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Kimberly J. Norwood

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Washington University Journal of Law & Policy

The Far-Reaching Shadow Cast By Ferguson

Kimberly Jade Norwood*

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in [the Constitution of the United States].

...

*They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; **and so far inferior, that they had no rights which the white man was bound to respect . . .***¹

—Justice Taney, *Scott v. Sanford*

One hundred and fifty eight years ago, United States Supreme Court Justice Roger B. Taney stated that black people had no rights

* Professor of Law at Washington University in St. Louis, MO. An acknowledgement and sincere thanks to my husband, Ronald Alan Norwood, Esq. and to two of my colleagues, David Becker, the Joseph H. Zumbalen Professor of Law of Property Emeritus, Katherine Goldwasser, Professor of Law. As always these three provide invaluable insights and support to my work.

1. *Scott v. Sandford*, 60 U.S. 393, 407 (1856) (emphasis added).

that a white man was bound to respect.² How different is that sentiment today?

Indeed, this was the question asked by MSNBC Talk Show Host and Professor Melissa Harris-Perry on August 16, 2014. After pondering the meaning of these words, Professor Perry then delivered a memorable and stunning tribute to young black men, all unarmed, who have been killed by police in the last decade.³ After first noting that approximately two black people die at the hands of police officers, on average, twice a week,⁴ she then recited, putting faces with the names, the following:

Timothy Stansbury Jr., January 24, 2004, Brooklyn, NY, unarmed⁵

Sean Bell, November 25, 2006, Queens, NY, unarmed⁶

Oscar Grant, January 1, 2009, Oakland, CA, unarmed⁷

Aaron Campbell, January 29, 2010, Portland, OR, unarmed⁸

Wendell Allen, July 7, 2011, New Orleans, LA, unarmed⁹

2. *Scott*, 60 U.S. at 407.

3. Jack Mirkinson, *Melissa Harris-Perry's Searing Tribute to Black Men Killed By Police*, HUFFINGTON POST (Aug. 16, 2014, 2:59 PM), http://www.huffingtonpost.com/2014/08/16/melissa-harris-perry-black-men-killed-by-police_n_5684588.html.

4. *Id.*; see also Kevin Johnson et al., *Local Police Involved in 400 Killings Per Year*, USA TODAY (Aug. 15, 2014, 9:41 AM), <http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/>; *Local Police Kill At Least 400 People a Year, Mostly Minorities*, RT.COM (Aug. 15, 2014, 4:29 PM), <http://rt.com/usa/180648-police-shootings-african-american/> (explaining that police are responsible for the deaths of black people in the United States, on average twice a week.). This data is undisputedly underreported because reporting is not mandatory and all police departments do not report, reflects some of the data from 2005 to 2012; *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killing of 313 Black People by Police, Security Guards and Vigilantes*, OPERATION GHETTO STORM, <http://www.operationghettostorm.org/>. The data collected in this study, again voluntarily reported, estimates that in 2012, the death of a black person at the hands of a police officer, security guard, and/or vigilante occurred every twenty-eight hours.

5. Robert D. McFadden & Ian Urbina, *Fatal Shooting Not Justified, The Police Say*, N.Y. TIMES (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/nyregion/fatal-shooting-not-justified-the-police-say.html>

6. Tara Palmeri & Daniel Prendergast, *Former Cops Still Reeling 7 Years after Sean Bell Horror*, NEW YORK POST (Nov. 30, 2013, 5:23 AM), <http://nypost.com/2013/11/30/former-cops-still-reeling-7-years-after-sean-bell-horror/>.

7. Michael McLaughlin, *Ex-Transit Officer Who Killed Oscar Grant, Unarmed Black Man, Wins Lawsuit*, HUFFINGTON POST (July 2, 2014 1:59 AM), http://www.huffingtonpost.com/2014/07/01/oscar-grant-lawsuit-bart-officer_n_5548719.html.

8. Maxime Bernstein, *Portland Police Training Review Drafts of Frashour Shooting Show How Lieutenant's Analysis Changed*, THE OREGONIAN (Oct. 16, 2012, 9:23 AM), http://www.oregonlive.com/portland/index.ssf/2012/10/portland_police_training_revie.html.

Alonzo Ashley, July 18, 2011, Denver, CO, unarmed¹⁰
Jonathan Ferrell, September 14, 2013, Charlotte, NC, unarmed¹¹
Eric Garner, July 17, 2014, Staten Island, NY, unarmed¹²
Michael Brown, August 9, 2014, Ferguson, MO, unarmed¹³

This tribute did not include all those spared death but beat worse than dogs. Consider Marlene Pinnock, the fifty-one-year-old grandmother who, on July 1, 2014, 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.¹⁴

It did not include the deaths by those who play police officers at night. Trayvon Martin was a seventeen year-old walking home on the early evening of February 26, 2012, talking on his cell phone when he realized someone was following him. He, *like you or I would have*, became alarmed, even scared, when he confirmed that yes, an SUV was following him. Minutes later he would be dead. The prizes from his quick store run, Skittles and an Arizona fruit drink, spattered under his body. He was killed by a wanna-be-cop, George Zimmerman who—after stalking the teen, confronting him and killing him—was allowed to cry fear for his *own* life and escape the punishment for his crime under the guise of self-defense.¹⁵

9. John Simerman & Claire Galofaro, *NOPD Officer Will Serve 4 Years for Wendell Allen Shooting*, *ADVOC.* (Aug. 19, 2013), <http://theadvocate.com/news/neworleans/6799062-148/nopd-officer-will-serve-4>.

10. *Coroner: Death of Man At Zoo Was Homicide*, *DENVER CHANNEL* (Oct. 22, 2011, 10:38 AM), <http://www.thedenverchannel.com/news/coroner-death-of-man-at-zoo-was-homicide>.

11. Elliott C. McLaughlin, *2nd Grand Jury Indicts Officer in Shooting of Ex-FAMU Football Player*, *CNN* (Jan. 28, 2014, 9:04 AM), <http://www.cnn.com/2014/01/27/us/north-carolina-police-shooting/>.

12. *Medical Examiner Rules Eric Garner's Death a Homicide, Says He Was Killed by Chokehold*, *NBC NEW YORK* (Aug. 21, 2014, 7:20 AM), <http://www.nbcnewyork.com/news/local/Eric-Garner-Chokehold-Police-Custody-Cause-of-Death-Staten-Island-Medical-Examiner-269396151.html>.

13. Mirkinson, *supra* note 3. Fox news guest, Linda Chavez, disputed the claim that Michael Brown was unarmed. She stated instead that an adult who is six foot four inches and weighs 300 pounds is not unarmed. See Hunter, *Fox New Objects to Calling Michael Brown an 'Unarmed Teen'*, *DAILY KOS* (Aug. 25, 2014, 1:43 PM), <http://www.dailykos.com/story/2014/08/25/1324537/-Fox-News-objects-to-calling-Michael-Brown-an-unarmed-teen>.

14. Ed Mazza, *Marlene Pinnock, Woman in Highway Patrol Beating Case, Reaches Settlement*, *HUFFINGTON POST* (Sept. 25, 2014, 8:59 AM), http://www.huffingtonpost.com/2014/09/25/marlene-pinnock-california-highway-patrol-beating-settlement_n_5879514.html.

15. Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*,

Professor Perry's tribute did not speak to the deaths by those who, while neither police officers nor wanna-be police officers, are nonetheless afraid of people with brown skin: nineteen-year-old Renisha McBride, executed through a screen door as she sought help and refuge on the closest porch she could find after being in a car accident.¹⁶ Remember, too, Jordan Davis, a passenger in a vehicle that dared to ignore a white man's demand that the people in the car turn their music down.¹⁷

Her tribute did not include the killing of John Crawford III, a young black man shopping in Walmart, who died as a result of the reckless actions of a so-called "good samaritan." Specifically, on August 4, 2014, Walmart shopper Ronald Ritchie called 911 to report that Crawford was walking around Walmart carrying a rifle and that Crawford had not only stopped to load it, but was also pointing it at people, including children.¹⁸ Turns out Ritchie told a lie. Crawford was shopping in Walmart. He did pick up an air powered pellet rifle that was for sale in the store. For the record, this store, in Beavercreek, Ohio, is located in an "open carry" state.¹⁹ An "open carry" state is one in which you can carry a loaded and real (as opposed to a toy) gun legally and without question. Responding to the caller's fears, confirmed multiple times by the 911 operator, the police descended on Walmart, found Crawford, and shot him.²⁰ His back was facing the officers at the time. He was talking on his cell phone. He had no idea death was on the way. In the particular state

N.Y. TIMES (July 13, 2013), http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all&_r=0.

16. Elisha Fieldstadt et al., *Renisha McBride's Killer Found Guilty of Murder*, ABC NEWS (Aug. 7, 2014, 1:51 PM), <http://www.nbcnews.com/news/us-news/renisha-mcbrides-killer-found-guilty-murder-n175306>.

17. Simon McCormack, *Michael Dunn Found Guilty of First-Degree Murder in Killing of Jordan Davis*, HUFFINGTON POST (Oct. 2, 2014, 3:59 PM), http://www.huffingtonpost.com/2014/10/01/michael-dunn-guilty_n_5913926.html.

18. *Walmart Shooting Video Synced with Ronald Ritchie 911 Call—What Was Ritchie Looking At?*, INQUISITR (Oct. 1, 2014), <http://www.inquisitr.com/1511916/walmart-shooting-video-ronald-ritchie/>; see also Jesse Williams, *Killing of John Crawford: Injustice for All*, CNN (Oct. 1, 2014, 10:55 AM), <http://www.cnn.com/2014/09/30/opinion/williams-crawford-walmart-killing/>.

19. Sebastian Murdock, *New Video Shows John Crawford Fatally Shot by Police in Walmart*, HUFFINGTON POST (Sept. 25, 2014, 4:59 PM), http://www.huffingtonpost.com/2014/09/24/john-crawford-air-rifle-video_n_5878022.html.

20. *Id.*

where John Crawford III was killed one does not even need a permit or a license to carry a *loaded and deadly* weapon.²¹ Yet, carrying an *unloaded pellet gun* while black was justification for death. The witness would later “recant” his statements about whether Crawford was loading a rifle or pointing it at people.²² Sadly, the actions of this caller resulted in *two* deaths that day. Not only did John Crawford die, but an innocent bystander with a heart condition panicked when the officers ran into Walmart with their guns drawn. She bolted from Walmart, making it only to the parking lot before she collapsed and died of a heart attack.²³ While both deaths have been ruled as homicides, no one, including Ronald Ritchie, the person who set the death train in motion, has been charged with the deaths.²⁴

Perry’s list of people to pay tribute to was just too long.²⁵ In the few weeks since that searing tribute, more black males have been killed or assaulted at the hands of police under questionable circumstances. In St. Louis—just a few days after Michael Brown’s death—another young man, Kajieme Powell, was killed by police. He was not unarmed; he held a butter knife in his hand. Standing

21. Rani Molla, *Map: Where Is ‘Open Carry’ Legal?*, WALL ST. J. (Aug. 22, 2014, 4:14 PM), <http://blogs.wsj.com/numbers/map-where-is-open-carry-legal-1715/>.

22. Chuck Ross, *Main Witness in Fatal Wal-Mart Police Shooting Changes His Story*, DAILY CALLER (Sept. 7, 2014, 3:24 PM), <http://dailycaller.com/2014/09/07/main-witness-in-fatal-wal-mart-police-shooting-changes-his-story/>.

23. Adan Salazar, *Walmart Shopper Shot Dead by Cops after Picking up BB Gun*, INFO WARS (Aug. 8, 2014), <http://www.infowars.com/walmart-shopper-killed-by-cops-after-picking-up-bb-gun/>; see also John Vibes, *Cops Kill Man in Walmart over Toy Gun, Bystander Dies from Incident as Well*, FREE THOUGHT PROJECT (Aug. 8, 2014), <http://thefreethoughtproject.com/cops-kill-man-walmart-toy-gun-bystander-dies-incident/>.

24. NewsOne Staff, *Angela Williams: Woman’s Death Following Walmart Shooting Ruled Homicide*, NEWS ONE (Sept. 27, 2014), <http://newsone.com/3056226/angela-williams-womans-death-following-walmart-shooting-ruled-homicide/>. See also Amy Goodman & Juan Gonzalez, *No Charges in Ohio Police Killing of John Crawford as Walmart Video Contradicts 911 Caller Account*, ALTERNET (Sept. 25, 2014), <http://www.alternet.org/civil-liberties/no-charges-ohio-police-killing-john-crawford-walmart-video-contradicts-911-caller>; Frank Vyan Walton, *So Why Isn’t Ronald Ritchie Being Charged with Manslaughter in Police Killing of John Crawford?*, DAILY KOS (Sept. 10, 2014, 8:41 AM), <http://www.dailykos.com/story/2014/09/10/1328519/-So-why-isn-t-Ronald-Ritchie-being-charged-with-Manslaughter-in-Police-Killing-of-John-Crawford>.

25. A follow-up show might even highlight some contrasts in treatment. See Stephen D. Foster Jr., *Police Don’t Shoot BMW-Driving White Teen Who Committed Three Hit-and-Runs and Assaulted Officer*, ADDICTING INFO (Sept. 7, 2014, 11:17 AM), <http://www.addictinginfo.org/2014/09/07/police-dont-shoot-bmw-driving-white-teen-who-committed-three-hit-and-runs-and-assaulted-officer-video/>.

multiple feet from the officers, with arms down and not in attack mode as initially reported by the police, he asked to be shot. The officers delivered his wish within fifteen seconds of their arrival on the scene.²⁶ We now know that Mr. Powell suffered from a mental illness.²⁷ He needed help, not death.

On September 4, 2014, a young, unarmed black man by the name of Levar Jones was pulled over for failing to wear a seatbelt. Once pulled over at the gas station, the officer asked Jones to get out of the car. Jones complied. The officer then asked for Mr. Jones' driver's license. Jones turned back into his car to get his license. The cop was then heard screaming: "Get out of the car! Get out of the car!" Jones stood up immediately, dropping what we now know to be his license and *with his hands up*. Despite hands up, the officer shot directly at him, five times. At a gas station. Around flammable substances. Around other cars and people. During the daytime.²⁸

On September 25, 2014, an Indiana family's car was pulled over by police because the driver was not wearing her seatbelt. Having provided her driver's license and insurance, the police were not satisfied. They wanted more, not from the driver, *but from the black male passenger*. The black male passenger was not happy with the focus on him. He was asked to open the car door. He refused, stating that both he and the actual driver of the car had given the officers all of the documents they asked for. Both he and the driver expressed concern that despite their compliance, multiple officers surrounded their vehicle *with their guns drawn*.²⁹ One of the officers with his own history of excessive force problems³⁰ tired of the back and forth

26. *Graphic Video: St. Louis Police Release Cell Phone Video of Fatal Shooting of Kajieme Powell*, CBS 12 NEWS, <http://www.cbs12.com/news/features/aroundtheweb/videos/graphic-video-st-louis-police-release-cell-phone-video-of-fatal-shooting-of-kajieme-powell.shtml>.

27. Jesse Singal, *Kajieme Powell Died Because Police Have Become America's Mental-Health Workers*, N.Y. MAG. (Aug. 22, 2014), <http://nymag.com/scienceofus/2014/08/police-kajieme-powell-and-mental-illness.html>.

28. *Levar Jones' Attorney Speaks Out*, THE ED SHOW (Sept. 26, 2014), <http://www.msnbc.com/the-ed-show/watch/levar-jones--attorney-speaks-out-334052931593>.

29. Trymaine Lee, *Family Sues Hammond Police over Traffic Stop Violence*, MSNBC (Oct. 7, 2014, 11:34 PM), <http://www.msnbc.com/msnbc/family-sues-hammond-police-over-traffic-stop-violence>.

30. Meghan Keneally & James Hill, *Cops Who 'Tasered' Man Accused of Excessive Force in the Past*, ABC NEWS (Oct. 8, 2014, 5:50 PM), <http://abcnews.go.com/US/indiana-cops-tasered-man-accused-excessive-force-past/story?id=26051579>.

dialogue and, without warning, took his baton and busted the window open. He pulled the passenger out of the vehicle and tasered him in front of his children.³¹ Yes, as the officers knew, children were in the back seat of the car. They could have been physically injured by flying glass. According to an interview with Don Lemon of CNN, the youngest child was terrified during that encounter as she sat in that car listening to the police, watching them break the window with their “stick,” dodging shards of flying glass, and ultimately tasing her father.³² This happened at the hands of the men in blue, men who wore badges with the phrase “to protect and serve.”

Finally, VonDerrit Myers Jr. went into a local store in his St. Louis neighborhood on the evening of October 8, 2014, to buy a sandwich. He waited patiently as his sandwich was made. He wore very low sagging pants and a black t-shirt that just hit his waist. He left the store. An off-duty officer moonlighting as a security guard stated that a group of black boys drew his attention (running while black perhaps?), he circled back to follow them, they ran, he chased one, and they got into a physical confrontation. The officer initially stated that he pulled off a grey sweatshirt from the man. The young man shot at the officer. The officer returned fire, seventeen times. Six to seven shots hit Myers. The officer was uninjured. Approximately six minutes after leaving the store, Myers was dead. Gunshot residue evidence and a ballistics test establish that Myers shot at the officer.³³ The store owner opined that Myers had no time to go home to get a gun and sweatshirt.³⁴

31. Stephanie Slifer, *Atty: Warrant Issued for Ind. Man Tased During Traffic Stop*, CBS NEWS (Oct. 10, 2014, 11:23 AM), <http://www.cbsnews.com/news/attorney-warrant-issued-for-jamal-jones-indiana-man-tased-during-traffic-stop/>.

32. *CNN Tonight* (CNN television broadcast Oct. 8, 2014), available at <http://edition.cnn.com/TRANSCRIPTS/1410/08/cnnt.01.html>.

33. Christine Byers & Robert Patrick, *Forensic Evidence Shows Teen Shot at St. Louis Police Officer, Police Say*, ST. LOUIS POST-DISPATCH (Oct. 15, 2014, 5:00 AM), http://www.stltoday.com/news/local/crime-and-courts/forensic-evidence-shows-teen-shot-at-st-louis-officer-police/article_3dafbce7-22b0-5c9a-b7e5-98460279f135.html.

34. Margaret Gillerman et al., *Teen in Shaw Shooting Died from Gunshot to Right Cheek, Medical Examiner Says*, ST. LOUIS POST-DISPATCH (Oct. 9, 2014, 11:45 PM), http://www.stltoday.com/news/local/crime-and-courts/police-officer-fatally-shoots-teenager-in-south-st-louis/article_2d5a8c2a-97db-5cec-a477-1130d7d26f7e.html; see also *Off-Duty St. Louis Officer May Have Fired 17 Times in Fatal Confrontation with Armed Teen*, FOX4KC.COM (Oct. 9, 2014,

Many in the St. Louis community, still reeling from the deaths of Brown, Powell, and Myers remain distrustful of the police.³⁵ According to Kevin Cokley, Director of the Institute for Urban Policy Research and Analysis at the University of Texas at Austin:

This is not an irrational fear. In a series of social psychological studies, Phillip Goff and his colleagues found that black boys are not given the same protections of childhood innocence as their white peers. In one study, participants were shown pictures of young black, white and Latino males matched for equal attractiveness. They found black boys are viewed as older, less innocent and less childlike than their white peers. They also found that the dehumanization of black boys (through association with apes) predicted racial disparities in police violence toward black children. Thus, it is no surprise when a video captured a Ferguson police officer referring to the mostly black protesters as “animals.”³⁶

Myers actually did have a criminal record. He wore an ankle bracelet as a condition of his bail for an upcoming hearing on a

2:59 PM), <http://fox4kc.com/2014/10/09/police-off-duty-st-louis-officer-shoots-kills-man-who-fired-at-him/>.

35. Shaun King, *Why does the St. Louis PD keep changing their story about the killing of VonDerrit Myers?*, DAILY KOS (Oct. 10, 2014, 11:24 AM), <http://www.dailykos.com/story/2014/10/10/1335651/-Why-does-the-St-Louis-PD-keep-changing-their-story-about-the-murder-of-VonDerrit-Myers#>.

36. Kevin Cokley, *Black community's mistrust of police is rational, justified*, ST. LOUIS POST-DISPATCH (Oct. 15, 2014, 12:00 AM), http://www.stltoday.com/news/opinion/black-community-s-mistrust-of-police-is-rational-justified/article_7aa43d1b-28df-5c70-84bc-6c782e970d48.html; see also Amanda Terkel, *Police Officer Caught On Video Calling Michael Brown Protestors 'F***ing Animals'*, HUFFINGTON POST (last updated Aug. 13, 2014, 12:59 AM), http://www.huffingtonpost.com/2014/08/12/michael-brown-protests_n_5672163.html. Another police officer, a lieutenant on the force since 1994, pointed a semi-automatic rifle at a Ferguson protestor and said “I will f***ing kill you.” Robert Patrick, *St. Ann officer removed after pointing gun, threatening Ferguson protesters*, ST. LOUIS POST-DISPATCH (Aug. 20, 2014, 7:00 PM), http://www.stltoday.com/news/local/metro/st-ann-officer-removed-after-pointing-gun-threatening-ferguson-protesters/article_3854ed72-a14c-5b8e-b32f-ddb35de94803.html. As you can see from the video, the protestor did not touch the officer, throw anything at the officer, or cause anything to touch the officer. See Gena Trius, *Officer Go Fuck Yourself-Revolutionary Ferguson Livestream Clip*, YOUTUBE (Aug. 20, 2014), <https://www.youtube.com/watch?v=3AFia3Uo0TQ&feature=youtu.be>. Rather, the protestor tapped into his first amendment right to use words to express his outrage.

weapons charge.³⁷ Indeed, police released images posted on social media of Myers holding two guns they say he used on the night of the shooting.³⁸ Several white people have told me that this is not only proof that the shooting of Myers by the police was justified, but that somehow this also casts doubt on the veracity of the facts surrounding the death of Michael Brown. I was and remain perplexed by those sentiments. I find an easy and almost unconscious willingness to merge the stories of black males shot by police into one narrative. Should each case not be analyzed on its own merits? In other words, no matter how one considers the justification for the shooting of Myers, I would think that this has nothing to do with the separate matter of the Brown shooting, which occurred two months earlier, under entirely different circumstances, in a different part of town.

In September of 2014, I participated in a public forum at the Missouri History Museum with other black mothers of black sons.³⁹ A panel of black mothers spoke to an audience of primarily white mothers. Our purpose was to share our fears and concerns about our sons. At a follow-up event, several white mothers expressed to me their concerns over the amount of crime committed by black males, about the numbers of out-of-wedlock births, and about black-on-black crime. As I spoke with them, the issue that seemed to really concern some of these mothers was the “black-on-black crime problem.” Indeed, many people, black and white, have expressed outrage over their beliefs that while black people complain about killings by police officers, they are oblivious to the larger issue of

37. Samira Puskar, Erik Ortiz & Aaron Mermelstein, *St. Louis Teen Vonderrit Myers Killed by Cop Faced Trial for Gun Charge*, NBC NEWS (Oct. 9, 2014, 1:11 PM), <http://www.nbcnews.com/news/us-news/st-louis-teen-vonderrit-myers-killed-cop-faced-trial-gun-n222196>.

38. Christine Byers, *Forensic evidence shows teen shot at St. Louis officer, police say*, ST. LOUIS POST-DISPATCH (Oct. 15, 2014, 5:00 AM), http://www.stltoday.com/news/local/crime-and-courts/forensic-evidence-shows-teen-shot-at-st-louis-officer-police/article_3dafbce7-22b0-5c9a-b7e5-98460279f135.html.

39. See Dr. Leah Gunning Francis, Associate Dean for Contextual Education, Eden Theological Seminary, *Mother 2 Mother: A Conversation with Black Mothers to White About “The Talk” With Their Black Sons* (Sept. 22, 2014). A follow-up event was also held. See also Dr. Leah Gunning Francis, Associate Dean for Contextual Education, Eden Theological Seminary, *Mother 2 Mother Part II: A Conversation with Black Mothers to White About “The Talk” With Their Black Sons* (Oct. 13, 2014).

black-on-black crime.⁴⁰ Steve Chapman of the Chicago Tribune recently responded:

Plenty of black leaders and organizations . . . spend a lot of time and energy trying to prevent crime in their communities. There are rallies, conferences, prayer vigils and gun turn-in days Have [the] critics publicized those events and programs? If not, why not? If so, why do they now act as though they don't exist?

[Moreover, can't] black leaders . . . work to curb violence by blacks against blacks and also work to prevent the killing of unarmed African-Americans by police and vigilantes [?]

It's no secret that rates of violent crime are far higher among blacks than among whites. What is generally overlooked is that these rates have dropped sharply over the past two decades. The Center on Juvenile and Criminal Justice reports that violent crime by young blacks has plunged 60 percent.

. . .

[Finally,] [t]here's another, bigger problem with the preoccupation with "black-on-black crime." The term suggests race is the only important factor. Most crimes are committed by males, but we don't refer to "male-on-male crime." Whites in the South are substantially more prone to homicide than those in New England, but no one laments "Southerner-on-Southerner crime." Why does crime involving people of African descent deserve its own special category?⁴¹

I concur. Moreover, I am troubled by the obsessive concern by whites regarding black-on-black crime when it seems to come at *the total exclusion* of concern about questionable use of excessive force by police on black and brown people.⁴² Yes, black-on-black crime is a

40. Steve Chapman, *Do black leaders ignore black-on-black crime?*, CHI. TRIB. (Aug. 21, 2014, 8:59 AM), <http://www.chicagotribune.com/news/opinion/chapman/ct-black-crime-ferguson-sharpton-jason-riley-steve-20140820-column.html>.

41. *Id.*

42. This is especially curious when it comes from those who tell blacks that they are the scum of the earth or should just go die or should go back to Africa. These are examples of

very serious problem that must be addressed. But, shouldn't excessive violence by police officers also be addressed? Indeed, might we agree that police officers owe some care to the people who they are hired to protect and serve? While the issue of black-on-black crime, on the one hand, and excessive use of force by police officers on black and brown citizens, on the other, are *both* shameful and need attention, the increasingly violent and deadly police encounters is and *should be* more troubling to us all.

I am not a criminal law scholar, nor am I a constitutional law scholar. But I am black and I do live in America. As such, I can speak to the stress of living in a country that looks upon my brown skin with scorn and hate. And as a mother, particularly of male children, I worry every day about their ability to survive not only black-on-black encounters but also to survive potential encounters with the people who are supposed to protect them.

This Essay is an expansion of a piece I originally published on CNN.com at the end of August. That earlier essay attempted to explain to the world that walking around in America and simply living one's daily life has starkly different stresses, worries, and fears, depending on the color of one's skin. I can relate to the *dis-*ease, the frustrations, and fears of the residents of Ferguson and other brown people throughout our nation whose skin color regularly draws scorn, hatred, and mistrust. Some say I cannot. I am a professor. I live in an ivory tower. I am so-called privileged and therefore cannot possibly relate. My response? Not true.

I was born and raised in Harlem in the 1960s and 1970s. My mother was a single parent and I was a part of and witnessed experiences similar to many who live today in neighborhoods with inadequate housing, joblessness, underperforming schools, and inadequate health care. Indeed, these very conditions continue to plague many in Ferguson and throughout the St. Louis region.⁴³ More

venom hurled at me for example. I cannot imagine that the speaker of these words really cares about black-on-black crime.

43. See generally *Improving the health and well-being of African Americans in St. Louis*, FOR THE SAKE OF ALL (last visited Nov. 2, 2014, 5:30 PM), <http://forthesakeofall.org/>. Specifically, please see the final report and each of the five policy briefs produced by the study. WASHINGTON UNIV. IN ST. LOUIS AND SAINT LOUIS UNIV., FOR THE SAKE OF ALL: A REPORT ON THE HEALTH AND WELL-BEING OF AFRICAN AMERICANS IN ST. LOUIS AND WHY IT MATTERS

importantly, I have brown skin and, as such, I remain connected to the daily experiences of many other brown people who walk, ever so carefully, through society as if on rice paper, hoping not to raise any eyebrows or cause alarm or fear in others. Society looks at me, sees my brown skin, and labels me accordingly. Remember it was just a few years ago, in 2009, when Harvard Professor Henry Louis Gates Jr. was arrested (while dressed quite nicely I should add—collared polo shirt, dress slacks, expensive walking cane) on suspicion of breaking into a home, a home that turned out to be his own.⁴⁴ Suspicion, distrust, fear, scorn, those feelings see black and brown. Criminality is often assumed.⁴⁵ One is not given the benefit of the doubt.

FOR EVERYONE (2014), available at <http://forthesakeofall.org/publications/report/>; JASON PURNELL, HOW CAN WE SAVE LIVES-AND SAVE MONEY-IN ST. LOUIS?: INVEST IN ECONOMIC AND EDUCATIONAL OPPORTUNITY (2013), reprinted in *Improving the health and well-being of African Americans in St. Louis*, FOR THE SAKE OF ALL, available at <http://forthesakeofall.files.wordpress.com/2013/08/policy-brief-1.pdf>; WILLIAM F. TATE IV, HOW DOES HEALTH INFLUENCE SCHOOL DROPOUT? (2013), reprinted in *Improving the health and well-being of African Americans in St. Louis*, FOR THE SAKE OF ALL, available at <http://forthesakeofall.files.wordpress.com/2013/09/policy-brief-2.pdf>; DARRELL L. HUDSON, HOW CAN WE IMPROVE MENTAL HEALTH IN ST. LOUIS?: INVEST IN OUR COMMUNITY AND RAISE AWARENESS (2013), reprinted in *Improving the health and well-being of African Americans in St. Louis*, FOR THE SAKE OF ALL, available at <http://forthesakeofall.files.wordpress.com/2013/10/policy-brief-3.pdf>; MELODY S. GOODMAN & KEON L. GILBERT, SEGREGATION: DIVIDED CITIES LEAD TO DIFFERENCES IN HEALTH (2013), reprinted in *Improving the health and well-being of African Americans in St. Louis*, FOR THE SAKE OF ALL, available at <http://forthesakeofall.files.wordpress.com/2013/11/policy-brief-4.pdf>; and BETTINA F. DRAKE & KEITH ELDER, CHRONIC DISEASE IN ST. LOUIS: PROGRESS FOR BETTER HEALTH (2013), available at <http://forthesakeofall.files.wordpress.com/2013/12/policy-brief-51.pdf>. See generally WHERE WE STAND, RACIAL SEGREGATION AND DISPARITY (6th ed. 2014), available at <http://www.ewgateway.org/pdf/newsletters/WWS/WWS6EdNo9.pdf>.

44. Abby Goodnough, *Harvard Professor Jailed; Officer Is Accused of Bias*, N.Y. TIMES (July 20, 2009), http://www.nytimes.com/2009/07/21/us/21gates.html?_r=0; see also *Editorial: Live in poverty? Need health care? Don't come to Missouri*, ST. LOUIS POST-DISPATCH (Sept. 02, 2014, 4:30 PM), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-live-in-poverty-need-health-care-don-t-come/article_7107b2d9-4d31-5d24-affb-305c6df9f4d8.html.

45. Consider the October 1, 2014, event where two black police officers, responding to a call of a suspected burglary in the upscale Foxhall Crescent neighborhood in Washington D.C., stopped a *sixty-four year old* black man walking down the street carrying a bag at the time. They left him there, to sit on the filthy sidewalk as they investigated further. It took a white lawyer to question the police treatment of this senior citizen on the curb. After her involvement, the officers realized they *had the wrong street* and let the man go. Roz Plater, *White lawyer angrily confronts D.C. police over detainment of black man*, ABC 7 NEWS (Oct. 10, 2014,

I live twelve miles from Ferguson. The median household income in my suburb is just under \$90,000 per year. In Ferguson, it is \$36,000. In my suburb, 3.5 percent of the people are black. In Ferguson, almost 70 percent are black. These are stark contrasts. Yet, I also share some things in common with black people in Ferguson.

When I shop, I am often either ignored as a waste of time or scrutinized as a potential shoplifter. In June of 2014, my youngest daughter and I walked into the china and crystal area in a Macy's department store. I was about to speak to the salesperson directly in front of me, a few yards away. As I tried to make eye contact, she walked right past me, not even looking at me, to welcome the white woman behind me. 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 had three feelings: hurt, anger, and embarrassment. This kind of encounter happens routinely.

When I drive, I tend to have a bit of a lead foot. The few times I have been stopped in my suburb the first question I am asked is whether I live "around here." I have asked several of my white friends about their experiences getting pulled over for speeding. Not one of them has ever been asked that question. I am not complaining about being stopped for speeding, although I must point out that the overpolicing and targeting of the poor for traffic violations in Ferguson and other municipalities in the St. Louis area is a shameful reality that has been well documented.⁴⁶ I am complaining now about

11:53 PM), <http://www.wjla.com/articles/2014/10/white-lawyer-angrily-confronts-d-c-police-over-detainment-of-black-man-107998.html>.

46. See ArchCity Defenders: Municipal Courts White Paper (on file with author). See also Jeremy Kohler, *Report on municipal courts in St. Louis County calls for oversight, stricter limits*, ST. LOUIS POST-DISPATCH (Oct. 16, 2014, 4:30 AM), http://www.stltoday.com/news/local/crime-and-courts/report-on-municipal-courts-in-st-louis-county-calls-for/article_f6bcb1da-6980-5eb4-a8fc-1ec5d51ac5e9.html; BETTER TOGETHER, PUBLIC SAFETY-MUNICIPAL COURTS (2014), available at <http://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf>; Radley Balko, *New report details the disastrous municipal court system in St. Louis County*, WASH. POST (Oct. 28, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/10/28/new-report-details-the-disastrous-municipal-court-system-in-st-louis-county/>; Radley Balko, *How municipalities in St. Louis County, Mo., profit from poverty*, WASH. POST (Sept. 3, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/>.

another separate issue: the curiosity of the officers as to whether I “live around here.” Related to speeding? I think not.

Last summer, my teenage daughter was shopping with four white friends at a mall in an affluent St. Louis suburb. As they left the store, two mall security guards approached my daughter. They told her the store had called them and reported her as a suspected shoplifter, and asked her to come with them. The store did not alert security about the four friends who accompanied my daughter. Of the group of five, then, only my daughter was singled out as a suspect. After a search, they found she had nothing. So far in her young life, mall security guards have stopped her on suspicion of shoplifting three times. Each time she was innocent.

I also have three sons. My two oldest are twenty-two. They are 6-foot-5 and 6-foot-4 and each weighs more than 220 pounds. One recently graduated from college; the other will graduate in 2015. The youngest is thirteen. All three like to wear jeans and they like the latest sneakers. They love hoodies. Yes, hoodies. I have received many emails wondering why black males wear hoodies when they know that the hoodie is “the uniform of common street thugs.”⁴⁷ I think of this often as I walk through the college campuses of America and see hoodies worn “as the uniform of common” college students. I wondered about this comment, too, just a few weeks ago when a fifteen year-old black male asked me why his white male friends could wear hoodies *with the hoods actually over their heads* when they get cold but his mother told him that he can never do the same. Indeed, I wonder why black males in hoodies are automatically

47. I received several emails explaining that the hoodie is the symbol of the thug and that upstanding people do not wear them. *See, e.g.*, Email (Sept. 2, 2014, 21:11 pm CST) (on file with author). “In white society this form of dress screams thug, drug pusher, hoodlum and this perception has its roots in reality. I said to the children in my family when they wanted to wear the now fashionable hoodie and baggie pants, if you dress like a duck you will be treated like duck. So in my family they were not allowed to wear the uniform of the street thugs regardless of its acceptability in their age group. *Id.* *See also* Email (Aug. 31, 2014, 22:53 CST) (on file with author): “My momma always told me growing up . . .”you get treated how you want to be treated. How you look, how you talk, and how you act tells others around you how you want them to treat you . . . want to be treated like a hooligan, then dress, talk and act like one. Want to be treated like an up-standing member of society, then act, talk, and dress like one.” *Id.*

labeled as street thugs and criminals but the hoodie is unremarkable, indeed invisible, when worn by white males.⁴⁸

My sons have never been arrested or even been in a fight at school. Yet, every time they leave the house, I worry about their safety. One of my sons loves to go to out at night to clubs. I worry about potential unrest at the clubs. I worry about his drive home and his being stopped by police.

The data out of Ferguson presents an example of the larger picture in the St. Louis County area. Police stop, search, and arrest black people at a disproportionate rate, even though they are less likely to possess contraband than white people.⁴⁹ My son who likes to go out at night is big and tall and he has brown skin. He is an intelligent, clean-cut young man. But the negative stereotypes automatically assigned to his skin color follow him everywhere, even in interviews, like extra weight. It reminds me of the airline employee who asks before you can check your suitcase: did a stranger ask you to carry something or pack your bag? In my son's case, the answer is yes. He is carrying extra weight, unfairly, and *without* his knowledge or consent, packed in his luggage.

Several summers ago, my husband and I went on a cruise. We were celebrating a milestone in our marriage and decided to take a trip without our children. My mother agreed to watch her grandchildren while my husband and I went on our trip. My older boys were young teenagers at the time and they were going to attend a summer enrichment camp at a school just under a mile straight up the road from our home. I thought it would be good for them to walk to school in the mornings and their grandmother would pick them up at the end of the school day. I had a long list of things to do before we left for our trip. At the top of that list was "email chief of police." I did.

I explained to the chief that my husband and I were going on a cruise, that we were a black family in the community and that my two sons, about 6 feet tall by this time, would be walking to school in the

48. Matthew Hutson, *The Power of the Hoodie-Wearing C.E.O.*, THE NEW YORKER, (Dec. 17, 2013) <http://www.newyorker.com/business/currency/the-power-of-the-hoodie-wearing-c-e-o>.

49. See Chapman, *supra* note 40.

mornings. I attached pictures of the boys. I explained that because the boys did not normally walk in the neighborhood, their visibility might raise eyebrows, turn heads, even cause someone to call the police.⁵⁰ I offered to bring my sons to the police department so officers could meet them. The police chief and I met and all went well. But I have often asked myself: how many parents of white sons have thought to add to their to-do-before-leaving-town list, “Write a letter to local police department, introducing sons and attaching photos, so police don’t become suspicious and harass them?” Even though my older boys are now men, I still worry about them. I worry about my thirteen-year-old too. This worry is a stressful, yet normal part of my daily existence. The thirteen-year-old is 6 feet tall. He weighs over 200 pounds. He has brown skin. These young black men have arrows pointed and ready to shoot at them daily—black-on-black crime, police encounters, citizen encounters, societal bias, and mistrust. How does one prepare them for this life?

Shortly after the Michael Brown shooting, I met with a group of my thirteen-year-old’s black male friends to have a talk with them. I had two goals: First, to talk to them about the killing of Michael Brown and explain to them what was happening in Ferguson. Second, I needed to have “*the talk*” with them. The talk was not about sex or birth control, as some assume; it was about staying safe, staying alive, and how to respond to the police in any future encounter. Many of these young men admitted to me that they are afraid of the police. One of my first questions to them—What would you do if a police officer started walking towards you?—had a response that shocked me. They *all* said turn around and run! Thirteen, *none* in any prior trouble, but they all spoke of an identical response. This should shock every reader. Young, innocent children who have never been in

50. See, e.g., John Vibes, *Black Teen With White Parents Mistaken For Burglar Assaulted By Cops In His Own Home*, THE FREE THOUGHT PROJECT.COM (Oct. 8, 2014), <http://thefree-thoughtproject.com/black-teen-fostered-white-parents-mistaken-burglar-attacked-cops/>. Compare the recent experience of a black teen who lived with a white family. He came home from school one day. He did not climb through a window or struggle to get inside. It was not dark outside. He simply walked through the front door. That was enough for neighbors to call police. Once police arrived, the police mistook him for a burglar. The teenager was told to put his hands up. Guns were drawn. The police yelled at him. He tried to explain that he lived in the house. The officers told him that he was a liar and pepper sprayed him. *Id.*

trouble with the law or in school are completely afraid of the men and women they are told are hired to serve and protect them. Indeed, they *all* thought the police would *hurt* them!

Of course, I discouraged the young men from running and spent time talking to them about the proper way to respond and *arrive home alive*. It was a good talk. It was a talk I had with my older male children years earlier when they were thirteen. It is a talk many mothers of black and brown boys have with their children. This time, though, my words felt heavier. I was reminded, as I spoke to them, of stories and fears my grandfather shared with me when I was a young girl about his encounters with the police during the Jim Crow era. And I felt sad, too, that lo, all these decades later, we are still having the same conversations and we still have the same fears.

I do not dislike police officers. I think most are good, great even, and we surely need them. I honor their service and commitment to society. But we still have a problem. Black and brown young men should not routinely be fearful of public officers who are supposed to protect and serve them. And, of course, the issues confronting many in Ferguson—and other frustrated black, brown, and poor people in the United States—are not only limited to police encounters. They do often find themselves over-policed and overrepresented in the criminal justice system, but they also largely remain at the bottom of the socio-economic ladder. Inadequate health care; joblessness; under employment; poor housing; inadequate education; and centuries of federal, state, and local government policies and societal prejudice have all contributed to the making of Ferguson.⁵¹ And Ferguson is merely representative of many similar communities throughout the country, all boiling with social ills that can no longer be ignored.

Ferguson shed light on a racial divide in this country that should shock the world.⁵² What now? How do we get out of this seemingly

51. Richard Rothstein, *The Making of Ferguson: Public Policy at the Root of its Troubles*, ECONOMIC POLICY INSTITUTE (last visited Nov. 2, 2014, 7:51 PM), <http://www.epi.org/publication/making-ferguson/>. See also COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY (Glenda Gilmore et al. eds., 2008).

52. Take a glance at some of the almost ten thousand comments posted in response to my original CNN piece. See Kimberly Norwood, *Why I fear for my sons*, CNN (Aug. 25, 2014), <http://www.cnn.com/2014/08/25/opinion/norwood-ferguson-sons-brown-police/>. See, too, the racial slurs hurled at *peaceful* Ferguson protestors by white St. Louis Cardinals fans. Shaun

entrenched and unmovable racial polarization in this so-called post-racial society?⁵³ We remain, as predicted by the Kerner Commission in 1967, “two societies, one black, one white—separate and unequal.”⁵⁴ Even with my original essay submission to CNN in August⁵⁵ and the reprinting in the St. Louis Post Dispatch in October,⁵⁶ the online comments sometimes were so vile that they could not be posted. This, of course, did not stop people from leaving voice mail messages for me filled with hate on my *work* and on my *home* voice mail systems.⁵⁷ The comments accused me of lying, of crying victim, of being stupid, ignorant and racist, of being part of a race that is the scum and scourge of the earth, and suggesting that either I move (back to Africa, as some Cardinals fans suggested of peaceful Ferguson protestors recently⁵⁸) or shut my pie hole.⁵⁹ I will not shut my pie-hole or go back to Africa. I am home. And I will not be cornered to cowardice or silence.

Worry, yes, this time we find ourselves in is definitely cause for concern. Gun sales in St. Louis communities, for example, have

King, *St. Louis Cardinals fans chant for Darren Wilson, tell protestors to get jobs and go to Africa*, DAILY KOS (Oct. 7, 2014, 10:30 AM), <http://www.dailykos.com/story/2014/10/07/1334938/--Video-St-Louis-Cardinals-fans-chant-for-Darren-Wilson-tell-protestors-to-get-jobs-go-to-Africa>.

53. See COLOR MATTERS, SKIN TONE BIAS & THE MYTH OF A POST-RACIAL AMERICA (Kimberly Jade Norwood ed., 2013) (proposition that despite statements to the contrary, America is not post-racial and cannot be as long as people continue to be judged based on the color of their skin).

54. *The Report of the National Advisory Commission on Civil Disorders*, at <http://www.eisenhowerfoundation.org/docs/kerner.pdf>; see also <http://historymatters.gmu.edu/d/6545/>.

55. Norwood, *Why I fear*, *supra* note 52.

56. Kimberly Norwood, *Kimberly Norwood: Skin color does matter*, ST. LOUIS POST-DISPATCH (Oct. 1, 2014, 12:00 AM), http://www.stltoday.com/news/local/kimberly-norwood-skin-color-does-matter/article_34ca4f47-49de-58ab-a977-d5ea62301e7f.html.

57. While I was unable to save the messages left on my office voice mail message, I was able to save a voice mail message left on my *home* telephone. That recording is on file with the author.

58. Lydia Warren, ‘Get a Job’: What St. Louis Cardinals fans chanted at Ferguson Protesters—along with ‘Let’s go Darren’—in support for white cop who killed unarmed black teen, MAIL ONLINE (last updated Oct. 8, 2014, 2:17 PM), <http://www.dailymail.co.uk/news/article-2785226/Cardinals-fans-tell-Ferguson-protesters-job-chanting-support-white-cop-killed-black-unarmed-teen.html>.

59. Email (Aug. 25, 2014, 17:29 CST) (on file with author).

soared.⁶⁰ The Ku Klux Klan is boasting increasing interest in membership and is promising to use lethal forces against protestors, cop killers, and potential *rapists of police officers' wives*.⁶¹ Does this ring any bells? Does anyone remember when black male were lynched for even looking at white women? Does anyone remember Emmett Till?⁶²

This Essay began with a quote from the *Dred Scott* decision of 1856.⁶³ Recall that the quote ended with a clear statement by Supreme Court Justice Roger B. Taney that a black man has no rights which a white man was bound to respect.⁶⁴ Professor Perry both began and ended her searing tribute to the deaths of unarmed black men in America over the past decade repeating this sentence from the *Dred Scott* decision, over and over again. It is a fitting question to ponder. I think of this quote often now as I watch white St. Louis Rams football fans snatch American flags away from young black people peacefully protesting their concerns about the circumstances surrounding Mike Brown's death.⁶⁵ Are the black protestors Americans, too, who get to carry the American flag and exercise their rights to free speech and to assemble?

I think about this statement often when people email me to tell me how stupid, or ignorant or racist I am for sharing a piece of my experience as a black person in America. I think about this statement every Halloween when white families display images of hanging President Obama (hanging, lynching, watermelons have not been

60. Philip Ross, *Ferguson Gun Sales Soar As City Awaits Grand Jury's Decision Over Michael Brown's Death*, IBTIMES (Nov. 13, 2014), <http://www.ibtimes.com/ferguson-gun-sales-soar-city-awaits-grand-jurys-decision-over-michael-browns-death-1723133>.

61. Danny Wicentowski, *Missouri KKK Leader: Ferguson Protests Are Boosting Recruitment*, THE RIVERFRONT TIMES (Nov. 12, 2014); http://blogs.riverfronttimes.com/dailyrft/2014/11/missouri_kkk_leader_says_ferguson_protests_boosting_recruitment.php; see also Arturo Garcia, *Ku Klux Klan leader defends threat of 'lethal force' against Ferguson 'terrorists'*, RAW STORY (Nov. 12, 2014) <http://www.rawstory.com/rs/2014/11/ku-klux-klan-leader-defends-threat-of-lethal-force-against-ferguson-terrorists/comments/#disqus>

62. See MAMIE TILL-MOBLEY AND CHRISTOPHER BENSON, DEATH OF INNOCENCE: THE STORY OF THE HATE CRIME THAT CHANGED AMERICA (One World/Ballantine 2004).

63. *Scott v. Sandford*, 60 U.S. 393 (1856).

64. *Id.* at 407.

65. *Editorial: The governor creates a Ferguson Commission; St. Louis faces a defining moment*, ST. LOUIS POST-DISPATCH (Oct. 21, 2014, 4:30 PM), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-the-governor-creates-a-ferguson-commission-st-louis-faces/article_3326745f-08d3-52c7-b084-05e3e58f5f14.html.

associated with any prior US President).⁶⁶ I think about this statement every Martin Luther King Day when white college students throughout America don blackface and dress up as gangbangers, drug dealers and users, even Aunt Jemina, in celebration of Dr. King's nationally recognized holiday.⁶⁷

I think about this in the rare instance when a black police officer shoots a white person and people cannot wait to email me and say: There! Now what do you have to say!?⁶⁸

I think about this when I read the comments on a YouTube video of a group of black children asking to grow up in a world that does not criminalize them solely on the basis of their skin color, where commenters liken them to future whores and drug dealers.⁶⁹ Indeed, I think about this as I watch documentaries of white people talking about how they do not see color and then go on to elaborate about the badness of being black.⁷⁰ I think of this when peaceful protestors questioning a death are consistently referred to as thugs, criminals, animals, and looters, but violent outbreaks by white people that result in the destruction of property at a pumpkin festival are considered immature and part of the college experience.⁷¹ I thought about this just 24 hours after the mid-term elections of 2014 when a caller to a live television show called the President of the United States a *nigger*

66. Diamond Sharp, *Halloween 'Lynching' Scene Taken Down After Neighbors Complain*, THE ROOT (Oct. 30, 2014, 9:58 AM), http://www.theroot.com/articles/culture/2014/10/halloween_lynching_scene_taken_down_after_neighbors_complain.html. See also Sara Bondioli, *Obama-Masked Figure Found Hanging From Overpass In Missouri: Report*, HUFFINGTON POST (last updated June 2, 2014, 4:59 PM), http://www.huffingtonpost.com/2014/06/02/obama-figure-hanging-overpass_n_5432541.html.

67. Joel Landau, *Arizona State University fraternity holds racist MLK Day party*, DAILY NEWS (Jan. 21, 2014, 3:07 PM), <http://www.nydailynews.com/news/national/college-fraternity-holds-racist-mlk-day-party-article-1.1586776>. See also Samantha Escobar, *13 Racist College Parties That Prove Dear White People Isn't Exaggerating At All*, THE GLOSS (Oct. 17, 2014, 12:50 PM), <http://www.thegloss.com/2014/10/17/culture/dear-white-people-review-racist-college-parties-blackface-mexican-stereotypes/>.

68. Email (Oct. 25, 2103, 12:13 CST) (on file with author).

69. The comments were so vile they had to be disabled. For the video, see Pharaoh Taj-Muhal, *Children of Ferguson*, YOUTUBE (Sept. 10, 2014), <https://www.youtube.com/watch?v=wiDAVyED0Yc>.

70. See generally *Whiteness Project: Inside the White/Caucasian box*, WHITENESS PROJECT (July, 2014), <http://whitenessproject.org/>.

71. Emanuella Grinberg, *Why Pumpkin Fest riots are not like Ferguson*, CNN (Oct. 21, 2014, 3:48 PM), <http://www.cnn.com/2014/10/21/living/keene-pumpkinfest-riot-ferguson/>.

on the air.⁷² I think about this as I walk with peaceful protestors in Ferguson who are white, Latino, Indian, Muslim, Christian, old, young, poor, not so poor, and wealthy, but who the media portrays, *without accountability*, as black, criminal, thugs, and looters.⁷³

In 1964, civil rights activist Fannie Lou Hamer delivered a powerful speech at the Democratic National Convention. A famous quote from her speech, “I am sick and tired of being sick and tired,”⁷⁴ resonates with many in Ferguson and throughout our nation today. We must figure out how to live under one roof. We must begin, honestly and earnestly, the real, long, and hard work of making Justice Taney’s words, a seeming right (current reality), into a wrong (a new reality). We have been operating with negative bias and stereotypes, suspicions, and mistrust of black people since the first arrival of nineteen indentured and enslaved people from Africa in chains hundreds of years ago.⁷⁵ Like Fannie Lou Hamer, I too, am sick and tired of being sick and tired. Aren’t you?

Before this Essay goes to the press, it is highly anticipated that the Grand Jury will have decided whether to return a true bill against Officer Darren Wilson. It is widely anticipated that he will be acquitted. I am not sure. What I do know is that the return of a true bill in the Darren Wilson case is no longer the driving force behind the protests. After August 9, 2014 in the United States we know a lot more about our society and race relations. The issues that led to the explosion in Ferguson and the ripple effects throughout the nation

72. Catherine Thompson, *C-SPAN Caller On Air: ‘Republicans Hate That N***er Obama’* (Nov. 6, 2014), <http://talkingpointsmemo.com/livewire/cspan-caller-obama-n-word>.

73. I should mention another media practice that throws logs onto fires or even embers. My original CNN submission, *supra* note 52, was entitled: “Dear America.” Without my knowledge, CNN retitled the piece: “This doesn’t happen to White People.” The title was changed after my complaint to another title, the current title, also not of my choosing but not before hundreds and hundreds of outraged and negative comments which laid their foundation with CNN’s title. I call what CNN did race baiting. They call it click baiting. Click baiting in this context is not healthy and does not help to get us talking and attempting to solve our racial tensions.

74. Lottie L. Joiner, *Remembering Civil Rights Heroine Fannie Lou Hamer: ‘I’m Sick and Tired of Being Sick and Tired’*, THE DAILY BEAST (Sept. 2, 2014), <http://www.thedailybeast.com/articles/2014/09/02/remembering-civil-rights-heroine-fannie-lou-hamer-i-m-sick-and-tired-of-being-sick-and-tired.html>.

75. See, e.g., *Arrival of first Africans to Virginia Colony*, in *Africans in America*, PBS (last visited Nov. 3, 4:47 PM), <http://www.pbs.org/wgbh/aia/part1/1p263.html>.

and the world are much larger than the fate of Darren Wilson. The killing of Michael Brown was the straw that broke the camel's back, true, but the camel was already grossly overweight, very old, and very tired. Our country is broken. And we need to address the underlying problems in order to fix it. A second civil war lies, just under the surface, waiting to erupt if we let the lessons of Ferguson pass us by. This is a watershed moment. Let us seize it. Our survival as one nation depends on it.