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The Double Whammy of Being Female and African-American: How Black Women are More Vulnerable to Trafficking and Other Forms of Discrimination

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**THE DOUBLE WHAMMY OF BEING FEMALE
AND AFRICAN-AMERICAN: HOW BLACK
WOMEN ARE MORE VULNERABLE TO
TRAFFICKING AND OTHER FORMS OF
DISCRIMINATION**

**Professor Cheryl Page*

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I. INTRODUCTION

“Black women and girls represent 30 percent of all women incarcerated but make up just 13 percent of the population. In addition, Black girls continue to be treated as criminals in the justice system in instances where they should be treated as victims.”

The Congressional Caucus on Black Women & Girls¹

**Professor Page has worked in the area of human trafficking (international and domestic) since 2005. She has spoken and taught internationally and domestically in Austria, China, Czech Republic, Greece and Turkey, to name a few. She has been a law professor since 2004 and currently works at Florida A&M University College of Law where she teaches, amongst other courses, Human Trafficking. Hoping to shed light on the subject and the scourge that is human trafficking, Professor Page co-authored a textbook entitled “Human Trafficking,” with Professor Bill Piatt. Prof. Page sees herself as a modern-day abolitionist and works tirelessly to see the eradication of modern-day slavery.*

Commercial sexual exploitation discriminates even among those that fall prey to this heinous criminal enterprise. It is impossible to comprehensively discuss this topic without addressing the fact that the majority of victims are female, females of color, traditionally are from a lower economic status, tend to not have as many educational opportunities, have experienced some form of abuse and trauma, have been a part of the foster care system, and have other vulnerabilities that make them even more susceptible to being trafficked.

This discussion would be incomplete without also addressing how trafficking is connected to race and racial discrimination, poverty, the foster care system, gender, migration and inadequate access to real educational opportunities.² Each of these factors contributes to the flourishing and lucrative business of trafficking.³ As a result, those subject to these conditions are more vulnerable and more likely to be trafficked.

The vast majority of victims of human trafficking victims are African-American females.⁴ Many states prosecute victims of sex trafficking as “prostitutes” and do not distinguish between adults and children.⁵ This article addresses how our criminal justice system failed Cyntoia Brown and is also failing countless other women of color in the same or similar situations. This article may refer to “African American youth,” not distinguishing between males and females; this is because so few studies break down statistics between the sexes. This only solidifies the point regarding intersectionality and oppression referred to in the article.

II. CYNTOIA BROWN: ONE CASE ILLUSTRATES HISTORICAL STEREOTYPES AND DISCRIMINATION AGAINST YOUNG WOMEN OF COLOR

Unfortunately, the facts of Cyntoia Brown’s case are not unusual. She was born to a mother who drank heavily throughout her pregnancy and began

1. *Black Women and Girls in the Criminal Justice System*, THE CONGRESSIONAL CAUCUS ON BLACK WOMEN AND GIRLS, <https://watsoncoleman.house.gov/cbwgcaucus/criminal-justice-system.htm>.

2. Jamaal Bell, *Race and Human Trafficking in the U.S.: Unclear but Undeniable*, HUFFPOST (May 10, 2010), https://www.huffingtonpost.com/jamaal-bell/race-and-human-traffickin_b_569795.html (last updated Dec. 6, 2017).

3. *ILO Action Against Trafficking in Human Beings*, INTERNATIONAL LABOUR OFFICE (2008), http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf (estimating annual profits as high as \$32 billion dollars generated from trafficking in human beings).

4. Karla Jacobos, *Who’s Disproportionately a Victim of Human Trafficking? Young Black Women*, WASHINGTON EXAMINER (Jan. 30, 2019), <https://www.washingtonexaminer.com/opinion/oo-eds/whos-disproportionately-a-victim-of-human-trafficking-young-black-women> (stating 94% of trafficking victims served in Georgia were female; 59% of those females were African-Americans).

5. Cynthia Soohoo, *Criminalization of Trafficking Victims*, UNITED NATIONS UNIVERSAL PERIODIC REV. U.S. AM. 2 (May 2015), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Criminalization-of-Trafficking-Victims.pdf>.

using drugs just before Cyntoia was born.⁶ She was born with fetal alcohol syndrome, which can cause impulse control problems.⁷ Between the ages of six months and three years, Cyntoia bounced between seven or eight different homes and was kidnapped by a member of her family.⁸ At sixteen, she ran away from home and found herself under the control of a pimp who went by the name of “Cut Throat.”⁹ This man, eight years her senior, was physically, emotionally, sexually, and verbally abusive to Cyntoia.¹⁰ He told her she needed to “learn to be a good whore,” because no one else would want her but him, and that she was born to be a whore.¹¹

Traffickers are master manipulators and have a way of grooming a victim into believing that they alone are their savior. This predator was able to do just that with Cyntoia. Traffickers are able to spot vulnerable young women and capitalize on their weaknesses. Cyntoia came from an insecure and unstable background, a risk factor for sex trafficking. In 2013 the FBI reported that 60% of child sex trafficking victims had been in the foster care system, while the DOJ reported that the figure was 85% for female victims.¹² On average, children in foster care are moved between seven different homes.¹³ This instability causes the smooth words of a pimp promising a better life to become more appealing, so traffickers target foster children.¹⁴ Their words are steeped in lies and deception and filled with promises of the life every child and young person dreams of.¹⁵ Many traffickers will offer

6. Tom Jacobs, *Life in Prison Begins at 16*, review of PBS documentary *Me Facing Life: Cyntoia's Story*, PACIFIC STANDARD (June 14, 2017), <https://psmag.com/social-justice/life-in-prison-begins-at-16-27624>.

7. Basics about FASDs, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/ncbddd/fasd/facts.html> (last visited May 21, 2019).

8. Jamie Catacosinos, *Evaluating the Role of Trauma: Case of Cyntoia Brown*, DANIELLE ROUSSEAU (December 16, 2017), <http://sites.bu.edu/daniellerousseau/2017/12/16/evaluating-the-role-of-trauma-case-of-cyntoia-brown/> (last visited May 21, 2019).

9. Benjamin Goggin, *Cyntoia Brown, a Trafficking Victim Jailed for Killing a Man Using her for Sex, was Granted Clemency Following a Social-Media Campaign. Here's Everything You Need to Know*, INSIDER (Jan. 8, 2019, 2:55 AM), <https://www.insider.com/cyntoia-brown-timeline-clemency-story-kim-kardashian-2019-1#brown-ran-away-from-her-adoptive-home-in-2004-when-she-was-16-she-was-forced-into-prostitution-by-a-24-year-old-man-named-garion-mcglathen-who-went-by-cut-throat-2> (last visited May 21, 2019).

10. *Id.*

11. Demetria D. Frank, *Cyntoia Brown Case Reveals Entrenched Problems with Tennessee Juvenile Justice*, THE APPEAL (Dec. 1, 2017), <https://theappeal.org/cyntoia-brown-case-reveals-entrenched-problems-with-tennessee-juvenile-justice-b4dd46e416e0/>.

12. Aliya Kuykendall, *New Report Shows Why Foster Care Often Leads to Sex Trafficking*, THE STREAM (2018), <https://stream.org/new-report-shows-why-foster-care-often-leads-to-sex-trafficking/> (last visited May 21, 2019).

13. Kenneth A. Camp, *How Many Times on Average Does a Child in Foster Care Move?*, KENNETH A CAMP (Jan. 14, 2015) <http://kennethacamp.com/how-many-times-on-average-does-a-child-in-foster-care-move/> (stating many families lack the resources to properly care for the child).

14. Kuykendall, *supra* note 11.

15. Kajal Patel, *Child Prostitutes or Sexually Exploited Minors: The Deciding Debate in Determining How Best to Respond to Those Who Commit Crimes as a Result of Their Victimhood*, 2017 U. ILL.L. REV. 1545, 1555 (2017).

food, alcohol (despite knowledge that the child is a minor), clothing, rides in fancy cars, life in a nice residence, drugs, love and affection.¹⁶ Victims quickly realize the promises are complete lies, designed to mislead and defraud, but by the time the victims come to this realization, it is often too late to leave the trafficker. By then, many pimps have threatened victims and their families, caused violent physical harm, forced them to watch others being dehumanized and harmed, or forced victims to take drugs, which creates an addiction and a dependence on the trafficker.¹⁷ This grooming process is a deliberate, methodical act that completely paralyzes the victim and makes her believe that she has no one else to run to for help.¹⁸

The laws as enforced do not provide adequate protection. Traffickers benefit from these laws, as they are able to more easily manipulate their victims by capitalizing on their fear of law enforcement.¹⁹ While there are statutes that criminalize child sex trafficking, over 700 children in the United States are arrested each year for prostitution.²⁰ As Yasmin Vafa has noted:

In any other instance what happens to these youth would be considered statutory rape or sexual assault of a minor, landing their abusers behind bars. But because their abuse is paid for, it is the child who ends up in handcuffs and detention instead of their exploiters, making this the only form of child abuse where our response is to criminalize the abused child.²¹

Our criminal justice system treats prostitution as a “victimless crime.” Nothing could be further from the truth.

Studies on the American education system often focus on gender and/or race. This perspective excludes the intersectionality females of color face, as members of both groups, and compounds the problems and ignores the possible solutions. It also makes a female of color feel as if she does not fit in anywhere, as if her specific issues are not valid or worthy of being discussed and validated. This is made worse by disparities between races: drop out/graduation rates, separate but unequal educations, a lack of credentialed educators (inexperienced and uncertified), inequitable facilities, technology, books, and computers, as well as differences in discipline based on race.²²

16. *Id.*

17. *Id.*

18. *Id.* at 1565.

19. Matthew Myatt, *The “Victim-Perpetrator” Dilemma: The Role of State Safe Harbor Laws in Creating a Presumption of Coercion for Human Trafficking Victims* 25 William & Mary Journal of Race, Gender, and Social Justice 555, 564 (2019).

20. Yasmin Vafa, *There is No Such Thing as a “Child Prostitute”*, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, <http://www.ncjfcj.org/there-no-such-thing-child-prostitute> (last visited May 21, 2019).

21. *Id.*

22. See generally Adaku Onyeka-Crawford, Kayla Patrick & Neena Chaudhry, *Let Her Learn: Stopping School Push Out for Girls of Color*, NATIONAL WOMEN’S LAW CENTER (2017), [https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf_\(discussing_barriers_to_success_in_education_for_teenage_girls_of_color\)](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf_(discussing_barriers_to_success_in_education_for_teenage_girls_of_color)).

African-American females are five and a half times more likely to be suspended than white females.²³ African-American females attend schools that are under-funded and ill equipped to educate them and prepare them for a productive life after high school.²⁴ This lack of meaningful education negatively affects their financial future and further educational opportunities.²⁵

A disproportionate number of African-American females attend schools that are overpopulated by inexperienced educators and lack adequate staffing for counselors.²⁶ In schools where there are 90% African-American students, the student to counselor ratio is 309:1.²⁷ The likelihood that a student will receive adequate professional counseling under these circumstances is highly unlikely. Counseling is an invaluable resource for students coming from communities and neighborhoods that can create toxic stress.²⁸ The lack of counseling, and the higher rates of sexual assault experienced by African American women²⁹ who lack the resources to properly process the stress, creates a cauldron of additional problems.

Schools with higher percentages of students of color are more likely to have law enforcement officials present, which helps explain the disproportionately high school-based student arrests and referrals to law enforcement among students of color.³⁰ The increased arrests and encounters with the juvenile justice system lead to increased numbers of African American females dropping out and becoming entangled in the adult criminal justice system.³¹ This is what is referred to as the “school to prison pipeline.”³²

Further, society still stereotypes young African-American women. A stereotype is defined as “conforming to a fixed or general pattern, especially: a standardized mental picture that is held in common by members of a group and that represents an oversimplified opinion, prejudiced attitude, or uncritical judgement.”³³ Many of the stereotypes that society has regarding African-American women revolves around their sexuality.³⁴ There are stereotypes that portray African-American women as “Jezebels,” “loose/unscrupulous” women, sex addicts, promiscuous and having an

23. *Id.* at 13.

24. *Id.* at 1.

25. *Id.*

26. *Id.* at 9.

27. *Id.* at 11.

28. Onyeka-Crawford, Patrick & Chaudhry, *supra* note 22, at 11.

29. *African-American Women and Sexual Assault Fact Sheet*, MARYLAND COALITION AGAINST SEXUAL ASSAULT, <https://mcasa.org/assets/files/African-American-Women-and-Sexual-Assault1.pdf> (2019).

30. Onyeka-Crawford, Patrick & Chaudhry, *supra* note 22, at 11–12.

31. *Id.*

32. *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (accessed May 22, 2019).

33. *Stereotype*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/stereotype>.

34. MARYLAND COALITION AGAINST SEXUAL ASSAULT, *supra* note 29.

insatiable sexual appetite³⁵ These misconceived and fallacious notions help to perpetuate the idea that African American women are somehow to blame for their victimization or that they “deserve” it.³⁶

When a jury evaluates a case like Cyntoia’s—a sixteen year old African American female who was being sexually violated by a white man, feared for her life, shot, and killed him—one must wonder whether they allow those stereotypes to play in their minds. This concern is particularly pressing when that child is ultimately sentenced to what amounts to life in prison and brings to mind a troubling question: would the ruling and sentence would have been the same for a sixteen-year-old white girl?³⁷ It would even be more of a question if the rapist were African American. Race, particularly the race of the victim and perpetrator, plays a role in every phase of the criminal process, from charging decisions to sentencing.³⁸ These factors cause some victims of violence to not even report their case because they know that they may not be believed or will be blamed for their own assaults.³⁹

Since the birth of this nation, our criminal justice system has historically meted out racially biased, unfair, and harsher laws, judgements, and sentences to African Americans. United States Supreme Court rulings included blatant racism in cases such as *Dred Scott* (1856),⁴⁰ *Plessy v. Ferguson* (1896),⁴¹ and *Cumming v. Richmond* (1899).⁴² These cases are just the beginning of the unfair and unjust ways in which African Americans have been treated.

A more recent egregious case of unfair sentencing and bias is the case of an African American female, with no prior criminal record, Sharanda Purlette Jones.⁴³ Jones lived in Terrell, Texas and was sentenced to life in

35. *Id.*

36. *Id.*

37. MARYLAND COALITION AGAINST SEXUAL ASSAULT, *supra* note 29. A study of college students showed that participants were more likely to believe a white assault victim over a black assault victim. *Id.*

38. ACLU, *Written Submission on Racial Disparities in Sentencing*, INTER AM. COMM’N H.R. (2014).

39. *See id.* at 1. Our criminal justice system has a history of treating white victims better than people of color. *Id.*; *see also* Feminista Jones, *Why Black Women Struggle More with Domestic Violence*, TIME, Sept. 10, 2014.

40. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV. *Dred Scott* was seeking his freedom; the Court ruled against him saying slaves could not be citizens and therefore lacked the ability to sue in federal court, hence the Court lacked jurisdiction. One Justice said that slaves were property under the Fifth Amendment and any law that deprived owners of their property was unconstitutional. *See id.*

41. *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by* *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483 (1954). This case sanctioned segregation and said that separate was equal. *See id.*

42. *Cumming v. Bd. of Ed. of Richmond Cty.*, 175 U.S. 528 (1899). When the school in their area was shut down, African American families asked the Court to allow their children to finish their schooling at the local white school. The Court ruled against them and said if there was no suitable school in the African American community, that their children would not be educated. *See id.*

43. *See* ACLU *supra* note 38, at 9.

prison for a drug offense.⁴⁴ The evidence was circumstantial, as there was no direct evidence tying Jones to the alleged crime.⁴⁵ She was convicted based on the testimony of a drug user and drug dealer, who were both offered a reduced sentence for their testimony.⁴⁶ Jones' sister and paraplegic mother were also convicted.⁴⁷ Jones' mother died while in prison after spending her entire sentence in a prison ward for the disabled and handicapped.⁴⁸ All of their convictions were part of a task force in a town of roughly 13,500 that netted 105 arrests of solely African Americans.⁴⁹

Our criminal justice system has a proven track record of being unfair and discriminatory towards African Americans. Another factor that plays a role in the unfair treatment of African American women is the fact that they are charged as "adults" when similarly situated white females are not charged as adults. The people that decide whether or not to try a juvenile as an adult are the prosecutors (the State requests it) and the judges (have to approve it).⁵⁰ A very small percentage of prosecutors are women of color (which could include African Americans, Asians, Latinas, Pacific Islanders, West Indians, or Native Americans).⁵¹

Who gets tried as an adult depends upon the race of the defendant (and perhaps to a lesser extent, the race of the prosecutor and judge).⁵²

44. *Id.*

45. *Id.*

46. *Id.*

47. ACLU, *A Living Death: Life without Parole for Nonviolent Offenses* 43, ACLU FOUNDATION (2013).

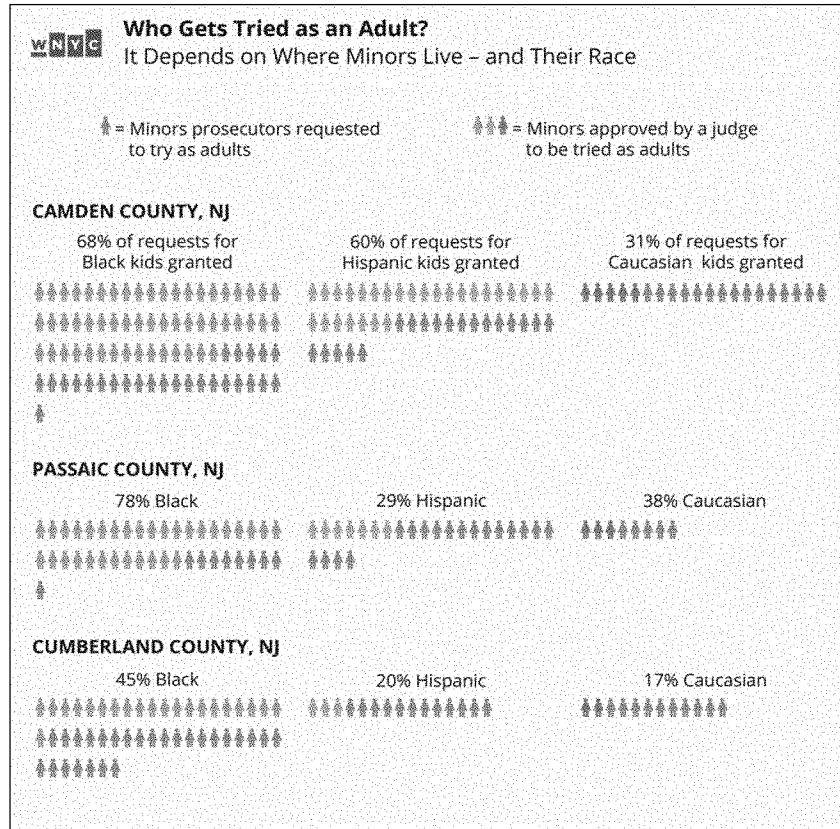
48. *Id.*

49. See ACLU *supra* note 38, at 9.

50. Sarah Gonzalez, *Kids in Prison: Getting Tried as an Adult Depends on Skin Color*, WNYC NEWS, (Oct. 10, 2016) <https://www.wnyc.org/story/black-kids-more-likely-be-tried-adults-cant-be-explained/>.

51. Amita Kelly, *Does it Matter That 95 Percent of Elected Prosecutors Are White?*, NPR (July 8, 2015, 4:59 PM), <https://www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white>.

52. *Id.* In the United States 95% of elected prosecutors are white; 83% men; 1% are women of color. *Id.*



The chart above illustrates how juveniles are charged as adults in specific counties in New Jersey.⁵³ Prosecutors have a considerable amount of power:

[I]n the U.S. legal system prosecutors may wield even more power than cops. Prosecutors decide whether to bring a case or drop charges against a defendant; charge a misdemeanor or felony; demand a prison sentence or accept probation. Most cases are resolved through plea bargains, where prosecutors, not judges, negotiate whether and for how long a defendant goes to prison. And prosecutors make these judgments almost entirely outside public scrutiny.⁵⁴

White youth commit the same types of crimes as African American youth, but prosecutors do not seek to try them as adults at the same rate as they do young African Americans.⁵⁵ When all factors considered by prosecutors when making charging decisions (educational and familial

53. See Gonzalez, *supra* note 50.

54. Jeffrey Toobin, *The Milwaukee Experiment: What can on prosecutor do about the mass incarceration of African-Americans*, THE NEW YORKER, May 4, 2015.

55. See Gonzalez, *supra* note 50.

background, economic status, type and severity of the crime, any past criminal history, likelihood to re-offend) are similar, “there are still disparities, significant disparities, that cannot be explained by anything other than race.”⁵⁶

The systematic oppression of African American women is seen in every aspect of the criminal process. One can harken back to the horrid story of Sandra Bland.⁵⁷ How does a simple traffic stop end in the death of an unarmed African American woman?

A study commissioned by Georgetown Law Center on Poverty found that African American females as young as 5 and up to 14 are seen as “less innocent and more adult-like” than their white counterparts.⁵⁸ The results are disheartening and disconcerting. It showed a perception that African American girls need less nurturing, protection, support, and comfort; are more independent; and know more about adult topics and sex.⁵⁹ These results give some insight into how African American females receive disproportionately severe penalties in school compared to their white classmates for similar conduct. It also suggests why African American females are treated in a racist and discriminatory fashion in the criminal justice system.

Abusing and mistreating another human being requires the abuser to dehumanize and degrade the person being victimized.⁶⁰ It makes the mistreatment more palatable and acceptable when they are abusing someone perceived as “less” than them. That is essentially what happens when an abuser attributes adult-like characteristics to a child. The abuser is placing the victim in another category, thereby justifying the disparities in their minds. By attributing these character traits to victims, abusers and even third parties justify the plight of the victim. That is how a white prosecutor, jury, and judge could charge a sixteen-year old for murder, convict her, and sentence her to prison essentially for life. This, without taking into consideration any mitigating factors – which may include mental disabilities, childhood trauma, poverty, and a lack of a stable home environment; to name a few.

56. *Id.* This statement was provided by Laura Cohen-Director of the Criminal and Youth Justice Clinic at Rutgers Law School. *Id.*

57. See Danny Cevallos, *Was the Sandra Bland Traffic Stop Legal— and Fair?*, CNN (July 23, 2015) <https://www.cnn.com/2015/07/23/opinions/cevallos-sandra-bland-traffic-stop/index.html>.

58. Rebecca Epstein, Jamilia Blake & Thalia González, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, GEORGETOWN LAW CTR. ON POVERTY AND INEQUALITY (June 27, 2017), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>.

59. *Id.*

60. See Deborah Doherty & Dorothy Berglund, *Psychological Abuse: A Discussion Paper*, GOV'T OF CAN. (July 26, 2012) <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/prevention-resource-centre/family-violence/psychological-abuse-discussion-paper.html>.

Cyntoia Brown's case was not easily overturned.⁶¹ She was convicted in 2006 of the 2004 fatal shooting of a white male child rapist (Johnny Allen, 43).⁶² The child predator picked up sixteen-year-old Cyntoia Brown, and then he raped her.⁶³ He took her to his home and threatened her with physical violence by brandishing a gun.⁶⁴ Brown said that she feared for her life when Allen appeared to be reaching for his gun. It was at this point that she shot him in the back of the head and killed him.⁶⁵ After killing him, she stole some of his guns and his wallet.⁶⁶

Prosecutors elected to charge her as an adult, and the presiding judge approved it.⁶⁷ She was found guilty and sentenced to two concurrent sentences.⁶⁸ There is no doubt that Brown's attorneys were ineffective in their assistance as her legal advocates. She was not allowed to testify on her own behalf and her attorneys failed to offer evidence that she had a severe neurodevelopmental disorder and suffered from fetal alcohol syndrome.⁶⁹

Brown, at the time of the shooting, was living under the control of a violent, vicious pimp, "Cut Throat."⁷⁰ He told her on the evening of the shooting to make some money.⁷¹ Brown knew what that meant. That is how she ended up in the car of a stranger, who paid to rape her.⁷² Five years after being in prison, a filmmaker produced a film about Brown's case, *Me Facing Life: Cyntoia's Story*, which brought national attention to the facts of the case and to the child prostitution laws at that time.⁷³ This movie helped to change that law. It also highlighted the fact that there were not many social programs designed to help children like Brown, who are statistically more likely to be sex trafficked.

New attorneys took on Brown's case and represented her 2012 appeal of the 2006 conviction.⁷⁴ Her new defense team put forth new evidence concerning her traumatic and violent past, the fetal alcohol syndrome, her diminished mental capacity, and her abusive relationship with Cut Throat.⁷⁵ Her attorneys also argued that her sentence was unconstitutional in light of a

61. Leah Carroll, *How The Justice System Failed Cyntoia Brown*, REFINERY29 (Jan. 7, 2019, 9:39 AM), <https://www.refinery29.com/en-us/2018/12/219015/cyntoia-brown-case-facts-real-story>.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Carroll, *supra* note 61.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Me Facing Life: Cyntoia's Story* (PBS, Mar. 1, 2011).

74. Travis Loller, *Attorneys Seek New Trial for Teenage Killer*, SPOKESMAN-REVIEW, Nov. 13, 2012, <http://www.spokesman.com/stories/2012/nov/13/attorneys-seek-new-trial-for-teenage-killer/>.

75. *Id.*

2012 Supreme Court case⁷⁶ holding that mandatory life sentences for minors are unconstitutional.⁷⁷ Despite new and compelling evidence and new legal precedent, Brown's conviction and sentence were upheld.⁷⁸

In 2017, Rihanna shared a social most post about Cyntoia Brown that read, "Imagine at the age of 16 being sex-trafficked by a pimp named 'cut-throat.' After days of being repeatedly drugged and raped by different men you were purchased by a 43-year-old child predator who took you to his home to use you for sex. You end up finding enough courage to fight back and shoot and kill him."⁷⁹ Other celebrities, including Kim Kardashian, Amy Shumer, Alyssa Milano and Ashley Judd, began to advocate on Brown's behalf for her release from prison. Rihanna's post brought global awareness and attention to Brown's case and began the social media firestorm that would eventually lead Brown's case to the desk of the Tennessee governor, Bill Haslam.

After she had served fifteen years in prison, in January 2019, Governor Haslam granted Cyntoia Brown clemency.⁸⁰ She is set to be released in August 2019.⁸¹ In granting Brown clemency, the governor effectively reduced her sentence and is allowing her to get out of prison sooner than expected. Her conviction, however, remains intact. The governor's act is not a pardon, which would have effectively "forgiven" her for the crime.⁸²

Another example of institutional discriminatory treatment of African American females is that they are suspended from school in greater numbers than their white counterparts.⁸³ Their suspension rate is not attributed to higher disciplinary rates, acting out in greater frequency, or for more egregious or serious behavior.⁸⁴

A belief that African American females are less innocent would lend to the fact that they receive harsher treatment by educators, law enforcement, and school resource officers. Recently, many were outraged when a video surfaced showing a high school resource officer wrapping his arm around the neck of an African American female student and tossing her to the ground in front of the entire class, and then handcuffing her for refusing to stand and hand over her cell phone.⁸⁵ The officer's behavior was deemed not to warrant

76. *Miller v. Alabama*, 567 U.S. 460 (2012).

77. Dakin Andone, *Cyntoia Brown Must Serve 51 Years Before She's Eligible for Release, Tennessee Supreme Court Says*, CNN (Dec. 8, 2018, 8:20 AM), <https://www.cnn.com/2018/12/07/us/cyntoia-brown-prison-release/index.html>.

78. *Id.*

79. *See* Carroll *supra* note 61.

80. Bill Chappell, *Cyntoia Brown, In Prison For Murder, Is Granted Clemency By Tenn. Governor*, NPR (Jan. 7, 2019), <https://www.npr.org/2019/01/07/682938808/cyntoia-brown-jailed-for-murder-is-granted-clemency-by-tenn-governor>.

81. *Id.*

82. *Id.*

83. *See, e.g.*, Onyeka-Crawford, Patrick & Chaudhry, *supra* note 22 (showing the suspension rate is greater in every single state).

84. *Id.*

85. Associated Press, *Deputy Who Tossed a S.C. High School Student Won't Be Charged*, N.Y. TIMES (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/afternoonupdate/deputy-who-tossed-a-sc-high-school-student-wont-be-charged.html>.

reprimand.⁸⁶ Many acts committed by African American is viewed as “criminal” or “aggressive” but are not considered in that light when committed by whites.⁸⁷

Stereotypical views of African American females needing less support or nurturing and being more independent could also explain why they are offered fewer leadership positions in school as well as not receiving more opportunities to be mentored.⁸⁸ African American women historically receive a lesser quality of healthcare and die in greater numbers in this country.⁸⁹ Astoundingly, African American women are three to four times more likely to die from “pregnancy or delivery complications” than white women.⁹⁰

In the American criminal justice system, African American women receive harsher sentences than their white counterparts, for the same criminal acts.⁹¹ Every case is different, but this statistical trend cannot be ignored. There is clearly more to these sentencing disparities than a coincidence.

Further, African American women earn less money on the dollar than white females.⁹² It takes an African American women roughly nineteen months to earn what a white man earns in twelve.⁹³ African American women earn 61% of what non-Latino white men earn, while women in general earn 80%.⁹⁴

These are just a few ways that African American women experience disparate treatment, and these issues go to the heart of basic societal values and norms. Financial well-being, access to good quality health care, freedom to grow and learn and live, the ability to drive or walk down the street free from harassment from law enforcement, the ability to attend school and not be treated in a discriminatory fashion: these values and systems of beliefs are bedrocks of our society. They are principles that people have lived by since the dawn of this nation but not all races and peoples have enjoyed such

86. *Id.*

87. Jeremy Bauer-Wolf, *Going to Class While Black*, INSIDE HIGHER ED (Nov. 14, 2018), <https://www.insidehighered.com/news/2018/11/14/ut-san-antonio-investigates-whether-student-escorted-out-class-having-feet-propped>. A female allegedly had her feet up on the chair in front of her; the professor called the police and the student was escorted out of class by the campus police. *Id.*

88. Epstein, Blake, & González, *supra* note 58.

89. Wayne J. Riley, *Health Disparities: Gaps in Access, Quality and Affordability of Medical Care*, 123 TRANSACTIONS OF THE AM. CLINICAL AND CLIMATOLOGICAL ASSOC. 67, 168–69 (2012).

90. Jacqueline Howard, *Childbirth is Killing Black Women in the US, and Here's Why*, CNN (Nov. 15, 2017), <https://www.cnn.com/2017/11/15/health/black-women-maternal-mortality/index.html>.

91. Radley Balko, *There's Overwhelming Evidence that the Criminal-Justice System is Racist. Here's the Proof.*, WASH. POST (Sept. 18, 2018), https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?hpid=hp_hp-top-table-main-racist%3Ahomepage%2Ft%3Acrim-just%3Ahomepage%2Ft%3Acrim-just&utm_term=.d1d40db567b9.

92. Raina Nelson, *Black Women and the Pay Gap*, AAUW (Aug. 1, 2018), <https://www.aauw.org/article/black-women-and-the-pay-gap/>.

93. *Id.*

94. *Id.*

benefits. The entitlements that many whites enjoy and take for granted, many People of Color never experience or expect to see in a lifetime.

Cyntoia Brown grew up in a world that showed her repeatedly that she would not experience the privileges that white people enjoy and bask in daily. She knew early on in life that her life mattered less than other lives simply because of her race and sex. She knew that that to be a fact as she saw it manifested in her life every single day. She saw that in how she was rejected by her family and shuttled through the foster care system, how she was alienated and felt the need to run away from her adopted family, how she was treated by her pimp and by men that exploited her for their sexual purposes. She saw it in how she was represented by legal counsel in her first trial and how she was treated by the jury, the judges, and the prosecution at all levels in this criminal episode. She saw and read the message loud and clear: “your life is not valued. You do not count.”

III. CONCLUSION

African American women are valued less than their white counterparts and this is borne out in the statistics. And when a group of individuals are singled out repeatedly and treated in a discriminatory fashion for conduct “condoned” when done by others of a different race, it shows the targeted individuals that they are somehow “less than” or devalued and unworthy. When this treatment is pervasive, consistent, continual and present throughout one’s life and that is shown across the board in varying systems (schools, banking institutions, educational settings, the justice system, places of employment, the healthcare field, etc.), the message is one that cannot be ignored or shunned. The message is crystal clear: you are somehow “sub-human,” you are not valued, and you do not matter.

We must place a value on all people and treat everyone with dignity and respect. Cyntoia Brown is a prime example of the disparate treatment African American females receive in our public institutions. But there are many other Cyntoia Browns who have gone unnoticed and unrecognized. They matter. They are valuable too. Every life matters, but currently that is not what the data shows.

Many say that justice is blind. In reality, her vision is skewed and tainted by classism, racism, sexism, and a system that maintains the dominant structure. Lady Justice sees. She sees African American females as less than, expendable and not as valuable or worthy. Cyntoia Brown is symptomatic of how our criminal justice system fails African American women and allows systematic oppression and injustice to continue unchecked.