

2017

## Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman


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### Repository Citation

Norwood, Kimberly Jade and Jones, Trina, "Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman" (2017). *Scholarship@WashULaw*. 593.  
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# Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman

Trina Jones\* & Kimberly Jade Norwood\*\*

*ABSTRACT: Black women in the United States are the frequent targets of bias-filled interactions in which aggressors: (1) denigrate Black women; and (2) blame those women who elect to challenge the aggressor's acts and the bias that fuels them. This Article seeks to raise awareness of these "aggressive encounters" and to challenge a prevailing narrative about Black women and anger. It examines the myriad circumstances (both professional and social) in which aggressive encounters occur and the ways in which these encounters expose gender and racial hierarchies. It then explores how the intersectional nature of Black women's identities triggers a particularized stereotype or trope of the "Angry Black Woman" and explains how this trope is often invoked in aggressive encounters to deflect attention from the aggressor and to project blame onto the target. After discussing the harmful effects of aggressive encounters and the absence of effective legal mechanisms to address them, the Article sets forth tangible steps that individuals can take to minimize their incidence.*

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## I. INTRODUCTION

May 24, 2016, approximately 11:00 a.m. CDT (as posted on Facebook by Professor Norwood):

So, I go to Home Depot today to get some paint. When I get to the paint station, there is a couple sort of hanging back between the aisle and the station. Another guy is at the station. I say “Hi,” and ask him if he has been helped. He says “Yes, thank you, but you should check with that couple over there.” What????????????

Yeah. He thought I worked at Home Depot despite the fact that (1) I DID NOT have on one of those bright ass orange vests, and (2) I LOOKED like the OTHER people in Home Depot: t-shirt and jeans. Ok. I smile. I whisper to him, “I don’t work here; no need to check with them. . .”

Then another man comes over. He looks at me and the dude I am standing behind. He proceeds to stand at a different part of the station. Paint person arrives. He helps the guy I originally spoke with. Then he asks, “Who is next?” The couple says nothing. I raise my hand to say me, and the guy last on the scene says “No, I’m next.”

So, I say, “Wait, not true. I was . . .” THEN DUDE COMES OVER TO ME, while I am in MIDSentence, GETS IN MY FACE—he is a white male, both older and ALOT shorter than me—and YELLS IN MY PERSONAL SPACE that he was there first and I need to wait my turn. Wait, did you read that? GETS IN MY FACE????????? YELLS????? MY????????? PERSONAL????????? SPACE?????????????????

At this point in the story, I won’t share the exact words or tone or volume of my response because I don’t want to lose some of you FB fam who think so highly of me . . . but suffice it to say, I DO owe some context (and maybe a piece of apology) to all in West County who unwittingly became a part of my response. . . .

I will say that I demanded to see a manager. Poor sales person. He was like, “I’m sorry! I didn’t know.” I assured him that I had no beef with him. He did the right thing by asking who was next. The problem was with the customer. Indeed, what should be done in those situations? Maybe you call for backup immediately. I don’t know. What I do know is that I was NOT about to be ignored and made to wait. I know that. So, after demanding to see a manager, I decided, hell with this, I am leaving.

As I am about to walk away, crazy man comes back near me and says: “Look! I got here 20 minutes ago! No one was here so I got other stuff I needed and now I’m back so I was here and I am next!”

Read that sentence again. “Look! I got here 20 minutes ago! No one was here so I got other stuff I needed and now I’m back so I was here and I am next!”

WHAT????? WHO in the world can LEAVE a line, go get other shit, and then come back and tell the people who were not there before that they were there first?????????????

WOW. Kicker: He adds: “I didn’t even see you. You were NOT here.”

Hmmm. . . I didn’t even see you.

So, (1) he looked at me when he arrived. I KNOW he saw me. (2) I am just under 6 feet tall. Tall girl! (3) I have beautiful chocolate skin. Beautiful! (4) I have beautiful locs (thanks Michelle Yikhenah Jamillah Borland). Locs! (5) I have really powerful eyes! Powerful! (6) I am a “healthy” child as my mom would say. Big! And DESPITE ALL THAT, he didn’t SEE me? Really?

So - Yes, an angry black woman was in Home Depot on Manchester in West County today. BUT she had a RIGHT to be angry. . . And please, don’t write a comment telling me that I spent more time on this post than it is worth. I get to decide what parts of my life I want

to share. This is a message I wanted my FB fam to know and it is therapeutic for me to write. Not a waste of time for me.<sup>1</sup>

May 24, 2016, approximately 7:30 p.m. EDT (Experienced and recounted by Professor Jones):

On the same day as Professor Norwood's encounter in Home Depot, I was flying back to my home in North Carolina from Atlanta. I was well rested, but a bit travel weary as my travel day had begun earlier in the Dominican Republic. I am a frequent traveler and had chosen a bulkhead seat for the extra legroom. (Bulkhead seats are on the first row in each cabin of an airplane. As there is either a wall or empty space immediately in front of these seats, they lack floor space for the storage of personal items like a purse. One must store these items in overhead compartments during takeoff and landing.) As I entered the economy plus section of the cabin, I immediately noticed the limited storage space in overhead bins and that the space above my seat was occupied by safety equipment. I therefore placed my bag in the overhead bin that was diagonally across the aisle and one row ahead of my seat.<sup>2</sup> Enter trouble in the form of a White businessman, in a designer suit, and fancy shoes. He appeared to be in his late 30s or early 40s. Businessman demands that I move my bag so that his companion (note not him, but his companion) could place his travel bag in the compartment my bag was occupying. He curtly tells me to place my bag in the compartment behind my seat as there was more space in the rear of the plane. I pause in the process of sitting, while he is glaring at me and waiting with the expectation that I would immediately comply with his demand. I then quietly, but firmly say to him, "I prefer not to have my handbag behind me." (This preference exists not only because I like to keep an eye on my personal effects, but also because it is more difficult to exit a plane if your luggage is located behind you.) Instead of making a scene, however, I move my bag. In the process, I notice Businessman (who was still standing facing the rear of the cabin) looking at travelers in the rows immediately behind him with a long-suffering gaze, and rolling his eyes as if to say "this stupid, inexperienced woman." At this point, I'm fuming. I'm mad at Mr. Arrogant because of his condescending manner. But I'm also mad at myself because I moved the dang bag and did not deliver a lecture on patriarchy (assumptions of male superiority and female inferiority), implicit bias, intersectionality, etc. As I settled in for the flight, I was stunned by his sheer presumption and I struggled to recapture my Caribbean-inspired joie de vivre. I kept asking myself: Would he have made the request had I been a White male business

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1. Kimberly Jade Norwood, FACEBOOK (May 24, 2016, 11:00 AM).

2. On this particular plane, bulkhead seats on the left side of the plane faced a wall, while the right bulkhead seats faced empty space reserved for emergency exits.

traveler – or any White male? a Black man? a White woman? Maybe. But would he have made the request in the same demanding and patronizing fashion – or would he have been too threatened by a Black man and too solicitous of a White woman to dare suggest that either was so beneath him that they were not entitled to a modicum of respect?<sup>3</sup>

This Article is about the invisibility and dehumanization that Black<sup>4</sup> women experience on a daily basis and the psychological and material harms that result. It is about how society does not recognize these injuries and therefore leaves Black women without any form of redress. It is about the complexity of that fleeting moment when Black women must decide whether and how to challenge another's assumptions about Black women's status and "place." It is about the consequences of exercising voice, whether in angry or moderated tones, and how that exercise can render one hyper visible and threatening. It is about the phenomenon of displaced blame and how any response to an aggressive encounter immediately risks deflecting attention from the aggressor and placing blame squarely on the target. It is about how in an instant, a reasonable Black woman, who is just going about her business, gets transformed into the trope of the Angry Black Woman. It is about intersectionality and what Black women, because they are Black and female, experience at the hands of White men, Black men, and White women. It is about White fragility and how very far the United States has to go to escape the shackles of patriarchy and White supremacy.

As used herein, aggressive encounters are bias-filled interactions in which aggressors: (1) denigrate Black women; and (2) blame women who elect to challenge the aggressor's acts and the bias that fuels them. This term captures both micro-aggressive as well as macro-aggressive behavior.<sup>5</sup> Some aggressive

3. Trina Jones, Experienced on Delta Flight 1753 in seat 20A from Atlanta, Ga. to Raleigh-Durham, N.C. (May 24, 2016).

4. This Article uses the word Black instead of African American. African American generally refers to Black people in the United States who trace their ancestry to persons who were enslaved and forcibly brought to this country from the African continent. Black is a more universal term, including not only African Americans, but any brown descendent of the African diaspora, regardless of whether they were born in the United States or in some other place (e.g., Brazil, the Caribbean, the African continent). Black thus includes persons described as Colored, Negro, African American, persons of color, etc.

5. For a definition of these terms, see Anthony V. Alfieri, *Community Prosecutors*, 90 CALIF. L. REV. 1465, 1503 (2002). Professor Alfieri notes:

Critical race theory delineates two kinds of aggression: micro and macro. Racial aggression differs from racial violence in its sparing use of material force and physicality. Exerted by individuals and at times groups, microaggression aims chiefly at the individual person of color: his or her state of mind, language, and daily act of being in the world. Macroaggression, in contrast, points to the collective community of color. Enacted by groups, often in concert with the state, or by the state itself, macroaggression unleashes cultural, economic, and political forces of harm. Those forces may cause cultural degradation, economic hardship, or political disenfranchisement.

*Id.*; see also Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOLOGIST 271, 271 (2007) ("Racial microaggressions are brief and

encounters, like those described earlier in the Home Depot and airplane examples, are initiated without Black women doing anything other than just being. Other aggressive encounters occur when Black women speak in opposition to an injustice that has been done to another person (e.g., object to the unfair treatment of a family member). In both scenarios, aggressors respond by shifting attention from their underlying acts and deflecting blame to Black women.

This Article seeks to raise awareness of aggressive encounters and to change the narrative concerning Black women and anger. The analysis proceeds as follows: Part II explains why this Article focuses on Black women as opposed to other targets of aggressive encounters. Part III examines the myriad circumstances (both professional and social) in which aggressive encounters occur and then analyzes the ways in which these encounters expose gender and racial hierarchies. Part IV explores how the intersectional nature of Black women's identities triggers a particularized stereotype or trope of the "Angry Black Woman." Part V examines White fragility, explains how it factors into the moment when Black women must decide whether to respond to aggressive acts, and analyzes the ways in which the exercise of voice by Black women leads to psychological projection and displaced blame. Part V then discusses some of the very real and harmful effects of aggressive encounters. Part VI explores implications of this analysis and sets forth possible solutions.

## II. WHY FOCUS ON BLACK WOMEN? THE NECESSITY OF INTERSECTIONAL ANALYSES

Black women are not the only targets of aggressive encounters. White women and Black men, among others, also experience macro- and micro-aggressive behaviors. Without seeking to diminish the significance of White women's and Black men's experiences, this Part explains why Black women merit separate analysis. In short, this Part explains that Black women's realities and the stereotypes to which they are subject overlap with, but sometimes differ from, those of their allies in struggles for racial and gender justice. Thus, conflating the experiences of Black women with those of Black men or White women—or assuming that Black women's concerns will be addressed in one-dimensional discussions of race or gender—renders the harms that Black women face invisible.<sup>6</sup>

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commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color.”).

6. As Professor Paulette Caldwell has noted:

[B]lack women's invisibility serves to blind all women and all blacks to the interactive relationship between race and gender, leads to the development of legal theories and social policies directed at either race or gender without fully considering the implications of such theories and policies, and ultimately assures the perpetuation of domination on the basis of race and gender for all women and members of subordinated races.

## A. HISTORICAL ERASURE

For centuries, Black women have pointed to the ways in which they are differently situated from Black men and White women. For example, in 1851, Sojourner Truth—a Black female civil rights advocate—disrupted and ultimately saved a Women’s Rights Convention, when she famously asked “Ain’t I a Woman?”<sup>7</sup> The White suffragists who had convened the conference feared that their message would be eclipsed or harmed if it were intertwined with abolitionist efforts.<sup>8</sup> Indeed, Sojourner’s presence set off a wave of panic and nervous energy amongst the assembly, with several women anxiously beseeching the chair of the convention, Frances Dana Gage, to prevent Sojourner from speaking.<sup>9</sup> After sitting silently and listening to White women describe the discrimination to which they were subject, and more importantly, when White male theologians assailed these women, Sojourner stood and shared the following:

Well, children, where there is so much racket there must be something out of kilter. I think that ‘twixt the negroes of the South and the women at the North, all talking about rights, the white men will be in a fix pretty soon. But what’s all this here talking about?

That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain’t I a woman? Look at me! Look at my arm! I have ploughed and planted, and gathered into barns, and no man could head me! And ain’t I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain’t I a woman? I have borne thirteen children, and seen most all sold off to slavery, and when I cried out with my mother’s grief, none but Jesus heard me! And ain’t I a woman?<sup>10</sup>

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Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 395.

7. The story of what transpired at this Convention is recounted in several places, with different spellings used to capture Sojourner’s words. This Article uses language set forth on the Sojourner Truth Memorial website. *Sojourner’s Words and Music*, SOJOURNER TRUTH MEMORIAL, <http://sojournertruthmemorial.org/sojourner-truth/her-words> (last visited May 2, 2017) (“‘Ain’t I a Woman?’ as recounted by Frances Gage, in 1863”); see also NELL IRVIN PAINTER, *SOJOURNER TRUTH: A LIFE, A SYMBOL* 164–75 (1996) (using different spellings).

8. PAINTER, *supra* note 7, at 166 (recounting events at the Convention as told by Frances Dana Gage). Painter notes, however, that Gage may have overemphasized the anti-black sentiment in her account. *Id.* at 169.

9. *Id.* at 166–67.

10. SOJOURNER TRUTH MEMORIAL, *supra* note 7. Sojourner also offered a powerful rebuttal (reportedly with some success) to the theologians’ assertions that women were too mentally feeble to vote, and inferior to men because God/Jesus was a man. Sojourner observed:

Then they talk about this thing in the head; what’s this they call it? [member of audience whispers, “intellect”] That’s it, honey. What’s that got to do with women’s



In this powerful speech, Sojourner not only proclaimed Black women's womanhood, she also called attention to Black women's history of oppression and the fact that in key respects this history differed from that of White women. Unlike White women, who allegedly had been placed on a pedestal (which was revealed to be a cage)<sup>11</sup> and who had been assumed too delicate to exercise basic civil rights like the right to vote, Sojourner noted that Black women had plowed and planted and endured the ravages of slavery.<sup>12</sup> Yet, they too were denied the right to vote. In short, Sojourner revealed that arguments used to subordinate White women were different from and at times contradicted by arguments that were used to subordinate Black women. This formerly enslaved woman and itinerant preacher clearly saw the intersectional nature of women's experiences and the ways in which recognition of this multidimensionality could counter arguments made to oppress all women (e.g., Black women's experiences in 1851 countered the narrative that women were too delicate to exercise basic rights of citizenship). In her vulnerability, Sojourner exercised her powerful voice to expose and to resist: (1) the prioritization of White women's needs; and (2) the assumption that White women's experiences represent the experiences of all women, when in fact they do not.<sup>13</sup>

A similar challenge to the erasure of Black women's history, the prioritization of White women's objectives, and the assumption of a universal women's experience has been made by women of color in the academy. In 1982, in a powerful collection of essays entitled *All the Women Are White, All the Blacks are Men, But Some of Us are Brave*,<sup>14</sup> Gloria Hull and other Black feminists

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rights or negroes' rights? If my cup won't hold but a pint, and yours holds a quart, wouldn't you be mean not to let me have my little half measure full?

Then that little man in black there, he says women can't have as much rights as men, 'cause Christ wasn't a woman! Where did your Christ come from? Where did your Christ come from? From God and a woman! Man had nothing to do with Him.

If the first woman God ever made was strong enough to turn the world upside down all alone, these women together ought to be able to turn it back, and get it right side up again! And now they is asking to do it, the men better let them.

*Id.*

11. As Justice Brennan famously noted, the "romantic paternalism" justification for sex discrimination put White women in a cage, rather than on a pedestal. *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) ("Traditionally, [sex] discrimination [in the United States] was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage.").

12. PAINTER, *supra* note 7, at 167.

13. These challenges not only affected first-wave feminism, they also plagued second-wave feminism. For a discussion of the ways in which first- and second-wave feminism failed to address the specific needs of women of color see ANGELAY DAVIS, *WOMEN, RACE & CLASS* 110–26 (1981); ESTELLE B. FREEDMAN, *NO TURNING BACK: THE HISTORY OF FEMINISM AND THE FUTURE OF WOMEN* 91–93 (2002); PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 159–70, 299–311 (1996); and Kirsten West Savali, 'When and Where I Enter': *The Racist Expectations of Whites-Only Feminism*, *ROOT* (Apr. 23, 2016, 3:00 AM), <http://www.theroot.com/when-and-where-i-enter-the-racist-expectations-of-whit-1790855079>.

14. See generally *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES* (Gloria T. Hull et al. eds., 1982).

examined how discussions of gender and race often exclude the voices of Black women. In other words, the essays explore how Black women are rendered invisible in both dialogues about race and dialogues about gender.<sup>15</sup>

In the legal academy, Professors Kimberlé Crenshaw and Angela Harris have offered similar critiques to Hull. In her seminal article, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*,<sup>16</sup> Professor Crenshaw critiques the “tendency to treat race and gender as mutually exclusive categories of experience and analysis.”<sup>17</sup> She notes:

[D]ominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. . . . [T]his single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.

This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. . . . [T]his focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.<sup>18</sup>

Importantly, Professor Crenshaw maintains that Black women’s experiences are not merely additive (Black men’s experience + White women’s experience = Black women’s experience). Rather, Crenshaw’s insight is that race and gender are always interconnected and never exist as separately distinct, disaggregated identities.<sup>19</sup>

15. The anthology provided materials for courses in the nascent field of Black women’s studies. In speaking to the need to study Black women’s experiences, Hull notes that “[w]omen’s studies courses . . . focused almost exclusively upon the lives of white women, [and] Black studies, which was much too often male-dominated, also ignored Black women.” *Id.* at xx.

16. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

17. *Id.* at 139.

18. *Id.* at 140 (emphasis added).

19. Other scholars have employed different terminology in critiquing a single-axis framework. See, e.g., Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. REV. 1467, 1518 (2000) (describing the problem as one of “compound discrimination”); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 633–34 (1997) (employing the term “multidimensionality”); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297, 297–99 (1992) (employing the phrase “multiple consciousness”).

Professor Angela Harris has added to the analysis by pointing out that there is nothing “essential” about gender that causes all women to share the same experience of sexism. There is no monolithic or universal “women’s experience.” Rather, “sexism” is always mediated by racism, classism, homophobia, etc.<sup>20</sup> Harris explains:

[T]he result of th[e] tendency toward gender essentialism . . . is not only that some voices are silenced in order to privilege others (for this is an inevitable result of categorization, which is necessary both for human communication and political movement), but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of “We the People”—among them, the voices of black women.<sup>21</sup>

Harris extends her anti-essentialism critique to race, noting that “[a] corollary to gender essentialism is ‘racial essentialism’—the belief that there is a monolithic ‘Black Experience,’ or ‘Chicano Experience.’”<sup>22</sup> Although the majority of this Subpart has examined gender essentialism, interrogating racial essentialism is equally important because society often overlooks Black women’s contributions to racial justice struggles.<sup>23</sup>

#### B. CONTEMPORARY EXAMPLES

The above analysis shows that for centuries mainstream feminism has asked Black women to put aside race and to focus on gender;<sup>24</sup> at the same time, movements for racial equality have asked Black women to put their concerns about sexism on hold until racial justice is achieved.<sup>25</sup> While

20. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (defining “gender essentialism” as “the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience”).

21. *Id.*

22. *Id.* at 588.

23. See GIDDINGS, *supra* note 13, at 183–97, 302 (discussing the complex relationship of Black men and women in struggles for racial justice); Tarana Burke, *History Repeats Itself: The Dangers of Erasing Women from the Movement*, ROOT (Oct. 22, 2016, 6:15 AM), <http://www.theroot.com/history-repeats-itself-the-dangers-of-erasing-women-fi-1790857379> (discussing history’s failure to acknowledge Black female leaders of the Civil Rights Movement like Diane Nash, Marie Foster, Ella Baker, Fannie Lou Hamer, and Johnnie Carr).

24. See Sherri Williams, *Historic Exclusion from Feminist Spaces Leaves Black Women Skeptical of March*, NBC NEWS (Jan. 21, 2017, 9:24 AM), <http://www.nbcnews.com/news/nbcblk/decades-exclusion-leave-black-women-skeptical-womens-march-n710216> (“[T]he roots of the early feminist movement were entrenched in disregard for black women. Suffrage leader Susan B. Anthony infamously said, ‘I will cut off this right arm of mine before I will ever work or demand the ballot for the Negro and not the woman.’”).

25. See Cherise Charleswell, *Herstory: The Origins and Continued Relevancy of Black Feminist Thought in the United States*, HAMPTON INST. (Feb. 27, 2014), <http://www.hamptoninstitution.org/black-feminist-thought.html> (“All too often [during the Black Liberation Movement and Women’s Movement], ‘black’ was equated with black men and ‘woman’ was equated with white women; and the end result of this was that black women were an invisible . . .”). Debate surrounding the controversial nomination of Judge Clarence Thomas to the United States Supreme Court illustrates this point. See Emma Coleman Jordan, *Race, Gender, and Social Class in the Thomas Sexual Harassment Hearings: The*

understanding the need for solidarity, Black women have fought against the disaggregation of their beings and the conflation of their experiences with those of Black men and White women. This struggle continues today, as the following sample of recent incidents illustrates.

Black women's articulated fear, pre-election 2016, that a Hillary Clinton presidency would ignore the concerns of women of color.<sup>26</sup>

Black women's shock and consternation, in the days after the 2016 U.S. presidential election, upon learning that a majority of White women abandoned Hillary Clinton, feminism, and anti-misogynistic efforts, among other things, and voted for Donald Trump.<sup>27</sup> The voting data reinforced some Black women's fears that White women would prioritize White racial hegemony not only over sisterhood, but also over other equality objectives (e.g., fighting homophobia, racism, religious inequality, abuse of disabled persons).<sup>28</sup>

The need to create #SayHerName in order to show that women of color are also subject to violence at the hands of law enforcement.<sup>29</sup>

*Hidden Fault Lines in Political Discourse*, 15 HARV. WOMEN'S L.J. 1, 7–23 (1992) (analyzing class, race, and gender conflict during then-Judge Thomas's hearing).

26. See Britni Danielle, *What Do Black Women Really Think About Hillary Clinton's Nomination?*, EBONY (June 9, 2016), <http://www.ebony.com/news-views/hillary-clinton-nomination> (collecting Black women's social media reactions to Hillary Clinton's presidential nomination); June Eric-Udori, *Why It's OK for Black Women to not "Be With" Hillary Clinton*, REVELIST (Oct. 27, 2016), <http://www.revelist.com/real-talk/hillary-clinton-black-women/5451> (describing why Black women might be concerned about future Clinton policies).

27. Fifty-three percent of White women voted for Donald Trump; 94% of Black women voted for Hillary Clinton. Charles D. Ellison, *Black Women Were the Only Ones Who Tried to Save the World Tuesday Night*, ROOT (Nov. 9, 2016, 4:00 PM), <http://www.theroot.com/black-women-were-the-only-ones-who-tried-to-save-the-wo-1790857646>; see also Shamira Ibrahim, *Once Again, Black Women Did the Work White Women Refused To*, VSB (Nov. 9, 2016), <http://verysmartbrothas.com/once-again-black-women-did-the-work-white-women-refused-to> (noting that "91 percent of Black Women with a college degree voted for [Hillary Clinton]").

28. Ibrahim, *supra* note 27.

29. See #SayHerName: *Resisting Police Brutality Against Black Women*, AFR. AM. POL'Y F., <http://www.aapf.org/sayhername-report> (last visited May 2, 2017) (describing #SayHerName "as a resource for the media, organizers, researchers, policy makers, and other stakeholders" to highlight the violence committed by law enforcement against Black women and girls). Although Black Lives Matter was founded by three progressive Black women who seek to examine police violence through an intersectional lens (e.g., by examining *all* Black lives), public attention has focused primarily on the high-profile killing of Black men. See *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited May 2, 2017) (stating that Black Lives Matter "goes beyond the narrow nationalism that can be prevalent within Black communities, which . . . keep[s] straight cis Black men in the front of the movement while our sisters, queer and trans and disabled folk take up roles in the background or not at all"); Lilly Workneh, *#SayHerName: Why We Should Declare that Black Women and Girls Matter, Too*, HUFFINGTONPOST (May 21, 2015), [http://www.huffingtonpost.com/2015/05/21/black-women-matter\\_n\\_7363064.html](http://www.huffingtonpost.com/2015/05/21/black-women-matter_n_7363064.html) (reporting that several activist organizations felt that the Black Lives Matter movement "ha[d] become especially focused on the lives of black men, with women and girls seemingly an afterthought").

Actress Julie Delpy's suggestion that sexism is worse than racism in the entertainment business, a suggestion that ignores that all women are not White and all Blacks are not men.<sup>30</sup>

The media's erasure of the accomplishments of Venus and Serena Williams, who have won multiple Olympic gold medals (among other championships) in tennis.<sup>31</sup>

The particularized form of gender-race-class norming directed at Black women and girls through regulation of their hairstyles and appearance. Problematic actions range from school and employment regulations prohibiting natural hairstyles,<sup>32</sup> to

30. During the 2016 debate over racism in Hollywood, Delpy stated:

Two years ago, I said something about the Academy being very white male, which is the reality, and I was slashed to pieces by the media. . . . It's funny — women can't talk. I sometimes wish I were African American because people don't bash them afterward. . . . It's the hardest to be a woman. Feminists is something people hate above all. Nothing worse than being a woman in this business. I really believe that.

Sharon Waxman, *Julie Delpy Says Hollywood Dumps on Women Most: 'I Sometimes Wish I Were African American,'* WRAP (Jan. 22, 2016, 2:33 PM), <http://www.thewrap.com/julie-delpy-hollywood-dumps-women-sometimes-wish-african-american>; see Erin Keane, *White Hollywood Meltdown: Now Julie Delpy Says It's Harder to be a Woman than to be Black in Hollywood,* SALON (Jan. 22, 2016, 5:31 PM), [http://www.salon.com/2016/01/22/julie\\_delpy\\_says\\_nothings\\_harder\\_than\\_being\\_a\\_woman\\_in\\_hollywood\\_i\\_sometimes\\_wish\\_i\\_were\\_african\\_american\\_because\\_people\\_dont\\_bash\\_them](http://www.salon.com/2016/01/22/julie_delpy_says_nothings_harder_than_being_a_woman_in_hollywood_i_sometimes_wish_i_were_african_american_because_people_dont_bash_them). Where do Black women fit in Delpy's frame? Are they just Black and not women? Does their Blackness insulate them from the ravages of sexism in Hollywood? One suspects that Viola Davis, Halle Barry, Angela Bassett, and Taraji P. Henson among others would argue that the combination of race and gender are deeply limiting. TARAJI P. HENSON, *AROUND THE WAY GIRL* ch. 11 (2016); Jessica Goldstein, *Why Viola Davis Won't Stop Talking About Racism in the Entertainment Industry,* THINKPROGRESS (Sept. 4, 2015), <https://thinkprogress.org/why-viola-davis-wont-stop-talking-about-racism-in-the-entertainment-industry-7b5b81692c56>; Taylor Gordon, *Gabrielle Union Says Racism in Hollywood Blocks Black Women from 'Smart' Comedic Roles,* ATLANTA BLACK STAR (Feb. 9, 2015), <http://atlantablackstar.com/2015/02/09/gabrielle-union-says-racism-hollywood-blocks-black-women-smart-comedic-roles>; Julian Kimble, *15 Years After Halle Berry's Historic Oscar Win, Black Actresses Remain Afterthoughts,* COMPLEX (Feb. 21, 2017), <http://www.complex.com/pop-culture/2017/02/halle-berry-oscar-win-racism-sexism-hollywood>.

31. After winning a gold medal at the Rio Olympics, the media praised Andy Murray for being the first person to win two Olympic medals in tennis. Murray promptly corrected the media's error by noting, "I think Venus and Serena [Williams] have won about four each." Marie Solis, *Andy Murray Was Lauded for Having Achieved a "First" the Williams Sisters Already Claimed,* MIC (Aug. 15, 2016), [https://mic.com/articles/151530/andy-murray-was-lauded-for-having-achieved-a-first-the-williams-sisters-already-claimed?utm\\_source=policymicFB&utm\\_medium=main&utm\\_campaign=social#\\_QAwHAcYXr](https://mic.com/articles/151530/andy-murray-was-lauded-for-having-achieved-a-first-the-williams-sisters-already-claimed?utm_source=policymicFB&utm_medium=main&utm_campaign=social#_QAwHAcYXr). Interestingly, in reporting on the media's mistake, the press emphasized the erasure of "women's athletic achievements"—and overlooked that Venus and Serena are *Black* women. *Id.*

32. See, e.g., *Equal Emp't Opportunity Comm'n v. Catastrophe Mgmt. Sols.*, No. 14-13482, 2016 WL 7210059, at \*1 (11th Cir. Dec. 13, 2016) (finding that an employer's decision to rescind an offer of employment unless a Black female applicant cut her locs before beginning employment was not an unlawful act of race discrimination under Title VII); *Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229, 231 (S.D.N.Y. 1981) (finding that American Airlines' policy against braided hairstyles did not discriminate on the basis of race, sex, or race and sex); Lasha, *Opinion, Black Girls Shouldn't Have to Protest to Wear Their Natural Hair,* EBONY (Aug. 30, 2016), <http://www.ebony.com/news-views/pretoria-girls-high-protest#axzz4J4LNQq8H>; Allison Ross, *Attica Scott: Hair Policy 'Stinks of Racism,'* COURIER-J. (July 29, 2016, 3:01 PM), <http://www.courier-journal.com/story/news/education/2016/07/28/attica-scott-hair-policy-institutional-racism/87656240> (describing a school's

comments about the hair of Black athletes and the children of celebrities.<sup>33</sup> The problem was underscored recently in Bill O'Reilly's comment that he "didn't hear a word [Congresswoman Maxine Waters said while speaking on the floor of the House because he] was looking at the James Brown wig."<sup>34</sup>

Social media postings and musings subjecting Michelle Obama's bare arms to more ridicule than Melania Trump's nude body.<sup>35</sup>

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dress code that specifically prohibited dreadlocks, cornrows and twists, which are hairstyles favored by Black girls with natural hair). For detailed discussion of the politics of Black hair, see generally Caldwell, *supra* note 6; and Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079 (2010).

33. In both the 2012 Olympics and the 2016 Olympics, gymnast Gabby Douglas was attacked by both Black and White women who asserted that her hair was too "nappy" and "unkempt," among other things. Adele Jackson-Gibson, *Black Athletes and Hair: Gymnasts and the Controversy Caused by Gabby Douglas' Hairdo*, EXCELLE SPORTS (Feb. 1, 2017), <http://www.excellesports.com/news/gymnasts-gabby-douglas-hair/>; Kyra Kyles, *From Blue Ivy to Alicia Keys: Stop Policing Black Women's Looks*, EBONY (Sept. 2, 2016), <http://www.ebony.com/life/alicia-keys-blue-ivy#axzz4J7bfcLTJ>; see also Jia Wertz, *Grown Adults Are Calling Blue Ivy Ugly on the Internet*, HUFFINGTON POST (Sept. 14, 2016), [http://www.huffingtonpost.com/entry/grown-adults-are-calling-blue-ivy-ugly-on-the-internet\\_us\\_57c83f1ee4b06c750dd8e510](http://www.huffingtonpost.com/entry/grown-adults-are-calling-blue-ivy-ugly-on-the-internet_us_57c83f1ee4b06c750dd8e510) (recording the comments of women, presumably of all races and ethnicities, who had viciously attacked the appearance of Beyoncé's five-year-old daughter on the internet).

34. Amy B. Wang, *Maxine Waters Swings Back at Bill O'Reilly: I'm a Strong Black Woman and I Cannot be Intimidated*, WASH. POST (Mar. 29, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/03/28/bill-oreilly-compared-a-black-congresswomans-hair-to-a-james-brown-wig/?utm\\_term=.3ce2a1bgdd4e](https://www.washingtonpost.com/news/the-fix/wp/2017/03/28/bill-oreilly-compared-a-black-congresswomans-hair-to-a-james-brown-wig/?utm_term=.3ce2a1bgdd4e). O'Reilly's comment prompted Dr. Julianne Malveaux to observe:

When men don't get their way, their response is, all too often, to denigrate a women's looks, her hair, or her virtue. Thus Bill O'Reilly claims that he was "joking" when he said he was too busy looking at Congresswoman Maxine Waters "James Brown wig" to hear what she was saying. Of course, he apologized, but that was a pretty low blow, and inaccurate, as well. But consistent with the way some R's talked about Michelle Obama's body, and the way WH Press Secretary fussed at journalist April D Ryan for shaking her head. I've not heard him deal with anyone else's body language, nor have I heard O'Reilly talk about anyone else's hair. What is wrong with these people? And where are our white "sisters" on this madness? I can already imagine what they'd be saying if a white woman were so denigrated! I must admit, with everything else in the world going on, this seems kind of small and petty. At the same time it is just reflective of what too many Black women have to deal with each and every day.

Julianne Malveaux, FACEBOOK (Mar. 30, 2017, 12:29 P.M.), <https://www.facebook.com/julianne.malveaux>.

35. For a comparison of the treatment of Michelle Obama and Melania Trump, see Charles Badger, *What if Melania Trump Were Black? A Case Study in White Privilege by Charles Badger*, BROTHA ONLINE (Aug. 11, 2016), <http://brothaonline.com/what-if-melania-trump-were-black-a-case-study-in-white-privilege-by-charles-badger>. Of course, the former First Lady has been called everything from ugly to apelike since her first days in the White House. See *Univision Host Sorry for Ape Remark About US First Lady*, BBC NEWS (Mar. 13, 2015), <http://www.bbc.com/news/world-us-canada-31877927>. She was infamously mocked in emails discovered by the Department of Justice during their investigation of the Ferguson, Missouri Police Department. DEPT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 72 (2015), <https://apps.washingtonpost.com/g/documents/national/department-of-justice-report-on-the-ferguson-mo-police-department/1435> (referencing an email that depicted the former First Lady dancing topless with African women at a fictitious "High School Reunion").

The disproportionate shaming of Black mothers who require treatment for substance abuse, despite the fact that White and Black women use drugs at roughly the same rates.<sup>36</sup>

These examples underscore that a focus on Black women is necessary to render visible the harms to which Black women are subject and to prevent their continued marginalization. Not only is this focus required for Black women's survival, it is necessary to counter arguments that are used to subordinate and exclude all women (as Sojourner's experience at that Women's Rights Convention in 1851 so clearly demonstrates).

Again, by focusing on Black women, this Article does not seek to negate the discrimination to which Black men and White women are subject; Black men experience racism, and White women experience sexism. Moreover, because there are important similarities in all forms of oppression,<sup>37</sup> oppressed individuals are necessary partners in liberation struggles. To focus with particularity on Black women in order to call attention to and to describe clearly Black women's realities does not mean that only their experiences of oppression matter. This is the important difference between focus (to draw attention to a particular group) and exclusion (suggesting that only that group matters) that many opponents of the Black Lives Matter Movement miss.<sup>38</sup> Like #SayHerName, this Article contends that Black women's experiences matter and require careful examination.

### III. AGGRESSIVE ENCOUNTERS: DEATH BY A THOUSAND CUTS

This Article turns now to describing aggressive encounters. Importantly, the two encounters with which this Article opened are neither rare nor isolated. Rather, they describe frequent occurrences in the lives of Black women. Indeed, every Black woman with whom the authors discussed this

36. Black mothers with substance abuse problems are sometimes labeled "black addicted mom[s]." Cassandra Frederique & Lisa K. Sangoi, *Demonization of Simone Biles' Birth Mother Shows National Addiction to Shaming Black Women*, ROOT (Aug. 24, 2016, 6:11 AM), <http://www.theroot.com/demonization-of-simone-biles-birth-mother-shows-national-1790856493>. Yet, as Cassandra Frederique and Lisa K. Sangoi note:

[This] trope [is] reserved for black mothers, despite the fact that white and black women use drugs at roughly the same rates . . . . This wholly inaccurate trope gave rise to some of the most infamous policies of mass incarceration, such as sentencing disparities in which penalties for crack were 100 times harsher than for cocaine.

Less discussed in the mainstream media is how politicians have offered this trope to justify policies and practices that surveil and punish black women and parenthood—for example, requiring parents to submit to unannounced inspections of their homes by public assistance or child welfare caseworkers; or requiring parents to pass drug tests to do anything from receiving food assistance to taking their child home from the hospital.

*Id.*

37. See The Combahee River Collective, *A Black Feminist Statement*, in Hull, *supra* note 14, at 13 (asserting that "major systems of oppression are interlocking").

38. Scott Jaschik, *The Law Professor Who Answered Back*, INSIDE HIGHER ED (July 12, 2016), <https://www.insidehighered.com/news/2016/07/12/law-professor-responds-students-who-complained-about-her-black-lives-matter-shirt>.

project soberly shared similar encounters. Black women are immediately familiar with aggressive encounters because their daily lives are filled with opportunities for emotionally draining interactions. Through illustrative examples,<sup>39</sup> this Part highlights the prevalence of aggressive encounters. These encounters occur in all facets of Black women's lives—from retail establishments, to professional settings, to interactions with the criminal justice system—and in all stages of Black women's lives, from childhood through adulthood.

#### A. COMMERCIAL ESTABLISHMENTS AND PRIVATE SPACES

It is widely known that staff in retail department stores often ignore or dismiss Black women customers or surveil and follow Black women as if they were potential shoplifters.<sup>40</sup> Professor Patricia Williams tells of one such encounter in *The Alchemy of Race and Rights*.<sup>41</sup> Describing a holiday shopping excursion after buzzers had become popular in boutiques in New York City, she notes:

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39. This Subpart relies on anecdotal data. Please note that this Article is the first part of an on-going project in which the authors will be collecting more systemic data.

40. As Professor Norwood once shared in a CNN.com Opinion she wrote shortly after Michael Brown's killing in August of 2014:

When I shop, I'm often either ignored as a waste of time or scrutinized as a potential shoplifter. In June, my daughter and I walked into the china and crystal department at a Macy's department store. I was about to speak to the salesperson directly in front of me. She walked right past me to welcome the white woman behind us. My daughter looked at me and said: "Really? Did she just ignore us?" My daughter is a young teenager at the crossroads of "skin color doesn't matter" and "oh yes, it does." She is in transition. I felt hurt, anger and embarrassment. But this kind of encounter happens routinely.

Kimberly Norwood, Opinion, *Why I Fear for My Sons*, CNN (Aug. 25, 2014, 5:04 PM), <http://www.cnn.com/2014/08/25/opinion/norwood-ferguson-sons-brown-police/index.html>. Professor Jones similarly has lost count of the number of times she has been approached, while shopping in a retail store, by women asking for another size or where a particular department or thing was located. When greeted with a blank stare, a shrug, or "I don't work here," these women generally realize their mistake and scurry away—usually without an apology. For more on "shopping while Black," see Dean A. Dabney et al., *Who Actually Steals? A Study of Covertly Observed Shoplifters*, 21 JUST. Q. 693, 696–98, 715 (2004), [http://users.clas.ufl.edu/rhollin/Who\\_actually\\_steals.pdf](http://users.clas.ufl.edu/rhollin/Who_actually_steals.pdf) (discussing surveillance bias by retail personnel and concluding that "[t]he lack of a direct relationship between sex, race, and shoplifting runs counter to the stereotypical assumptions underlying commonly held profiling strategies"); Darren K. Carlson, *Racial Profiling Seen as Pervasive, Unjust*, GALLUP (July 20, 2004), <http://www.gallup.com/poll/12406/Racial-Profiling-Seen-Pervasive-Unjust.aspx> (reporting that 49% of those surveyed think that "racial profiling is used widely by those attempting to prevent theft in shopping malls and stores;" that number increased to 67% for Blacks and 63% for Hispanics); and Nadra Kareem Nittle, *How Shopping While Black Hurts African Americans*, THOUGHTCO. (Nov. 16, 2015), <https://www.thoughtco.com/racial-profiling-in-retail-2834831> (describing the ways in which Black shoppers are "follow[ed], question[ed], ignore[d], or otherwise disrespect[ed]"). See also Chris Hoeng, *New Claims of Racial Profiling Against Major Retailers*, DIVERSITYINC (Oct. 28, 2013) <http://www.diversityinc.com/news/new-claims-racial-profiling-major-retailers> (describing lawsuits filed against Barneys and Macy's by Black men alleging that they were racially profiled by these stores).

41. See generally PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* (1991).



I was shopping in Soho and saw in a store window a sweater that I wanted to buy for my mother. I pressed my round brown face to the window and my finger to the buzzer, seeking admittance. A narrow-eyed, white teenager wearing running shoes and feasting on bubble gum glared out, evaluating me for signs that would pit me against the limits of his social understanding. After about five seconds, he mouthed “We’re closed,” and blew pink rubber at me. It was two Saturdays before Christmas, at one o’clock in the afternoon; there were several white people in the store who appeared to be shopping for things for *their* mothers.

I was enraged. At that moment I literally wanted to break all the windows of the store and *take* lots of sweaters for my mother. In the flicker of his judgmental gray eyes, that sales child had transformed my brightly sentimental, joy-to-the-world, pre-Christmas spree to a shambles. He snuffed my sense of humanitarian catholicity, and there was nothing I could do to snuff his, without making a spectacle of myself.

I am still struck by the structure of power that drove me into such a blizzard of rage.<sup>42</sup>

In addition to being ignored, dismissed, or surveilled, Black women are frequently assumed to be service personnel. Whether Black women are shopping in a retail department store or in a supermarket with a cart, customers, who are almost always White, believe that Black women are store employees and are there to serve them. A recent encounter by Professor Norwood demonstrates this phenomenon. She recalls:

Late one night, I was leaving doggy day care with my dog. As I exited the facility, a White woman was coming in from the other side of the door. She and I almost collided. She immediately said to me: “Oh, thank you for bringing her to me.” I said “Excuse me?” And when she looked down at my dog and realized it was not her dog she said, “Oh, sorry, I thought they were bringing me my dog.” She had to look at the dog to realize I was not who she thought I was.<sup>43</sup>

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42. *Id.* at 44-45.

43. Kimberly Jade Norwood, Encounter at Happy Tails in St. Louis, Mo. (Nov. 20, 2016). Professor Jones recently experienced a similar encounter after boarding a plane. She notes:

As passengers entered the plane through the side door, I was standing slightly behind the flight attendant in front of my seat organizing my things in preparation for the long flight. An entering passenger (a White female) looked past the Asian flight attendant, caught my eye, and asked for a seat belt extension. As I stared back at her with a look of confusion on my face, she repeated her request, asking, “May I have an extension, I’m not sure if I’ll need it, but just in case.” I could tell she was perplexed and getting a little agitated as I continued to look blankly at her. Thankfully for both me and the other passenger, the flight attendant spoke up and said, “I’ll get you one as soon as possible.” This interaction left me wondering, what was it about me that made this passenger assume that I was the flight attendant? I

When contractors and workmen come to middle- and upper-class Black women's homes to work, Black women often encounter quizzical looks when they open the door, as if the person is trying to figure out who they are (because they certainly cannot be the homeowner).<sup>44</sup> Importantly, aggressive encounters are not always in person. Even "Black-sounding" voices are not given the same attention as "White-sounding" voices.<sup>45</sup> In telephone conversations, women with Black-sounding voicing are sometimes given misinformation by people or hurriedly dismissed so that they will go away.<sup>46</sup>

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did not have on a Delta uniform and certainly was not greeting folks as they entered the cabin.

Trina Jones, Experienced on Delta Flight 1565 from Atlanta to S.F. (Jan. 3, 2017).

44. Although we have located no empirical studies of this phenomenon, it is unsurprising given evidence to show that police are sometimes more inclined to believe that Blacks are thieves rather than homeowners. See CHARLES J. OGLETREE, *THE PRESUMPTION OF GUILT: THE ARREST OF HENRY LOUIS GATES, JR. AND RACE, CLASS AND CRIME IN AMERICA* 10, 18–40 (2012) (describing the arrest of Harvard Professor Henry Louis Gates at his home in Cambridge, Massachusetts); BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 39–42 (2014) (recounting an encounter in which the police appeared not to believe Stephenson's assertions that he was outside of his home). Sometimes a mistaken identity can be used to one's strategic advantage. One friend revealed the following:

A canvasser (I think Jehovah's Witness or charity) came to the door of my condo (rental prior to this house). My mother did not want to be bothered and so she pretended to be the maid and said she didn't "know nothing about those donations or anything." The woman instantly believed her and left even though my mother was dressed to go out to dinner with me.

E-mail from Camille Gear Rich, Professor, to Trina Jones & Kimberly Norwood (Dec. 13, 2016) (on file with authors). This friend added: "For me it's about finding a way to laugh in the face of stereotyping and using invisibility to strategic advantage." *Id.*

45. For discussion of accent bias, see CHERYL STAATS ET AL., *KIRWAN INST., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW* 32–33 (2016), <http://kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf> (discussing "accent bias" in the employment setting); John Baugh, *Linguistic Profiling*, in *BLACK LINGUISTICS: LANGUAGE, SOCIETY, AND POLITICS IN AFRICA AND THE AMERICAS* 155, 155–66 (Sinfree Makoni et al. eds., 2003) (discussing preferential and discriminatory linguistic profiling in the United States); Amanda Carlin, *The Courtroom as White Space: Racial Performance as Noncredibility*, 63 *UCLA L. REV.* 449, 472–74 (2016) (discussing language as a way to mark nonwhite speakers as demonstrating "noncredibility"); and Patricia Rice, *Linguistic Profiling: The Sound of Your Voice May Determine if You Get that Apartment or Not*, *SOURCE* (Feb. 2, 2006), <https://source.wustl.edu/2006/02/linguistic-profiling-the-sound-of-your-voice-may-determine-if-you-get-that-apartment-or-not> (discussing the work of linguistics scholar John Baugh). The terms "Black-sounding" and "White sounding" reference differences in timber and cadence that some people may associate with different racial groups. To be sure, this terminology is problematic to the extent that Black-sounding is understood to mean speaking in something other than "standard English" (e.g., with less than perfect diction or grammar). *Id.* The ability to use "standard English" is not limited to Whites, just as deviations from this supposed "ideal" are not limited to Blacks. The problem is that people tend to believe that those using non-standard English are Black or of lower economic status. See generally JOHN BAUGH, *OUT OF THE MOUTHS OF SLAVES: AFRICAN AMERICAN LANGUAGE AND EDUCATIONAL MALPRACTICE* (1999).

46. For example, in July 2016, Professor Norwood called a police department in Tennessee, on behalf of a White client, to inquire about regaining custody of the client's five-year-old daughter, who had been kidnapped by a relative. The client did not have the relative's home address. The officer on the other line told Professor Norwood they could do nothing without an address. Really? Despite the fact that the location of kidnapped children is usually not known, an address was demanded. Professor Norwood later relayed her story to another Black female who specializes in child custody cases. The lawyer told Norwood: "He could tell from your voice that you were Black. He probably assumed the child was Black too. The police do not expend the

## B. PROFESSIONAL SETTINGS

Aggressive encounters are not limited to retail establishments or private spaces. Professional Black women are frequently assumed to be secretaries, clerical assistants, or service personnel in professional settings.<sup>47</sup> There are also stories of court clerks and security guards, who assume that the smartly dressed Black woman standing in front of them could not possibly be a lawyer,<sup>48</sup> and of flight attendants who refuse to believe that a Black female responder to a call for medical assistance might actually be a doctor.<sup>49</sup> This refusal to see Black women as professionals happens regardless of how they are attired or the activities in which they are engaged. Race and gender seem to trump all other indicators of professional status.<sup>50</sup> For example, Black female doctors are often mistaken for nurses or nursing assistants and are asked to clean rooms, get dinner trays, and help patients to the bathroom, among other things.<sup>51</sup> These “mistakes” happen despite the doctor’s uniform

same effort trying to find Black girls.” Telephone Conversation between Kimberly Jade Norwood and Kathryn Banks, in St. Louis, Mo. (July 2016).

47. See Carolyn M. West, *Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an “Oppositional Gaze” Toward the Images of Black Women*, in LECTURES ON THE PSYCHOLOGY OF WOMEN 287, 287–90 (Joan C. Chrisler et al. eds., 4th ed. 2008); Cate Matthews, *Being Mistaken for Kitchen Help Just Made this Exec More Outspoken*, HUFFINGTON POST (May 28, 2014), [http://www.huffingtonpost.com/2014/05/23/melody-hobson-color-blind-color-brave-ted-talk\\_n\\_5380095.html](http://www.huffingtonpost.com/2014/05/23/melody-hobson-color-blind-color-brave-ted-talk_n_5380095.html); Brigid Schulte, *Black and Latina Women Scientists Sometimes Mistaken for Janitors*, WASH. POST (Feb. 6, 2015), [https://www.washingtonpost.com/news/local/wp/2015/02/06/black-and-latina-women-scientists-sometimes-mistaken-for-janitors/?utm\\_term=.bec410582993](https://www.washingtonpost.com/news/local/wp/2015/02/06/black-and-latina-women-scientists-sometimes-mistaken-for-janitors/?utm_term=.bec410582993).

48. Text exchange by Kimberly Jade Norwood with Attorney Micah Hall (St. Louis, Mo.) (Dec. 12, 2016).

49. Carolyn Y. Johnson, *The Disturbing Reason Why We Don’t Believe Young, Black Women Are Really Doctors*, WASH. POST: WONKBLOG (Oct. 14, 2016), [https://www.washingtonpost.com/news/wonk/wp/2016/10/14/a-black-doctor-wanted-to-save-a-mans-life-first-she-had-to-convince-the-flight-attendant-she-was-an-actual-physician/?tid=sm\\_fb&utm\\_term=.bd2243e7](https://www.washingtonpost.com/news/wonk/wp/2016/10/14/a-black-doctor-wanted-to-save-a-mans-life-first-she-had-to-convince-the-flight-attendant-she-was-an-actual-physician/?tid=sm_fb&utm_term=.bd2243e7); see also Ashley Watkins, *Why Black Women’s Success Is so Shocking to White People*, HELLO BEAUTIFUL, <https://hellobeautiful.com/2910189/black-women-success-white-people/#.WB54nYLixLI.facebook> (last visited May 2, 2017). Dr. Christine Bussey, a Black female cardiologist in the Washington, D.C. area, shared with Professor Norwood a story of a woman who became unresponsive at an Ocean Breeze Water Park in Virginia Beach, Va. in August of 2015. The woman needed a doctor. When Dr. Bussey responded, employees at the Water Park would not let her assist. Dr. Bussey notes:

They would not let me help, saying that I could be pretending to be a doctor since I had no credentials. . . . I was telling them that I am a BOARD CERTIFIED CARDIOLOGIST! [Lifeguards] physically held me back. EMS arrived and also ignored me. It was INFURIATING!!! . . . I was pissed and humiliated. I think she was going to be ok though. And it was obvious that she was a cardiac patient as she had a large chest scar like from open heart surgery. This is what I do!

Facebook Message from Dr. Christine Bussey to Kimberly Norwood (Oct. 14, 2016, 9:50 AM) (on file with author).

50. Importantly, we are not suggesting that Black professional women are “better” than women who work in clerical or blue-collar positions. All labor is valuable. It is the assumption that all Black women are service workers to which we object.

51. Mandy Oaklander, *7 Female Doctors Speak Out About Racism and Sexism During Airplane Emergencies*, TIME (Oct. 21, 2016), <http://time.com/4538567/female-doctor-medical-emergency-airline-racism-sexism>; Pamela Wible, *Her Story Went Viral. But She Is Not the Only Black Doctor Ignored in an Airplane Emergency*, WASH. POST (Oct. 20, 2016),

(the name tag, the stethoscope, the white coat). Interestingly, patients and their family members do not require uniforms for White men, who they generally *presume* are doctors.<sup>52</sup> Even when their professional status is clear, Black women's credentials and intellect are often questioned. For example, Black female law professors report being queried, questioned, and challenged by White law students, usually males, in ways that their White male colleagues are not.<sup>53</sup>

The aforementioned examples involve relatively short encounters and mostly with strangers. It is important to note, however, that aggressive encounters can unfold over time, in familiar settings, and among colleagues. For example, many Black female professionals, particularly those with significant tenure in their positions, have experienced advocating for greater diversity within their institutions. Not only is this work time consuming, uncompensated, and emotionally draining, it can also wreak havoc on one's professional advancement.<sup>54</sup> This is in part because the norms in elite institutions<sup>55</sup> are so strong, and unconscious bias runs so deeply, that one often encounters resistance (even among co-activists) when one pushes strongly against the status quo. For example, one of the co-authors of this Article recently co-chaired a year-long, university-wide task force on diversity on her campus. Like most efforts directed at institutional change, the experience was contentious and draining as it required that task force members grapple with their own biases, unacknowledged privileges, and the ways in which various groups are differently situated in society on the basis of race, class, sexual orientation, gender identity, etc. Mindful of Bernice Johnson Reagon's insight that coalition building is not done in a womb,<sup>56</sup> the co-author and the task force members plowed through, reached consensus, and ultimately produced a strong final report, with useful recommendations. The report was delivered to the faculty and University leaders and received overwhelmingly positive feedback.

A serious problem, however, arose during the subsequent preparation of materials that were to support the final report. An influential member of the task force demanded the deletion of text that this person felt was too critical of certain administrators and administrative offices on campus. Importantly, this demand was not driven by a concern that the offered criticism was invalid

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science/tamika-cross-is-not-the-only-black-doctor-ignored-in-an-airplane-emergency/2016/10/20/3f59ac08-9544-11e6-bc79-af1cd3d2984b\_story.html.

52. Message Exchange with Dr. Christine Bussey, *supra* note 49.

53. See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012).

54. Cecil Canton, *The "Cultural Taxation" of Faculty of Color in the Academy*, CAL. FAC. MAG. (Fall 2013), <http://www.calfac.org/magazine-article/cultural-taxation-faculty-color-academy>; Audrey Williams June, *The Invisible Labor of Minority Professors*, CHRON. HIGHER EDUC. (Nov. 8, 2015), <http://www.chronicle.com/article/The-Invisible-Labor-of-234098>.

55. These norms relate to what constitutes "acceptable" scholarship, academic qualifications, and life experiences.

56. See generally Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 343 (Barbara Smith ed., 1983).

or unsupported, but rather it was driven by this person's expressed fear about how certain high-level University officials might respond to the criticism. In other words, this person wanted to remove factual material from a document due to a fear that the University's President and Provost (who incidentally were in charge of the very structures the task force was asked to review) might respond negatively to it. The co-author, however, strongly believed that if the task force's supporting materials were redacted and filtered in this way, then the work of the task force would be seriously compromised. (One does not tamper with research results because they are unfavorable). Viewing this as a matter of professional ethics and integrity, the co-author was unwilling to sign off on a document that did not reflect fully what the task force had learned, including insights (though critical) that could have been useful to the University.

The task force leaders were thus at an impasse, with neither side willing to budge. After a year of political wrangling and compromise, after enduring months of micro-aggressive behavior at the hands of the person in question, after weeks of responding to countless emails fueled by what appeared to be behind-the-scenes-maneuvering by this same individual, and with a month-long professional trip mere days away (which would prevent the co-author from protecting the work product of the task force), the co-author resigned as co-chair of the task force.<sup>57</sup>

The co-author's position was eventually vindicated by the executive committee of the group that had commissioned the task force.<sup>58</sup> The co-author, however, felt that irreparable harm had been done to her reputation. By refusing to concede to her colleague's demands and by resigning, she was transformed into "the angry black woman." Mercurial. Contentious. Unsteady. Someone to be feared. Not to be trusted. Someone of insight and principle, but someone too intimidating and unstable to exercise leadership and judgment on matters of diversity. Importantly, instead of focusing on the colleague's acts, which led to the co-author's resignation, attention shifted to the author's response, which many understood yet viewed disapprovingly. None of these consequences were surprising. After sacrificing a research leave, after foregoing bed rest following major surgery (against doctor's orders), the exhausted act of resignation—which the co-author viewed as an act of principled resistance—ultimately came to define the co-author's contribution and reputation. What makes this an aggressive encounter is that views about the co-author's resignation and her subsequent competence were likely shaped by the co-author's race and gender. Would the resignation have been read with greater legitimacy and support had the actor been a White man, or a White woman?

While the above encounter unfolded over the course of a year and culminated in a fairly dramatic fashion, Black women experience occurrences

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57. Another member, having viewed the "goings on," also resigned in protest. These resignations were not coordinated, though many people erroneously believed that they were given that both persons to resign were Black.

58. The co-author and the other resigning member eventually rejoined the task force.

like these with regularity—occurrences in which the very act of speaking becomes the focus and the problem, rather than the issue to which Black women’s commentary is directed. For example, when statements about diversity are made in meetings, Black women must decide whether to ask questions, knowing that if they do so many people in the room will exchange knowing glances, as if to say “here she goes again.” In other words, Black women know that by speaking up, they risk reinforcing their marginal status within their institutions.<sup>59</sup> Similarly, they know that if they push for diversity too hard, too passionately, or in too animated a fashion, then they will likely encounter backlash. They will be viewed as a squeaky wheel, a troublemaker, a discontent, as not being a team player. Even if a Black woman is saying the very things that others are saying, her voice on certain topics (particularly those involving discrimination and inequality) is viewed with skepticism, as if her Blackness and womanness disqualify her from speaking.<sup>60</sup> In these moments and encounters, others end up criticizing Black women who push against exclusionary hierarchies instead of the root causes of the problem (i.e., the exclusionary hierarchies). In short, the raced and gendered voices of Black women become the problem, rather than the underlying issue to which they seek to bring attention.

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59. This marginalization is why some people of color may elect to remain silent. This of course creates an interesting dynamic among people of color. Those who speak are likely to be penalized. Those who silently go along, or who speak more sparingly, are likely to be rewarded (e.g., with promotions, favorable views by colleagues). One colleague has termed this the “good news v. bad news negro phenomena.” Conversation between Trina Jones & Kerry L. Haynie, Professor, in Durham, N.C. (Fall 2015). Ironically, due in part to the efforts of “bad news negroes,” “good news negroes” are often promoted and held out as evidence of the institution’s progress on diversity. *See also* DEVON W. CARBADO & MITU GULATI, ACTING WHITE? RETHINKING RACE IN “POST-RACIAL” AMERICA 2, 26, 74–79 (discussing the differential treatment of “good Blacks,” “but for” Blacks (“but for” the fact that they look black, they are otherwise indistinguishable from whites”), and those who are perceived as “too Black”).

60. Another experience of Professor Norwood is relevant here. She notes:

During the summer of 2016, while offering implicit bias training to a mostly White male group of prosecutors, a group of White male prosecutors (and only White male prosecutors I was told) complained the next morning that they felt that I was attacking them. They did not feel comfortable; they believed I had an “agenda;” and they were outraged. Outraged was the exact term used. Similar comments were expressed by a group of judges, again almost exclusively White males, to whom I presented earlier that year. This caused me to question, was I doing something in my presentations to cause these reactions, or was their response race related? I got my answer several weeks later when a White male judge admitted to me that my presentation was outstanding, accurate and quite well done. Only problem? I am black and female. This judge told me that while he was ashamed to admit it, my presentation would have been better received had I been a White male. This judge said that he did not subscribe to this opinion but was sharing with me what he heard from his colleagues. Interestingly, many of these same colleagues purport to be colorblind.

Kimberly Jade Norwood, St. Louis, Mo. (Summer 2016).

*C. INTERACTIONS WITH LAW ENFORCEMENT*

Aggressive encounters at the hands of the police are especially troubling due to the presence of state power and the dangerous, indeed life-threatening, consequences that might ensue. Consider the experience of a recent law graduate:

August, 2013. In-keeping with a burgeoning tradition, I planned to attend Lollapalooza in Chicago's Grant Park with my [fellow] law school grads. We were celebrating! We survived law school! And the BAR! We were on our way!

Partner in tow, I hopped on a train from New York to Chicago. The first two days in Chicago were just as fun-filled as we had imagined. On the second day of the festival, my partner asked that we stop by the Nas performance. By the time we arrived [at] the stage, Nas' performance had already begun. So I stayed on the ground while my partner hopped into a tree to get a better view. About five minutes into the show I was approached by a man asking for a lighter. I did not have one in my pocket so I decided to search through my bag to try to give him some matches I thought I had on hand. As I was searching through my backpack, he must have spotted my medication [2 pills] in a clear bag. I carried my medication in a plastic bag and I left the bottle at the hotel. Upon spotting the clear bag containing my medication he asked me what was in that bag, and asked if I was here to "have fun." I explained that it was my Adderall. Then, for 5 minutes, he tried every which way to convince me to sell my Adderall to him. "[C]ome on, [he said,] it's just for my girlfriend," "my girlfriend just wants to have a good time." I had no interest in selling my medication, but in an effort to end the conversation I said that my Adderall was already spoken for. He left.

Ten seconds later I was surrounded by 5 uniformed officers, with at least 2 of them screaming "don't move!" and "drop the bag!" Confusing instructions. Before I knew what was happening, my heart was racing. I thought I was going to die. They grabbed me, tore my bag from my shoulders, and handcuffed me. I felt as if they were trying to break my arms. The handcuffs cut into my wrists. One of the male officers violently rummaged through my backpack. All of this in front of scores of people. I was humiliated, embarrassed. My heart was racing. My knees were weak. Why? My partner jumped from the tree, terrified, and asked what was going on. The officers screamed at her to back up and step away from them.

Eventually, the officer pulled out the bag my pills were in and triumphantly yelled, "Got it!" He also pulled out the ten or so dollars in cash I had in my bag. At this point, I calmly tried to explain the two pills in the bag but the officer screamed at me: SHUT UP!

They asked for my identification and I directed them to my pockets. They scanned my identification and asked where I was from. I calmly

stated that I was visiting from New York to which an officer responded, “Oh you’re visiting all the way from New York? You came here just for this?” I was a bit baffled. Lollapalooza is a 3-day music festival that attracted over 300,000 people in 2013. It is a national and international music destination that not only draws attendees from all across the United States, but the world. Yes. I came there just for that.

The handcuffs. OMG! I turned to the white male officer who put the handcuffs on me and asked if they could be loosened just a bit. I told him I had never had handcuffs on before. The pain was excruciating. His response? “I find it hard to believe that *you* are visiting from *New York* and you’ve never been in handcuffs before.”

I tried to ask what was happening and whether I was in trouble and being arrested. I was not screaming. I was not loud. I was not hysterical. In fact, I tried to do everything I could to remain as calm as possible. That’s when the black female officer *got close to my face* and screamed “do you want to be arrested? You could be. *Do you want to fucking be arrested?*” I responded that I didn’t and that I just wanted to know what was going on. My partner explained that we were both soon-to-be lawyers and we just wanted to know what was happening. One of the officers scoffed at this possibility and told my partner to get away from the officers. “If you were really a lawyer you’d understand that I could arrest you right now for coming this close.” My partner tried to ask for a name or badge number so she could follow up if anything happened, but was again threatened with detainment. At every turn, I and my partner were treated rudely, disrespectfully and despite all efforts to have a respectful, human conversation, the police were bent on escalation. Eventually, something happened and they decided to let me go. They escorted me through Grant Park (through most of the festival) in handcuffs, surrounded by 3 officers and past scores and scores of people at the concert. I was on the verge of tears. My God. How humiliating and embarrassing this was. At the gate, the officers told me to leave and to not come back for any other performances that day. I explained that I had wanted to see a particular act that was performing that evening, but they said that if I re-entered the park I would be arrested on sight. I asked why that was the case, and was effectively told that it was because they said so. Why? I had done nothing wrong. I was effectively robbed of my \$300+ ticket as I could not reenter to see the rest of the acts. And, as a parting shot, the officer “advised” me to not come back into the park with a backpack [the next day] because it made me look suspicious.

.... My God. I am a black woman with dark skin and I wear my hair in locs. Is that all it takes? I now understand over-exertion of police authority as an integral part of what it means to be black in America.



I am scared of police now. And I will certainly never go to that park again. I want to live.<sup>61</sup>

This former student acknowledged that no one in her party was killed; she was not raped or beaten. Her story reflects a brief moment in time; approximately 15 minutes of her life that were filled with cuts, stabs, jabs, and slices at her humanity. She recognizes that her story is not unique and that others have faced similar and even greater trauma. Consider Sandra Bland, who was found dead in a jail cell after talking back to a White police officer.<sup>62</sup> Consider the Black woman who was straddled and beaten like an animal on a public street in broad daylight,<sup>63</sup> and the Black women who were raped by an on-duty police officer.<sup>64</sup> Consider the Black woman who accidentally locked herself out of her apartment, called a locksmith to have the locks changed, and was later confronted by not one, not two, not three, but *nineteen* police officers who burst into her apartment, with their guns drawn, accusing her of burglary.<sup>65</sup> No apology was forthcoming, neither from the police nor from the White male *neighbor* who called law enforcement.<sup>66</sup>

Consider also what might have happened to Professor Michele Goodwin on a cold dark night in Chicago.<sup>67</sup> Professor Goodwin was driving down the street with her four-year-old daughter in the backseat when an unmarked car pulled behind her, flashed a white light, and motioned her to pull over.<sup>68</sup> After Professor Goodwin complied, a White man, dressed in civilian attire, came to the side of her car representing that he was a police officer. When Professor Goodwin asked for identification, the officer yelled “NIGGER, I’M

61. Interview with anonymous by Kimberly Jade Norwood, Wash. Univ. Sch. of Law, in S.F., Cal. (Aug. 6, 2016).

62. David Montgomery, *New Details Released in Sandra Bland’s Death in Texas Jail*, N.Y. TIMES (July 20, 2015), <https://www.nytimes.com/2015/07/21/us/new-details-released-in-sandra-blinds-death-in-texas-jail.html>.

63. Ed Mazza, *Marlene Pinnock, Woman in California Highway Patrol Beating Case, Reaches Settlement*, HUFFINGTON POST (Sept. 25, 2014, 1:41 AM), [http://www.huffingtonpost.com/2014/09/25/marlene-pinnock-california-highway-patrol-beating-settlement\\_n\\_5879514.html](http://www.huffingtonpost.com/2014/09/25/marlene-pinnock-california-highway-patrol-beating-settlement_n_5879514.html) (describing how Marlene Pinnock, a 51-year-old grandmother, was straddled by a California state trooper on the side of a major state highway and punched, full force, repeatedly, in the face, during daylight).

64. Bart Jansen, *It’s a Problem for the Nation’: Former Okla. Cop Preyed on Minority Women*, USA TODAY (Dec. 11, 2015, 8:34 PM), <http://www.usatoday.com/story/news/nation/2015/12/11/former-oklahoma-police-officer-found-guilty-serial-rape/77138186> (discussing an Oklahoma cop’s sexual assault of women in the low-income neighborhood that he paroled); Michael Martinez & Jethro Mullen, *Victims Describe Assaults by Convicted Ex-Oklahoma City Cop Daniel Holtzclaw*, CNN (Dec. 11, 2015, 8:17 PM), <http://www.cnn.com/2015/12/11/us/oklahoma-daniel-holtzclaw-verdict/index.html> (same).

65. Fay Wells, *My White Neighbor Thought I Was Breaking into My Own Apartment. Nineteen Cops Showed Up.*, WASH. POST: POSTEVERYTHING (Nov. 18, 2015), [https://www.washingtonpost.com/posteverything/wp/2015/11/18/my-white-neighbor-thought-i-was-breaking-into-my-own-apartment-nineteen-cops-showed-up/?utm\\_term=.7b35acdoc180](https://www.washingtonpost.com/posteverything/wp/2015/11/18/my-white-neighbor-thought-i-was-breaking-into-my-own-apartment-nineteen-cops-showed-up/?utm_term=.7b35acdoc180).

66. *Id.*

67. Michele Goodwin, *An Open Letter to Diamond Reynolds*, HUFFINGTON POST (July 13, 2016, 9:24 PM), [http://www.huffingtonpost.com/michele-goodwin/an-open-letter-to-diamond\\_b\\_10936382.html](http://www.huffingtonpost.com/michele-goodwin/an-open-letter-to-diamond_b_10936382.html).

68. *Id.*

A POLICE OFFICER!”<sup>69</sup> At this point, Professor Goodwin’s daughter began to cry, Professor Goodwin’s friend (a White woman who was sleeping in a fully reclined passenger seat) woke up and sat forward.<sup>70</sup> Upon seeing this White face, the officer backed off.<sup>71</sup> An investigating officer later told Professor Goodwin that this police officer had followed her for *over 30 miles*.<sup>72</sup> Why stop her on a dark and deserted street?<sup>73</sup> “The investigator explained that the case was so chilling to him that he admonished his wife if such a thing every [sic] happened to her,” she should “just drive off.”<sup>74</sup> “Just drive off.” Therein lies the rub: running, flight, “just driving off” are not options for Black Americans in police encounters<sup>75</sup>—neither, it seems, is the exercise of voice.

#### D. CROSS-GENERATIONAL EXPERIENCES

The above examples underscore the ubiquitous nature of aggressive encounters. Importantly, these encounters do not begin when Black women reach adulthood.<sup>76</sup> They commence long before that point, as the following excerpt from Leah Thomas demonstrates. Ms. Thomas attended an exclusive

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* It should go without saying, but we err on the side of saying it anyway, that many police officers are honorable, noble, and perform their jobs well. There are, however, some bad apples in the barrel, and there are officers who have taken sexual advantage of Black women. The latest, most egregious case at the time of this writing can be found in the DOJ report on the Baltimore Police Department. See Victoria M. Massie, *Department of Justice: Baltimore Cops “Coerced Sex in Exchange for Immunity From Arrest,”* VOX (Aug. 11, 2016, 6:08 PM), <http://www.vox.com/2016/8/10/12429214/baltimore-police-investigation-justice-department-sexual-misconduct> (describing a report of how Baltimore police officers coerced people “involved in sex work” for immunity); see also Jansen, *supra* note 64 (discussing an Oklahoma police officer’s rape of Black women).

75. See Thomas Frank, *Black People Are Three Times Likelier To Be Killed in Police Chases*, USA TODAY (Dec. 1, 2016), <http://www.usatoday.com/pages/interactives/blacks-killed-police-chases-higher-rate> (“Deadly pursuits of black drivers were twice as likely to start over minor offenses or non-violent crimes.”).

76. Recall the horrible treatment of Black girls in McKinney, Texas and at Spring Hill High School in South Carolina. See Carol Cole-Frowe & Richard Fausset, *Jarring Image of Police’s Use of Force at Texas Pool Party*, N.Y. TIMES (June 8, 2015), <https://www.nytimes.com/2015/06/09/us/mckinney-texas-pool-party-dispute-leads-to-police-officer-suspension.html> (“Now a video of a police officer pointing a gun at teenagers in bathing suits and shoving a young black girl’s face into the ground has become the latest flash point in relations between the police and minorities.”); Richard Fausset et al., *Race and Discipline in Spotlight After South Carolina Officer Drags Student*, N.Y. TIMES (Oct. 27, 2015), <https://www.nytimes.com/2015/10/28/us/spring-valley-high-school-sc-officer-arrest.html> (“Videos of a white sheriff’s deputy throwing a black high school girl to the floor of a classroom thrust this community into an unsettling national discussion . . . .”); see also AFR. AM. POLICY FORUM, CTR. FOR INTERSECTIONALITY & SOC. POLICY STUDIES, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED 10 (2015), <http://schottfoundation.org/resources/black-girls-matter-pushed-out-overpoliced-and-underprotected> (discussing the effects of punitive school disciplinary policies on Black girls). See generally *Let Her Learn: Join the Fight to Stop School Pushout*, NAT’L WOMEN’S L. CTR., <http://nwlc.org/resources/let-her-learn> (last visited May 3, 2017) (providing resources for schools regarding how to treat Black girls).

private school in the St. Louis metropolitan area from fifth grade through high school and was one of only five Black girls in her class.<sup>77</sup> She recounts:

[My school was] the kind of place with incredible faculty, advanced classes, and college level course material—with a side of racism sprinkled in every now and again in social settings.

....

Here are just a handful of experiences I can remember being a black, liberal girl, in good ol' Missouri.

**5th grade:**

My only black female friend was called “burnt bacon” by another male student.

A gorilla was drawn on the whiteboard in a 7th grade room. A few students joked that the picture depicted a black student in the class.

**6th grade:**

My mom picked us up from school because someone wrote “Kill all \*gay slur\* n\*ggers/b\*tches” in the bathroom and the school was locked down temporarily. An email was sent out, but I remember a student telling me “it’s just a joke” when I felt scared.

A guy told me he liked me and I had a crush on him too. I was over the moon! The next day I overheard him tell his friend about me, which his friend replied “Man, you can do better than *that*. How could you date *it*?”

This was the first time I’d heard the n-word. I was told “It’s in rap music Leah” [and to not be offended.

**7th grade:**

This was the first time someone told me “Leah you’re not really black” and proceeded to explain [that my eloquence made me] closer to being white.

A boy told me he liked me, but he couldn’t tell his parents because “you know” and pointed to his arm and skin color.

**8th grade (First Obama Election):**

A student told me this while sitting at the lunch table[:] [“]My dad said he can’t vote for Obama because Obama is a muslim and he’d swear on the Q’ran and ruin America[”]

....

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77. Leah Thomas, *Casual Racism and Political Discussion in St. Louis Private School*, LINKEDIN (Dec. 13, 2016), <https://www.linkedin.com/pulse/casual-racism-political-discussion-st-louis-private-school-thomas?published=t>.

Because of Obama being the first black president, his inauguration was live-streamed at [the school]. I overheard “Why do we have to watch this, black people have rights now.”

....

**12th grade (Second Obama Election):**

I started The Young Democrats Club on campus because at the time, only The Young Republicans existed.

In my Italian class, a student whispered “Obama is a n\*gger from Kenya.”

In this same class students laughed and accused Obama of not being a true citizen, they called him a Muslim as though that were an insult, and said their parents wanted to leave the country.

....

During Ferguson I had to remove a lot of peers from Facebook who called black people “Animals” and when I questioned them about it replied “well not you Leah”. “Not you.”

....

I shared maybe two of these experiences on Facebook and was met with these responses by some:

“damn Leah you know you should have left that school and given your spot to someone who wanted it and was put on a wait list you ungrateful spoiled brat”

“Leah you should be silenced because you are full of shit. and you know it”

“your dad can have a nice little discussion with the board members at micds. Spreading Lies so they can sue you!”<sup>78</sup>

Leah decided to share her story after conservative students at the school publicly asserted that the school had been unwelcoming to Trump supporters, to which the head of the school responded with a letter of apology.<sup>79</sup> Leah notes that she did not “expect an apology” for what she experienced, nor did she “want one.”<sup>80</sup> She sought only to “point out very real experiences that [she] had as a black student [in the school and how she] was told to deal with [those experiences] and [to] be thankful [that she] was even allowed in that space.”<sup>81</sup>

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78. *Id.*

79. Kristen Taketa, *Conservative Students at MICDS Suffer Discomfort, Not Bias, Alumni Say*, ST. LOUIS POST-DISPATCH (Dec. 13, 2016), [http://www.stltoday.com/news/local/education/conservative-students-at-micds-suffer-discomfort-not-bias-alumni-say/article\\_076a7b5e-2896-508e-aad6-67faa55678c6.html](http://www.stltoday.com/news/local/education/conservative-students-at-micds-suffer-discomfort-not-bias-alumni-say/article_076a7b5e-2896-508e-aad6-67faa55678c6.html).

80. Thomas, *supra* note 77.

81. *Id.*

*E. A BRIEF SUMMARY*

The aggressive encounters discussed in this Part reveal three things. First, aggressors often act based upon preexisting assumptions about Black women's status and moral proclivities. Among other things, Black women are assumed to be thieves, service workers, criminals, drug users, poor, biased, and irrational. For example, the law graduate in Chicago could not possibly be visiting from New York, and could not possibly be a lawyer. Within the minds of those officers, she could only be a drug abuser and up to no good.

Second, these assumptions cause harm. Sometimes the cuts are immediate and deep, like the student's humiliation and fear in Grant Park. Sometimes the initial cut is small, but festers over time. For example, the woman who is surveilled in a department store or who is assumed to be a worker at her home, instead of the homeowner, may be simply irritated, until the same thing happens repeatedly and the realization sinks in that Black women are at all times assumed to be criminal, economically poor, or subservient.

Third, these encounters all carry the risk that if a Black woman were to challenge embedded assumptions, the focus would shift from the aggressor's act to the appropriateness of the Black woman's response. Indeed, responding to any of the affronts summarized in this Part risks the all too familiar conclusion: there she goes—that Angry Black Woman! Why is she so angry? So bent out of shape? So sen-si-tive? In an instant, a Black woman who pushes back against her marginalization gets transformed by society into the "Angry Black Woman." Loud. Erratic. Uncontrollable. Full of attitude. The problem becomes the Black woman as opposed to the conditions to which she is responding. In short, the exercise of voice leads to further stereotyping, backlash, and death by a thousand cuts.

Some would maintain that much of what this Article describes are temporary inconveniences, that Black women are overreacting, and that they should "just move on." This Article pushes back against this tendency to dismiss or to minimize the micro- and macro-aggressions that are a recurring theme in Black women's lives. Not only is each aggressive encounter emotionally and spiritually draining, but like irritating grains of sand, they can build and fester until they explode, like Langston Hughes's raisin in the sun,<sup>82</sup> or Professor Williams's blizzard of rage.<sup>83</sup> The insidiousness of modern discrimination is that it can be so subtle, yet so constantly present, that many deny its existence and its effects. Indeed, that is the nature of micro-aggressions.

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82. THE COLLECTED POEMS OF LANGSTON HUGHES 426 (Arnold Rampersad & David Roessel eds., 1994).

83. WILLIAMS, *supra* note 41, at 45. For discussion of the potential health consequences of aggressive encounters, see Freddie Allen, *Racism and Stress Killing Black Women*, PITT. COURIER, <http://newpittsburghcourieronline.com/2015/04/22/racism-and-stress-killing-black-women> (last visited May 3, 2017); and Monnica T. Williams, *The Link Between Racism and PTSD*, PSYCHOL. TODAY (Sept. 6, 2015), <https://www.psychologytoday.com/blog/culturally-speaking/201509/the-link-between-racism-and-ptsd>.

This Article also rejects the notion that these so-called minor infractions are no more consequential than an isolated inconvenience. Perceptions formed (or more likely revealed) in one setting often influence behavior (or reflect behavior) in other spheres. The businessman Professor Jones encountered on the plane was likely an employer or a supervisor of others. Does he treat Black females under his supervision the way in which he treated Professor Jones? How does he interact with Black females in other settings (e.g., service workers in eateries, janitorial staff in his place of employment, the occasional Black female teacher in his child's school)? And what about that man who launched his verbal abuse at Professor Norwood in Home Depot? How does he treat the Black females that Home Depot actually employs? His Black female colleagues at work? The cashier at Starbucks? The sales clerk in a convenience store? In short, aggressive acts are unlikely to be limited to one encounter or to one woman. To the extent that these acts are driven by stereotypes and biases about Black women in general, they are likely to occur repeatedly in different settings.<sup>84</sup>

#### IV. (DE)CONSTRUCTING THE TROPE OF THE ANGRY BLACK WOMAN

As noted in Part II, Black women's histories and contemporary experiences differ from those of White women and Black men. These differing histories, shaped by the intersection of race and gender, inform the biases and stereotypes to which Black women are subject. This Part examines these stereotypes more closely and considers the ways in which they play out in aggressive encounters and constructions of the "Angry Black Woman."

Consider below, some common stereotypes of White women, Black men, and Black Women.<sup>85</sup>

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84. In addition to minimizing the effects of aggressive encounters, some would deny that these encounters are about race or gender. To the latter, this Article notes that the aggressors in aggressive encounters are almost always White, indicating that an underlying racial component exists, and are frequently male, indicating an underlying gender component. In addition, the stereotypes and biases to which Black women are subject in these encounters reflect assumptions which, argued in Part IV *infra*, flow from a combination of Black women's race and gender.

85. These stereotypes were drawn from the following materials. See generally MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* (2011); DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); Catherine R. Albiston & Laura Beth Nielsen, *Welfare Queens and Other Fairy Tales: Welfare Reform and Unconstitutional Reproductive Controls*, 38 *HOW. L.J.* 473, 484-87 (1995) (examining stereotypes of poor Black women); Nathalie A. Augustin, *Learnfare and Black Motherhood: The Social Construction of Deviance*, in *CRITICAL RACE FEMINISM: A READER* 144, 144-50 (Adrien Katherine Wing ed., 1997) (detailing the image of people on welfare to be predominately black females); Laura Green, *Stereotypes: Negative Racial Stereotypes and Their Effect on Attitudes Toward African-Americans*, 11 *PERSP. ON MULTICULTURALISM & CULTURAL DIVERSITY*, Winter 1998-99, <http://www.ferris.edu/jimcrow/links/VCU.htm>; Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 *WIS. L. REV.* 1003; Caldwell, *supra* note 6 (discussing the use of stereotypes in employment cases); West, *supra* note 47.

	<b>POSITIVE</b>	<b>NEGATIVE</b>
<b>WHITE WOMEN</b>	Beautiful Intelligent Fun Loving Warm and Friendly Morally Upstanding Nurturing (Good Wives and Mothers) Sexually Adventurous Middle Class	Delicate/Fragile Flighty Overly Emotional/Hysterical Emotionally Cold (Ice Maidens) Stuck Up Prone to Prioritize Family Over Work  Promiscuous/Loose Pampered/Entitled Bland/Fake
<b>BLACK MEN</b>	Athletic Physically Strong Sexually Attractive Rhythmic Artistically Talented	Overly Aggressive Threatening Sexual Predators Hip-Hop Gangsters/Thugs Uneducated Morally Questionable Prone to Criminality Bad Fathers Lazy Poor
<b>BLACK WOMEN</b>	Exotically Beautiful Warm and Spiritual Sexually Erotic Athletic Physically Strong  Intelligent Resilient Wise	Ugly Mammy Sexually Permissive Built like a Man (Bestial/Animalistic) Domineering/Emasculating Overly Aggressive and Assertive Threatening Not Smart Black Welfare Queens Uppity Loud Disagreeable/Unpleasant Morally Deficient

\*The above representation roughly pairs positive stereotypes with their negative counterparts.

The above lists are not merely the theoretical musings of two law professors.<sup>86</sup> Numerous contemporary events support the continued widespread invocation of these stereotypes. Consider the following:

Black women and girls make up 13% of the female population, yet they constitute 33% of the females killed in police encounters.<sup>87</sup> (*Stereotype: Threatening*)

The wife of New York City Mayor Bill de Blasio, a Black woman, was recently called a “former crack addict” by a New York City police officer.<sup>88</sup> (*Stereotype: Criminal, Morally Deficient*)

Horrific online postings about Sasha Obama, President and First Lady Obama’s youngest daughter, included comments such as: “Hope u get raped.”<sup>89</sup> (*Stereotype: Uppity - Needs to be put in her place*)

Leslie Jones, a comedian on Saturday Night Live and an actor in the remake of Ghostbusters, was called an ape and other names on Twitter.<sup>90</sup> (*Stereotype: Animalistic*)

A DC police officer manhandled a Black female school teacher after assuming she was a prostitute.<sup>91</sup> (*Stereotype: Criminal, Sexually permissive, Morally deficient*)

A Black woman, incarcerated for failure to complete classes following a traffic violation, was left in jail for multiple days without needed feminine products, toothpaste, deodorant or the ability to shower, and was paraded into court before a judge, seemingly without pants.<sup>92</sup> (*Stereotype: Animalistic*)

Serena Williams, the greatest female tennis player in the open era, has been called n\*gger, a man, and an ape, among other things. Some expressed outrage that she was selected by *Sports Illustrated* as

86. See *supra* note 85 and accompanying text.

87. #SayHerName, AFR. AM. POL’Y F., <http://www.aapf.org/sayhername> (last visited May 3, 2017). The #SayHerName website tracks the experiences of Black women and girls who have been killed by police or as a result of encounters with the police. *Id.*

88. See Erin Durkin & Larry McShane, *Mayor de Blasio Hits Back at Racist, Facebook-Ranting NYPD Cop Who Called his Wife a ‘Former Crack Addict,’* N.Y. DAILY NEWS (Aug. 10, 2016, 2:27 PM), [http://www.nydailynews.com/new-york/de-blasio-hits-back-called-wife-crack-addict-article-1.2746047?utm\\_content=bufferd9df1&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=buffer](http://www.nydailynews.com/new-york/de-blasio-hits-back-called-wife-crack-addict-article-1.2746047?utm_content=bufferd9df1&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer).

89. John Prager, *Racist Conservatives Wish Sasha Obama a Happy 15th Birthday: ‘Hope U Get Raped’* (SCREENSHOTS), ADDICTING INFO (Jun 10, 2016, 10:07 PM) <http://www.addictinginfo.org/2016/06/10/racist-conservatives-wish-sasha-obama-a-happy-15th-birthday-hope-u-get-raped-screenshots>.

90. *Leslie Jones Quits Twitter After Spending a Day Battling Racist Twitter*, CULTURE (July 19, 2016), <http://theculture.forharriet.com/2016/07/leslie-jones-quits-twitter-after.html>.

91. Rachaell Davis, *DC Cop Manhandles Black Female School Teacher After Allegedly Assuming She Was a Prostitute*, ESSENCE (Aug. 17, 2016), [http://www.essence.com/2016/08/17/dc-cop-manhandles-black-female-school-teacher?xid=essence\\_socialflow\\_facebook](http://www.essence.com/2016/08/17/dc-cop-manhandles-black-female-school-teacher?xid=essence_socialflow_facebook).

92. Matt Naham, *Judge Outraged After Jailers Send Woman to Court With No Pants*, AJC.COM (Aug. 1, 2016, 8:14 AM), <http://www.ajc.com/news/news/national/judge-outraged-after-jailers-send-woman-court-no-p/nr7yS>.



its 2015 Person of the Year over a *horse*.<sup>93</sup> One newspaper went so far as to compare Ms. Williams to the horse in question.<sup>94</sup> Few people, however, seem upset over the fact that until recently Maria Sharapova, a fellow White female tennis player, with significantly fewer professional achievements than Williams, was the highest paid female athlete for eleven years.<sup>95</sup> (*Stereotype: Ugly, Animalistic*)

Black female teenagers have been dragged with ropes around their necks, thrown to the floor by safety officers in schools, or treated like garbage and tossed around parking lots like rag dolls by security personnel.<sup>96</sup> (*Stereotype: Not human*)

Society at large, including employers, school districts, and even Black men, rejects Black women, particularly those with dark skin and natural hair.<sup>97</sup> (*Stereotype: Unattractive*)

93. Brittney Cooper, *The Truth About Serena & American Pharoah: Here's the Real Reason Why the Comparison Is So Insulting*, SALON (Dec. 16, 2015, 4:58 AM), [http://www.salon.com/2015/12/16/the\\_truth\\_about\\_serena\\_american\\_pharaoh\\_heres\\_the\\_real\\_reason\\_why\\_the\\_comparison\\_is\\_so\\_insulting](http://www.salon.com/2015/12/16/the_truth_about_serena_american_pharaoh_heres_the_real_reason_why_the_comparison_is_so_insulting); Jenée Desmond-Harris, *Serena Williams is Constantly the Target of Disgusting Racist and Sexist Attacks*, VOX (Sept. 7, 2016, 8:50 AM), <http://www.vox.com/2015/3/11/8189679/serena-williams-indian-wells-racism>; Chris Murphy, *Serena Williams vs. American Pharoah: The Sports Illustrated Fallout*, CNN (Dec. 16, 2015, 6:40 PM), <http://edition.cnn.com/2015/12/16/sport/winning-post-serena-williams-sports-illustrated/index.html>.

94. Chuck Schilken, *Are Fans Right to be Upset that Serena Williams Beat American Pharoah for SI Sportsman of the Year?*, L.A. TIMES (Dec. 14, 2015, 10:25 AM), <http://www.latimes.com/sports/sportsnow/la-sp-sn-serena-williams-american-pharaoh-sports-illustrated-20151214-hmlstory.html>.

95. SI Wire, *Serena Williams is World's Highest-Paid Female Athlete*, SPORTS ILLUSTRATED (June 7, 2016), <https://www.si.com/tennis/2016/06/06/serena-williams-highest-paid-female-athlete-maria-sharapova>.

96. Andy Campbell, *Rope Burns on a Black Schoolgirl's Neck Weren't Criminal, Police Say*, HUFFINGTON POST: BLACK VOICES (July 26, 2016, 2:07 PM), [http://www.huffingtonpost.com/entry/black-schoolgirl-rope-burns-texas\\_us\\_57979124e4bod3568f8499be](http://www.huffingtonpost.com/entry/black-schoolgirl-rope-burns-texas_us_57979124e4bod3568f8499be); CNN Wire, *Video Shows South Carolina School Officer Slam Female Student to Floor; Throw Her Across Classroom*, KTLA (Oct. 26, 2015, 11:44 PM), <http://ktla.com/2015/10/26/parents-outraged-over-video-of-confrontation-between-high-school-student-and-school-resource-officer>; Nick Visser, *Teen Sues Mall, Cop After Being Thrown Like A "Doll" During Arrest*, HUFFINGTON POST: BLACK VOICES (May 16, 2016, 8:55 AM), [http://www.huffingtonpost.com/entry/monique-tillman-lawsuit\\_us\\_5739143ee4bo8f96c1837864](http://www.huffingtonpost.com/entry/monique-tillman-lawsuit_us_5739143ee4bo8f96c1837864).

97. For a recent anecdotal example of bias against dark-skinned Black women, see Gilbert Arenas *Says Lupita Nyong'o 'Ain't Cute' in Tirade about Dark-Skinned Women*, GRIO (Apr. 14, 2017, 3:32 PM), <http://thegrio.com/2017/04/14/gilbert-arenas-dark-skinned-women> (discussing former NBA star Gilbert Arenas's statement that Nyong'o was "cute when the lights are off"). For analysis of skin color preferences, see generally COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA (Kimberly Jade Norwood ed., 2014); KATHY RUSSELL-COLE ET. AL., THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR IN A NEW MILLENNIUM (2d ed. 2013); SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS (Evelyn Nakano Glenn ed., 2009); Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487 (2000); Kimberly Jade Norwood, *"If You Is White, You's Abright. . . ." Stories About Colorism in America*, 14 WASH. U. GLOBAL STUD. L. REV. 585 (2015); *I Don't Want No Black B\*tch: Florida Rapper Sparks Colorism Debate*, GRIO (Aug. 13, 2016, 12:45 PM), <http://thegrio.com/2016/08/13/i-dont-want-no-black-btch-florida-rapper-sparks-colorism-debate>; and Ross, *supra* note 32. For analysis of the racialized dating preferences of men, see Ralph Richard Banks, Opinion, *Why Black Women are Justifiably Bitter: The Bleak Relationship Picture for African-American Females*, DAILY NEWS (Sept. 2, 2011, 4:00 AM), <http://www.nydailynews.com/opinion/black-women-justifiably-bitter-bleak-relationship-picture-african-american-females-article-1.953496>; and Christian Rudder, *Race and Attraction*, 2009-2014.

The above charts and examples are not offered to suggest that these stereotypes are accurate, despite their prevalence. Nor does this Article seek to reify societal constructs of White women, Black Men, and Black women,<sup>98</sup> or to dismiss the oppression of Black men and White women. Rather, these lists are set forth to show that in aggressive encounters, aggressors are not responding to Black women as women, or as Black—but rather as Black women. As previous scholars and persons have noted, Black women are raced *and* gendered beings who at times are viewed differently from White men, Black men, and White women. Importantly, the fact that society has juxtaposed Black women and these other groups means that the aggressors in aggressive encounters are not only White men, but also Black men as well as White women.<sup>99</sup> To the extent that Black women have internalized these societal norms, they also may be aggressors (as, for example, was the case with the Black female officer and the former student in Grant Park).<sup>100</sup>

The lists are useful because they also reveal that the trope of the “Angry Black Woman” is innately intersectional. This so-called “Angry Black Woman” is the physical embodiment of some of the worst negative stereotypes of Black women—she is out of control, disagreeable, overly aggressive, physically threatening, loud (even when she speaks softly), and to be feared. She will not stay in her “place.” She is not human. Importantly, the “Angry . . . Woman” label is assigned almost exclusively to Black women. The salience of this trope comes from the combination of blackness and non-conforming femininity.

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OKCUPID (Sept. 9, 2014), <https://theblog.okcupid.com/race-and-attraction-2009-2014-107dcb4fo60> (finding that men on OkCupid rated Black women less attractive than all other women). *See also I don't Want No Black B\*tch, supra* (discussing a studio session by Dieuson Octave, “which has many people up in arms for its derogatory lyrics about black women”). The low status of Black women as romantic partners appears to be a world-wide phenomenon. *See also Brazilian Actress Polly Marinho Explains Why Wealthy Black Men Don't Marry Black Women “Black is a Slave,” BOSSIP* (Mar. 8, 2016), <http://bossip.com/1290251/brazilian-actress-polly-marinho-explains-why-wealthy-black-men-dont-marry-black-women-black-is-a-slave> (Marinho explains that “Black men often desire white women because it’s a sign of prosperity to be able to marry a non-Black woman”).

98. There is nothing “real” or “innate” about race or gender that produces certain behavioral characteristics. That is, race and gender are not biologically determined. Rather, they are social constructions, meaning that society has taken certain physical attributes (e.g., skin color, hair texture, the possession of breasts and ovaries) and assigned social meaning to them. *See* Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 7 (1994) (“[D]efin[ing] . . . ‘race’ as a vast group of people loosely bound together by historically contingent, socially significant elements of their morphology and/or ancestry. . . . Race is neither an essence nor an illusion, but rather an ongoing, contradictory, self-reinforcing process subject to the macro forces of social and political struggle and the micro effects of daily decisions.”). *See generally* THE SOCIAL CONSTRUCTION OF GENDER (Judith Lorber & Susan A. Farrell eds., 1990).

99. For example, when one considers some of the aggressive encounters described in Part II, it is important to note that White women also assume that Black women operate in a service capacity. In addition, White female clerks in department stores surveil or ignore Black women. And, White women cut in line in front of Black women as if they were invisible or do not exist. It is hard to know the frequency with which these events occur. But, what is important is that Black women notice and it is part of their discourse. The sense is that these occurrences are not just “rude behavior,” but rather it is behavior driven by conscious and unconscious stereotyping and bias.

100. *See supra* note 61 and accompanying text.

How many times has the reader heard of the Angry White woman? The Angry Asian Woman? The Angry Latina Woman?

The above lists are set forth for an additional purpose. Earlier this Article referenced the decisional moment in aggressive encounters—that split second in which Black women must decide whether to remain silent or to speak. This moment is fraught because Black women know that to push back—to exercise voice—inevitably means that any positive stereotypes to which they may be subject (however slim they may be) will immediately elide into the negative. This elision underscores the fragility of the line between the positive and the negative and how easily that line can be crossed. Indeed, this Article argues that this line is so easily traversed because with marginalized groups (including White women and Black men), negative stereotypes are the default norm against which group members are always pushing. Anyone who does not fit the norm is viewed as an exception. This exceptional status, however, can be tenuous, and it does not fundamentally change underlying views about the group. Thus, one or two noncomplying group members do not change the default norm. But, negative action by one or two individuals seems to confirm or reinforce negative stereotypes about the group. Thus, when Micah Johnson murdered five police officers in Dallas, Texas, his horrific act reinforced negative stereotypes about all Black men.<sup>101</sup> Or when Hillary Clinton pursued her political ambitions, her actions reinforced negative stereotypes of women and raised fears about women's qualifications<sup>102</sup> and about women "stepping out of place."<sup>103</sup> Yet, when Dylann Roof entered an African-American church and killed Black worshippers,<sup>104</sup> when James Homes

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101. See Richard Fausett et al., *Micah Johnson, Gunman in Dallas, Honed Military Skills to a Deadly Conclusion*, N.Y. TIMES (July 9, 2016), <http://www.nytimes.com/2016/07/10/us/dallas-quiet-after-police-shooting-but-protests-flare-elsewhere.html>. A similar observation might be made about the effects of Omar Mateen's deadly massacre on the perceptions of Muslim men. See Lizette Alvarez & Richard Pérez-Peña, *Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead*, N.Y. TIMES (June 12, 2016), <https://www.nytimes.com/2016/06/13/us/orlando-nightclub-shooting.html>. Note Michelle and Barack Obama's accomplishments and exemplary acts do not have a similar effect; their actions do not transform the default negative characterization of Black people. Instead, the Obamas are viewed as exceptions. See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 318 (1987) (explaining how Blacks who do not fit the standard profile are viewed as exceptions to the rule, rather than as evidence that default assumptions should be changed).

102. Peter Beinart, *Fear of a Female President*, ATLANTIC (Oct. 2016), <http://www.theatlantic.com/magazine/archive/2016/10/fear-of-a-female-president/497564> (discussing the misogyny surrounding Hillary Clinton's candidacy); Jacqueline Howard, *How Gender Bias Plays a Role in Elections*, HUFFINGTON POST (Nov. 12, 2015, 9:59 AM), [http://www.huffingtonpost.com/entry/gender-bias-role-in-elections\\_us\\_564357b4e4b045bf3ded2245](http://www.huffingtonpost.com/entry/gender-bias-role-in-elections_us_564357b4e4b045bf3ded2245).

103. See, e.g., Michelle Goldberg, *The Hillary Haters*, SLATE (July 24, 2016, 8:01 PM), [http://www.slate.com/articles/news\\_and\\_politics/cover\\_story/2016/07/the\\_people\\_who\\_hate\\_hillary\\_clinton\\_the\\_most.html](http://www.slate.com/articles/news_and_politics/cover_story/2016/07/the_people_who_hate_hillary_clinton_the_most.html); Jay Parini, Opinion, *Why Do They Hate Hillary Clinton So Much?*, CNN (Mar. 21, 2016, 6:27 AM), <http://www.cnn.com/2016/03/20/opinions/why-the-hate-for-hillary-clinton-opinion-parini/index.html>; Amy Walter, *Working Moms, First Ladies and Recalling Hillary Clinton's 'Baking Cookies' Comment*, ABC NEWS (Apr. 12, 2012), <http://abcnews.go.com/blogs/politics/2012/04/working-moms-first-ladies-and-recalling-hillary-clintons-cookies>.

104. Indeed, the police actually stopped at a fast food restaurant to feed the hungry murderer after his rampage. Simon McCormack, *Cops Bought Dylann Roof Burger King Hours After Charleston*

walked into a theater and killed 12 people and injured over 70,<sup>105</sup> when Jared Loughner killed 6 people (and injured 13) in the parking lot of a supermarket,<sup>106</sup> when Timothy McVeigh set off a bomb in Oklahoma City killing 168 people,<sup>107</sup> when Ted Kaczynski killed people through letter bombs over a 20-year period,<sup>108</sup> or when Adam Lanza walked into an elementary school and killed 20 children and 6 employees,<sup>109</sup> these acts did not appear to indict all White men or even to disrupt positive stereotypes of White men.<sup>110</sup> Again, the point here is that Black women in aggressive encounters are aware of the ingrained and pervasive nature of negative stereotypes and of how quickly these stereotypes can completely eclipse any positive views to which they may be subject. One roll of the eye. One hand on the hip. One oppositional word, spoken loudly or softly, and a Black woman who is quietly going about her business gets transformed into the “Angry Black Woman.”

#### V. WHITE FRAGILITY AND PSYCHOLOGICAL PROJECTION: THE BLAME GAME

Thus far, this Article has focused on the ways in which conscious or unconscious stereotypes and biases lead to aggressive encounters. It has yet to offer a theory for why the exercise of voice or any form of pushback may cause aggressors to blame these encounters on the very women they are attacking.

*Shooting*, HUFFINGTON POST (June 23, 2015, 11:11 AM), [http://www.huffingtonpost.com/2015/06/23/dylann-roof-burger-king\\_n\\_7645216.html](http://www.huffingtonpost.com/2015/06/23/dylann-roof-burger-king_n_7645216.html) (“Shelby Police Chief Jeff Ledford told the Charlotte Observer that when Roof complained he was hungry, cops went to a nearby Burger King and bought the accused mass murderer a meal while he was in custody.”). And lest we forget, images of Dylann Roof burning the flag, clearly less patriotic than not putting a hand over one’s heart during the National Anthem, invoked no national outcry, no protests, and no venom against Roof. See Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, N.Y. TIMES (June 20, 2015), <https://www.nytimes.com/2015/06/21/us/dylann-storm-roof-photos-website-charleston-church-shooting.html>.

105. See Steve Almasy et al., *James Holmes Sentenced to Life in Prison for Colorado Movie Theater Murders*, CNN (Aug. 8, 2015, 8:37 AM), <http://www.cnn.com/2015/08/07/us/james-holmes-movie-theater-shooting-jury>.

106. See *Tucson Gunman Before Rampage: “I’ll See You on National T.V.”*, CBS NEWS (Apr. 11, 2014, 12:18 PM), <http://www.cbsnews.com/news/jared-loughner-who-shot-gabrielle-giffords-in-tucson-ranted-online>.

107. See Ryan Gorman, *20 Years After the Oklahoma City Bombing, Timothy McVeigh Remains the Only Terrorist Executed by US*, BUS. INSIDER (Apr. 19, 2015, 8:00 AM), <http://www.businessinsider.com/20-years-after-the-oklahoma-city-bombing-timothy-mcveigh-remains-the-only-terrorist-executed-by-us-2015-4>. Although Timothy McVeigh was actually called a terrorist, this label rarely gets attached to White men. See David A. Love, Opinion, *What Does it Take to Call White Men Terrorists?*, GRIO (Oct. 17, 2016, 2:10 PM), <http://thegrio.com/2016/10/17/white-men-terrorists-kansas-bomb-plot>.

108. Charlie Savage, *F.B.I. Is Looking at Unabomber in ‘82 Tylon Case*, N.Y. TIMES (May 19, 2011), <http://www.nytimes.com/2011/05/20/us/20tylenol.html>.

109. Doug Stanglin & Marisol Bello, *Sandy Hook Killer Carefully Planned Attack, Study Says*, USA TODAY (Nov. 21, 2014, 1:53 PM), <http://www.usatoday.com/story/news/nation/2014/11/21/sandy-hook-massacre-newtown-connecticut-adam-lanza/19343223>.

110. This demographic is also responsible for the majority of rapes and serial killings in the United States. And yet the predominant stereotype of White men is not that of rapist or murderer. It seems that when White men commit bad acts, they are treated as individuals. In contrast, when members of marginalized groups commit bad acts, their actions are read as confirmation of negative stereotypes about their group.

To augment understanding of this blame shifting, this Part examines White transparency, White fragility, and psychological projection.

A. *WHITE TRANSPARENCY, WHITE FRAGILITY, AND AGGRESSIVE ACTS*

On November 4, 2008, the night Barack Obama was first elected President, some people proclaimed that the United States was post-racial.<sup>111</sup> Ubiquitous evidence of racial discrimination since that time has proven them wrong.<sup>112</sup> Yet, while there is a seemingly heightened awareness, particularly after the 2016 Presidential campaign and election, of the continuing significance of racism on a macro level, many Whites still reject its influence on a micro level (i.e., with regard to their personal decision making and in their individual lives). That is, many Whites deny, or are oblivious to, their own racial bias and privilege.<sup>113</sup>

This denial and oblivion are likely affected by what Barbara Flagg has termed White transparency,<sup>114</sup> or the tendency of Whites to be unaware of their whiteness.<sup>115</sup> Per Flagg, White transparency allows Whites to see the world from a particular vantage, with their own experiences as the unstated, uncontested norm.<sup>116</sup> White transparency means that Whites rarely have to think about embedded racial hierarchies and the ways in which they are

111. See David R. Sands & Andrea Billups, *Obama Term Expected to be Post-Racial*, WASH. TIMES (Nov. 9, 2008), <http://www.washingtontimes.com/news/2008/nov/09/obama-presidency-expected-to-be-post-racial> (discussing how some believed President Obama's 2008 victory meant the United States was a post-racial society); Daniel Schorr, *A New, 'Post-Racial' Political Era in America*, NPR (Jan. 28, 2008, 4:00 PM), <http://www.npr.org/templates/story/story.php?storyId=18489466> (questioning whether President Obama's 2008 presidential victory meant the United States was post-racial).

112. See generally Breanna M. Bacon, *The Myth of Obama's Post-Racial Presidency: Why Barack Obama's Election Didn't End Racial Inequality in America*, 7 INQUIRIES J. (2015), <http://www.inquiriesjournal.com/articles/988/the-myth-of-obamas-post-racial-presidency-why-barack-obamas-election-didnt-end-racial-inequality-in-america>; Mario L. Barnes et al., *A Post-Race Equal Protection?*, 98 GEO. L.J. 967 (2010); Angela Onwuachi-Willig & Mario L. Barnes, *The Obama Effect: Understanding Emerging Meanings of "Obama" in Anti-Discrimination Law*, 87 IND. L.J. 325 (2012); Sheryl Estrada, *President Obama: Talk of a Post-Racial America Not Realistic*, DIVERSITYINC (Jan. 11, 2017), <http://www.diversityinc.com/news/president-obama-talk-post-racial-america-not-realistic>. Racially motivated crimes and other acts of racial hatred since November 8, 2016, seem to have buried for good the myth that the United States is post-racial. See *Hate Groups/State Totals*, SOUTHERN POVERTY L. CTR., <https://www.splcenter.org/hate-map> (last visited Apr. 19, 2017) (showing the location, number, and types of hate crimes committed in the United States by state); see also Maureen B. Costello, *The Trump Effect: The Impact of the 2016 Presidential Election on Our Nation's Schools*, S. POVERTY L. CTR. (Nov. 28, 2016), <https://www.splcenter.org/20161128/trump-effect-impact-2016-presidential-election-our-nations-schools> (discussing how K-12 educators found the results of the 2016 presidential election negatively impacted their schools and students).

113. See generally MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013).

114. Technically, Flagg labeled this the transparency phenomenon, but over time it has been referred to as White transparency.

115. Barbara J. Flagg, *"Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969-73 (1993). Flagg notes that "in this society, . . . the white person has an everyday option not to think of herself in racial terms at all." *Id.* at 969.

116. *Id.* at 971.

racially privileged.<sup>117</sup> The world just is, and for people who experience racial privilege—where whiteness is the background norm—it is a comfortable place to be.

To be sure, with increasing economic inequality and changing racial demographics, a form of White-identity politics seems to have emerged in recent years. Some Whites are no longer feeling economically privileged, and their expectations about a “better life” for themselves and their children are being disappointed. The decline of White privilege (at least for this subgroup) has created a hyper-awareness of whiteness and has seemingly led some Whites to rally behind slogans like “Make America Great Again,” which some have read as “Make America White Again.”<sup>118</sup> Thus, the United States may be experiencing a moment of White visibility. However, the goal of those who are most alarmed in this moment appears to be to get back to a state where whiteness is again hegemonic.

Not only does racial transparency exist, but so too does gender transparency.<sup>119</sup> Although men may think of themselves as male and women as female, it seems that until recently relatively few men challenged maleness as the preferred gender norm or acknowledged the privilege that maleness bestows. This is reflected quite readily in the views of those who voted for Donald Trump simply because he is male,<sup>120</sup> or those who stated that if Hillary Clinton had selected Elizabeth Warren as a running mate, they definitely would not have voted for her because they could not vote for “two women.”<sup>121</sup> Clearly, these individuals have not contemplated that for centuries U.S. citizens have chosen between two male candidates for the Presidency, and between two men on each ticket,<sup>122</sup> without ever seeing that “choice” as problematic.

117. *Id.* at 970–73.

118. See, e.g., Lola Adesioye, “*Make America White Again*”: How US Racial Politics Led to the Election of Donald Trump, *NEW STATESMAN* (Nov. 21, 2016), <http://www.newstatesman.com/world/north-america/2016/11/make-america-white-again-how-us-racial-politics-led-election-donald> (discussing how some White Americans felt that they “were losing out under this black president [Obama], and that white identity and culture . . . were being threatened by this move towards a more open, inclusive and diverse society”); Toni Morrison, *Making American White*, *NEW YORKER* (Nov. 21, 2016), <http://www.newyorker.com/magazine/2016/11/21/making-america-white-again> (discussing how some Americans sacrifice themselves to “restore whiteness to its former status as a marker of national identity”).

119. See Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women’s Studies* 1 (Wellesley Coll. Ctr. for Research on Women, Working Paper No. 189, 1988), <http://www.collegeart.org/pdf/diversity/white-privilege-and-male-privilege.pdf> (“I think whites are carefully taught not to recognize white privilege, as males are taught not to recognize male privilege.”).

120. See Rebecca Morin, *Giuliani: Trump ‘Better for the United States than a Woman,’* *POLITICO* (Oct. 2, 2016, 5:26 PM), <http://www.politico.com/story/2016/10/rudy-giuliani-donald-trump-woman-229026>.

121. Hadley Freeman, *Hillary Clinton in Charge Is OK, but Elizabeth Warren, Too? That’s Pushing It*, *GUARDIAN* (June 18, 2016, 4:00 AM), <https://www.theguardian.com/commentisfree/2016/jun/18/hadley-freeman-hillary-clinton-elizabeth-warren-two-women-in-charge>.

122. A number of women have run for the U.S. Presidency, but only one (Hillary Clinton, 2016) became the nominee of one of the two major parties, and only two were vice-presidential

When White racial hegemony is challenged, as it is by the changing demographics of the United States and movements like #SayHerName and #BlackLivesMatter, backlash often results.<sup>123</sup> Recently, sociologists have attributed some of the backlash to what Dr. Robin DiAngelo, PhD, has termed “White Fragility.”<sup>124</sup> Dr. DiAngelo argues that: “White people in North America live in a social environment that protects and insulates them from race-based stress. . . . This insulated environment of racial protection builds white expectations for racial comfort while at the same time lowering the ability to tolerate racial stress.”<sup>125</sup> Dr. DiAngelo argues that this leads to White fragility, defined as “a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves[,] . . . includ[ing] the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation.”<sup>126</sup>

Both White fragility and White transparency likely play a role in aggressive encounters. White male aggressors enter these encounters with conscious or unconscious notions of White male superiority and accompanying notions of Black female inferiority. They may also enter these encounters with a degree of racial anxiety and hostility based upon their perceived loss of social power. When Black women exercise voice by asserting their humanity and challenging assumptions about their second-class status, they disrupt the racial and gender comfort in which these aggressors exist and upset embedded notions of racial and gender superiority. As Dr. DiAngelo points out, this exercise of voice can provoke a range of emotions in White men, including anger and argumentation (as Professor Norwood witnessed in Home Depot).<sup>127</sup> It can also lead to a defensive projection of blame, or what

nominees (Geraldine Ferraro in 1984 and Sarah Palin in 2008). *Women Presidential and Vice Presidential Candidates: A Selected List*, CTR. FOR AM. WOMEN & POL., [http://www.cawp.rutgers.edu/levels\\_of\\_office/women-presidential-and-vice-presidential-candidates-selected-list](http://www.cawp.rutgers.edu/levels_of_office/women-presidential-and-vice-presidential-candidates-selected-list) (last visited May 3, 2017).

123. See David French, *Black Lives Matter: Radicals Using Moderates to Help Tear America Apart*, NAT'L REV. (July 11, 2016, 3:23 PM), <http://www.nationalreview.com/article/437677/black-lives-matter-radical-divisive> (distinguishing between a reasonable Black Lives Matter and a radical Black Lives Matter); Erin Aubry Kaplan, *Black Lives Matter Fights Brutality and Backlash*, HUFFINGTON POST (July 15, 2016, 11:39 AM), [http://www.huffingtonpost.com/entry/black-lives-matter-fights-brutality-and-backlash\\_us\\_57890183e4b03fc3ee508b18](http://www.huffingtonpost.com/entry/black-lives-matter-fights-brutality-and-backlash_us_57890183e4b03fc3ee508b18) (discussing the backlash the Black Lives Matter movement has suffered); see also Janet Adamy & Paul Overberg, *Places Most Unsettled by Rapid Demographic Change are Drawn to Donald Trump*, WALL STREET J. (Nov. 1, 2016, 10:35 AM), <https://www.wsj.com/articles/places-most-unsettled-by-rapid-demographic-change-go-for-donald-trump-1478010940>; Cornell Belcher, *Trump is the Inevitable Backlash to an Obama Presidency*, GUARDIAN (Nov. 10, 2016, 12:27 PM), <https://www.theguardian.com/commentisfree/2016/nov/10/donald-trump-election-backlash-obama-presidency-white-voters> (asserting that the Trump campaign capitalized on racial backlash to the Obama Presidency); Brian Resnick, *White Fear of Demographic Change is a Powerful Psychological Force*, VOX (Jan. 28, 2017, 12:30 PM), <http://www.vox.com/science-and-health/2017/1/26/14340542/white-fear-trump-psychology-minority-majority> (arguing that “[i]ncreasing diversity could make America a more hostile place”).

124. Robin DiAngelo, *White Fragility*, 3 INT'L J. CRITICAL PEDAGOGY 54, 54 (2011).

125. *Id.* at 55 (footnote omitted).

126. *Id.* at 57; see also *supra* note 60 (recounting the angry reactions of a predominantly White male group of prosecutors and judges following a presentation by Professor Norwood).

127. See DiAngelo, *supra* note 124, at 57. Professor Norwood witnessed this behavior in Home Depot. See *supra* note 1 and accompanying text. Another widely known example would be the case

this Article terms “displaced blame.” Displaced blame allows aggressors in aggressive encounters to deflect attention from their aggressive acts and to place blame for these encounters on Black women.<sup>128</sup>

### B. PSYCHOLOGICAL PROJECTION

Displaced blame draws upon psychological projection, which psychologists define as:

The tendency for people to see in others characteristics that they are motivated to deny in themselves. For example, a woman tempted to cheat on a test might accuse others of dishonesty, a man with unwanted sexual fantasies and desires might become obsessed with the immorality of his neighbors, and another with an urge to commit violence against someone might come to believe that the other person is the potential aggressor.<sup>129</sup>

Importantly, research shows that projection operates as a defense mechanism. People “feel better about themselves and experience less anxiety as a result of projecting unwanted traits onto others.”<sup>130</sup>

Projection also allows the projector to escape responsibility for his actions and instead to blame others for them, which then reinforces the projector’s sense of superiority. For example, in his work on racism and projection, Kenneth Reeves notes:

African Americans are sometimes seen as lazy. All human beings have some laziness, but when White people see African Americans as lazy, White people can then deny their own laziness. This projection of laziness contributes to racism, because seeing African Americans as lazy and therefore less deserving justifies denying them access to societal benefits.<sup>131</sup>

Thus, projection operates in at least two ways. First, an individual who fears having certain traits may attempt to suppress thoughts about that trait. Yet, research shows that such suppression may “increase the likelihood that people will come to believe that others can be labeled with that very trait.”<sup>132</sup> Thus, projection increases the likelihood of stereotyping. Second, because

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of Sandra Bland, the Black woman who was found dead in her jail cell after being pulled over for a traffic violation. The video of this incident shows Bland asserting her rights to an increasingly irate police officer who ultimately arrested her. Some who viewed this video questioned whether Bland (merely by invoking her civil rights) led to the escalation of the situation. Debbie Nathan, *What Happened to Sandra Bland?*, NATION (Apr. 21, 2016), <https://www.thenation.com/article/what-happened-to-sandra-bland>.

128. *Projection*, ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY 708 (Roy F. Baumeister & Kathleen D. Vohs eds., 2007).

129. *Id.*

130. *Id.*

131. Kenneth M. Reeves, *Racism and Projection of the Shadow*, 37 PSYCHOTHERAPY 80, 83 (2000).

132. *Projection*, *supra* note 128, at 709.



some individuals desire to avoid the consequences of their own bad acts, projection may also increase the likelihood of deflecting blame.

In many aggressive encounters, aggressors display anger, irritation, and a sense of entitlement or superiority (either when initiating the encounter or after a Black woman responds). Yet, instead of the aggressors taking ownership for their actions and emotions, they label the Black woman the wrongdoer. When a Black woman pushes back, she is transformed into the “Angry Black Woman.” Angry. Out of control. Unreasonable. Temperamental. Threatening. Note that in projecting these emotions onto the Black woman, aggressors are able to deflect attention from their actions (and the fact that they may very well possess these traits) and are able instead to blame the encounter on the Black woman’s response. The aggressor then uses the Black woman’s response as confirmation of her inferiority and all of the other stereotypes that likely led to the encounter in the first place.

Displaced blame through defensive projection is neither new nor unique to Black women. It also occurs when society, through the criminal justice system, perpetuates violence against Black men (through unlawful detentions, disproportionate arrests, disparate sentences, disproportionate killings of unarmed black men, etc.). Instead of examining this state-sponsored violence, society characterizes Black men as gangsters and thugs. In this projection, Black men become the primary focus of attention and are blamed for the violence to which they are subject while the state apparatus escapes serious critique and transformation.<sup>133</sup>

Displaced blame may also occur without the projection of traits the aggressor seeks to deny in himself. Sometimes the aggressor will merely blame the harmed individual. For example, displaced blame occurred in the United States when White communities killed or maimed African Americans who were in geographical areas that Whites deemed off limits. Instead of examining the racism and the racial exclusion at the heart of sundowner laws, Black people were blamed for the unspeakable horrors perpetuated against them.<sup>134</sup> Not staying in one’s assigned “place” became the focus of attention instead of the propriety of society assigning a place based on “race.” Displaced blame also occurs when men perpetuate physical violence against women, and instead of accepting responsibility for this violence, society blames women for drinking “too” much, for being out “too” late, for wearing the “wrong”

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133. See the commentary surrounding a *New York Times* article in which the reporter wrote that “Michael Brown . . . was no angel.” John Eligon, *Michael Brown Spent Last Weeks Grappling with Problems and Promise*, N.Y. TIMES (Aug. 24, 2014), <http://www.nytimes.com/2014/08/25/us/michael-brown-spent-last-weeks-grappling-with-lifes-mysteries.html>; Margaret Sullivan, Opinion, *An Ill-Chosen Phrase, ‘No Angel,’ Brings a Storm of Protest*, N.Y. TIMES (Aug. 25, 2014, 3:55 PM), <http://publiceditor.blogs.nytimes.com/2014/08/25/an-ill-chosen-phrase-no-angel-brings-a-storm-of-protest> (“That choice of words was a regrettable mistake.”); see also Ta-Nehisi Coates, *Nonviolence as Compliance*, ATLANTIC (Apr. 27, 2015), <https://www.theatlantic.com/politics/archive/2015/04/nonviolence-as-compliance/391640> (“When nonviolence is preached by the representatives of the state, while the state doles out heaps of violence to its citizens, it reveals itself to be a con.”).

134. See generally JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* (2005) (discussing the history of racial exclusion of Black people from sundown towns).

clothing, etc. In other words, women get blamed for “not acting like a good lady should.”<sup>135</sup> Male violence and societal restrictions that limit women’s freedom elude interrogation.<sup>136</sup>

### C. THE DECISIONAL MOMENT AND CONSEQUENCES

Even without advanced training in psychology, Black women are aware of the racial bias and stereotyping (sometimes nuanced, sometimes in your face) that occur in aggressive encounters. They also know that if they were to push back against these stereotypes, then they risk backlash from the aggressor (and possibly others)<sup>137</sup> and that they may ultimately be blamed for the encounter. Saying nothing, however, allows the aggressor’s stereotypes and embedded assumptions to go unchecked. In other words, not speaking may cause a Black woman to feel as if she is complicit in her own oppression.

Thus, Black women are constantly faced with decisional moments, those fleeting instants in which they must decide whether to speak or to be silent. Both “choices” have immediate and long-term consequences. The stress and psychic violence of the moment is obvious, whether one stakes one’s ground (as Professor Norwood did in Home Depot) or complies (as Professor Jones did on the plane). As discussed below, there are longer-term costs as well.

Aggressive encounters play mind games on Black women. Recall the befuddlement, shock, anxiety, and anger that Professor Norwood experienced in Home Depot and how she silently wondered how the aggressive encounter was affecting others’ perceptions of her. Consider the constant stress that countless other Black women face knowing that they risk being labeled an “Angry Black Woman” and blamed if they speak forcefully or strongly—or if they speak at all. Black women are constantly kept wondering: Should I check myself? Am I coming on too strongly? Am I out of line? (This of course begs the question of who drew the lines.)

This kind of uncertainty and the stress that it breeds has the potential not only to erode one’s confidence over time, but it can also lead to negative

135. Even in 2016, women continue to be blamed, *even by judges*, for being raped. See AJ Willingham & Carma Hassan, *Judge to Woman in Rape Case: ‘Why Couldn’t You Just Keep Your Knees Together?’*, CNN (Sept. 13, 2016, 1:25 PM), <http://www.cnn.com/2016/09/12/world/robin-camp-rape-comments-trnd>.

136. While the Article focuses on individual aggressive encounters, this Part shows that these encounters occur on a systemic level as well. In other words, societal structures exclude groups from participation in certain social, economic, and political activities. When these groups protest, the focus centers on the illegitimacy of the protest and the protestors. In this way, attention and blame are deflected from the structural inequalities that are crying out for attention. Getting at this larger dysfunction requires that one brings attention back to it. This Article seeks to contribute to this redirection.

137. Black women know that they often cannot count on the support of other witnesses to the encounter. Some people may be influenced by their own implicit biases and will conclude that the Black woman is overreacting, out of line, difficult, or rude. Others, while sympathetic and supportive of the Black woman, may want to avoid being in the line of fire, or the subject of ire. (A version of this happens in meetings on a controversial topic, when one person speaks up and others elect to remain silent. These individuals may subsequently come to the speaker’s office to privately offer support for the speaker’s views.) See *supra* notes 126–28 and accompanying text.

health effects. Indeed, numerous studies have established that discrimination can lead to emotional distress, depression, anxiety, nightmares, post-traumatic stress disorder, high blood pressure, diabetes, cancer, heart disease, and stroke.<sup>138</sup>

Speaking back can also adversely affect opportunities for romantic relationships. Data show exogamy rates are stronger among Black men than Black women.<sup>139</sup> Although the authors do not know the exact reasons for these disparities,<sup>140</sup> anecdotally, many Black men have reported that they find Black women too strong, too assertive, too domineering, too independent, and too emasculating.<sup>141</sup> In other words, the trope of the Angry Black Woman seems to have affected the dating choices of some Black men.

Exercising voice can also affect one's career,<sup>142</sup> or lead to incarceration and death. Again the reader should recall Sandra Bland and the treatment of countless other Black women who were incarcerated or died when they dared

138. See JOY DEGRUY, POST TRAUMATIC SLAVE SYNDROME: AMERICA'S LEGACY OF ENDURING INJURY AND HEALING 114-44 (2011); Vetta L. Sanders Thompson & Anjanette Wells, *The Intersection of Poverty and Health: Are Race and Class Far Behind? A Case Study*, in URBAN ILLS: TWENTY-FIRST-CENTURY COMPLEXITIES OF URBAN LIVING IN GLOBAL CONTEXTS 109 (Carol Camp Yeakey et al. eds., 2013); Maxine S. Thompson & Verna M. Keith, *Copper Brown and Blue Black: Colorism and Self Evaluation*, in SKIN DEEP: HOW RACE AND COMPLEXION MATTER IN THE "COLOR-BLIND" ERA 45, 47 (Cedric Herring et al. eds., 2004). See generally Elizabeth A. Klonoff & Hope Landrine, *Is Skin Color a Marker for Racial Discrimination? Explaining the Skin Color-Hypertension Relationship*, 23 J. BEHAV. MED. 329 (2000); Camille A. Nelson, *Of Eggshells and Thin-skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women*, 29 INT'L J.L. & PSYCHIATRY 112 (2006); Vetta L. Sanders Thompson, *Perceived Experiences of Racism as Stressful Life Events*, 32 COMMUNITY MENTAL HEALTH J. 223 (1996).

139. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, TABLE 56. MARITAL STATUS OF THE POPULATION BY SEX, RACE, AND HISPANIC ORIGIN: 1990 TO 2009, <https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/1150056.pdf>; U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, TABLE 60. INTERRACIALLY MARRIED COUPLES BY RACE AND HISPANIC ORIGIN OF SPOUSES, <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/tables/1250060.pdf>; see also RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE: HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 33-38 (2011); Wendy Wang, *Interracial Marriage: Who Is "Marrying Out"?*, PEW RES. CTR.: FACT TANK (June 12, 2015), <http://www.pewresearch.org/fact-tank/2015/06/12/interracial-marriage-who-is-marrying-out>; Ritchie King, *The Uncomfortable Racial Preferences Revealed by Online Dating*, QUARTZ (Nov. 20, 2013), <http://qz.com/149342/the-uncomfortable-racial-preferences-revealed-by-online-dating>.

140. See *supra* note 97 and accompanying text; see also BANKS, *supra* note 139, at 2, 29-44 ("Black women of all socioeconomic classes remain single in part because the ranks of black men have been decimated by incarceration, educational failure, [ ] economic disadvantage," and interracial marriage.).

141. See BANKS, *supra* note 139, at 116, 121-22 (discussing the possible effects of stereotypes of Black women on their dating prospects). Other explanations are that Black women are not physically attractive and Black women are limiting their options by not considering nonblack men. See *id.* at 119-30; Rudder, *supra* note 97.

142. See Liane Jackson, *Minority Women Are Disappearing from BigLaw—and Here's Why*, ABA J. (Mar. 1, 2016, 12:15 AM), [http://www.abajournal.com/magazine/article/minority\\_women\\_are\\_disappearing\\_from\\_biglaw\\_and\\_heres\\_why](http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why) (discussing how women, especially women of color, learn to be quiet or else people will say they are "too sensitive. . . . [They] learn not to say anything because [they] know that could be a complete career killer. [They] make it as well as [they] can until [they] decide to leave.").

to speak back to law enforcement.<sup>143</sup> Instead of examining the systemic flaws revealed in these incidents, some pointed to the Black woman's resistance as the cause, asking, "Why didn't she just keep her mouth shut?"

## VI. SEARCHING FOR SOLUTIONS: IS THERE RELIEF IN SIGHT?

Deeply-rooted problems defy fast and simple solutions. Sometimes the best that can be done is to continue using existing means to whittle away at entrenched barriers. This Part considers three mechanisms to reduce the incidence and ameliorate the harm of aggressive encounters: (1) coalition building; (2) legal interventions; and (3) individual action.

### A. COALITION BUILDING IN THE NEW MILLENNIUM

I feel as if I'm gonna keel over any minute and die. That is often what it feels like if you're *really* doing coalition work. Most of the time you feel threatened to the core and if you don't, you're not really doing no coalescing. . . . You don't go into coalition because you just *like* it. The only reason you would consider trying to team up with somebody who could possibly kill you, is because that's the only way you can figure you can stay alive.<sup>144</sup>

As they have done in the past (with varying degrees of success), Black women, White women, and Black men must continue to support each other and to forge coalitions. Yet, as this section underscores, this task will not be easy. Indeed, more than 35 years after Bernice Johnson Reagon delivered the above-quoted words, coalition building, particularly among women, remains extremely difficult as recent discussions around the January 2017 Women's March on Washington illustrate.

The March was designed to show women's solidarity and opposition to a Trump presidency. Yet in a *New York Times* article, published just days before the March, some White women expressed discomfort and reluctance to attend the event upon learning that race and class would be on the agenda.<sup>145</sup> For example, a 50-year-old White minister from South Carolina told the *Times* that she decided not to participate after being put off by the tone of a Black woman's Facebook post.<sup>146</sup> According to the *Times*, the post "advised 'white

143. See AFR. AM. POL'Y F., *supra* note 87.

144. Reagon, *supra* note 56, at 356–57. These words come from a chapter that was "[b]ased upon a presentation at the West Coast Women's Music Festival" at Yosemite National Forest in 1981. *Id.* at 356.

145. See Farah Stockman, *Women's March on Washington Opens Contentious Dialogues About Race*, N.Y. TIMES (Jan. 9, 2016), <https://www.nytimes.com/2017/01/09/us/womens-march-on-washington-opens-contentious-dialogues-about-race.html>; see also Emma-Kate Symons, *Agenda for Women's March Has Been Hijacked by Organizers Bent on Highlighting Women's Differences*, N.Y. TIMES: WOMEN WORLD (Jan. 19, 2017), <http://nytlive.nytimes.com/womenintheworld/2017/01/19/agenda-for-womens-march-on-washington-has-been-hijacked-by-organizers-bent-on-highlighting-womens-differences>; WITW Staff, *Women's March on Washington Provokes Heated Debate on Class and Privilege*, N.Y. TIMES: WOMEN WORLD (Jan. 10, 2017), <http://nytlive.nytimes.com/womenintheworld/2017/01/10/womens-march-on-washington-provokes-heated-debate-on-class-and-privilege>.

146. Stockman, *supra* note 145.

allies' to listen more and talk less. It also chided those who, it said, were only now waking up to racism because of the election."<sup>147</sup> The minister told the *Times*, "This is a women's march, . . . [w]e're supposed to be allies in equal pay, marriage, adoption. Why is it now about, 'White women don't understand black women'?"<sup>148</sup>

The *Times*' article also recorded the reaction of a New Jersey woman to a quote posted on the march's Facebook page. The quote, taken from Bell Hooks, a famous Black author and feminist, encouraged women to create "a stronger sisterhood by 'confronting the ways women—through sex, class and race—dominate[] and exploit[] other women.'"<sup>149</sup> The New Jersey woman responded "I'm starting to feel not very welcome in this endeavor."<sup>150</sup>

It seems that both the South Carolina minister and the New Jersey woman were expressing a willingness to engage in coalition building only if they could do it on their terms—i.e., from a safe ("comfortable") space and with a focus squarely on issues of concern to White women (e.g., pay equity, marriage, adoption, but not the ways in which pay equity, marriage, and adoption are affected by race or class).<sup>151</sup> This struck some Black women, who feel marginalized and uncomfortable every day of their lives, as another instance of White women's blindness and unwillingness to interrogate their racial and class privilege—or at least to understand the multiplicity of their identities.<sup>152</sup> This tension, which is not new, was aggravated by the fact that 53% of White women voted for Donald Trump, while 94% of Black women voted for Hillary Clinton.<sup>153</sup> This startling disparity had already caused some women of color to wonder whether a deep, intersectional sisterhood was possible.

What the above interactions reveal is that some, though certainly not all, White women are missing a key insight of intersectionality theory. Race is always mediated by class and gender. And gender is always mediated by race and class. One cannot overcome sexism without simultaneously addressing racism and classism. Similarly, one cannot overcome racism without simultaneously addressing sexism and classism. Black women are keenly aware of these facts as they advocate for the abolishment of gender barriers only to see White women benefit in greater percentages without apparent concern

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. To be sure, some of the White women interviewed by the *Times* also suggested that the tone of the interactions were off putting, with use of phrases like "check your privilege." *Id.* A demand that discourse be refined, polite, and carefully phrased so as not to offend is another way of controlling the terms under which coalition building occurs—terms which render White women comfortable and mute Black women's frustration and anger. In other words, it should be understood that dictating the terms of engagement can itself be a form of control.

152. See Candice Norwood, *Can Women's Marchers Find a Way to Reconcile Their Differences*, ATLANTIC (Jan. 27, 2017), <https://www.theatlantic.com/politics/archive/2017/01/womens-marchers-differences/514652> (reporting that some women of color saw a lack of interest among White marchers on issues of race and class).

153. See Ellison, *supra* note 27.

for the fact that Black and poor women do not fare as well—or advocate for racial justice only to experience continuing violence at the hands of Black men.

The above tensions, however, may reflect more than a lack of understanding of the multiplicity of identities. They may also point to another phenomenon identified by Professors Trina Grillo and Stephanie Wildman in their work on analogies.<sup>154</sup> Grillo and Wildman note:

Because whiteness is the norm, it is easy to forget that it is not the only perspective. Thus, members of dominant groups assume that their perceptions are the pertinent perceptions, that their problems are the problems that need to be addressed, and that in discourse they should be the speaker rather than the listener. Part of being a member of a privileged group is being the center and the subject of all inquiry in which people of color or other non-privileged groups are the objects.<sup>155</sup>

What seems to happen in discussions of sexism is that White women implicitly believe that their concerns should be center stage. When challenged on this belief, well-meaning White women feel offended. And Black women feel frustrated.

There are no easy ways to bridge this divide. And many will certainly argue that in the Trump era, progressive women should focus on what unites them rather than what divides them. Yet, even in times of crisis and unsettling upheaval, taking the long-view is preferable. As Anne Valk noted in the *Times*' article referenced earlier,

[i]f your short-term goal is to get as many people as possible [protesting in the streets], maybe you don't want to alienate people . . . [b]ut if your longer-term goal is to use [protest] as a catalyst for progressive social and political change, then that has to include thinking about race and class privilege.<sup>156</sup>

Thus, White women must be willing to listen more and to learn. They must understand that in so many ways, from trying to survive with a criminal

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154. See generally Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397.

155. *Id.* at 402 (footnote omitted).

156. Stockman, *supra* note 145.

record,<sup>157</sup> to the gender pay gap,<sup>158</sup> to even rising in corporate America,<sup>159</sup> the differences, experiences, and outcomes between Black and White women are profound. White women must also prepare to be uncomfortable. As Reagon reminds us:

Coalition work is not work done in your home. Coalition work has to be done in the streets. And it is some of the most dangerous work you can do. And you shouldn't look for comfort. Some people will come to a coalition and they rate the success of the coalition on whether or not they feel good when they get there. They're not looking for a coalition; they're looking for a home! They're looking for a bottle with some milk in it and a nipple, which does not happen in a coalition. You don't get a lot of food in a coalition. You don't get fed a lot in a coalition. In a coalition, you have to give, and it is different from your home.<sup>160</sup>

For their part, Black women will have to do what they have done for centuries—continue to point out the multiplicity of all women's existences and stay the course even when some seek to render their lives and their existences invisible. None of this will be easy. Yet in these perilous times, progressives cannot afford to do anything else—they need each other to survive.<sup>161</sup>

157. Julia Craven, *Black Women with Criminal Records Have a Harder Time Than Their White Peers Finding Housing in D.C.*, HUFFINGTON POST (Oct. 19, 2016), [http://www.huffingtonpost.com/entry/black-white-women-housing-dc\\_us\\_5806958fe4b0dd54ce361ad3?section=&section=us\\_black-voices&](http://www.huffingtonpost.com/entry/black-white-women-housing-dc_us_5806958fe4b0dd54ce361ad3?section=&section=us_black-voices&).

158. Adia Harvey Wingfield, *About Those 79 Cents*, ATLANTIC (Oct. 17, 2016), <http://www.theatlantic.com/business/archive/2016/10/79-cents/504386>. Specifically, the article discusses the gender pay gap difference between White women and women of color. The 79-cent figure represents the average of all women, yet that 79-cent figure is closer to 65 cents for Black women and 54 cents for Latina women. *Id.*

159. Emily Peck, *Black Women Are Leaning In And Getting Nowhere*, HUFFINGTON POST (Sept. 29, 2016), [http://www.huffingtonpost.com/entry/black-women-are-leaning-in-and-getting-nowhere\\_us\\_57e98908e4b024a52d29b0e8](http://www.huffingtonpost.com/entry/black-women-are-leaning-in-and-getting-nowhere_us_57e98908e4b024a52d29b0e8) (discussing a recent study that “makes clear that while all women remain underrepresented in the corporate pipeline, women of color face the steepest drop-offs”); Jo Piazza, *Women of Color Hit a ‘Concrete Ceiling’ in Business*, WALL STREET J. (Sept. 27, 2016, 4:04 AM), <http://www.wsj.com/articles/women-of-color-hit-a-concrete-ceiling-in-business-1474963440> (noting that women of color face a concrete, as opposed to a glass, ceiling). According to the Women in the Workplace: 2016 study, produced by LeanIn.Org and McKinsey & Company, “[w]omen of color are the most underrepresented group in the corporate pipeline, lagging behind white men, men of color, and white women. Even though they make up 20 percent of the U.S. population, women of color hold a mere 3 percent of C-suite positions, despite having higher aspirations for becoming a top executive than white women.” LAREINA YEE ET AL., WOMEN IN THE WORKPLACE: 2016, at 8 (2016) (footnote omitted), <https://womenintheworkplace.com>.

160. Reagon, *supra* note 56, at 346.

161. Although the above analysis focuses on coalition building between White and Black women, the analysis also applies to coalition building among Black women and Black men. The latter may be somewhat easier to achieve as Black men and women often share the same domestic spaces. Because Black men and women are family members (brothers, sisters, fathers, daughters, aunts, uncles, etc.) their interconnected fates appear obvious, and the need to overcome internal divisions is seemingly more urgent. Therefore, coalitions generally form more naturally between Black men and women—although usually these coalitions form around racial as opposed to

### B. LEGAL INTERVENTIONS

While law has been a mechanism for social change, the sad truth is that law cannot solve all problems. As this Subpart reveals, legal claims are likely to be of limited utility in addressing aggressive encounters. Two areas of the law are relevant to the present analysis: (1) civil rights claims under constitutional and statutory law; and (2) tort claims.

#### 1. Constitutional and Statutory Claims

The Fourteenth Amendment to the U.S. Constitution provides, “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>162</sup> At least two problems arise with constitutional claims arising under this Amendment. First, they require state action, which may be possible to satisfy with governmental entities like the police.<sup>163</sup> But many aggressive encounters are perpetuated by private entities, which are beyond the Fourteenth Amendment’s reach.<sup>164</sup> Second, constitutional claims require a showing of intent.<sup>165</sup> Proof of intent, however, is difficult because aggressors rarely articulate their racial and gender bias (and indeed they may be unaware that this bias even exists).<sup>166</sup>

Claims under federal statutory law face similar challenges. One of the most important civil rights statutes is 42 U.S.C. § 1983, which prohibits interference with rights, privileges and immunities secured by federal law.<sup>167</sup> Like constitutional claims, claims under 42 U.S.C. § 1983 are limited in scope as they also require proof of state action. To be sure, other federal statutes

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gender discrimination and violence. Coalition building among Black and White women is more challenging in part because many Black and White women occupy different social and economic spheres. Their fates do not appear to be as inextricably interwoven. Of course, there are exceptions with interracial relationships and interracial families. But those families are still a minority in the United States today. Wang, *supra* note 139.

162. U.S. CONST. amend. XIV, § 1.

163. Qualified immunity provides another formidable barrier to constitutional and statutory claims. See *Ashcroft v. Al-Kidd*, 563 U.S. 731, 735 (2011).

164. *Washington v. Davis*, 426 U.S. 229, 239 (1976).

165. *Id.* at 240–41.

166. See Lawrence, *supra* note 101, at 328–44 (explaining the difficulty of proving intent); see also Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997, 1027–52 (2006) (analyzing empirical research studies on implicit bias in antidiscrimination law).

167. Section 1983 states that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (2012).



prohibit discrimination by private entities on the basis of race or gender.<sup>168</sup> These statutes, however, cover only specifically delineated areas (e.g., voting rights, education, employment, housing, public accommodations). Because aggressive encounters involve daily micro-aggressions that generally do not result in the denial of a tangible right like voting, employment, or housing, these laws will provide little redress. In addition, even if one were to proceed under one of these statutes, the barriers to establishing an intersectional claim are tremendously high.<sup>169</sup> Basically, Black women would need to prove that they are subject to discrimination due to their race *and* gender. Though cognizable,<sup>170</sup> such intersectional claims have not achieved a high degree of success in the courts.<sup>171</sup> This may in part be due to a reluctance of factfinders to infer intentional discrimination when a decision maker has favorably treated other individuals with some, but not all, of the plaintiff's demographic characteristics. For example, factfinders may be loath to infer intentional discrimination against a Black woman if her employer has hired Black men (presumably negating racial animus) and White women (presumably negating gender animus).<sup>172</sup> Absent a clear understanding of the ways in

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168. See, e.g., Fair Housing Act of 1968, 42 U.S.C. §§ 3601–31 (2012) (prohibiting discrimination in the sale, rental, or financing of housing); Civil Rights Act of 1964, 42 U.S.C. § 2000a (2012) (prohibiting discrimination on the basis of race, color, religion or national origin in public accommodations); *Id.* § 2000d (prohibiting discrimination on the basis of race, color or national origin by programs receiving federal financial assistance); *Id.* § 2000e (prohibiting discrimination in employment on the basis of race, color, religion, sex or national origin); Voting Rights Act of 1965, 42 U.S.C. § 1973aa–6 (2012) (barring racially discriminatory voting practices).

169. It is important to note that it is already difficult for plaintiffs to win discrimination cases based on one protected marker. See Trina Jones, *Intra-Group Preferencing: Proving Skin Color and Identity Performance Discrimination*, 34 N.Y.U. REV. L. & SOC. CHANGE 657, 661–62 (2010) (discussing the high bar that plaintiffs face in discrimination cases).

170. See, e.g., *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1561–62 (9th Cir. 1994) (recognizing an intersectional race and gender claim in a Title VII discrimination case); *Jefferies v. Harris Cty. Cmty. Action Ass'n*, 615 F.2d 1025, 1032–35 (5th Cir. 1980) (similarly recognizing the validity of such a claim); *Graham v. Bendix Corp.*, 585 F. Supp. 1036, 1039 (N.D. Ind. 1984) (same).

171. See, e.g., Bradley Allan Areheart, *Intersectionality and Identity: Revisiting a Wrinkle in Title VII*, 17 GEO. MASON U. C.R. L.J. 199, 234–35 (2006) (proposing to amend Title VII because intersectional plaintiffs “lack[] full recourse”); Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 LAW & SOC'Y REV. 991, 992 (2011) (“[P]laintiffs who make intersectional claims, alleging that they were discriminated against based on more than one ascriptive characteristic, are only half as likely to win their cases as are other plaintiffs.”); Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias*, 50 WM. & MARY L. REV. 1439, 1459 (2009) (finding based on a sample of summary judgment decisions that employers prevail at a rate of 73% on claims for employment discrimination in general, and at a rate of 96% in cases involving multiple claims).

172. See generally *Lam v. Univ. of Haw.*, No. 89-00378 HMF, 1991 WL 490015 (D. Haw. Aug. 13, 1991) (deciding in favor of defendants where plaintiff, a woman born in Vietnam of French and Vietnamese parentage, alleged discrimination based on national origin, race, and sex), *rev'd in part and aff'd in part*, 40 F.3d 1551 (9th Cir. 1994); *Jefferies v. Harris Cty. Cmty. Action Ass'n*, 425 F. Supp. 1208 (S.D. Tex. 1977) (deciding for the defendants where plaintiff, a Black, female employee, alleged employment discrimination on the basis of sex and race), *aff'd in part and vacated in part*, 615 F.2d 1025 (5th Cir. 1980). For additional discussion of this point, see Jones, *supra* note 169, at 689–95.

which Black women are differently situated from these groups, plaintiffs will lose these cases.

## 2. Tort Claims

Resort to common law tort theory may be equally unavailing for Black women who are subject to aggressive encounters. To be sure, in any case where a person is physically harmed, assaulted, or falsely imprisoned, traditional tort remedies are available.<sup>173</sup> But what about the smaller daily affronts—the thousand cuts caused by aggressive encounters. Are they compensable under current tort theories of recovery?

Claims for intentional or negligent infliction of emotional distress merit analysis.<sup>174</sup> Indeed, aggressive encounters can fall within both categories. Some harms are intentionally inflicted; others are unintentional, even unconscious. The problem is that stand-alone claims for emotional harm, i.e., claims unaccompanied by any physical injury, are difficult to win. Plaintiffs in these cases are typically required to prove that their emotional injury is severe or serious, i.e., distress beyond that which a reasonable person would be expected to endure.<sup>175</sup> In addition, expert medical or scientific proof is often required to sustain the claim.<sup>176</sup> Standing alone, the encounters set forth in

173. General tort remedies include nominal, compensatory, and punitive damages, and occasionally injunctive relief. DAN B. DOBBS, *THE LAW OF TORTS* 1047–52 (2000); *see also* DONALD H. BESKIND & DORIANE LAMBELET COLEMAN, *TORTS: DOCTRINE AND PROCESS* 404–05 (2016) (describing general tort damages). Damages fall into three general categories: (1) time losses (e.g., lost wages); (2) expenses incurred due to the injury (e.g., medical expenses); and (3) pain and suffering, including harm for emotional distress. *Id.*

174. Intentional (or reckless) infliction of emotional harm is found when “[a]n actor who by extreme and outrageous conduct intentionally or recklessly causes severe emotional harm to another . . .” RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL & EMOTIONAL HARM § 46 (AM. LAW INST. 2012). Negligent infliction of emotional harm is found when:

[N]egligent conduct causes serious emotional harm to another . . . [and] the conduct: (a) places the other in danger of immediate bodily harm and the emotional harm results from the danger; or (b) occurs in the course of specified categories of activities, undertakings, or relationships in which negligent conduct is especially likely to cause serious emotional harm.

*Id.* § 47; *see also generally* Deana Pollard Sacks, *Torts: Implicit Bias–Inspired Torts*, in *IMPLICIT RACIAL BIAS ACROSS THE LAW* 61 (Justin D. Levinson & Robert J. Smith eds., 2012) (arguing that implicit bias-inspired torts should be actionable).

175. “‘Emotional harm’ means impairment or injury to a person’s emotional tranquility.” RESTATEMENT (THIRD) OF TORTS, *supra* note 174, § 45. The *Restatement* notes:

Courts have played an especially critical role in cabining this tort by requiring “extreme and outrageous” conduct and “severe” emotional harm. A great deal of conduct may cause emotional harm, but the requisite conduct for this claim—extreme and outrageous—describes a very small slice of human behavior. The requirement that the resulting harm be severe further limits claims.

*Id.* § 46 cmt. A.

176. *See* Camille A. Nelson, *Considering Tortious Racism*, 9 DEPAUL J. HEALTH CARE L. 905, 942–44 (2005); *see also* *Camper v. Minor*, 915 S.W.2d 437, 446 (Tenn. 1996) (concluding that “in order to guard against trivial or fraudulent actions, the law ought to provide a recovery only for ‘serious’ or ‘severe’ emotional injury. . . [and that] the claimed injury or impairment must be supported by expert medical or scientific proof” (first quoting *Burgess v. Superior Court*, 831

this Article would fall outside tort law's protective umbrella as most do not involve physical assault, battery, or false imprisonment. Individual cuts, even those that accumulate over time, from different sources, would not be actionable unless severe or serious emotional distress results. Thus, the majority of indignities shared in this Article (e.g., ignoring a Black woman in a store, following her because you think she is going to steal, assuming she is not a professional, calling her an animal) would not provide a basis for redress. In effect, the law's response to Black women is "Suck it up! Everyone has to deal with 'minor' insults."

C. *CHANGING THE NARRATIVE AND A CALL FOR INDIVIDUAL ACTION*

After a presentation where a White man accused me of being angry and defensive, I called a friend, who is Black. I told her about the presentation and wondered aloud why I had been perceived as an Angry Black Woman? Her response was "Unless we are smiling, speaking quietly, and not doing anything remotely considered as a challenge, we are labeled Angry Black Women. But, think of it this way: You are black. You are a woman. Sometimes you get angry. And God knows, sometimes you have a right to be angry."<sup>177</sup>

This Article has sought to raise awareness of aggressive encounters and to encourage readers to think more critically about the bias, prejudice, and stereotypes that attach to Black women (and more broadly to all marginalized peoples). It has invited readers to reconsider the trope of the Angry Black Woman and to recognize that anger is an emotion; a state of mind; a state of being. Anger can be triggered when, for example, a person is disrespected, ignored, preyed upon, erroneously suspected of wrongdoing, or otherwise discriminated against. Consider the following statement from Dominique Matti, a Black woman, who explains why she is angry:

Because when I was five, my kindergarten classmate told me I couldn't be the princess in the game we were playing because black

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P.2d 1197, 1200 (Cal. 1992) (en banc); then quoting *Rodrigues v. State*, 472 P.2d 509, 520 (Haw. 1970)); John C. P. Goldberg & Benjamin C. Zipursky, *The Restatement (Third) and the Place of Duty in Negligence Law*, 54 VAND. L. REV. 657, 748 (2001) (stating how "a majority of courts require plaintiffs alleging negligent infliction of emotional distress to demonstrate that their distress was particularly acute in that it extended beyond passing upset. Some courts convey this requirement by asking the plaintiff to prove, often with expert testimony, that they suffered 'severe' emotional distress.").

177. Telephone Interview by Kimberly Jade Norwood with CeLillianne Green, Attorney, in Wash. D.C. (Spring 2016). Professor Norwood describes the presentation as follows:

A few years ago I gave a presentation on implicit bias to a largely white audience. During a break, several audience members came up to speak to me. I answered questions, successfully I thought. The last questioner was a young white male. He wanted to know why I was so defensive. He and I discussed his perception of my demeanor. Eventually, we finished our conversation and I proceeded with my presentation. During the remainder of my presentation, though, I found myself constantly trying to monitor my voice, pitch, tone. Do I sound angry? Threatening? Defensive? Am I coming off as angry?

Kimberly Jade Norwood, (Creve Coeur, Mo.) (2016).

girls couldn't be princesses. Because I was in third grade the first time a teacher seemed shocked at how "well-spoken" I was. Because in fourth grade I was told my crush didn't like black girls. Because in sixth grade a different crush told me I was pretty—for a black girl. Because in 7th grade my predominantly black suburban neighborhood was nicknamed "Spring Ghettos" instead of calling it its name (Spring Meadows). Because I was in 8th grade the first time I was called an Oreo and told that I "wasn't really black" like it was a compliment.

Because in 9th grade when I switched schools a boy told me he knew I had to be mixed with something to be so pretty. Because in 10th grade my group of friends and I were called into an office and asked if we were a gang, or if we had father figures. Because in 11th grade my AP English teacher told me that I didn't write like a college-bound student (though I later scored perfectly on the exam). . . .

Because my college boyfriend called me a "fiery negress" as a joke when he ordered for me at a restaurant. Because the boyfriend after that cut me off for saying he was privileged. Because I can't return to my hometown without getting pulled over. . . .

Because when I got married people assumed I was pregnant. Because people who know I'm married call my husband my "baby daddy. . . ." Because when I was 7 months pregnant my neighbor asked me to help him move a dresser up a flight of stairs. Because I am not seen as a woman. Because I am not allowed to be fragile. . . . Because people don't think we are people.

Because I can't protect my son. Because I can't protect myself. Because my stomach sinks whenever I see a police car. Because when my husband leaves the house at night I am afraid he'll be killed for looking like somebody. Because I worry that if I went missing like the 64,000 other black women in this nation, the authorities wouldn't try hard to find me. Because I am disposable. Because I am hated. Because we keep dying. Because they justify our deaths. Because no one is held accountable. . . . Because I don't know what it means to let loose. Because doing the things that my white peers do with ease could cost me my life—trespassing in abandoned buildings, smoking joints, wearing a hoodie, looking an officer in the eye, playing music loudly, existing. Because I am afraid to relax. Because I am traumatized.

Because there isn't a place in the world white supremacy hasn't touched. . . . Because not hating myself is considered radical.<sup>178</sup>

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178. Dominique Matti, *Why I'm Absolutely an Angry Black Woman*, HUFFINGTON POST: BLOG (Oct. 27, 2016, 9:43 AM), [http://www.huffingtonpost.com/dominique-matti/why-im-absolutely-an-angry-black-woman\\_b\\_8308228.html](http://www.huffingtonpost.com/dominique-matti/why-im-absolutely-an-angry-black-woman_b_8308228.html).

As the above excerpt and this Article have demonstrated, Black women have much about which to be angry. Stand in Dominique's shoes. Feel the countless cuts and scores, each leaving some mark of pain and confusion. Would not you be angry too?

Changing the narrative about Black women and anger requires information (which this Article has sought to provide) as well as empathy.<sup>179</sup> It requires that readers understand that expressing anger does not make Black women "innately" angry or angrier than any other person responding to and trying to cope with disrespect, bigotry, discrimination, macro- and micro-aggressions and biased treatment. It does not make Black women any less human. Indeed, Black women's responses to pervasive inequality and hierarchy should be understood as an affirmation of their humanity and as a demand for the equality, dignity, and respect to which all humans are entitled.<sup>180</sup>

But empathy and understanding in the abstract are not enough. Tangible action is also required. While stronger coalitions and more creative legal interventions are necessary to counter aggressive encounters, change also happens at the individual level. Individual acts may appear small and incremental, but tiny ripples can create large effects. As a first step toward empowering individuals in their daily lives, this Article encourages readers to ask three questions when engaging with Black women (or when witnessing an aggressive encounter): (1) What is causing me to respond in a particular way to this person (i.e., what stereotypes, biases, or assumptions are reflected in my reactions to or actions toward her); (2) What factors are likely influencing her response to me; and (3) What might I do now to produce a better outcome? While asking these three questions will not prevent all aggressive encounters, they should reduce their incidence—or at least provide space for greater reflection and conversation. Moreover, when aggressive encounters occur, asking these questions has the potential to de-escalate the situation. More importantly, pondering these questions may lead to a realization that Black women are not walking around inherently angry. That is a trope. Rather, Black women, like all humans, are responding to societal stimuli. When the stimuli change, so too will Black women's responses.

## VII. CONCLUSION

You may shoot me with your words, You may cut me with your eyes,  
You may kill me with your hatefulness, But still, like air, I'll rise.<sup>181</sup>

This Article has sought to bring attention to aggressive encounters experienced by Black women. Aggressive encounters have two distinguishing features. First, an aggressor acts based upon negative stereotypes or biases

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179. Alex Dixon, *Can Empathy Reduce Racism?*, GREATER GOOD (July 21, 2011), [http://greatergood.berkeley.edu/article/item/empathy\\_reduces\\_racism](http://greatergood.berkeley.edu/article/item/empathy_reduces_racism).

180. Black women have survived a history of degradation, rape, torture, and ridicule. Justifiable outrage and anger over the assaults to their humanity arguably fueled their resistance. The refusal to back down and the will to survive, turned and continues to turn, anger into power.

181. MAYA ANGELOU, AND STILL I RISE, *Still I Rise* (1978).

about Black women. Second, when a Black woman pushes back against this treatment, she is viewed as being “out of line” and becomes the source of blame for the encounter, rather than the negative stereotypes and biases that initially fueled it. This Article has described the many locations and the various ways in which aggressive encounters occur. It has also demonstrated how Black women, who are justifiably angry in these encounters, become readily transformed into the trope of the “Angry Black Woman.”

Dismantling this trope requires overcoming barriers of race (within the community of women) and gender (within the Black community); it requires the sort of intersectional analysis set forth in this Article. Listening to the voices of Black women not only renders the experiences of Black women visible, it also has the potential to transform understandings of racism and sexism. Ultimately, the trope of the Angry Black Woman is simultaneously about race and gender. It is about a woman “acting against form” and about a person of color “acting true to form.” Eliminating this trope would mean that all women would be more empowered to challenge the reins of sexism and all people of color would enjoy greater power to challenge the reins of racism.