

WHY ARE WE SO MAD? THE TRUTH BEHIND “ANGRY” BLACK WOMEN AND THEIR LEGAL INVISIBILITY AS VICTIMS OF DOMESTIC VIOLENCE

Amber Simmons

“When I say I am a Black feminist, I mean I recognize that my power as well as my primary oppressions come as a result of my Blackness as well as my womanness, and therefore my struggles on both of these fronts are inseparable.”¹

— Audre Lorde, Self-described Black feminist,
lesbian, poet, mother, warrior

INTRODUCTION

Janay Palmer and Ray Rice met in typical American fashion, at a movie theater in their hometown of New Rochelle, New York at fourteen and fifteen years old, respectively.² They became immediate friends, until summer 2007 when the friendship escalated into a relationship.³ By May 2012, Ray and Janay were engaged and expecting their first child.⁴ They had normal relationship disagreements, until one night in Atlantic City.⁵

On February 1, 2014, a surveillance camera video surfaced of Ray punching Janay unconscious in the elevator of an Atlantic City, New Jersey casino.⁶ That night, both Ray and Janay were both arrested.⁷ Ray was charged with third-degree aggravated assault and, shortly thereafter, was terminated from the Baltimore Ravens.⁸ Ray never went to trial for

1. AUDRE LORDE, *I AM YOUR SISTER* (Rudolph P. Byrd et al. eds., 2009).

2. Jemele Hill, *Janay Rice, in her own words*, ESPN (Nov. 28, 2014), http://www.espn.com/nfl/story/_/id/11913473/janay-rice-gives-own-account-night-atlantic-city.

3. *Id.*

4. *Id.*

5. *Id.*

6. Feminista Jones, *Why Black Women Struggle More with Domestic Violence*, TIME (Sept. 10, 2014), <http://time.com/3313343/ray-rice-black-women-domestic-violence/>.

7. Rebecca Elliott, *Everything you Need to Know About the Ray Rice Case*, TIME (Sept. 11, 2014), <http://time.com/3329351/ray-rice-timeline/>.

8. *Id.*

the assault, and after a one-year rehabilitation class, the charges were eventually dropped.⁹

This story paints an all too familiar picture in the United States.¹⁰ Black women experience intimate partner violence at disproportionately higher rates than other ethnic groups and races in the United States.¹¹ Some studies link the higher rates to Black women's affinity for their culture and their unwillingness to betray their race, but this is an incomplete and dangerous assertion.¹² Another explanation is the common sentiment in the Black community to rely on spiritual beliefs to solve problems of issues in the family.¹³ Both of these explanations seek to explain why Black women remain in abusive relationships. However, there is a much more important question: What happens to those who want to leave?

The most dangerous time in an abusive relationship, for any victim of any race or ethnicity, is leaving.¹⁴ Black women who want to escape face a myriad of obstacles.¹⁵ Black women are four times more likely to be killed by a boyfriend or girlfriend and twice as likely to be killed by a spouse than their white counterparts.¹⁶ This fact discourages Black women from leaving the abusive environment.¹⁷ Also, Black women are disproportionately exposed to the effects of poverty, which makes it even more difficult for them to leave abusive relationships.¹⁸ Single Black women have an average of \$100 in wealth.¹⁹ Once children are added, single Black women have no measurable wealth.²⁰ While all of the above obstacles are at play, there is a plethora of academic work addressing these issues. An under-acknowledged part of this problem focuses on how

9. *Id.*

10. See HILLARY POTTER, *BATTLE CRIES: BLACK WOMEN AND INTIMATE PARTNER ABUSE* 8 (2008) (explaining the normalcy of the battered Black woman in the United States today).

11. NAT'L. CTR. FOR INJURY PREVENTION & CONTROL, *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010-2012 State Report* 124 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (highlighting the fact that the Black women are only surpassed by Native American women when it comes to intimate partner violence).

12. See Jones, *supra* note 6; see also Madelaine Adelman et al., *Policing Violence Against Minority Women in Multicultural Societies: "Community" and the Politics of Exclusion*, 7 *POLICE & SOC'Y* 103, 115 (2003) (arguing that women of color often choose between their race and their gender, a concept called 'double bind').

13. See Jones, *supra* note 6 (using spiritual beliefs in the Black community to explain victim's unwillingness to leave their abusers); Potter *supra* note 10.

14. See POTTER, *supra* note 10 (arguing that victims feel fear to escape because of threats from the abuser).

15. See NAT'L. CTR. FOR INJURY PREVENTION *supra* note 11 (claiming that racial and ethnic minorities are exposed to more stressors that contribute to their inability to get out of abusive relationships).

16. SHANNAN CATALANO & HOWARD SNYDER, U.S. DEP'T OF JUSTICE, *FEMALE VICTIMS OF VIOLENCE* 3 (2009).

17. See POTTER, *supra* note 10 (arguing that victims feel fear to escape because of threats from the abuser).

18. Geneva Brown, *Ain't I a Victim?: The Intersectionality of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 *CARDOZO J.L. & GENDER* 147, 149 (2012).

19. *Id.* at 149-150.

20. *Id.* at 150.

Black women are directly and indirectly discouraged from reporting their abuse to the proper authorities due to stereotypes.²¹

This article will focus on an overlooked aspect of Black women's fight for freedom from domestic violence: the effects of the "Angry Black Woman" stereotype.²² The main objective of the criminal justice system in the United States is to uphold the ideals of fairness and justice.²³ These ideals can be perverted by the implicit bias of individuals carrying out the abstract notions of justice and fairness. The opinions and closely held stereotypes of police officers, prosecutors, and judges prevent these actors from seeing Black women as victims.²⁴

A. *Structure and Organization of the Argument*

Part I discusses the history and context of the "Angry Black Woman" stereotype. It will further explore how the origins were nefarious and how its intended effects are still playing out today. This part will answer: why the stereotype exists, when it was created, how it has been perpetuated, and what can be done to change the narrative.

Part II explains the disconnect between Black women and the criminal justice system, specifically police, because of the "Angry Black Woman" stereotype. It explores how police officers treat Black women and how that treatment is informed by the "Angry Black Woman" stereotype.

Parts III and IV explore the actor in the trial stage of the criminal justice process. These parts explain how judges' and attorneys' opinions are informed by the "Angry Black Woman" stereotype. These parts will answer: who is the Black female victim of domestic violence, what do actors in trial think of her, why do they think that, and how does their bias affect her access to a fair, impartial trial?

Part V presents solutions to change the outcome for Black women in abusive relationships. This part explores Due Process arguments in favor of a fairer criminal justice system for Black women and a re-education of the public about who fits into the definition of the word "victim." This part further discusses the universal nature of domestic violence and how it touches every group in the United States in some way. Black women, White women, Asian women, Native American women, Hispanic women, Middle Eastern women—all women can be victims of domestic violence. While this paper focuses on solutions specific to black women, it aspires to be a part of a larger body of work that seeks to find a solution for all women.²⁵

21. See Adelman, *supra* note 12, at 116 (suggesting that police make minority women feel "othered" and irrelevant when reporting abuse).

22. *Id.* at 115.

23. U.S. CONST. amends. V, XIV.

24. Lisa M. Martinson, *An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin*, 16 WIS. WOMEN'S L.J. 259, 260 (2001).

25. NAT'L. CTR. FOR INJURY PREVENTION, *supra* note 11.

I. HISTORICAL CONTEXT OF THE “ANGRY BLACK WOMAN” STEREOTYPE AND ITS INTERGENERATIONAL EFFECT ON BLACK FEMALE VICTIMS OF DOMESTIC VIOLENCE

A. *Origins of the stereotype*

Control of Black women was a goal of slave owners.²⁶ Black feminist Barbara Christian posits that, “the enslaved woman became the basis for the definition of our society’s Other.”²⁷ Making Black women society’s *other* made it easier during slavery to justify their oppression.²⁸ Othering took many forms: The Jezebel, The Mammy, and The Sapphire.²⁹

Black women are “othered” by what is referred to as the “Angry Black Woman” stereotype.³⁰ This stereotype can be traced to Sapphire, a character on the Amon ‘N’ Andy Show in 1951.³¹ Sapphire would routinely bicker with her husband, George “Kingfish” Stevens, kick him out of the home, and complain about trivial things.³² Audiences got to know Sapphire as the man-hating, ball-busting, wife of Kingfish but, more importantly, her attitude became synonymous with the attitude of all other Black women.³³

While most Black women would agree that Black women are strong and resilient like Sapphire; they would also agree that the Sapphire image is an exaggerated trope with perilous implications.³⁴ Black women are taught by female elders in their family to be strong:³⁵

“We young black girls had to learn to protect ourselves against physical hurt, to figure things out in order to maximize our safety within both private and public space. To cushion ourselves against physical mistreatment meant learning to fight to defend ourselves and to in. To cushion ourselves therefore meant that we could not expect any protection from black men or, especially, from the police. I was able to be on my own as a strong, independent black woman who could handle anything life threw at me.”³⁶

26. PATRICIA H. COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 56 (2000).

27. BARBARA CHRISTIAN, *NEW BLACK FEMINIST CRITICISM, 1985-2000* 160 (2007).

28. COLLINS, *supra* note 27.

29. *Id.*; See Brown, *supra* note 19, at 161 (Explaining other stereotypes of Black women to include: the Jezebel trope describes Black women as, “sexually aggressive wet nurses.” This stereotype served two purposes for slave owners: to justify the systematic rape of African slaves and to separate Black female slaves from their White wives. Much like the Mammy stereotype justified the employment of Black women as domestics and servants in White homes. These two stereotypes lay out what society expected from “model” African slave women, sleep with Master and take care of the home with no push back. Slavery is no more, but the expectations of Black women are not much different.).

30. POTTER, *supra* note 10.

31. *Amos ‘N’ Andy Show* (CBS television broadcast 1951).

32. *Id.*

33. Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539 (1989).

34. See COLLINS, *supra* note 27, at 109 (suggesting that Black women see and understand the stereotypes associated with them and have varying ways of coping with those).

35. Potter, *supra* note 10, at 38.

36. *Id.* at 38-39.

This ability to be resilient in the face of adversity is an evolutionary skill that was developed because Black women have always fought back.³⁷

B. *Negative Images of Black Women in Popular Media*

The notion of a strong independent Black woman has been morphed into a crude joke in popular media.³⁸ Television shows such as VH1's *Love & Hip-Hop* and Bravo's *Real Housewives of Atlanta* focus almost entirely on in-group fighting, public arguments, or physical altercations.³⁹ Black women on these shows are depicted in stereotypical fashion as loud and ghetto and angry, frequently getting into physical altercations, hurling insults at one another, and exhibiting overall immoral behavior.⁴⁰

Hollywood has a similar problem and, oddly enough, a Black man is at the center of the revival of Angry Black female characters, Tyler Perry.⁴¹ Tyler Perry, in his reprisal of the role Madea Simmons, guarantees a continuation of the stereotype that Black women are combative, loud, aggressive, or all of the above.⁴² This stereotypical depiction of Black women is fully captured in his film *Precious*, co-produced with Oprah Winfrey.⁴³ While some might praise *Precious* as an inspirational, innovative film, others position its importance in the context of the "White gaze."⁴⁴ "White gaze" is the concept that because media is controlled and owned by White Americans, it is designed for their eyes.⁴⁵ In *Precious*, the main character finds solace in the comfort of her daydreams, characterized by White middle class and upper-class images of family strength and unity.⁴⁶ This ideal juxtaposed against images of *Precious*' horrible reality, posits a disparaging image of Black women's lives. It also prioritizes White ideals of success as if that is what Black women should aspire to obtain.⁴⁷

The transformation of the strong independent Black woman into sensationalized "Angry Black Woman" has massive societal impact because most White Americans' only contact with Black people, in general, is from

37. *Id.* at 35.

38. Ann Marie Kerwin, *The 'Angry Black Woman' Makes Real A Women Angry*, ADAGE (Sept. 27, 2017), <http://adage.com/article/media/angry-black-woman-makes-real-women-angry/310633/>.

39. *Love & Hip-Hop: Atlanta* (VH1 Television broadcast 2012); *The Real Housewives of Atlanta* (True Entertainment broadcast 2008); Kerwin *supra* note 44.

40. Kerwin, *supra* note 44.

41. Erika Yancy, *Attack of the Angry Black Woman*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/erikka-yancy/attack-of-the-angry-black_b_3563532.html.

42. *Id.*

43. E.g. Rachel A. Griffin, *Pushing into Precious: Black Women, Media Representation, and the Glare of the White Supremacist Capitalist Patriarchal Gaze*, 31 CRITICAL STUDIES IN MEDIA COMMUNICATION 182, 184 (2014) (suggesting that the film has undercurrents of White influence and was created for the White gaze, by perpetuating common stereotypes about Black women).

44. *See id.* (explaining the success of the film *Precious* in the context of the White gaze).

45. *See id.* at 183 (defining White gaze as "a process of seeing without being seen, that constructs the Black body into its own colonial imaginary").

46. *See Id.* at 185 (painting an image of *Precious*' daydreams as products of "White gaze").

47. *See id.* at 185 (claiming that the daydream scenes in *Precious* appeal to Whiteness).

popular media, through the Internet, movies and television programs.⁴⁸ This phenomenon is due to the continued segregation of the average American's social circle. Ninety-one percent of White Americans' social circle consists of other White people.⁴⁹ Among Black Americans, eighty-three percent of their core social circle is made up of other Black Americans.⁵⁰ The variation of these facts are minimal when controlled for gender, religion, political affiliation, and even region of the United States.⁵¹ Race is still the most significant statistical factor when it comes to social segregation. If Black and White Americans are not interacting with one another, how can the negative image of the "Angry Black Woman" stereotype be remedied?

II. POLICE OFFICERS: IMPARTIAL INTERVENORS OR HURDLES TO JUSTICE

A. *History of Law Enforcement and Black Women*

The relationship between black women and police officers follows a long line of historical precedents that dehumanized Black women.⁵² Black slaves, both men and women, could be murdered or mutilated by their master, with no legal redress.⁵³ Black female slaves, specifically, were routinely "bred" with slave owners or other male slaves against their will, with no legal redress.⁵⁴ Furthermore, every state that adopted a rape statute defined the crime as one that occurs to White women only.⁵⁵ Law enforcement during the slave era in the United States was not required to protect and serve Black slaves, especially not Black female slaves.

Although this particular regime of slavery has ended, these types of violations have continued.⁵⁶ In fact, during Jim Crow, Black women were even more susceptible to rape and violence because, as according to sociologist Patricia Hill Collins, they were:

48. See Kerwin, *supra* note 44 (presenting evidence that an average White American's social circle is typically 91% White, according to U.S. Census Data and Public Religion Research Institute).

49. Yancy, *supra* note 47; Daniel Cox et. al., *Race, Religion, and Political Affiliation of Americans' Core Social Networks*, PUBLIC RELIGION RESEARCH INSTITUTE (Aug. 3, 2016), <https://www.prrr.org/research/poll-race-religion-politics-americans-social-networks/>.

50. Cox, *supra* note 55.

51. See *id.* (explaining that controlling for gender, religion, and political affiliation yields nearly identical results to that for race).

52. See Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle against Police Violence*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 39, 44 (2018) (explaining the historical justification police officers used for hurting and/or killing Black people).

53. *Id.*

54. *Id.* at 44-45.

55. *Id.* at 45.

56. See *id.* (pointing out that even though slavery ended, the atrocious acts committed on Black women did not end); see Ruth Thompson-Miller & Leslie H. Picca, *There were Rapes!: Sexual Assaults of African American Women and Children in Jim Crow*, 23 VIOLENCE AGAINST WOMEN 934, 935 (2018) (contending that sexual violence of Black women did not end with the Emancipation of the slaves in 1865).

No longer the property of a few White men, African American women became sexually available to all White men. As free women who belonged to nobody except themselves and in a climate of violence that meted out severe consequences for their either defending themselves or soliciting Black male protection, Black women could be raped.⁵⁷

The police almost never held the men that committed the countless acts of violence against Black women accountable.⁵⁸ Additionally, those Black women that did report the crimes against them faced threats of death, physical violence, and destruction of their property.⁵⁹

In 1969, the National Commission on the Causes and Prevention of Violence created its final report, in which it analyzed different crimes and various aspects of those crimes.⁶⁰ The Commission found that Black women were determined to be the typical victim of violent assaultive crime, especially rape.⁶¹ However, the Commission also found that police systematically ignored the crimes that were committed in what it calls the ghetto, places where Black Americans live.⁶²

B. *Police Bias and Black Female Victims of Domestic Violence*

The Angry Black Woman stereotype has helped to further the tradition of police ignoring Black women.⁶³ Specifically with domestic violence, law enforcement has the tendency to hold on to two common stereotypes about Black women: 1) Black women are not credible and cannot be believed and 2) Black women must be mutual combatants and there is no possible way they are merely victims.⁶⁴ Take *Conerly v. Town of Franklinton*⁶⁵ as an example of what happens when officers act on their beliefs of Black women. Felicia Fox was repeatedly abused by her long-time boyfriend, Robert Toomer.⁶⁶ Felicia first reported the abuse on May 17, 2002.⁶⁷ A police officer did arrive to the home to help, but no arrest

57. PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS: AFRICAN AMERICANS, GENDER AND THE NEW RACISM* 65 (2005).

58. See Thompson-Miller, *supra* note 56 at 936 (holding that White men during the Jim Crow era were free from worry, because no police officer held them accountable for raping Black women).

59. See *id.* (quoting “African Americans who did report being the victims of violence commonly faced retaliation, such as physical violence, death threats, and firebombs on their property”).

60. NAT’L COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, *FINAL REPORT* 146 (1969), <https://www.ncjrs.gov/pdffiles1/Digitization/275NCJRS.pdf>.

61. *Id.* at 25.

62. See *id.* at 146 (generalizing that young Black females and males suffered the most from assaultive crimes in the United States).

63. See Jacobs, *supra* note 52, at 46 (suggesting that Black women are not credible when they report, and that Black victims’ words have no value).

64. *Id.*

65. E.g. *Conerly v. Town of Franklinton*, No. 03-1507, 2004 U.S. Dist. LEXIS 11943, at *4 (E.D. La. June 28, 2004) (explaining a tragic story of a Black women that was ignored by law enforcement and was eventually killed by her abuser).

66. *Id.* at 2.

67. *Id.*

was made.⁶⁸ A second incident was reported on May 22, 2002.⁶⁹ This time Robert strangled Felicia.⁷⁰ Felicia called the police again.⁷¹ The police responded, but again, no arrest was made.⁷² The very next day, May 23, 2002, Felicia's mother called the police.⁷³ This time Robert attempted to shoot Felicia.⁷⁴ Finally, this time Robert was arrested for aggravated assault, illegal use of a weapon, and simple battery and domestic violence.⁷⁵ Robert was released the same day.⁷⁶ Robert attempted to break-in to Felicia's home at about midnight.⁷⁷ The police were called.⁷⁸ No arrest was made.⁷⁹ On May 26, 2002, two of Robert's friends assaulted Felicia.⁸⁰ Again, the police were called, no arrests were made.⁸¹ That same day, May 26, 2002, Robert went to Felicia's home and shot her twice, killing her instantly.⁸² Robert Toomer was arrested for the second-degree murder of Felicia Fox.⁸³ Felicia called the police that night and they did not respond.⁸⁴ When asked why he did not respond, the officer said he already told Ms. Fox to lock her door and keep it locked.⁸⁵ But for this officer's view of Black women, Felicia Fox may be here today.

The story of Felicia Fox is a common one among Black female domestic violence victims.⁸⁶ Black female victims of intimate partner violence are twice as likely to be killed by spouses and four times as likely to be killed by significant others than White women.⁸⁷ This is because police purposefully give a lower priority to Black female victims of intimate partner violence.⁸⁸ Why is that? The answer may be heuristics, a type of mental shorthand that associates certain characteristics with certain groups of people.⁸⁹ Some legal commentators argue that what police engage in is not intentional racial hatred, but rather horrible racial gam-

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 4.

84. *Id.*

85. *Id.* at 4-5.

86. *E.g.* CATALANO, *supra* note 16 (finding that Black women are twice as likely than White women to be killed by spouses and four times as likely with significant others).

87. *Id.*

88. *See Conerly v. Town of Franklinton*, No. 03-1507, 2004 U.S. Dist. LEXIS 11943, at *5 (E.D. La. June 28, 2004) (arguing that, "a motivating factor in defendants' actions is giving a lower priority to black female victims of domestic violence).

89. *See* Michael R. Smith & Geoffrey Alpert, *Explaining Police Bias*, 34 CRIMINAL JUSTICE AND BEHAVIOR 1262, 1266 (Oct. 2007) (contending that police officers use 'criminal shorthand' to be more suspicious of racial minorities).

bling.⁹⁰ Furthermore, racial stereotyping by police officers has been blamed on their interactions with popular media, family, and friends.⁹¹ While this may explain their stereotyping of Black female victims of domestic violence, it does nothing to excuse it.

How does the “Angry Black Woman” stereotype affect a police officer’s response to Black female victims of domestic violence? There are countless examples. Black women that have the courage to report are often met with dissatisfactory experiences.⁹² One victim, Lola, recounts how a police officer questioned her in the immediate presence of her abuser.⁹³ Yet another victim explains how an officer claimed there was no evidence of abuse because he could not see bruises on her dark skin.⁹⁴ Would an officer behave in these ways with a White female victim? The phenomenon of the “dual-arrest” has undoubtedly and directly affected Black female victims of domestic violence.⁹⁵ Dual-arrest is when an officer arrests both people involved in a domestic violence dispute, without regard to who is the aggressor and who is the victim.⁹⁶

The Violence Against Women Act (VAWA) requires responding police officers to arrest the “primary aggressor” in a domestic violence situation.⁹⁷ Black women are more likely to be stereotyped the aggressor, because of the “Angry Black Woman” stereotype, and are therefore more likely to be arrested, even if they are the person who called the police for help.⁹⁸ The Office of Violence Against Women realized that this was not an effective policy because some officers were arresting both parties to avoid determining who the true aggressor was.⁹⁹ To protect against this effect, police departments that want VAWA funding must prove women are not being arrested, “solely to avoid having to make a determination of who the aggressor was.”¹⁰⁰ Despite the progress, “dual arrest” policies around the U.S. still continue to disproportionately affect Black women; for example, in New York, seventy percent of women who were mandatorily arrested under “dual arrest” were Black or Latina.¹⁰¹ Nonetheless, the public is still convinced that mandatory arrest is proper.¹⁰²

90. See *id.* at 1266-67 (suggesting that police officers do not hold racial hatred, but rather engage in racial gambling).

91. See Smith & Alpert, *supra* note 89, at 1270 (commenting that mass media and taught stereotypes play a role in what police officers think of racial minorities).

92. E.g. POTTER, *supra* note 10, at 178 (detailing the various stories of dissatisfactory encounters with police from Black female victims of domestic violence).

93. E.g. *id.* (Retelling of a story by Lola about her experience with police officers).

94. E.g. *id.* (Explaining the disbelief of her statement that she was abused because the officer could not see the bruises on her dark skin).

95. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); See Jacobs *supra* note 52, at 88 (explaining how the passage of VAWA negatively affected Black women by requiring dual arrest).

96. Jacobs, *supra* note 52, at 89.

97. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); Jacobs *supra* note 52, at 87.

98. *Id.* at 88.

99. *Id.* at 89.

100. *Id.* at 90.

101. *Id.* at 90-91.

102. *Id.* at 91.

C. *Fighting Back*

Marissa Alexander was routinely beaten by her husband.¹⁰³ Marissa was cornered in the bathroom of their home, as he yelled insults through the door.¹⁰⁴ He broke through the door and grabbed Marissa by the neck.¹⁰⁵ After struggling for what felt like forever, she escaped from the bathroom and ran to the garage.¹⁰⁶ Marissa tried to escape out of the garage door, but it was stuck. She instead ran to the car and grabbed the handgun in the glove compartment.¹⁰⁷ Her husband spotted her with the gun and charged at her, yelling threats on her life.¹⁰⁸ She raised the gun and fired a warning shot into the air.¹⁰⁹ Marissa Alexander was found guilty of aggravated assault with a deadly weapon, for firing a warning shot, in the air, away from her abuser.¹¹⁰

Marissa Alexander is an example of what happens when Black female victims of domestic violence fight back.¹¹¹ Women, in general, who fight back lose sympathy with police and all other actors in the criminal justice system.¹¹² This is because a woman that fights back defies their role as the weaker gender.¹¹³ This fact rings truer for Black women because they are the antithesis of what police are taught a “battered woman” is.¹¹⁴ Black women are viewed by most, especially police officers, as aggressive and not passive.¹¹⁵ “Authentic” victims are meant to fit that fragile, weak mold and, when that does not happen, police officers paint those women as deviants.¹¹⁶ Nothing could be farther from the truth.

Black women, overwhelmingly, fight back against their abusers more than White women do.¹¹⁷ *Why is that?*¹¹⁸ The obvious answer that most research relies on is the overused trope: Black women are angry and aggressive and problematic.¹¹⁹ Hillary Potter looks deeper at the actions of Black female victims and reasoned that these women were not just enacting their own form of retributive justice.¹²⁰ Hillary Potter does this work

103. *Alexander v. State*, 121 So. 3d 1185, 1187 (Fla. Dist. Ct. App. 2013).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 1186.

111. Jacobs, *supra* note 52, at 93; *Alexander v. State*, 121 So. 3d 1185 (Fla. Dist. Ct. App. 2013).

112. Jacobs, *supra* note 52, at 91.

113. *Id.*

114. *See id.* (suggesting that passive, White, heterosexual women are what a “sympathetic battered woman” looks like).

115. *Id.* at 92.

116. *See id.* at 91 (suggesting that Black women do not fit the victim mold and suffer because of that).

117. POTTER, *supra* note 10, at 116.

118. *See id.* (inquiring as to why there is so little research into the high correlation of Black women and retaliation of abusers).

119. *See id.* at 117 (detailing the uncreative ways people explain why Black women retaliate against their abusers, “Black women are angry women”).

120. *See id.* (considering Black women’s actions under the dynamic resistance model, contradicting the view that these actions are in some way retribution for the abuse).

as an Associate Professor of Ethnic Studies at the University of Colorado at Boulder.¹²¹ The women Potter interviewed presented several factors that led them to fight back.¹²² Of the women interviewed, those who were exposed to abuse in their childhood tended to fight back more than those who were not exposed to violence.¹²³ Another reason Potter finds Black women tend to fight back is their self-perception as non-victims, based on society's definition of who a victim is and who a victim is not.¹²⁴ Society's view of women that fight back is rooted in a contradiction.¹²⁵ Women defending themselves against attacks from strangers is encouraged, evidenced by the amount of pink, bedazzled cans of mace on the market.¹²⁶ If this is true, then why are women that fight back against their intimate partners stigmatized?¹²⁷

For Black women, the social stigma of fighting back is exacerbated by the stereotype of just being a Black woman in the U.S.¹²⁸ Black women fight back because they believe the criminal justice system is unfair to them.¹²⁹ Police intervention, for most, is the last alternative for several reasons,¹³⁰ especially when one considers the implicit bias police have against Black female victims.¹³¹ With little to no help from police officers and no sympathy in self-defense, what options do "Angry Black Women" have? The effects of the "Angry Black Woman" stereotype do not stop with the police. As domestic violence progresses further into the criminal justice system, we see that prosecutors contribute to stifling justice.

III. PROSECUTORS

A. *History of Prosecution of Domestic Violence in America*

The next rung in the criminal justice ladder is the prosecution of the crime.¹³² The United States has recently embraced the prosecution of perpetrators of family violence, in spite of its contrary history.¹³³ In eighteenth and nineteenth-century America, the law favored the privacy of the home, and with that the husband's prerogative to domestically chastise

121. Hillary Potter, *University of Colorado at Boulder: Ethnic Studies*, <https://www.colorado.edu/ethnicstudies/people/core-faculty/hillary-potter>.

122. POTTER, *supra* note 10, at 125-127.

123. *Id.* at 126.

124. *Id.* at 127.

125. *Id.* at 128.

126. *See id.* at 128-29 (explaining the U.S. acceptance of women fending off strange attackers, "by any means necessary to protect oneself").

127. *See id.* (describing the paradoxical struggle between defending yourself as a woman against an attacker, but not against your violent partner).

128. *See id.* at 136 (explaining the intersecting factors Black women face when fighting back that other women do not).

129. *Id.* at 174.

130. *Id.* at 176.

131. *See* Smith & Alpert, *supra* note 89, at 1263 (explaining the research that shows, "police treat members of certain minority groups differently than Whites").

132. *See generally* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3 (1999) (explaining the process domestic violence victims go through to get justice).

133. *Id.* at 4.

his wife.¹³⁴ Courts in various states structured policies that tended to not interfere with the private sphere.¹³⁵

Specifically, with Black female victims, *Fulgham v. State*, the Alabama Supreme Court, in 1871, allowed the prosecution of a Black, freed slave for striking his wife, another Black, freed slave.¹³⁶ Likewise, the Supreme Court of Mississippi also decided to prosecute a Black man for beating his wife.¹³⁷ While these decisions seem like steps in the right direction, these decisions were more of a play to control Black men; Black women were not at the forefront of these decisions.¹³⁸ Black women were less of a concern for the courts in the nineteenth-century, because the control of Black men was more important.¹³⁹

B. Prosecutorial Intervention

With the shift in the culture, prosecutors now treat domestic violence as a serious crime.¹⁴⁰ This is important when one considers prosecutors, in upwards of ninety-three percent of cases, decide the fate of the accused via plea bargain.¹⁴¹ Prosecutorial duties include: whether to investigate, whether to arrest the suspect, whether to disclose evidence to the defense, whether to propose a plea bargain, what terms to include, and making sentencing recommendations to the judge.¹⁴² With this amount of discretion, prosecutors are capable of making some serious mistakes, including engaging in selective prosecution.¹⁴³ Luckily, cases of prosecutorial refusal to press criminal charges is now an uncommon occurrence in domestic violence cases.¹⁴⁴ This is exemplified by “no-drop” prosecution policies adopted by many district attorney’s offices around the country.¹⁴⁵ “No-drop” policies became necessary because prosecutors were resisting or even refusing to pursue cases of domestic violence for various reasons.¹⁴⁶ There are two types of “no-drop” policies: hard and soft.¹⁴⁷

134. *Id.* at 10. (explaining American courts allowance of a “husband’s right of domestic chastisement”).

135. *Id.*

136. *Fulgham v. State*, 46 Ala. 143, 146 (1871); Reva Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2134 (June 1996).

137. *Harris v. State*, 14 So. 266 (Miss. 1894); Reva Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2136 (June 1996).

138. See Siegel, *supra* note 158 (explaining the alternative motive for the otherwise positive conviction of abusers of Black women).

139. *Id.* (comparing the concerns of the courts in cases involving White men and Black men, both beating their wives).

140. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1852 (June 1996).

141. CENTER FOR PROSECUTOR INTEGRITY, PROSECUTOR ETHICS IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES 1 (2013).

142. *Id.*

143. *Id.*

144. See Epstein, *supra* note 132, at 4 (explaining that, “prosecutorial refusal to press criminal charges in most intrafamily cases has diminished”).

145. *Id.*

146. Hanna, *supra* note 140, at 1861–62; Epstein, *supra* note 132, at 5.

147. Hanna, *supra* note 140, at 1863.

Hard “no-drop” policies force domestic violence victims to continue through the process with or without the victim’s cooperation, assuming there is an adequate amount of evidence available.¹⁴⁸ This type of “no-drop” policy has been criticized of stripping the victims of their choice and autonomy.¹⁴⁹ In spite of this criticism, most Black women are mostly on board for the prosecution of their batterers.¹⁵⁰ Soft “no-drop” policies continue with the conviction of the abuser, but allow the victim to choose whether or not they want to be a part of the process.¹⁵¹ Additionally, victims are offered counseling and other support services and are encouraged to be active part of the process.¹⁵² Generally, soft “no-drop” policies are praised for emphasizing “the importance of listening to women and their concerns before taking action against their batterers.”¹⁵³

For Black women, being cooperative with prosecutors does not do much to quell the inherent biases of being a Black woman and a victim.¹⁵⁴ Black women are coached by prosecutors to, “look sad, to try to cry, to never look the jury in the eye.”¹⁵⁵ Prosecutors tend to fit domestic violence victims into this narrow mold in part due to the legal system’s emphasis on the Battered Woman’s Syndrome.¹⁵⁶ In fact, one former prosecutor, Alafair Burke, suggests that, “the theory is taught to counselors, police officers, prosecutors, parole board officials, and social-service providers to improve the quality of their responses to domestic violence.”¹⁵⁷

Battered Women’s Syndrome is a concept first laid out by Lenore Walker in her 1979 book, *The Battered Woman*.¹⁵⁸ Walker artfully explains victims of domestic violence as helpless, passive, scared women that do not leave the relationship for fear of shame and dependency on the abuser.¹⁵⁹ Women who, unfortunately, never fit this image, women of color and Black women specifically, had their stories pushed further into the margins.¹⁶⁰ There have been steps to create an alternative theory, Sur-

148. *Id.*

149. *Id.* at 1866.

150. See POTTER, *supra* note 10, at 184 (finding that sixty-five percent of Black women in Arlene Weisz’s study wanted prosecution of their abusers).

151. Hanna, *supra* note 140, at 1863.

152. *Id.*

153. See *id.* (explaining the support-centered approach of soft “no-drop” policies as the strategy that should be adopted by all jurisdictions).

154. Cf. POTTER, *supra* note 10, at 173 (explaining Black women’s willingness to cooperate with prosecutors, not being reciprocated).

155. See Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 86 (2008) (recounting April’s experience with prosecutors encouraging her to be more “victim like”).

156. See *id.* at 84 (detailing how the advent of the Battered Women’s Syndrome gave prosecutors a picture of victim that could easily win a jury over).

157. *Id.*

158. LENORE E. WALKER, *THE BATTERED WOMAN* 21-22 (1979); Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 82 (2008).

159. *Id.* at 83 (describing Walker’s concept of learned helplessness, a common side effect of being a battered woman).

160. Goodmark, *supra* note 155, at 84.

vivor Theory.¹⁶¹ This theory, created and advocated for by Edward Gondolf and Ellen Fisher, reshaped the battered woman from helpless to a survivor who protects herself and her children from the abuser.¹⁶² While this theory moves in the right direction, it does not account for the wide variety of experiences Black women face in violent relationships, such as the decision to fight back.¹⁶³ Furthermore, the legal system has yet to accept any alternative theories, to include the Survivor Theory, as wholly as it has accepted Battered Woman's Syndrome.¹⁶⁴

C. *The Failings of VAWA*

In 1994, Congress enacted the Violence Against Women Act, or VAWA.¹⁶⁵ In general, VAWA has four objectives: "change attitudes toward domestic violence, foster awareness of domestic violence, improve services and provisions for victims, and revise the manner in which the criminal justice system responds to domestic violence and sex crimes."¹⁶⁶ With regard to the last goal, VAWA created several grant programs intended to help state, local, and even tribal law enforcement to investigate and prosecute crimes against women.¹⁶⁷ Since its enactment in 1994, Congress has reauthorized VAWA in 2000, 2005, and 2013, three times total, and all times with bipartisan support.¹⁶⁸ While VAWA has been a success for some victims of domestic violence, VAWA was never intended for Black women, let alone any other woman of color.¹⁶⁹ Senators Joe Biden, David Boren, and William Cohen had to package VAWA as a solution to the pillaging and raping of *their* women, not *other* women.¹⁷⁰

161. *Id.* at 84-85.

162. *Id.*

163. *Cf.* Goodmark, *supra* note 155, at 85 (explaining the one downfall of survivor theory being that it does not include the stories of women who choose to fight back).

164. *See id.* at 84-85 (presenting Battered Woman's Syndrome as the most widely accepted form of testimony regarding the, "impact of domestic violence on battered women").

165. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994).

166. *Id.*; LISA N. SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 1 (2015).

167. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV § 40121, 108 Stat. 1796 (1994); SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 3 (2015).

168. LISA N. SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 9 (2015); Melissa Jeltsen, *Violence Against Women Act is About to Expire*, HUFFINGTON POST (Aug. 8, 2018), https://www.huffingtonpost.com/entry/violence-against-women-act-expiring-september_us_5b6b0a4ae4b0de86f4a789db.

169. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); *Cf.* 137 CONG. REC. 1314-15 (1991) (emphasizing the effect violence has on mothers, wives, daughters, and sisters in the traditional Middle-class, White sense of the terms).

170. *Cf.* 137 CONG. REC. 1314-15 (1991) (emphasizing the dichotomy of "our women" that the Senate had to use to persuasively present this bill to the other, overwhelmingly White, senators); *see* Goodmark, *supra* note 155, at 88 (explaining the "white face" politicians had to place on the battered woman to successfully push legislation through).

VAWA is only as effective as the system that delivers its promises.¹⁷¹ In a system that has already systematically over-policed Black communities, VAWA exacerbated the problem.¹⁷² Kimberlé Crenshaw places this idea in the larger context of Black community sentiment:

“There is also a more generalized community ethic against public intervention, the product of a desire to create a private world free from the diverse assaults on the public lives of racially subordinated people. In this sense the home is not simply a man’s castle in patriarchal terms, but it is also a safe haven from the indignities of life in a racist society.”¹⁷³

There were proposed changes for VAWA in 2018, but the support for another reauthorization was shaky, at best.¹⁷⁴ While the proposed changes passed in the House, they have been stalled since April 2019 in the Senate. In the past, all three reauthorizations of VAWA had bipartisan support.¹⁷⁵ Among the changes, there is emphasis on alternative justice options, external to the traditional criminal justice system, an admission by Democratic proponents of VAWA that the heavy law enforcement presence in previous versions of this bill have overwhelmingly affected Black communities.¹⁷⁶

Black women are subjected more than any other victim group to the effects of mandatory arrests.¹⁷⁷ Eliminating the harmful mandatory arrest policies in earlier versions of VAWA will reduce Black female victims being lumped in with their abusers when they are wrongly perceived by law enforcement and prosecutors as “primary aggressors.”¹⁷⁸ Until a renewed, more egalitarian VAWA is passed in Congress, prosecutors around the country are forced to continue with the oppressive system the way that it is at present.¹⁷⁹ Although prosecutors have volumes of discretion, their hands are tied regarding VAWA legislation, as are the hands of the Black female victims of domestic violence that are affected.¹⁸⁰

171. Epstein, *supra* note 132, at 13.

172. LISA N. SACCO, CONG. RESEARCH SERV., R42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 1 (2015); Hanna, *supra* note 163, at 1880.

173. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991); Hanna, *supra* note 140, at 1882.

174. Violence Against Women Reauthorization Act of 2018, 115 H.R. 6545 (exemplifying the fact that there is no Republican co-sponsor present); Melissa Jeltsen, *Violence Against Women Act is About to Expire*, HUFFINGTON POST (Aug. 8, 2018), https://www.huffingtonpost.com/entry/violence-against-women-act-expiring-september_us_5b6b0a4ae4b0de86f4a789db.

175. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); Jeltsen, *supra* note 168.

176. Jeltsen, *supra* note 168.

177. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); Jacobs *supra* note 52, at 87.

178. Jeltsen, *supra* note 168.

179. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); Jacobs *supra* note 52; Jeltsen, *supra* note 168.

180. CENTER FOR PROSECUTOR INTEGRITY, PROSECUTOR ETHICS IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES 3 (2013).

IV. JUDGES AND THEIR ROLE IN PERPETUATING STEREOTYPES

A. *History of Judicial Bias And Black Women*

Black women have a tumultuous history with the judiciary.¹⁸¹ One reason for this could be what has always been the predominant make-up of the judiciary in the United States, White men.¹⁸² It was not until 1939 that the United States even had its first Black woman judge, Judge Jane Matilda Bolin.¹⁸³ This lack of representation correlates directly with the unfortunately racist decisions of the late 19th and early 20th centuries surrounding Black women.¹⁸⁴ For example, the Supreme Court of Florida in 1918, refused to extend the assumption of chastity of unmarried rape victims to Black women, because of the relative immorality of the Black women and their tendency to be unchaste.¹⁸⁵ Many opinions, like this one from Florida's highest court, kept Black female victims, of any type, from reporting incidents of violence against them.¹⁸⁶ While the make-up of the court is a problem, there is a bigger problem: judicial bias.¹⁸⁷

B. *Judicial Bias*

Judges retain their own personal biases in the courtroom.¹⁸⁸ Unfortunately, for Black women these biases may include unconscious racist sentiments or stereotypes.¹⁸⁹ While this unconscious form of racism is not intentionally causing harm, it renders that same amount of harm that old-fashioned, outright racism did.¹⁹⁰ Professors of Law at Cornell Law School Jeffrey Rachlinski and Sheri Johnson conducted the first implicit racial bias study among trial judges.¹⁹¹ One-hundred and thirty-three judges participated in the study, from three different jurisdictions.¹⁹² The

181. See generally The Hon. Anna Blackburne-Rigsby, *Black Women Judges: The Historical Journey of Black Women to the Nation's Highest Courts*, 53 HOW. L. J. 645 (2010) (describing the long battle it took for Black women to become accepted amongst the judiciary).

182. BARRY J. McMILLION, CONG. RESEARCH SERV., R43426, U.S. CIRCUIT AND DISTRICT COURT JUDGES: PROFILE OF SELECT CHARACTERISTICS 5 (2017).

183. Blackburne-Rigsby, *supra* note 181.

184. E.g. *Dallas v. State*, 79 So. 690, 691 (Fla. 1918) (exemplifying the type of racist opinions of the late 19th and early 20th century, following Reconstruction).

185. See *id.* (stating that, "what has been said by some courts about an unchaste female in our court being a comparatively rare exception is no doubt true where the population is composed largely of the Caucasian race, but we would blind ourselves to actual conditions if we adopted this rule where another race that is largely unmoral constitutes an appreciable part of the population").

186. E.g. *id.* (exemplifying the type of treatment that served to keep Black women from reporting their abuse); see Brown *supra* note 19, at 170 (describing the harm unconscious racism amongst judges has on Black female victims).

187. Cf. Brown, *supra* note 18 (implying that judicial decisions are the direct cause of harmful outcomes).

188. See *id.* at 163-64 (2012) (describing the discretion judges have based on extralegal factors, such as, race, class, and gender).

189. See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 380 (Jan. 1987).

190. Brown, *supra* note 209, at 170.

191. Jeffrey J. Rachlinski & Sheri Lynn Johnson, *Does Unconscious Racial Bias Affect Trial Judges*, 84 NOTRE DAME L. REV. 1195, 1197 (2009).

192. *Id.* at 1205.

judges were given a computer-based Implicit Association Test (IAT) in two trials.¹⁹³ The results were as follows: there was a strong White preference amongst White judge and no clear preference for White or Black amongst Black judges.¹⁹⁴ The researchers found that judges, like most Americans, have implicit racial biases that have the possibility of affecting their judgment.¹⁹⁵ This takes away from the fact that Black women’s experiences are intersectional.

In addition to the implicit racial bias, judges also hold biases against domestic violence victims.¹⁹⁶ Judicial hostility toward victims of domestic violence stems from ignorance and lack of knowledge of the plight of the abused.¹⁹⁷ Judges can be particularly harsh to these men and women seeking help, going as far as to say disparaging comments, threatening sanctions for overuse of the court, or even threatening violence themselves.¹⁹⁸ Judges also frequently underestimate the gravity of the situations battered women are in, categorizing domestic violence cases as “unimportant” or even “, ‘family matters’ that do not belong in criminal court.”¹⁹⁹ One explanation for this bias is lack of adequate training for judges, regarding domestic violence, and therein also lies one solution.²⁰⁰ Judges in Washington, D.C. are required to attend formalized training before they accept an assignment to their new Domestic Violence Court.²⁰¹ This new system has positively improved the court system for domestic violence victims.²⁰²

However, the experiences of Black female victims of domestic violence are intersectional in nature.²⁰³ These women must deal with the implicit racial bias of judges and their unfortunate bias against domestic violence victims, all at once.²⁰⁴ There have been several solutions presented to solve the racial bias issue faced among judges.²⁰⁵ One of those solutions is employing the stereotype-incongruent model.²⁰⁶ This model seeks to rewire one’s brain to associate stereotyped groups with the opposite association, for example surrounding someone with negative biases against

193. *Id.* at 1209.

194. *Id.* at 1210 (finding that overall, 87.1% of White judges preferred White on the IAT and there was “no clear preference overall” amongst Black judges).

195. *Id.* at 1221.

196. Epstein, *supra* note 132, at 46.

197. *Id.* at 39.

198. *Id.* at 40; see *Report of the Special Joint Committee on Gender Bias in the Courts*, 20 U. BALT. L. REV. 1, 12 (1990) (explaining a judge’s comment to “flush out all these women who are lying”); see *A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts*, 72 N.D. L. REV. 1113, 1208 (1996) (quoting a judge telling a victim of domestic violence, “If you go back one more time I’ll hit you myself”).

199. Epstein, *supra* note 132, at 42.

200. *Id.* at 44.

201. *Id.*

202. See *id.* at 44-45 (finding that the instances of temporary custody awarded to victims has increased since the training has been instituted).

203. See generally Brown, *supra* note 19, at 164.

204. Cf. generally *id.*

205. Rachlinski & Johnson, *supra* note 191, at 1226.

206. See *id.* at 1221 (defining ‘stereotype incongruent model’ as exposure to groups of esteemed colleagues of the opposite race to counteract societal influences).

Black people with a group of highly esteemed, intelligent Black colleagues.²⁰⁷ Another proposed solution, once again, is judicial training on the matter.²⁰⁸ Considering that the average age of U.S. Circuit Court judges is 64.7 years, training can only be so effective for people with long lives and concrete biases and opinions of certain groups.²⁰⁹

C. *Due Process Argument for Black Female Victims of Domestic Violence*

The Due Process clause in the Fourteenth Amendment of the U.S. Constitution is meant to ensure states do not deprive their citizenry of, "life, liberty, or property, without due process of law."²¹⁰ All citizens are guaranteed equal protection in the eyes of the laws of the state.²¹¹ Judges, through common law, determine how these protections are to be carried out throughout the 50 states and beyond.²¹² In this respect, Black female victims of domestic violence are cut out of those promises.²¹³

With regard to domestic violence, the Due Process framework is *Town of Castle Rock v. Gonzales*.²¹⁴ Ms. Jessica Gonzales, the mother of three children, previously received a restraining order for herself and her children against her estranged husband.²¹⁵ On June 4, 1999 the estranged husband abducted the three children from Ms. Gonzales' home, as they were playing outside in the front yard.²¹⁶ Ms. Gonzales contacted the Castle Rock Police Department; the police told her they could not help her and to call back if they did not come back home by 10:00 P.M.²¹⁷ She called back at 10:00 P.M. and was then told to wait until midnight.²¹⁸ At every turn Ms. Gonzales was met with apathy, and ultimately her three daughters were all viciously murdered by her estranged husband.²¹⁹

Ms. Gonzales sued the Town of Castle Rock under a Due Process claim, holding that she had a property interest in the restraining order she was issued and that they deprived her of the benefit of that interest when they refused to respond to her complaints.²²⁰ The Supreme Court held that there was no entitlement held in restraining orders and because of that the officers were not violative of Ms. Gonzales' Due Process rights by failing to protect her and her children.²²¹ This decision in effect, strength-

207. *E.g., id.* at 1227.

208. *Id.* at 1228.

209. BARRY J. McMILLION, CONG. RESEARCH SERV., R43426, U.S. CIRCUIT AND DISTRICT COURT JUDGES: PROFILE OF SELECT CHARACTERISTICS 11 (2017).

210. U.S. CONST. amend. XIV § 1.

211. U.S. CONST. amend. XIV § 1.

212. U.S. CONST. amends. V, XIV.

213. *See generally* Emily C. Rutledge, COMMENT: Healing Jurisprudential 'Bruises': A Critique of the Failure of Due Process to Account for the Intersection of Race, Class, and Gender in the Post-Castle Rock Era, 53 HOW. L. J. 421 (2010).

214. *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

215. *Id.* at 751.

216. *Id.* at 753.

217. *Id.*

218. *Id.*

219. *Id.* at 754.

220. *Id.*

221. *Id.* at 772.

ened the discretion police officers have when deciding which domestic violence calls to respond to or not.²²²

This Due Process framework, as it pertains to domestic violence, is wholly unable to account for the intersectional issues that Black women face for several reasons:²²³ Black female victims have issues with police, as mentioned earlier in this comment, making it hard to place all trust for their protection in police's discretion.²²⁴ Additionally, Black female victims are at a higher risk of being victimized and revictimized and possibly killed in relationships that involve domestic violence.²²⁵ Along with this added risk, Black women are also more likely to be below the poverty threshold.²²⁶ Due process protects forms of property such as: professional licenses, public employment, and government benefits; these interests focus more on money and power, things prioritized by the predominantly, White male judiciary.²²⁷ The idea of Due Process is a construction that could be expanded to help the most vulnerable in our society.²²⁸

V. SOLUTIONS: WHAT CAN BE DONE?

A. *Re-education: Positively Changing the Narrative*

Battered Women's Syndrome (BWS) for years has taught the public and actors in the legal field that the "battered woman" should fit one specific list of characteristics and should react to abuse one specific way.²²⁹ This theory was largely based on White women and their behavior and reaction to abuse, with no woman of color in mind.²³⁰ There must be a massive shift in the thinking of the public, legal actors, and the like towards re-education.²³¹ Organizations such as Women of Color Network and the National Coalition Against Domestic Violence are leading re-education efforts through various platforms for the general public.²³² In the legal field, however, BWS is something that still taught in Family Law courses across the nation and because of that it is highly relied upon in domestic violence litigation.²³³ While it is not suggested that all education on this syndrome should cease, education of BWS should be followed with qualifying language, such as, not every victim fits this model or this

222. *Id.*; see Emily C. Rutledge, COMMENT: *Healing Jurisprudential 'Bruises': A Critique of the Failure of Due Process to Account for the Intersection of Race, Class, and Gender in the Post-Castle Rock Era*, 53 *How. L. J.* 421, 437 (2010).

223. Rutledge, *supra* note 213, at 424.

224. Jacobs, *supra* note 52, at 41.

225. NAT'L. CTR. FOR INJURY PREVENTION *supra* note 11, at 124.

226. *See id.*

227. Rutledge, *supra* note 213, at 455.

228. Rutledge, *supra* note 213, at 456.

229. WALKER, *supra* note 158, at 192.

230. Sharon Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 *UCLA WOMEN'S L. J.* 191, 194 (1991).

231. *Id.* at 195.

232. *National Coalition Against Domestic Violence*, NCADV (Nov. 19, 2018), <https://ncadv.org>; *Women of Color Network: Facts & Stats Collection*, Department of Justice (Nov. 19, 2018), https://www.doj.state.or.us/wp-content/uploads/2017/08/women_of_color_network_facts_domestic_violence_2006.pdf.

233. WALKER, *supra* note 158.

model is based on stereotypes of White female victims of domestic violence.²³⁴

Additionally, the pervasive media image of the Angry Black Woman had tainted in the minds of the public what a domestic violence victim can be.²³⁵ This issue, in recent years, has seen headway with impactful Black female roles in television and film to include: Kerry Washington, Viola Davis, and Lupita Nyong'o.²³⁶ These roles are important to re-educate not only the public but also those figures integral in an abused women's fight for justice: judges, prosecutors, and police officers.²³⁷

However, re-education of prosecutors and judges may be harder because of the amount of discretion these groups have in domestic violence litigation.²³⁸ Success has been seen with re-education amongst judges in Washington, D.C.²³⁹ The same can be said for prosecutors that are taught Survivor Theory, rather than BWS.²⁴⁰ If models like these, devoid of the flawed BWS theory, can work to paint a more accurate picture of who a victim is, why are programs like these not taught nationwide?²⁴¹ The face of the movement is White for politicized reasons, especially to gain traction as the movement began.²⁴² While that was a necessary evil in the movement's beginning, in 2020 that is not something that is a must.²⁴³ It is now universally accepted that domestic violence happens to every race of women—Asian, Black, Hispanic, White, and Multicultural.²⁴⁴ We must push for re-education so that all women can be protected from domestic violence, especially those who are the most harmed by the current framework: Black women.

B. *Resources for All, Not Just for the Few*

Black women are four times more likely to be victimized by intimate partners in the United States than their White counterparts.²⁴⁵ Unfortunately, this statistic does not translate to the availability of resources available to women who have been victims of domestic violence. Shelter services are undoubtedly designed around the needs of middle-class White women.²⁴⁶ For example, in a study of shelters in the Southern U.S. it was found that the majority of publicly funded shelters were located in predominantly White areas of town.²⁴⁷ It was also found that these shel-

234. *Id.*

235. Kerwin, *supra* note 38.

236. *Id.*

237. *Id.*

238. *See* Epstein, *supra* note 132, at 44-45.

239. *Id.*

240. *See* Goodmark, *supra* note 155, at 84-85, n.48 (describing the use of Survivor theory to successfully overcome expert testimony on BWS).

241. *Id.*

242. *Id.* at 89.

243. *Contra id.* (stating that to make the movement politically significant it needs to be attached to whiteness; in 2018, this can no longer be a true fact).

244. *See id.* (describing domestic violence as a universal problem).

245. CATALANO, *supra* note 16.

246. Denise A. Donnelly et. al., *White Privilege, Color Blindness, and Services to Battered Women*, 11 VIOLENCE AGAINST WOMEN 6, 11 (2005).

247. *Id.*

ters employ predominantly White staff and that the rules and social norms within the shelter reflected mainly White middle-class norms and expectations.²⁴⁸ As a result of this flawed design, Black women are less likely to utilize publicly funded services like shelters when they exit abusive relationships, leaving them open to risk.²⁴⁹

The resources that lower income Black female victims of domestic violence need are, undoubtedly, not the same resources that well-connected, middle class White woman might need to get out of a dangerous, abusive relationship.²⁵⁰ Shelters should strive to do their best to recognize the unique cultural needs of women, while not isolating them because of those specialized or heightened needs.²⁵¹ One size fits all programming does only one positive thing: calm the conscience of shelter directors that are often times too politically correct.²⁵² Black women suffer from issues like poverty and lack of literacy more than other women in the United States, and inclusive programming must recognize inequalities such as these.²⁵³

Lack of transportation is also an issue that disproportionately impacts Black women.²⁵⁴ Being mindful about these unique concerns will draw more Black women away from their violent relationships onto a path of healing and stability.²⁵⁵ With cultural acceptance, more Black women can be helped after they make the brave decision to leave their dangerous situations.²⁵⁶

C. Congressional Solutions: What VAWA Should Mean for all Domestic Violence Victims

For domestic violence victims, receiving help from police should not be predicated on the fear of being locked up themselves.²⁵⁷ Congress has the power to remove this fear from domestic violence victims' minds by eliminating the "primary aggressor" requirement found in VAWA.²⁵⁸ Additionally, Congress can ensure that the amount of funding, allocated to various domestic violence shelters and domestic violence organizations, goes to organizations that can help ALL domestic violence victims, not just those that can afford access.²⁵⁹

Unfortunately, amidst a government shutdown, for unrelated reasons, VAWA expired in late December 2018.²⁶⁰ Despite that expiration, it was

248. *Id.*

249. *Id.*

250. Goodmark, *supra* note 155, at 89.

251. Donnelly et. al., *supra* note 246, at 22.

252. *Id.* at 21.

253. Brown, *supra* note 18, at 149.

254. *Id.*

255. Donnelly et. al., *supra* note 246, at 23.

256. *Id.*

257. Jeltsen, *supra* note 168.

258. *Id.*

259. *Id.*

260. Elise Viebeck, *Violence Against Women Act expires with government shutdown*, THE WASHINGTON POST (Dec. 22, 2018), <https://www.washingtonpost.com/powerpost/violence-against-women-act-to-expire-with-government-shutdown/2018/12/21/b6>

picked up by the House and was passed in March 2019. VAWA has been stalled in the Senate since April 2019, with no action. Additionally, as a program that is funded by the Justice Department, the funding of what is left of the program is stalled, along with many other federally funded programs.²⁶¹ So while Congress could have made forward progress to aid ALL victims of domestic violence, this opportunity is now stripped with the death of VAWA.²⁶² At this point, members of the House of Representatives can propose a new VAWA-type bill—albeit without all of the damaging policies as the previous—or leave victims of domestic violence helpless.²⁶³

D. Lasting Solutions

Since the era of slavery in the United States, those in power have sought to “other” Black women.²⁶⁴ Placing them into categories such as Mammy, Jezebel, and most prolifically “Angry.” The other-ing of Black women has affected media’s portrayal of Black women; from film to television, Black women are depicted as overly aggressive people incapable of controlling their emotions.²⁶⁵ These images in media inform people’s opinions on the everyday Black women they encounter. More importantly, these images in media inform those in the legal field that encounter Black women through their profession. This especially affects Black women that are victims of domestic violence.

Police officers in particular, have a contentious history with Black women in America.²⁶⁶ This rocky history couple with the pervasively negative images of Black women in media, officers have a tendency to 1) not believe Black female victims of domestic violence, 2) think they are the aggressor in some way, or 3) refuse to help or report abuse of Black women when it is encountered.²⁶⁷ Police officers are also constrained by a system, which includes mandatory arrests and primary aggressor language, that disproportionately affects Black women involved in intimate partner violence.²⁶⁸

Prosecutors also have a checkered past interacting with Black women that have sought out the help of the criminal justice system.²⁶⁹ Prosecutors, similarly to police officers, are also constrained by the no-drop or

6f600a-0557-11e9-b5df-5d3874f1ac36_story.html?noredirect=on&utm_term=.87060a155afa.

261. *Id.*

262. *Id.*

263. *Id.*

264. Jacobs, *supra* note 52, at 45.

265. *Love & Hip-Hop: Atlanta* (VH1 Television broadcast 2012); *The Real Housewives of Atlanta* (True Entertainment broadcast 2008).

266. See generally Kate Nodjimbadem, *The Long, Painful History of Police Brutality in the U.S.*, SMITHSONIAN.COM (July 21, 2017), <https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/> (explaining the long history between police and Black Americans).

267. Michael R. Smith & Geoffrey Alpert, *Explaining Police Bias*, 34 CRIMINAL JUSTICE AND BEHAVIOR 1262, 1270 (Oct. 2007); POTTER *supra* note 10, at 178.

268. Jacobs, *supra* note 52, at 90.

269. *E.g. Fulgham v. State*, 46 Ala. 143, 146 (1871); Reva Siegel, “The Rule of Love”: Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2134 (June 1996).

soft no-drop policies of their district attorney's office, so even if a victim wishes to not continue on with the process, they can be forced to.²⁷⁰ Prosecutors also suffer from a bout of misinformation courtesy of the Battered Woman's Syndrome (BWS).²⁷¹ What Lenore Walker describes as "classic" symptoms of a battered women are only symptoms she observed from White female victims of domestic violence.²⁷² Black women tend to have different life experiences from their White counterparts, and therefore do not fit neatly into that model.²⁷³ Prosecutors have gone so far as to coach Black women to look sad and downtrodden and to not act like themselves, because anything other than themselves is what will make their case more believable to a jury and judge, under a BWS theory.²⁷⁴ This *mis*-education can be cured with some *re*-education explaining the different reactions battered women of all colors have.

The last actors considered were judges, the centerpiece of our judicial system in the United States. Since the dawn of the United States, Black women have gotten the short end of the stick, with regards to representation.²⁷⁵ It took until the 20th century for the first Black female judge to be appointed.²⁷⁶ Lack of representation means a shortage of decisions, in America's early history, that resulted in the favor of Black women's interests.²⁷⁷ Fast forward to the 21st century, and the outcome for Black women in the judiciary has not changed much, due in large part to, the bias judges hold against Black people coupled with the bias held for domestic violence victims.²⁷⁸ While there are Due Process arguments in favor of Black female victims of domestic violence, similarly to prosecutors, judges need to be completely re-educated about all aspects surrounding domestic violence.

This leaves one question: what are the solutions? Re-education for all actors involved tops the list as the most important step forward that the legal field needs to take. Understanding the history of Black women's interactions with police and prosecutors, the unique obstacles that Black women face, that others do not, and understanding that one size fits all theories, like BWS, do not hold true for all women, in all situations. Re-education also needs to occur on the mass public scale. Black women are not aggressive, opinionated, or promiscuous, but are much more.

Second, the availability of resources for those Black women that do exit violent relationships must be more open and more effective.²⁷⁹ Black

270. Hanna, *supra* note 140, at 1863.

271. Goodmark, *supra* note 155, at 84.

272. WALKER, *supra* note 158; Goodmark, *supra* note 155, at 82.

273. Goodmark, *supra* note 155, at 85 (2008).

274. See Goodmark, *supra* note 155, 86 (recounting April's experience with prosecutors encouraging her to be more "victim like").

275. BARRY J. McMILLION, CONG. RESEARCH SERV., R43426, U.S. CIRCUIT AND DISTRICT COURT JUDGES: PROFILE OF SELECT CHARACTERISTICS 5 (2017).

276. Blackburne-Rigsby, *supra* note 181, at 666.

277. E.g. *Dallas v. State*, 79 So. 690, 691 (Fla. 1918) (exemplifying the type of racist opinions of the late 19th and early 20th century, following Reconstruction).

278. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 380 (Jan. 1987).

279. Goodmark, *supra* note 155, at 89 (2008).

women, by and large, are one of the most poverty-stricken groups in the United States. Many Black women cannot relate to the convenience of having money to escape their abuser or even an education to be able to pull themselves up by the bootstraps.²⁸⁰ The resources that are available to battered women should include job training, adult education courses, and money management classes. Nonetheless, because the majority of publicly funded shelters are located in White, middle-class, communities in the United States, these services are almost never offered on-site.²⁸¹ Publicly funded shelters, especially, should be available and located where women of ALL races can utilize them, if needed.

Lastly, a re-authorization of VAWA would be a large solution to the issues Black women are facing in the domestic violence landscape. The way VAWA was previously written greatly affected Black women because of the mandatory arrest clause and the funding of shelters that did not cater to the needs of Black victims of domestic violence.²⁸² Therefore, a reauthorization of VAWA with the necessary removal of the mandatory arrest clause would be a solution that could free up police officers and prosecutors from that requirement.

These solutions are feasible and realistic for the American people to accomplish. The American people cannot afford to turn a blind eye to the way those most vulnerable in its society are being treated because that can translate to those in the majority. Despite the United States' history of injustice and unequal treatment of minorities in general, there have been positive strides to see all people as equal. These positive strides have been met with negative setbacks, and once again as a society we find ourselves in the same position we started.

CONCLUSION

This leads back to the question posed in the title of this piece: *why are we so angry?* Black women are angry because they are not heard. They are labeled. They are continuously victimized. They are never part of the narrative. They are pushed into the margins of the domestic violence prototype and written off as a group of people that cannot possibly be victims and that, as a result, cannot possibly be believed or helped. Police officers are part of the problem. Prosecutors are part of the problem. Judges are part of the problem. Society as a whole is the problem.

So long as society continues to "other" Black women and their struggles, experiences, and stories, the status quo will remain. The status quo, with regard to domestic violence, is killing Black women. It is silencing Black women. It is keeping Black women in their designated "box" and not allowing for any variance in personality or appearance. As Audre Lorde put it, "If I didn't define myself for myself, I would be crunched into other people's fantasies for me and eaten alive."²⁸³ For the Black fe-

280. Brown, *supra* note 18, at 149.

281. Donnelly et. al., *supra* note 246, 11.

282. Violence Against Women Act (VAWA), Pub. L. No. 103-322, Tit. IV, 108 Stat. 1796 (1994); See Jacobs *supra* note 52, at 88 (explaining how the passage of VAWA negatively affected Black women by requiring dual arrest).

283. Audre Lorde, Learning from the 60s (Feb. 1982).

male victim of domestic violence, these factors and stereotypes combine and intersect to reveal an almost hopeless outlook for the future. The original question then becomes: Wouldn't you be angry, too?

