in the community specifically impact Black women led her to conclude that

[t]here is wide variation in the type and severity of reactions to violent exposure. Individual responses are a result of the incident and a constellation of individual, social risk, and protective factors. However, few individuals are left untouched by these experiences,

220. Angela Davis, Keynote Address at The Color of Violence: Conference on Violence Against Women of Color (Apr. 28, 2000), available at http://colorlines.com/archives/2000/10/the_color_of_violence_against_women.html.

221. Warren, *supra* note 6, at 1 (citations omitted) ("African-American women have a triple jeopardy status which places us at risk for developing depression. We live in a majority-dominated society that frequently devalues our ethnicity, culture, and gender. In addition, we may find ourselves at the lower spectrum of the American political and economic continuum.").

222. CHARLOTTE PIERCE-BAKER, *SURVIVING THE SILENCE: BLACK WOMEN'S STORIES OF RAPE* 84 (1998).

223. Esther J. Jenkins, *Black Women and Community Violence: Trauma, Grief, and Coping*, 25 *WOMEN & THERAPY* 29, 32–36 (2008).

224. *Id.* at 34.

especially when violence exposure involves intimates. Reactions to witnessing violence, having close others victimized, or simply living in a violent milieu can include a host of traumatic stress reactions, including clinical disorders and subclinical reactions. These problems often manifest in poor work and school performance, and in impaired social relationships.²²⁵

In addition to the above-cited list, Jenkins proposes that both witnessing and being a victim of violence results in loss, grief, an increase in aggression, compromised physical health, and ineffective parenting.²²⁶ She provides a list of suggested interventions aimed at making Black women whole again.²²⁷ Unfortunately, there was no intervention plan for Black women during and after slavery. In fact, because Black women were viewed as sub-human, there was no recognition or empathy for the trauma they endured on a daily basis. Most importantly, they were silenced by the abuse. Surely, if psychologists can measure the damage violence causes to Black women in 2013, there must be recognition that similar events from past centuries had similar results. Where is the justice and how can society repay the debt or repair the victimized?

Psychologists Roxanne Donovan and Michelle Williams cite several studies in their article, *Living at the Intersection: The Effects of Racism and Sexism of Black Rape*, outlining how society continues to view Black women.²²⁸ Donovan and Williams write:

The belief that Black women are unrapeable continues to exist. For example, in several studies, researchers asked college students to respond to hypothetical scenarios that involved sexual assault. When the victim was a Black woman, students were less likely to define the incident as date rape, to believe the crime should be reported to the police, and to hold the perpetrator accountable. In addition, students rated a Black date rape victim, when compared to her White equivalent, as less truthful and more responsible for her sexual assault. It also appears that Black rape survivors were held more responsible for their victimization, regardless of the perpetrator's race. These data suggest that Black women's long history of sexual victimization, coupled with racial stereotypes, exacerbated their rape experiences. Overall, Black survivors may

225. *Id.* at 32–33 (citations omitted).

226. *Id.* at 35–37.

227. *Id.* at 40. Professor Jenkins suggests individual and community level interventions. *Id.* at 40–41. She also suggests that therapists conduct a comprehensive assessment to learn more about the level of violence in their Black women patient's lives. *Id.* at 40.

228. Donovan & Williams, *supra* note 5, at 96.

receive less empathy, consideration, and judicial support than their White counterparts.²²⁹

Professors Donovan and Williams's research indicates that both the larger society and the judicial system continue to deny Black women protection from rape, violence, and mental and physical abuse.²³⁰ In concluding their article, Donovan and Williams proffer, "Black rape survivors are judged as less truthful and more to blame for their rapes. Black rape survivors are also less likely to seek supportive interventions and to disclose or report their rapes. . . . [R]acist images of Black women contribute to the silence and overall marginalization of Black rape survivors."²³¹ This daunting conclusion by Donovan and Williams must send ripples through the community of Black women. It is one thing to fear that you might be devalued by the larger society, but it is quite another to realize that it is in fact a reality.

In her book *Surviving the Silence*, Charlotte Pierce-Baker characterizes her own rape by saying that "[t]he violations, humiliation, and wounds of that day changed me and the course of my life."²³² She wrote that, after being raped, she became an emotional vegetable overnight.²³³ She further revealed how she coped with the rape by disassociating, just as psychologists indicated would occur.²³⁴ Pierce-Baker was a "lucky" rape survivor; she had a supportive family and a middle-class persona, which she attributed to the attention she received from the judicial system.²³⁵ She did not remain silent. Eventually, she spoke up for herself as well as for those who had been silenced:

For [B]lack women, where rape is concerned, race has preceded

229. *Id.* at 97 (citations omitted).

230. *Id.* at 96–97.

231. *Id.* at 103.

232. PIERCE-BAKER, *supra* note 222, at 27.

233. *Id.* at 45.

234. *Id.* at 44.

I wondered through all of this about the women whose cases had not been considered convincing enough for a possible trial. For some of them, the police had *never* arrived. I knew that our solid middle-class status and my husband's high profile at the university were partial reasons for the attention from police and the positive treatment by the court system. This knowledge sickened me, and at the same time brought comfort. Gradually I learned to swallow the anger. Each time detectives arrived, I became disoriented. Fear rekindled. My focus on the case and caring that it might matter—I faked. I began to create the fiction of a life and a past to account for my now new mode of distanced behavior.

Id.

235. *Id.*

issues of gender. We are taught that we are first [B]lack, then women. . . .

The unearthing of “silent survivors” . . . has taken time. But since I waited so many years to cease being silent myself, I had to continue to be patient until others were ready to speak with and through my efforts.

. . . .

. . . I speak for them, and I speak for all of us muted by circumstance. . . . They have broken silences; they have borne witness.²³⁶

In her book, Pierce-Baker gave voice to the silent survivors and allowed them to tell their stories; many of them spoke the unspeakable:

“You are the survivors of a crime that does not exist.”²³⁷

“I feel that we [Black women] should write because after all there are a lot of us out here that are hurting and don’t know where to turn and we keep it bottled up.”²³⁸

“I had a choice of being either raped or being murdered.”²³⁹

“If you let the man go unpunished, then in a sense what you’re doing is punishing yourself again.”²⁴⁰

Are current victims hearing the echoes of their ancestors? How did Black women survive the abuse, disinterest, and shame thrust upon them for generations? Perhaps they are not yet fully healed. If psychologists, therapists, and survivors of violence recognize that current trends of violence in Black communities have a detrimental and potentially long-lasting impact on Black women, is it not possible that two hundred years of bearing witness to unspeakable violence and more acutely, being the victims of said violence has had a lasting impact which continues to manifest today?

III. SILENCE OF THE STORYTELLERS

In addition to Black women’s silence and the silence of the legal system, there has been a silence and a void in telling Black women’s stories. Black women have started “talking back,”²⁴¹ but, it is still a fact that Black

236. *Id.* at 84–85.

237. *Id.* at 83.

238. PIERCE-BAKER, *supra* note 222, at 87.

239. *Id.* at 105.

240. *Id.* at 164.

241. See generally BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK (1989) [hereinafter HOOKS, TALKING BACK] (writing about Black women and White feminism and

women's stories have been erased, ignored, and generally unacknowledged.²⁴²

Because the violence against Black men is privileged in our political outrage and moral contempt, we rarely think about the bodies of Black women. Although Black women chronically experience violence, from lynching to rape to police brutality to domestic violence, we erase their stories from the annals of history and from the surface of our minds. We push these narratives away and say we will deal with them after we are emancipated, have gained Civil Rights, established Black [P]ower, and ended racial profiling.²⁴³

Moreover, Black women have been promised that their stories will be told, but the telling of their stories has always taken a back seat to more pressing problems surrounding the African-American race. And, many times, when the story is told, it is from the perspective of Black and White males.²⁴⁴

Furthermore, Black women constantly hear the stories of Chandra Levy, Natalee Holloway, Laci Peterson—young, White women who went missing and were presumably murdered during the last decade. The media devoted a large amount of time and space to such young, White women, while their missing Black counterparts received no attention.²⁴⁵ This is not

how the two sectors have failed to join forces at several points in history when they could have formed a natural alliance around issues that women face. hooks theorizes that the main cause of this failure is that Black women have sublimated their gender for their race because their gender identity has been devalued by slavery and racist socialization). Further, hooks argues that when given the opportunity to fight against sexist oppression, Black women were afraid to acknowledge that "sexism could be as oppressive as racism." *Id.* at 1.

242. Eva Jefferson Paterson, *And Still We Rise*, 6 AFR.-AM. L. & POL'Y REP. 15, 19 (2004) ("People have rewritten history to remove our presence and erase our history.").

243. Tillet, *supra* note 13, at 164.

244. The movies *Monster's Ball*, *The Help*, and *Precious* serve as examples of male directors attempting to tell Black women's stories. See *THE HELP* (DreamWorks 2011); *PRECIOUS* (Tyler Perry Studios 2009); *MONSTER'S BALL* (Lionsgate 2001).

245. *Cases of Missing Black Women Continue to Be Ignored*, NEWSONE (Jan. 19, 2012), <http://newsone.com/1806725/cases-of-missing-black-women-ignored/>.

The Black & Missing Foundation, Inc. (BAM), a non-profit organization whose mission is to bring awareness to a problem, states that most Black women disappear in New York, Georgia, North Carolina, Maryland, and Florida. Since the organization was launched in 2008, it has helped to either locate or bring closure to 71 missing persons cases. [In January 2012] alone, the organization helped find six people, and all were found alive.

....

"BAM says that there are a number of reasons why law enforcement drag their feet when it comes to diligently working toward solving missing cases involving blacks. We all know that Black and Latinos, or any person of color, who go missing often times do not receive the much needed media coverage, which could drastically increase the

said to diminish the worth of those women, but what about stories of the countless Black women who have been raped, abused, and murdered?

The racism and sexism written into the social construction of rape are merely contemporary manifestations of rape narratives emanating from a historical period when race and sex hierarchies were more explicitly policed. Yet another is the devaluation of Black women and the marginalization of their sexual victimizations. This was dramatically shown in the special attention given to the rape of the Central Park jogger during a week in which twenty-eight other cases of first-degree rape or attempted rape were reported in New York. Many of these rapes were as horrific as the rape in Central Park, yet all were virtually ignored by the media. Some were gang rapes, and in a case that prosecutors described as was [sic] “one of the most brutal in recent years,” a woman was raped, sodomized and thrown fifty feet off the top of a four-story building in Brooklyn. Witnesses testified that the victim “screamed as she plunged down the air shaft. . . . She suffered fractures of both ankles and legs, her pelvis was shattered and she suffered extensive internal injuries.” This rape survivor, like most of the other forgotten victims that week, was a woman of color.²⁴⁶

Black women’s stories must be told in order to ameliorate some of the pressing physical, mental, and socio-economic problems which continue to plague Black women.

Moving from silence into speech is for the oppressed, the colonized, the exploited, and those who stand and struggle side by side a gesture of defiance that heals, that makes new life and new growth possible. It is that act of speech, of “talking back,” that is no mere gesture of empty words, that is the expression of our movement from object to subject—the liberated voice.²⁴⁷

It goes without saying that history has been silent in reporting the violence and abuses against Black women.²⁴⁸ Psychologist Salamishah Tillet wrote in her article *Fragmented Silhouettes* that she attended an exhibit on lynching and was shocked at discovering that many of the victims were

odds of their safe recovery.”

Id. (quoting Derrica Wilson, “co-founder, president and CEO of BAM”).

246. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1268 (1991) (citations omitted).

247. HOOKS, TALKING BACK, *supra* note 241, at 9.

248. Tillet, *supra* note 13, at 163.

Black women.²⁴⁹ She stated that “[t]he virtual invisibility of African American women in our lynching memories is largely due to the way history has been shaped and not by the actual numbers of Black women lynched.”²⁵⁰ Moreover, the stories regarding how Black women continued to be raped by White men during the Jim Crow era and well into the twentieth century have been ignored and only served to reinforce the silence of Black women.²⁵¹

The avoidance factor has only allowed old stereotypes of Black women as over-sexualized, uneducated, and dependent upon men or government aid for assistance to continue. Consider the mass media, in the form of film and television. The issues brought to life on the screen continue to portray Black women in a negative light. Not only has the film, television, and print media marginalized the individual, familial, and community effects of years of abuse and rape committed upon Black women, but they have failed to tell the victim's story. When no one listens to your cries, you learn to stop crying.

The abuse and rape of women in general has been the focus of many theatrical and television movies, but these films have mostly portrayed assaults against White women. Even in movies where the underlying crime happened to a Black female, as in the film *A Time to Kill*, where the jury was asked to picture the ten-year-old rape victim as White in order to justify the enraged girl's father's killing of the White, openly racist defendants.²⁵² The media treats Black female victims differently from the way it treats White victims.²⁵³ This diminution practically encourages the silence of Black women because they see that their story is not worth telling and not worthy of public outrage.²⁵⁴

249. *Id.*

250. *Id.* at 164.

251. Deb Friedman, *Rape, Racism and Reality*, 5 QUEST 42 (1979).

The systemic terrorization of Black communities by the Ku Klux Klan frequently included the rape of Black women. A common practice of the Klan during an attack on a Black community was to rape the women and burn peoples' homes and churches. Rape served to terrorize the entire community in the same way as lynchings.

Id.

252. *A TIME TO KILL* (Warner Bros. 1996).

253. See *Cases of Missing Black Women Continue to Be Ignored*, *supra* note 245.

254. The cases of White girls and women Natalee Holloway, JonBenét Ramsey, and Nicole Simpson show the disparate treatment of Black and White women in the media. For further information about the disappearances of these women, see Chuck Hustymre, *Paradise Lost: The Disappearance of Natalee Holloway*, CRIMELIBRARY, http://www.trutv.com/library/crime/criminal_mind/forensics/natalee_holloway/1_index.html (last visited Feb. 25, 2013); Marilyn Bardsley & Patrick Bellamy, *Murder of JonBenét Ramsey*, CRIMELIBRARY, http://www.trutv.com/library/crime/notorious_murderers/famous/ramsey/index_1.html (last visited Feb. 25, 2013); Thomas L. Jones, *The Murder Trial of O.J. Simpson*, CRIMELIBRARY, http://www.trutv.com/library/crime/notorious_

Most recently, in the film, *The Hunger Games*, many Whites expressed dismay and disgust after learning that one of the more sympathetic characters in the book was portrayed in the film by a young Black girl.²⁵⁵ This shock and disappointment was evidenced even after it was pointed out that the character, Rue, was clearly described as a Black girl in the novel.²⁵⁶ Some took to blogs to admit that they felt less sympathy for her plight once they realized that she was Black.²⁵⁷ This lack of sympathy towards Black women and girls by the majority of society is borne out in the above-mentioned studies.²⁵⁸

Even when attempting to forge the awareness of domestic violence and rape occurring within the Black community, the message gets lost. In her article on the intersection of politics, violence, gender, and race, Kimberlé Crenshaw argues that strategies for “increasing awareness of domestic violence within the [W]hite community” perpetuates racial stereotypes and neglects the problem of domestic violence and rape in communities of color.²⁵⁹ The experience of violence by minority women is ignored, except to the extent it gains White support for domestic violence programs in the White community.²⁶⁰ Crenshaw wanted to use Los Angeles Police Department (LAPD) statistics, reflecting the rate of domestic violence interventions by the precincts, to provide a rough picture of arrests by racial group.²⁶¹ However, the LAPD refused to release the statistics—they were afraid the statistics would only serve to unfairly represent the Black

murders/famous/simpson/index_1.html (last visited Feb. 25, 2013).

For a more general discussion of disparate media treatment based on race, see also Mia Moody, Bruce Dorries & Harriet Blackman, *The Invisible Damsel: Differences in How National Media Outlets Frame the Coverage of Missing Black and White Women in the Mid-2000s* (May 22, 2008) (unpublished manuscript), available at http://www.academia.edu/944503/The_Invisible_Damsel_Differences_in_How_National_Media_Outlets_Framed_the_Coverage_of_Missing_Black_and_White_Women_in_the_Mid-2000s; Eugene Robinson, Op-Ed., *(White) Women We Love*, WASH. POST, June 10, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/09/AR2005060901729.html>; Ava Thompson Greenwell, *What's Missing From Television Coverage of Missing Persons?*, HUFFINGTON POST (Jan. 20, 2012, 1:42 PM), http://www.huffingtonpost.com/ava-thompson-greenwell/whats-missing-from-televi_b_1219443.html; .

255. THE HUNGER GAMES (Lionsgate 2012).

256. SUZANNE COLLINS, THE HUNGER GAMES 98–99 (2008).

257. See Racist “Hunger Games” Fans Upset that Rue Is African American?!, LOVELYISH (Mar. 29, 2012), <http://www.lovelyish.com/760656708/racist-hunger-games-fans-upset-that-rue-is-african-american/>; Christopher Rosen, ‘Hunger Games’ Racist Tweets: Fans Upset Because of Rue’s Race, HUFFINGTON POST (Mar. 26, 2012, 2:40 PM), http://www.huffingtonpost.com/2012/03/26/hunger-games-racist-tweets-rue_n_1380377.html.

258. Donovan & Williams, *supra* note 5, at 97.

259. Crenshaw, *supra* note 246, at 1241, 1258.

260. *Id.* at 1260.

261. *Id.* at 1252.

community, Black men in particular, as violent.²⁶² Crenshaw goes on to say that this account sharply illustrates how women of color can be erased by the strategic silences of antiracism and feminism.²⁶³

The medical field has also failed Black women. In the early nineteenth century, scientists attempted to distinguish and rank the races by racial differences.²⁶⁴ One such scientist was George Cuvier, who turned a Black woman into a sideshow because of her distinct features:

Saartjie (Sarah) Bartman, an African woman from the Kung tribe of Bushmen, was a model specimen to illustrate his claims of racial inferiority. She was called the “Hottentot Venus” and displayed for public amusement. Strangers ridiculed her prominent Africanoid features and physically molested her buttocks and genitalia. After Sarah Bartman’s death, her mummified body, skull, skeleton, and disembodied vagina were preserved in a specimen jar and displayed at various museums.²⁶⁵

Have Saartjie Bartman’s family and ancestors ever received an apology for the brutal way she was treated in the name of science? Or has science remained silent on that issue?

Likewise, J. Marion Sims, a noted surgeon and the “father of modern gynecology,”²⁶⁶ used slave women in medical experiments to perfect the use of certain instruments and procedures still used today.²⁶⁷ All indications are that he operated on these women multiple times, usually without anesthesia.²⁶⁸ Great contributions were made to medical science as a result of these barbaric surgeries and experiments performed on Black women.²⁶⁹ Notwithstanding this fact, little space in history has been given to telling this story: silence is all that exists.

In her article, *Examining the “Stick” of Accreditation for Medical Schools Through Reproductive Justice Lens: A Transformative Remedy for Teaching the Tuskegee Syphilis Study*, Professor Deleso Washington examines the conscious disregard for the Black women unknowingly and intentionally subjected to the syphilis study that took place from 1932 to

262. *Id.* at 1252–53.

263. *Id.* at 1253.

264. Taylor, *supra* note 23, at 147–48.

265. *Id.*

266. *Id.* at 148.

267. *Id.*

268. Deleso Alford Washington, *Critical Race Feminists Bioethics: Telling Stories in Law School and Medical School in Pursuit of “Cultural Competency,”* 72 ALB. L. REV 961, 981 (2009).

269. Taylor, *supra* note 23, at 148.

1972 in Alabama, and how the story of these women can be used as a lesson in medical and professional ethics in medical colleges.²⁷⁰ The United States Government conducted this study on the long-term effects of syphilis on Black males living in Macon County, Alabama, by the United States Department of Health.²⁷¹ Professor Washington writes that “Black women were excluded not only on the basis of gender, but also race, and such women have been generalized as part of a distinct race: the ‘notoriously syphilis soaked race.’ Hence, the Black women directly impacted by the effect of untreated syphilis were deemed not ‘worthy’ of study” and went untreated for the disease.²⁷² Syphilis was transmitted by sexual activity as well as congenitally,²⁷³ thus a woman could contract the disease from her untreated partner and pass it on to her newborn without knowing that she was infected. The individuals conducting the study took no care to make sure these uninvited, yet subjected, participants of the study received the medical attention necessary to prevent the symptoms of the debilitating disease,²⁷⁴ such as “running sores, gumma, bone decay, and heart damage”²⁷⁵ as well as “blindness, insanity (paresis), paralysis, and death.”²⁷⁶

In the face of certain harm, those who undertook an oath to do no such harm wore the veil of silence. Nurse Eunice Rivers, a Black female nurse who worked for the White physicians conducting the study, did not try to prevent the exploitation of African Americans.²⁷⁷ She remained silent herself, not warning them or their wives of the dangers. Perhaps her silence is not to be blamed, because Nurse Rivers, like the other Black women of Macon County, Alabama, lived in the shadow of Jim Crow when Black voices, and certainly Black female voices, were not heard.²⁷⁸ It is better to remain silent than to let the government or White men into the African-American community, as their presence causes more harm than good.

270. Deleso Alford Washington, *Examining the “Stick” of Accreditation for Medical Schools Through Reproductive Justice Lens: A Transformative Remedy for Teaching the Tuskegee Syphilis Study*, 26 J. C.R. & ECON. DEV. 153, 154, 162, 166–68 (2011) [hereinafter Washington, *Examining the “Stick” of Accreditation*].

271. *Id.* at 154.

272. *Id.* at 162–63 (citations omitted).

273. *Id.* at 164.

274. See Taylor, *supra* note 23, at 148–49 (explaining how the physicians conducting the study ignored the women and children who contracted syphilis from the untreated men).

275. Washington, *Examining the “Stick” of Accreditation*, *supra* note 270, at 165.

276. *Id.* (citation omitted).

277. Taylor, *supra* note 23, at 149.

278. See *The Rise and Fall of Jim Crow*, *supra* note 49.

Black women's self-imposed silence and the silence of the law, both during the eras of slavery and Jim Crow, as well as multiple systemic silences (historical, medical, and media) have caused African-American women to suffer from depression.²⁷⁹ According to Barbara Jones Warren, in her above-cited article, "[Black women] are alive, but barely, and are continually tired, lonely, and wanting."²⁸⁰ Does the silence continue to kill Black women?

IV. GIVING VOICE TO THE SILENCE: REMEDIES

When we speak we are afraid our words will not be heard or welcomed. But when we are silent, we are still afraid. So it is better to speak. – Audre Lorde²⁸¹

It is clear that race, rape, slavery, law, society, history, and the media formed a complex and powerful tool utilized for centuries to silence Black women. Thus, policymakers must find remedies for this centuries-old abuse and neglect that are just as complex and far-reaching as the destructive causes of the abuse. There is no single solution for the continued silence of many Black women.

Black women must speak and break the silence of their pain. The first way to heal the pain is to acknowledge and understand it. But, it is also of the utmost importance that society listens to Black women and also acknowledges that they have had a brutal past with consequences that continue even today.

There needs to be therapeutic intervention to provide a safe space for sharing the pain. As such, healthcare must be readily available to all who need and seek it. The United States Government must step up and help provide Black women with the skills needed to heal their injuries. The United States is responsible as a nation, because it either inflicted or stood

279. Warren, *supra* note 6.

African-American women have a triple jeopardy status which places us at risk for developing depression. We live in a majority-dominated society that frequently devalues our ethnicity, culture, and gender. In addition, we may find ourselves at the lower spectrum of the American political and economic continuum. Often we are involved in multiple roles as we attempt to survive economically and advance ourselves and our families through mainstream society. All of these factors intensify the amount of stress within our lives which can erode our self-esteem, social support systems, and health.

Id. (citations omitted).

280. *Id.*

281. ANGELA JACKSON, THE CULTURAL AWARENESS JOURNAL: FOR THOSE NEW TO CULTURAL AWARENESS AND THOSE ALREADY ON THE JOURNEY 7 (2011).

by in silence as others inflicted some of those wounds.²⁸²

The criminal justice system, including the police, must assist in prosecuting crimes against Black women as rigorously as they prosecute crimes against their White counterparts. The decision on whether to prosecute a crime should not be contingent on the color of one's skin or socio-economic status. Legislators must enact laws demonstrating that all citizens are valued and deserving of equal justice. Law enforcement must use legislation addressing education, child care, true welfare reform, health care, and equal opportunity for Black women to rectify past wrongs. Sentencing guidelines must be fair and reflect the mitigating circumstances that created the criminal atmosphere.

Society must engage in a conscious effort to replace the negative stereotypes and images that have plagued Black women for decades. There are myths and stereotypes buried deep into the national collective unconsciousness that manifest themselves in college students believing that the Black girl was not really raped²⁸³ and that an innocent young Black girl who is killed in a current popular film is not worthy of sympathy.²⁸⁴ Society must dismantle these stereotypes, particularly from the highest echelon of government. Why did former Senator Arlen Specter feel comfortable referring to Professor Anita Hill as a liar on national television?²⁸⁵ Why was his behavior or the silence that followed acceptable?

Young Black girls must be educated to understand that they are entitled to bodily integrity and autonomy that cannot be breached without their explicit permission. They must learn to develop a language that transcends the silence of centuries. If the cycle of pain can be broken, future generations may be spared the ill effects of the continued collective maladies of slavery. The media is responsible for its failure to include Black women in its storytelling. Moreover, when the media has bothered to tell the story of Black women, it is usually in an unfavorable light.²⁸⁶ This further enhances

282. Tillet, *supra* note 13, at 162.

283. Davis, *supra* note 220.

284. See *supra* note 257 and associated text.

285. Barbara Lee, *Women, Sex, and Clarence Thomas: What Has Changed (And What Hasn't)*, HUFFINGTON POST (Oct. 11, 2011, 6:10 PM), http://www.huffingtonpost.com/barbara-lee/anita-hill-hearings_b_999904.html.

286. See generally Ann duCille, *The Occult of True Black Womanhood: Critical Demeanor and Black Feminist Studies*, 19 *SIGNS* 591 (1994) (discussing Black women writers and academicians from a feminist perspective, and although she writes about those categories, her words are applicable to Black women generally).

Long either altogether ignored as historical and literary subjects or badly misfigured as magnanimous mammies, man-eating matriarchs, or immoral Jezebels, [B]lack women—that is, certain [B]lack women—and their texts have been taken up by and reconfigured within the academy, elevated and invoked by the intellectual elite as well

the myths and the stereotypes surrounding Black women's sexuality, honesty, loyalty, and intellect. Therefore, members of the media should acknowledge their complicity in the silence, and history must be rewritten to reflect and include the true extent of Black women's contribution to the nation.

Black men as well must attend to the emotional and psychological needs of Black women who have waited for generations for society to address their needs and recognize their history. In addition, current discussions of reparations for slavery must factor in the abuse that has occurred against Black women for centuries. Black women must have a seat at the table and a voice in the discussion. The silence and fear must yield to something greater—for in the words of Sojourner Truth, “ain't I a woman?”²⁸⁷ The answer must be a resounding “YES.” Break the silence.

as the scholarly marginal.

Id. at 594.

287. Sojourner Truth, *Ain't I a Woman?*, Address at the Women's Rights Convention in Akron, Ohio (1851), available at <http://www.feminist.com/resources/artspeech/genwom/sojour.htm>.

