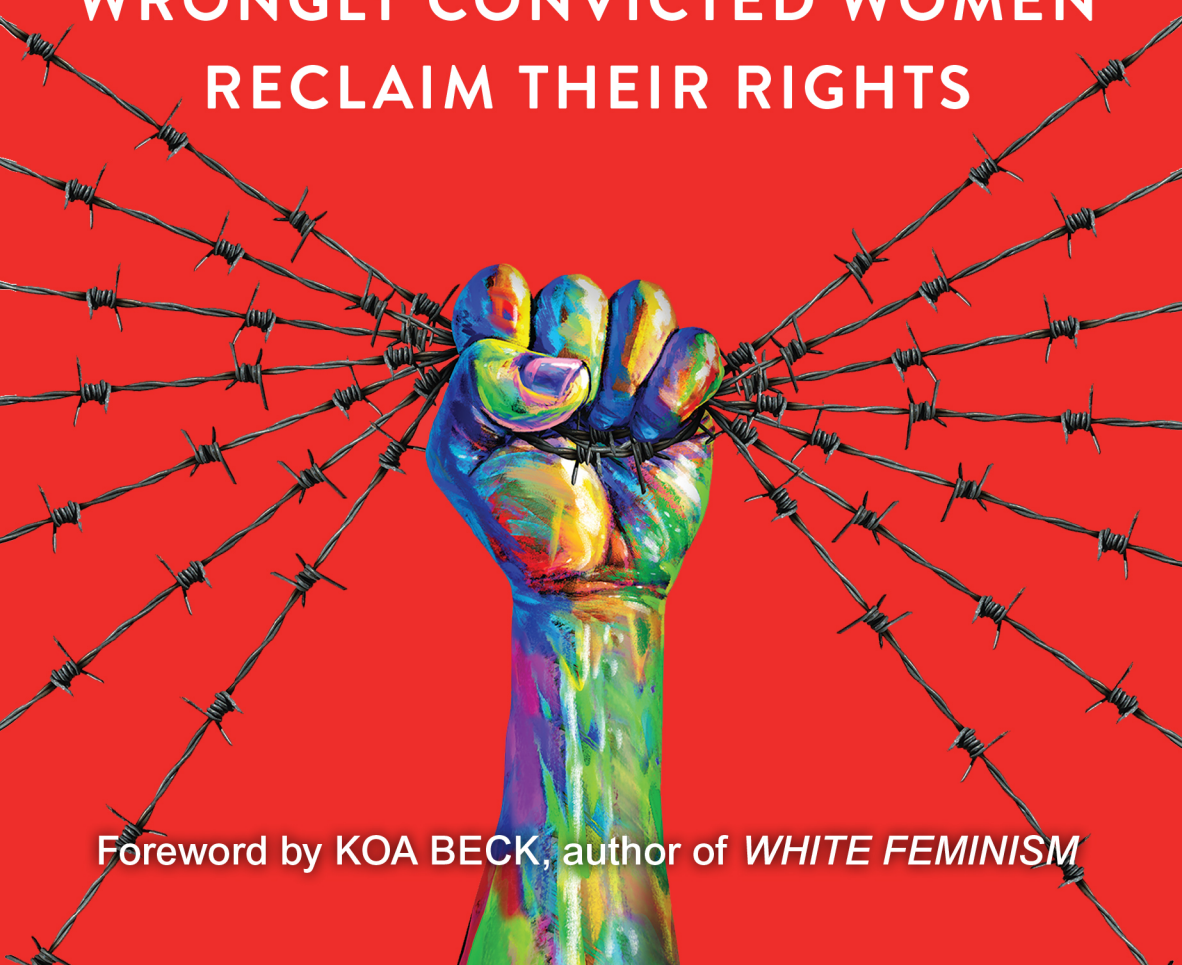
VALENA BEETY
Founding Director of the
WEST VIRGINIA INNOCENCE PROJECT

MANIFESTING JUSTICE

WRONGLY CONVICTED WOMEN RECLAIM THEIR RIGHTS



Foreword by KOA BECK, author of *WHITE FEMINISM*

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PROLOGUE

The shortest distance between two strangers is the story.
—Patti Digh

We view strangers with suspicion because we cannot predict what they will do. But when we hear their stories, we unearth what is hidden. We find ways to listen, to wait, and to grow intimate. With intimacy we can grow closer until we realize our stories are not so separate, but a part of a tapestry, our lives interwoven.

Though we are strangers, I encourage you to tell your story and to listen to this one.

The prison yard was unusually quiet when Leigh's friend collapsed. With a soft thud, her body crumpled onto the dirt, smearing red dust on her green-and-white-striped pants. These were not her clean pants, the ones kept fresh and bright for rare family visits. These pants were faded and frayed, marked with the stripes showing she had permission to be walking with a friend in the exercise yard of the Central Mississippi Correctional Facility for Women.

Leigh stood next to her comatose friend and yelled for help. She cupped her hands to amplify her voice and strained her eyes to identify approaching guards. Urgently, she called again. As the guards ran closer, she froze, so as to not pose a threat to them.

One guard pushed Leigh aside to try to minister to Leigh's friend. But another turned to her with rebuke.

"Leigh, why didn't you help her?" the guard demanded.

Leigh stared down at the unconscious woman, gripped by a powerful memory.

Then she turned and met the guard's eyes.

"Because the last time I tried to help someone in trouble, I ended up in prison for a crime I didn't commit."

This is a story about sexual shame. This is also a story about the War on Drugs, and trapping people in prison because of fear, misunderstanding, and hatred. But the root of it is shame.

It is also a story of change and how we can create justice.

Three women meet in a drug rehab institution. One experienced a tragic event in college months earlier. Trying to cope, she throws her personal and sexual vulnerability to the wind. The second woman is newly out of high school and struggling to figure out her sexual identity. The third woman is a lesbian, recently turned thirty, who has lived through homelessness and exile all the while questioning her purpose in the world. All three need help. And they find each other. Their relationships buoy them until the outside world shames them for their sexual choices, grasps at lies and stereotypes, and transforms them into victims and criminals.

This is their story.

I am an innocence litigator. For more than a decade, I have represented men and women who were factually innocent—serving time in prison for crimes they did not commit. Someone else had committed the crime, but police, prosecutors, and our courts had made a tragic mistake.

Over the past thirty years, innocence litigators have created a whole new field of law. With the advent of DNA evidence, these attorneys proved in court that their clients were factually innocent. They exposed serious failings in our criminal legal system, and they led legislative reforms in many states to prevent wrongful convictions.

In this book I offer a passport to this world, and a new expanded vision of wrongful convictions.

Some of my clients had DNA evidence that could prove they did not commit the crime. The evidence was either in a police storage locker or a courthouse evidence room. I needed the prosecutor's per-

mission to test the evidence. Every single prosecutor refused. I always offered to pay the DNA testing costs, but that wasn't what mattered to the prosecutor.

During those years, judges often told me their hands were tied, that there was no legal pathway to consider my client's plea for relief.

They were wrong; there is a legal pathway. It's called manifest injustice.

Manifest injustice is a legal mechanism to challenge and reverse convictions. It recognizes that convictions tied to racism, police and prosecutor misconduct, over-sentencing, and false evidence are wrongful. Manifest injustice—or miscarriage of justice—empowers a judge to consider the law, facts, and surrounding circumstances in a case and to declare a conviction, or a sentence, unjust.

Judges rarely use it.

In our criminal legal system, what qualifies as legal punishment can be a far cry from what is just. Judges infrequently reverse convictions.

The legal system prioritizes finality and prefers a simple contained narrative. The story is considered over once the person is convicted and labeled as guilty. To reverse that conviction, to free someone from prison, to be able to tell the full and complete story, is to overcome a legal bar that is dauntingly high, even for "perfect" defendants.

Our full stories reveal our motivations, our imperfections, and our humanity. My clients were not perfect, and like so many incarcerated people, they were survivors of crime and violence. My clients suffered in the same way that every incarcerated person suffers in prisons in America: over-arching violence, non-existent health care, token time with family, being caged in remote locations far from relatives with expensive phone bills widening that distance, and only small reprieves except escape through drugs.

Most of my clients did not have the DNA golden ticket to reverse their convictions and free them from prison. According to the prosecutors and judges, they didn't have enough proof to meet the very high standard of "innocence" that the current law demands. While locked in prison and unrepresented by counsel, my client may have filed five different petitions, each of which challenged a different evidentiary problem: the mistaken eyewitness, the police officer lying on the stand, the suppressed statement by a passerby to the crime.

The evidence issues presented across these petitions made it clear that my client had been wrongfully convicted, but courts do not review these errors collectively. Instead, they review the errors raised in each petition in piecemeal fashion. While this makes it much easier for the courts to rule out errors are "harmless," it makes it exponentially more difficult for the incarcerated person to win freedom.

Taken singly, one by one, each error was insufficient to meet the burden on the client—which was now on me as their attorney—to reverse the conviction. Courts often simply refuse to consider the entirety of the errors that were committed, and the result is denial of relief.

The courts' reliance on finality serves a purpose. Finality, enforced through an impossibly high standard to even revisit a conviction, insulates legal actors from reflection and reform. Finality is a shield, deflecting or burying criticisms of prosecutors, defense attorneys, judges, and police.

This dominant story of finality is the reason why the standard for reversing convictions must be manifest injustice. Courts should be obligated to review the picture as a whole to assess whether a trial was fair and just. The wrongs should be added up, rather than individually picked off and discarded as meaningless or as "harmless error."

It is not just the factually innocent who are wrongly in prison. Forensic fraud, "testilying" police officers, prosecutors withholding exculpatory evidence, mistaken eyewitness identification, and false confessions lock away factually innocent people. But these systemic breakdowns also unjustly lock away far more people who are wrongfully convicted and sentenced, even if their factual innocence cannot be conclusively proven or their guilt is not in dispute.

Innocence work often promotes the concept of an "ideal client" with a sympathetic narrative and no prior convictions. The result, intended or not, is a perception that only near-perfect people imprisoned for crimes they did not commit deserve to have the innocence community fight for their freedom. But even with "ideal clients," factual innocence may not be enough. Previously established facts are questioned or labeled fake news, not to mention disputed evidence or facts that simply remain unknown.

In a country that currently incarcerates 2.3 million people, proving factual innocence is also not enough to provide justice. Some innocence work has been co-opted by a denier's narrative, which contends that the vast majority of people who are arrested deserve prison and punishment.

The façade of the "always right" prosecutor should no longer be allowed to demand the conviction and incarceration of millions of people in the United States today.

These convictions can be reversed through manifest injustice. Manifest injustice is a tool that reaches beyond the perfect client who is demonstrably innocent. It can be an independent, fact-based claim for relief.

Through manifest injustice, courts can allow a defendant to withdraw their guilty plea after a conviction. Through manifest injustice, prosecutors can withdraw sentences they had advocated for and free the convicted person in prison, even years later. Through manifest injustice, bail requirements as well as sentencing guidelines can be more flexible. Courts can acknowledge over-incarceration and sentencing errors. Courts can recognize a confluence of errors in a case and their cumulative impact, even if each individual error does not rise to the legal standards created by previous court decisions.

The idea of manifest injustice challenges assumptions of what is natural and what is normal. Judges, lawyers, and civilians should not be accustomed to how our legal system quickly and routinely wrenches away peoples' freedom every day.

Manifest injustice is a correction when the law is too strict and leads to an unjust result. There are other tools that do the same thing—"dismissal in the interest of justice," before a person is convicted, and "coram nobis," after a person has served their sentence.

Before trial, fourteen states and Puerto Rico recognize a judge's authority to dismiss a criminal charge not on legal grounds, but in the interest of justice. Like manifest injustice, "dismissal in the interest of justice" allows a court to dismiss a procedurally proper but unjust charge pre-trial.

At the height of the AIDS health crisis in the 1990s, judges dismissed low-level charges against HIV-positive defendants in the interest of jus-

tice. Judges dismissed charges against ACT UP protesters—AIDS Coalition to Unleash Power—who organized "die-ins" and protested the government's failure to support research and find a cure. Courts dismissed charges in the interest of justice to protect protesters and principles of free speech.

Coram nobis petitions can challenge a conviction even after the convicted person has served their sentence. Courts can grant coram nobis petitions "to maintain public confidence in the administration of justice," reversing convictions for de-criminalized behavior, like marijuana possession, or where a "fundamental error" occurred.

In 2014, relatives of George Stinney filed a writ of coram nobis for his conviction to be reversed. The State of South Carolina convicted Stinney of murder in 1944, when Stinney was fourteen years old.

Stinney, a Black boy, was legally and factually innocent, but an all-white jury found him guilty after a one-day trial. The state of South Carolina executed Stinney in 1944, putting a Bible on the electric chair so the boy could fit into the straps.

In 2014, a court vacated Stinney's conviction through coram nobis, recognizing a miscarriage of justice. Coram nobis petitions and manifest injustice claims are being successfully brought today, even when the harm is decades old.

Manifest injustice is a powerful tool that can have a wide-ranging impact and expand innocence work.

Manifest injustice may also be seen as disruptive of traditional innocence work and its cohesive theory of factual innocence. And it is. It is part of a growing movement that asks courts to liberate rather than incarcerate. It is an expansion and not a devaluation of the innocence movement and its global importance. We can celebrate the successes of innocence work, while also consciously discussing an expansion of innocence. We can apply the term "wrongfully convicted" to more people, as our society also begins to recognize criminal injustice more broadly. Manifest injustice is a new direction for growth and change, as a theory and a reality.

The innocence vision is powerful. And when we free wrongful convictions from the technical constraints of factual innocence, we can recognize and remedy miscarriages of justice.

Building awareness is how we turn from the "deserving" narrative of finality to a manifest injustice framework. Galileo said he wasn't the first to discover the stars and planets, he was the first to see them for what they are. Manifest injustice is likewise a story of generational change: the origin of innocence work, the backlash of prosecutors adhering to a status quo, and a current move to reclaim the narrative of what is a wrongful conviction. Police, prosecutors, innocence deniers, and myriad structural system challenges stand as obstacles to freeing and vindicating people harmed by our criminal legal system. Manifest injustice creates a unique avenue to challenge prosecutorial misconduct, police abuse, and broader systemic racism.

The universal adoption of a manifest injustice standard would slow the churning machine of incarceration. Wrongful convictions are blazingly real and encompass a broad swath of people. Incarcerating people of color for decades to punish drug use is real. Women sentenced to a lifetime in prison for their connection to a boyfriend selling drugs is real. Imprisoning poor people for engaging in the same behavior as free, wealthy Americans is real. Convictions resulting from these injustices are wrongful.

The DNA revolution and innocence movement started more than thirty years ago, proving the reality of wrongful convictions in a way that courts and citizens have come to accept. But it is a narrow vision—too narrow to include the vast numbers of less than perfect, less than innocent people whose convictions are obtained through corruption, junk science, racism, and other legally dubious means. For the past twenty years, advocates in criminal justice reform have been arguing to broaden the innocence movement. This book acts as both a mirror and as a path forward from theory to reality. The widespread adoption of the existing tool of manifest injustice can expand innocence work to mitigate longstanding structural inequities rooted in our current system.

This book also provides other ways to manifest justice. When police and prosecutors criminalize transgender people, innocence litigators and activists can speak up about these wrongful arrests, charges, and convictions. When people of color are arrested and charged based on racism, state laws can require the charges be dismissed. When women

are over-sentenced for assaulting their rapist or abuser, people can advocate for clemency, for pardons. Many paths exist to manifest justice.

This book is about manifesting justice for people incarcerated too long, for women who took the fall for someone else, for people wrongfully convicted. And this book is about ways we are manifesting justice now.

Let's begin.

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INTRODUCTION

In the spring of 2013, in a hearing room in Tennessee, a group of legislators came together to create a new crime – the crime of fetal assault. A woman would be guilty of this crime if she took illegal narcotics while pregnant and her child was harmed as a result. The maximum punishment for this crime was eleven months and twenty-nine days in jail. Ultimately over the course of two years, about 120 mostly low-income women – rural, urban, Black, and white – would be prosecuted in Tennessee for fetal assault. The law was justified, in large part, by a very strange and deeply disturbing set of ideas: that the only way to help women who used illegal drugs while pregnant was to prosecute them, and that the prosecution itself was not only a road to treatment but was actually a form of treatment in and of itself. Despite these perhaps benevolent seeming ideas, the reality was quite different. Overwhelmingly, those women pled guilty and faced sentencing. Despite the strong assertions by the law's proponents that the prosecution was a road to accessing treatment, it appears that very few women actually got access to treatment through prosecution. Instead, they got what the criminal system almost always delivers: they were placed on probation, they went to jail, and they found themselves owing sometimes thousands of dollars in criminal debt. At the same time, these same women were subject to a child welfare system that equated their substance use during pregnancy with severe abuse and as grounds for rapid termination of their parental rights. Moreover, when we pull the lens out from the individual cases to the legal and social welfare systems in which their cases were embedded – the healthcare system, the child

welfare system, and the criminal legal system – we see that for these deeply stigmatized women and others like them, to the extent they do receive any care, that care is corrupted by its location within or near punishment systems. In 2016, though, the Tennessee fetal assault law expired, putting an end to these prosecutions.

It's a fair question, then, to ask why one might want to read (or write) an entire book about these particular prosecutions and the systems in which they took place. The answer, quite simply, is that the ideas that drove the creation of this crime – that criminalization is a road to care, that the care provided at the end of that road is corrupted by its linkage to punishment, and that, for those society deeply stigmatizes, criminalized care is all they deserve – sit firmly at the heart of the US criminal, child welfare, and social welfare systems. The systems at the heart of this book operate on the assumption that poor people and poor communities are not worthy of care in the best sense of that word. In fact, if we look not at what is said but instead at what is done, not at what some in power purport but at the operation of the systems they create, it is clear that the United States has a set of rules and systems that assume that whole categories of deeply stigmatized poor people do not deserve what this book broadly terms care – economic security, housing, healthcare, safety, or support. In poor communities, systems might dole out some meager support, some meager approximation of care, but there is always a high price to pay. That price all too often comes in the form of stigmatization, surveillance, and punishment. Even beyond this, these purported offers of care are often nothing more than a facade behind which we find mostly subordination. A central idea at the heart of these systems is what this book terms *criminalizing care* – the idea and practice of linking the provision of care (in the Tennessee example healthcare and drug treatment) to involvement in systems that punish and the devastating outcomes that result. So, the Tennessee story, and this book, is not only a story about the operation of one law in the lives of 120 women. It is also a book that highlights that story as an extreme and crystal-clear example of criminalizing care, a phenomenon at the heart of US social welfare, child welfare, and criminal system policy.

It's important to note, at the outset, that both the ideas that drive these phenomena and the systems that manifest and carry out these

ideas have everything to do with race, gender, and socioeconomic status. Both the ideas and the systems that have resulted were originally built to punish and control poor, Black women and their families. But these systems also draw on and perpetuate a complicated mix of white privilege, when society sees addiction in white communities as a healthcare need rather than a crime wave, and long-existing stigmas around and aggressive efforts to control reproduction by poor women, both white and Black. The book will touch on and attempt to tease out this complicated race, class, and gender story and the way that these stories underpin and support what is termed here criminalized care.

To step back before diving deeper in, it is important to understand how this book uses the words in the title. While prosecuting poverty is relatively straightforward – the criminal system targets, in the fetal assault example and beyond, those in poverty in a way that deepens that poverty – the meaning of the next two words are less immediately clear. Criminalizing, or criminalization, in its most basic form, happens when society uses criminal law and criminal systems (think criminal courts, police, probation, and parole) to address a particular social problem. So, we criminalize conduct like murder, rape, robbery, and assault, and individuals who commit those crimes are subject to the criminal system, with all its punishment and surveillance tools and actors. But criminalization here also refers to three other, broader phenomena: first, criminalization occurs when society makes conduct criminal when a social welfare solution is available (for example making it a crime to sleep outside and then prosecuting homeless people for that crime). Second, criminalization occurs when social welfare programs are built to make its participants feel like criminals, for example by fingerprinting welfare applicants and subjecting them to extensive monitoring that is structured in a way that is eerily similar to probation. Third and finally, criminalization occurs when seeking assistance in a social welfare program puts stigmatized members of society at risk for punishment in the criminal and child welfare system, for example when welfare recipients are drug tested and those drug test results are shared with child welfare and probation staff or here, when seeking care during pregnancy, labor and delivery leads to prosecution.

The next word in the title, care, as used in this book, is intentionally broad and evocative of basic human rights. In its deepest and broadest

sense, care is something society owes to its members. It is a set of basic supports – housing, economic security, healthcare, safety, education. But care as it is used here is not only about what society should provide to its members. It is also, crucially, about how it should be provided. Care, as it is used here and in its best form, is inextricable from dignity. Society provides that form of care when it does so in a way that enhances, rather than undermines, the dignity and well-being of the individual, family, or community receiving that care. Throughout this book, because the volume's prime example is about substance use during pregnancy, the forms of care the book talks about the most are obstetrics, gynecology, and addiction treatment, but keep in mind as you read that these forms of healthcare are merely examples of kinds of care that society sometimes provides and that should be provided in a form that enhances the dignity and well-being of those who require it.

When it comes to care, one of the central arguments of this book is that there is a wide gulf between both the substance and the form of care available in the United States and that this gulf breaks down on race and class lines. When it comes to those in poverty, many of whom society deeply stigmatizes, what society provides falls far short of a robust form of care. Instead, when it comes to women like those prosecuted for fetal assault in Tennessee, care is all too often criminalized. Offers of care are often nothing more than a smokescreen for punishment; care comes at the risk of severe punishment, and, even when care is provided, its proximity to punishment systems degrades the quality of care itself. This book highlights the prosecution of 120 women for fetal assault as a way to understand criminalizing care: the ideas that drive criminalized care, the means by which criminalized care comes into existence in society's systems, and what actually happens, both to people and to care, when criminalized care dominates parts of the healthcare, child welfare, and criminal systems. Finally, this book asks what the United States might do to shrink our systems of punishment, build better systems of care outside of and away from punishment, and, in the meantime, erect firm walls between systems that can punish and systems that deliver support.

To tell the fetal assault story as an example of criminalized care, the book draws on several bodies of data.[1] The criminal court case files are central to the story. These files, which the research team

gathered over nearly a year from court clerks, prosecutors, and sheriffs across the state, lay out, in tellingly bureaucratic form, who was prosecuted and what happened in the prosecutions. Through them, we learn about the charges that were brought, how much jail time a woman served, whether she pled guilty, what sentence was imposed, what she was required to do, whether there is any indication that treatment was offered as a part of the case, and what fees and other costs were assessed. In addition, the story relies on the birth records of infants who were born with neonatal abstinence syndrome (the condition that those who supported the law said they were targeting) when the law was in effect. Those files enable us to learn more demographic information about the women who were prosecuted and, crucially, to assess how effective the criminal system was at targeting women who gave birth to infants diagnosed with neonatal abstinence syndrome, the syndrome purportedly targeted by the fetal assault law.

The bulk of the remaining data comes from in-depth interviews of professionals in the healthcare, child welfare, and criminal legal systems in Tennessee. Over the course of about two years, I interviewed over forty professionals in those systems both about their particular views and experiences in the fetal assault cases and about their views and practices about providing care close to and inside punishment systems. In addition, I interviewed several medical experts, both in Tennessee and nationally, about best practices for women who are pregnant and struggling with substance use disorder. Finally, although the qualitative research for this book focused primarily on the systems and the views of system actors, the voices of the women who were prosecuted are also heard here. These voices come from public records, from moments in which women who were subject to prosecution testified or spoke publicly, and, crucially, from qualitative research on the implementation of the fetal assault law conducted by SisterReach, a nonprofit based in Memphis, Tennessee "that supports the reproductive autonomy of women and teens of color, poor and rural women, LGBTQIA+ people and their families through the framework of Reproductive Justice" and whose mission is to "empower our base to lead healthy lives, raise healthy families and live in healthy and sustainable communities."[2]

Ultimately, *Prosecuting Poverty, Criminalizing Care* seeks to use the example of the fetal assault law to convince you of several interconnected ideas. First, the United States targets criminalized care not at all people who engage in particular stigmatized conduct (in this case taking illegal drugs while pregnant) but only at poor people, who are racialized in very specific ways. Second, when those in power put forward the idea of offering care in the criminal system, often that's just a smokescreen. Instead, for this group of stigmatized poor people, they are prosecuted. Prosecution in turn leads not only to deepened poverty but goes hand-in-hand with a deeply degraded form of justice. Third, in poor communities in Tennessee and well beyond, care is linked to punishment: to the extent that society is willing to provide care in poor communities, it has increasingly offered that care in ways that are closely linked to systems that punish. And locating care within punitive systems fundamentally corrupts the structure and quality of that care. That corruption plays out in public assistance and healthcare, in child welfare, and in the criminal legal system itself. And finally, the book seeks to convince you that there is a better way, that we can and must shrink our punishment systems, erect firm legal walls between systems that support and systems that punish, and invest substantial resources in creating systems of care that promote the dignity and well-being of individuals, families and communities.

The argument is laid out in four sections. Part I, "A Problem, a Solution, and a Quick Dive into History and Theory," provides much-needed context. Chapter 1, *Creating a Crime to Create Care*, begins to delve into the case study, describing the basic structure of the fetal assault law. It also draws on the law's legislative history to describe the thesis about both the problem and the solution presented by those who supported the creation of the fetal assault law. The law's proponents argued both that, for the women they were targeting, care is better provided inside rather than outside punishment systems and that criminal system processes in and of themselves are a form of care. Both these ideas are central to the criminalization of care. Chapter 2, *Defining the Problem,* delves more deeply into how we think about the "problem" that this law was supposed to solve. It presents both the framing of the problem as described by those who supported the law and then, drawing on medical research, the research of SisterReach, as

well as the qualitative interviews of several experts, reframes the serious needs of poor pregnant women struggling with substance use disorder, to start to introduce a different notion of what "problem" might exist and what kinds of solutions and support might actually help. Finally, Chapter 3, *Historical and Theoretical Roots*, turns briefly to history and theory, contextualizing the Tennessee law as an example of a far broader history of prosecuting pregnant women for substance use during pregnancy, the location of care resources within courts, and the criminalization of social welfare programs.

Part II, "Care As a Smokescreen" returns to the case study. Chapter 4, *Prosecuting Poverty*, presents evidence that the prosecutions targeted not fetal harm in general and by all classes of women but instead drug use by poor women, predominantly white in Appalachia and both Black and white in Memphis. Moreover, in the majority of cases, the files bear no evidence that women were offered care as part of their criminal cases. Instead, the women faced what every poor person faces when charged with a misdemeanor: bail, jail, probation, fines and fees, and sometimes more jail. While we tend to focus on felonies when we talk about the injustices at the heart of the criminal legal system, these cases add data to the scholarship describing the crushing nature of our misdemeanor system. Chapter 5, *Deepening Poverty and Degrading Justice*, demonstrates that the punishment women received was just that – punishment, and that punishment came in forms characteristic of the misdemeanor system. So, rather than addressing the poverty or healthcare needs of these women, prosecution deepened their poverty through the imposition of high levels of criminal debt. In addition, again as is characteristic of cases at the low end of the criminal system, little justice was available. Instead, women faced extraordinary pressure to plead guilty and subject themselves to the risk of additional punishment, even in those cases in which their files indicated a strong possibility of a defense to the charge. In all these ways the rhetorical focus on care in the legislation turned out, in the majority of cases, to be nothing more than a smokescreen for deepening poverty and degrading justice.

Part III, "Criminalized Care" presents the books' second primary argument. This Part lays out the series of mechanisms that enable the criminalization of care for women like the fetal assault defendants and

then argues that when you link care to punishment defendants face not only a tremendous set of risks of additional punishment as a cost of care, but they receive a degraded form of care. Chapter 6, *The Path In: From Healthcare to Child Welfare to Criminal Systems*, begins the Part by laying out the legal, regulatory, and practice mechanisms by which information about women, and ultimately the women themselves, traveled from the moment when they sought healthcare, through the child welfare system, and to the moment of prosecution and punishment. Chapter 7, *Criminalization As a Road to Care and the Price You Pay*, takes on a different part of the structural puzzle, describing the ways in which opportunities for care are located proximate to or inside punishment systems, effectively drawing individuals who need care into those systems. In addition that Chapter explores the price of that care, in terms of the risk of punishment. Chapter 8, *Corrupting Care*, takes up the issue of care itself, demonstrating that, in the case highlighted in this book, the form of care itself is corrupted by its proximity to or location inside punishment systems. This corruption of care takes three distinct forms: First, treatment providers, whose clients are referred predominantly from the child welfare and criminal systems, inevitably find themselves accountable not just to their patients but to actors in those systems who have the power to punish their patients. These connections inevitably undermine the trust essential to the provision of health care. Second, and related to the first, as a result of these risks, women engage strategically, taking the risk of punishment into consideration as they decided what information to share with their health care providers. The effect of this, of course, is that health care providers may not have the information they need to provide the best care for their patients. Third, decisions about the course of treatment itself are deeply affected not only by data about the medical risks and benefits of particular treatment decisions but also by the implications of those decisions in the child welfare and criminal systems, leading, in this books' terminology, to corrupted care.

Part IV, "Rejecting Criminalization and Reconceptualizing the Relationship between Punishment and Care," concludes with Chapter 9, *A Path Forward.* That chapter recenters the focus on the ways in which bias and subordination enable and reinforce the criminalization of care. It highlights the many dangers of reform in these

systems and presents a framework for evaluating possible reforms that might minimize those risks. It then offers a series of possible reforms, in the health care, child welfare, and criminal settings, that are designed to build stronger walls between care systems and punishment systems, shrink punishment systems, and build systems that provide care in the best and broadest sense of that term.

NOTES

1. This book does not contain a separate methodology section. However, as conclusions from various data sources are introduced, the text and endnotes contain a brief description of the data and methods employed.
2. SisterReach, *Who We Are* (2021), https://www.sisterreach.org/who-we-are.html [https://perma.cc/42KA-P6UX].

IMPERFECT VICTIMS

CRIMINALIZED SURVIVORS AND THE PROMISE OF ABOLITION FEMINISM

LEIGH GOODMARK

GENDER AND JUSTICE

Edited by Claire M. Renzetti

This University of California Press series explores how the experiences of offending, victimization, and justice are profoundly influenced by the intersections of gender with other markers of social location. Cross-cultural and comparative, series volumes publish the best new scholarship that seeks to challenge assumptions, highlight inequalities, and transform practice and policy.

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Imperfect Victims

CRIMINALIZED SURVIVORS AND THE PROMISE OF ABOLITION FEMINISM

Leigh Goodmark

UNIVERSITY OF CALIFORNIA PRESS

There are no criminals here at Riker's Island Correctional Institution for Women (New York), only victims. Most of the women (over 95%) are black and Puerto Rican. Many were abused children. Most have been abused by men and all have been abused by "the system."

—Assata Shakur, "Women in Prison: How It Is with Us"

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Preface

In 2018, I co-facilitated a support group for women serving life sentences at the Maryland Correctional Institution for Women. My students and I represented several of the women in the group who were eligible for parole and had been working with them to write their life stories for their parole packets. Looking for a new group project, we coalesced around writing a book—the women would write their stories, and I would frame their narratives using law and social science research. Although some at the prison were open to the idea, the Maryland Department of Public Safety and Correctional Services vetoed the project. The women then asked me to tell their stories myself. This book is the result of that request.

I have been telling the stories of victims of gender-based violence in various forms for more than twenty-five years: as a lawyer, in legislative advocacy, and as a scholar. But until 2013 my work with criminalized survivors was largely academic. The exception: in 2006, I read about Dixie Shanahan, a woman subjected to unspeakable abuse who killed her husband, Scott, after he threatened to murder her and their unborn child. I learned about Dixie through news articles, obtained the transcripts of her trial, and tried to figure out how anyone could believe that incarcerating Dixie after the nineteen years of abuse she had already endured could

constitute justice. I wrote a law review article about her case and, after the article's publication, became involved with the effort to seek commutation of Dixie's sentence and began trading letters with Dixie.

I was very clear about the injustice of Dixie's incarceration, but I wasn't doing anything to help women closer to home. That changed in 2013, when I began teaching at the University of Maryland Carey School of Law. I started a new clinic, the Gender Violence Clinic, whose mission was to handle any case where gender and violence intersected. Looking for new types of cases to work on with students, I connected with Mary Joel Davis. Mary Joel is a legend in Maryland. At fifty, Mary Joel founded Alternative Directions, an organization providing services to incarcerated and formerly incarcerated people. After her retirement, at seventy-five, Mary Joel founded Second Chance for Women, which assists incarcerated people preparing for parole. Now well into her eighties, Mary Joel continues to go into prisons regularly, trailing her oxygen tank and getting into the best kind of trouble on behalf of incarcerated people. She referred me my first criminalized survivor client seeking parole and gave me the basics I needed to represent my client properly.

Since then, my students and I have represented numerous criminalized survivors seeking parole, commutations, and pardons in both the state and federal systems. We have spent hours upon hours in prisons, delivering news both good and devastating. We have seen how police, prosecutors, judges, parole commissioners, and governors disbelieve, disdain, and dismiss our clients' claims of victimization. And how our clients sit in prison year after year, doing their best to grow and find meaning in their incarceration, enduring trauma and losing hope.

I came late in my career to representing criminalized survivors. I came even later to abolition feminism. At twenty-five, when I began representing victims of violence, I firmly believed that everyone who perpetrated violence was a monster and that swift and harsh intervention by the criminal legal system was essential to stop that violence. My clients quickly taught me to look at intimate partner violence in more nuanced ways. The more I represented people in the legal system, the more I doubted how effective those interventions were.

In 2018, by the time I published my second book, *Decriminalizing Domestic Violence*, I had been a critic of the legal system's response to

intimate partner violence for many years. In that book I argued that the criminal legal system was not deterring or decreasing intimate partner violence and that criminalization had serious negative consequences for the people it was meant to benefit. Nonetheless, I ended that book by saying that although "one could make a credible, even strong, case for decriminalizing intimate partner violence," decriminalizing domestic violence was "unlikely, and probably unwise." I was not yet ready to embrace abolition. Instead, I offered reforms to the carceral system that I suggested could make it more just and less likely to spur the trauma that contributes to the perpetration of intimate partner violence—the kind of reforms that I criticize in this book.

I've talked about *Decriminalizing Domestic Violence* hundreds of times. But the context for that conversation is very different now than it was when I finished writing the book in 2016. Continuous police killings of Black people brought police and prison abolition to the consciousness of those of us not previously steeped in it. I learned from feminist abolitionists like Angela Y. Davis, Mariame Kaba, Andrea Ritchie, and Beth Richie that abolition was not only consistent with efforts to end gender-based violence but essential to those efforts.

And I was going into prisons regularly to represent my own clients. The people the criminal legal system had labeled "murderers" I experienced as kind, caring, funny, warm, thoughtful, empathetic human beings. I came to understand that the violence of incarceration can never solve the problem of gender-based violence and that caging people can never be just. By the time I began writing *Imperfect Victims*, it was clear to me that abolition is the only solution to the revictimization of survivors by the criminal legal system. I hope in reading this book it becomes clear to you as well.

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Maura Roessner
Acquisitions Editor, University of California Press
Via-email

RE: IMPERFECT VICTIMS: HOW THE LEGAL SYSTEM PUNISHES SURVIVORS OF GENDER-BASED VIOLENCE

Dear Maura:

Modern legal history is full of the stories of people who acted to protect themselves from gender-based violence—rape, sexual assault, intimate partner violence, trafficking. Rosa Lee Ingram, the sharecropper convicted in 1948 for the murder of a local landowner after an armed sexual assault. Joan Little, acquitted of the 1974 murder of Clarence Alligood, a prison guard who attempted to rape her in her cell. Judy Norman, convicted in 1985 of the murder of her sleeping husband, J.T., after days of being trafficked, beaten, starved, and threatened. Cyntoia Brown-Long, released in 2019 after sixteen years of incarceration for shooting the man who bought her for sex at age 16.

Since the 1970s, anti-violence advocates have worked to make the legal system more responsive to claims of gender-based violence. Significant changes to the substantive law governing rape, intimate partner violence, and trafficking have made both criminal and civil relief more broadly available to victims of these violations. Yet victims of violence continue to be targeted by the criminal legal system, notwithstanding the recognition that they have been victimized. This targeting happens in a variety of contexts: when victims seek help, when they are called by the state as witnesses, when they act in self-defense, and when, after years of confinement, they request clemency or parole. It happens to girls, women, and trans and gender nonconforming people, to citizens and to those who are undocumented, to those who have been raped or sexually assaulted, victimized by their intimate partners, and trafficked. The criminalization of gender-based violence has had a variety of unintended consequences. But perhaps the most problematic unintended consequence of the criminalization of gender-based violence has been its impact on those it was meant to benefit--victims of violence.

In IMPERFECT VICTIMS: HOW THE LEGAL SYSTEM PUNISHES SURVIVORS OF GENDER-BASED VIOLENCE, I will explore how the criminalization of gender-based violence has led to the punishment of victims. Whenever possible, I will amplify the stories of those who have been victimized and criminalized, including my own clients (who have asked for their stories to be included in this book) to illustrate my points. The book is intended for those who work with and write about criminalized survivors, for students and scholars of gender-based violence, and for anyone interested in the unintended consequences of criminalization and mass incarceration.

Market Consideration

This book has several potential audiences. Scholars focused on mass incarceration, the criminalization of women, prison abolition, and gender-based violence would be interested in the book, as would students enrolled in courses on those topics. General readers searching for information on the impact of criminalization on victims of gender-based violence are another potential audience. I have tried to make the book both theoretically rigorous and as accessible as possible. I have included narratives of criminalized survivors throughout the book to illustrate my points and draw readers in more deeply, which should increase the appeal of the book.

Table of Contents

Chapter 1—The Background

Criminalized survivors were a central organizing focus in the anti-violence movement of the 1970s and 1980s. Chapter 1 will examine the cases of women like Joan Little, Inez García, and Judy Norman and discuss how efforts to increase the visibility of and pass law reform addressing gender-based violence affected criminalized survivors. One example: the criminalization of rape and intimate partner violence relied strongly upon gendered stereotypes of victims and perpetrators. These stereotypes created problematic portraits of violent relationships and created unrealistic expectations for victims of violence, particularly women of color, and especially when they use force. Chapter 1 will discuss the rise in incarceration of women and provide some basic information about the intersection of gender-based violence and criminalization (explaining that the vast majority of incarcerated people have been victims of some form of gender-based violence). Chapter 1 will survey the social science literature on women's criminality and use of force (drawing from and supplementing my article, *When Is A Battered Woman Not A Battered Woman? When She Fights Back,* 20 YALE J. L. & FEMINISM 75 (2008)) .

Chapter 1 will conclude with a roadmap for the rest of the book.

Chapter 2—Young People

The criminalization of survival begins with girls and trans and gender nonconforming youth. The chapter will argue that the criminal legal system's failure to see young people either as children or as victims has led to increased punitive intervention into the lives of young criminalized survivors. The chapter will discuss the increase in the number of young people brought into the criminal legal system as a result of mandatory arrest and human trafficking laws and highlight the cases of girls like Bresha Meadows, incarcerated for killing her abusive father, and Cyntoia Brown, incarcerated for killing the man who bought her for sex at age 16. The chapter will explore the various mechanisms used to bring young people into the system and describe the experience of detention for young criminalized survivors.

Chapter 3—Arrest and Prosecution

Decisions about who to arrest and what to charge have profound implications for victims of violence. This chapter will look at the arrest and charging decisions in several cases,

including the cases of Marissa Alexander, Tondalo Hall, Eraina Pretty, and Ramona Brant in an attempt to determine what police and prosecutors hope to accomplish through criminalizing survivors. Drawing on my article, *The Impact of Prosecutorial Misconduct, Overreach, and Misuse of Discretion on Gender Violence Victims,* 123 DICKINSON L. REV. 627 (2019), this chapter will discuss the criminalization of victims of violence as witnesses, highlighting the use of material witness warrants to compel testimony from victims of violence. The chapter includes the story of Renata Singleton, the named plaintiff in the class action lawsuit against Orleans Parish District Attorney Leon Cannizzaro, whose office used fake subpoenas to compel victim participation, then relied on those subpoenas in asking judges to incarcerate witnesses who failed to comply. The chapter will discuss "culpability inflation," the mechanism prosecutors use to hold criminalized survivors responsible for the actions of others. It will also track the evolution of self-defense law since the inception of the battered women's movement and will discuss the impact of battered woman syndrome and Stand Your Ground laws. This chapter will pay particular attention to the impact of race on these decisions and argue that women of color are disproportionately affected by police and prosecutors' decisions to pursue criminalized survivors.

Chapter 4—Sentencing and Punishment

Chapter 4 looks at the back end of the system, asking what the system hopes to achieve by punishing criminalized survivors (drawing on my article, *The Punishment of Dixie Shanahan: Is There Justice for Battered Women Who Kill,* 55 KANSAS L. REV. 269 (2007)). The article will consider the sentences handed down in these cases to ask whether the underlying justifications for criminal punishment are met by those sentences, looking specifically at both prosecutorial statements about sentencing and the impact of mandatory minimum sentences in the cases of criminalized survivors. Prosecutors and others argue that criminalizing survivors can be beneficial, allowing survivors to access services for which they would not otherwise be eligible and taking them out of abusive environments. Indeed, some survivors have made the same assertion. Chapter 4 looks at the experience of incarceration for women, asking whether incarceration can ever be "good" for people subjected to abuse. Chapter 4 considers specialized forms of punishment in cases of gender-based violence, including requirements that those convicted of trafficking register as sex offenders and that those convicted of intimate partner violence attend batterer intervention counseling, and argues that these punishments (often mandatory) are inappropriate for victims of gender-based violence. Chapter 4 also looks at the criminalization of the choice to immigrate, and in particular, at how immigration detention serves as a form of punishment for victims of violence.

Chapter 5—Resentencing, Parole, and Clemency

Over the last thirty years, there have been many high-profile campaigns to free criminalized survivors, from the Framingham (Massachusetts) Eight to Cyntoia Brown. This chapter will look at resentencing, parole, and clemency, noting the systemic obstacles to obtaining these remedies for criminalized survivors, detailing the mechanisms available for criminalized survivors to seek redress (including the recently passed Domestic Violence Survivors' Justice Act in New York), and the continuing hardships that face criminalized survivors when they are released from prison.

Chapter 6—Feminist Abolitionism

As long as the criminal system intervenes in cases of gender violence, there will always be criminalized survivors. Reams have been written about reforms to the criminal legal system intended to benefit criminalized survivors, including trauma involved treatment, gender responsive programming, women's jails, legislative change. The first part of the chapter surveys those reforms, concluding that in the end, those reforms all amount to one thing: criminalize and incarcerate better. The chapter will argue that those who advocate for continued reliance on the criminal legal system must accept that criminalized survivors will always be collateral damage. The chapter will contend that abolition feminism rather than criminal system reform is the way forward, describing that movement and providing examples of "non-reformist reforms" that abolition feminists should champion on behalf of criminalized survivors.

The total word count of the book will be about 100,000 words, including the front matter, main text, notes, and bibliography.

Comparable and Competing Volumes

There are numerous books that discuss discrete aspects of each of the topics covered in this book: the criminalization of girls and youth, the criminalization of victims of intimate partner violence, the criminalization of victims of trafficking, women's incarceration, clemency, prison abolition. But there is no single volume that charts how criminalized survivors move through the contemporary criminal legal system from childhood through parole or that considers gender-based violence broadly (as opposed to focusing solely on intimate partner violence or trafficking).

The closest book to *Imperfect Victims* is probably Beth Richie's 1996 classic, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (Routledge). Dr. Richie's book examines how Black survivors of violence are drawn into the criminal legal system and how they are treated within that system. The narratives in Dr. Richie's book are rich and detailed and her theory of gender entrapment is essential to parts of my book. But Dr. Richie's book is restricted to the experiences of Black women and is much more focused on individual women than the role of the criminal legal system.

Elizabeth Comack's books, *Women in Trouble: Connecting Women's Law Violation to their Histories of Abuse* (Fernwood Publishing 1996) and *Coming Back to Jail: Women, Trauma, and Criminalization* (Fernwood Publishing 2018), also provide rich narratives from incarcerated women, but these books are not specifically focused on gender-based violence or the role of the legal system.

Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States (University of California Press 2016) by Jennifer Musto examines how "carceral protectionism" influences how police and prosecutors approach victims of sex trafficking. Dr. Musto's book is restricted to the trafficking context and does not talk at great length about the experience of incarceration.

The explanation of why women subjected to intimate partner violence use force in Susan Miller's *Victims as Offenders: The Paradox of Women's Violence in Relationships*

(Rutgers University Press 2005) is essential in framing *Imperfect Victims*. Dr. Miller covers the interactions of victims of intimate partner violence with police and prosecutors, but Dr. Miller's book does not discuss how the law itself facilitates the abuse of victims and only discusses intimate partner violence.

This book owes an important debt to all of those books, but none of them centers the role of the legal system or has the breadth of *Imperfect Victims*.

A tagline for the book might read: Criminalization of gender-based violence was meant to protect victims of violence. But the most serious unintended consequence of greater state intervention in these cases has been the arrest, prosecution, conviction, and incarceration of those victims. Victims of violence are regularly punished by the criminal legal system—and only dismantling the system will bring that punishment to an end.

Status of the Work

I have completed a first draft of this book, which is attached to this proposal. Some of the chapters build from law review articles, and I have used those articles in the classroom, as have others in higher education (undergraduate, graduate programs, and law school).

Potential Reviewers

The following people are experts in this field and would be excellent reviewers:

Professor Courtney Cross
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Author Platform

It is incredibly important to me that my work reach people outside of the academy. I have written for several popular publications, including the New York Times and the New York Daily News, and have contributed to online publications including The Alchemist

and The Conversation. I have blogged for UC Press and others. I have more than 2800 Twitter followers, including people with substantial followings who would be interested in this book. I am frequently quoted in the media on issues involving gender-based violence and regularly do talks at law schools, undergraduate institutions, and for the general public. I always discuss my book, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*, published in 2018 by UC Press, in those conversations. I teach a course where my students represent criminalized survivors (many of whom appear in this book). I would assign this book to those students and can imagine others who teach similar courses assigning it as well. I have worked productively with UC Press in the past to leverage these avenues to build interest in my book and would look forward to doing so again.

I am excited about the possibility of doing another book with UC Press. My experience in working with everyone at the Press has been wonderful and I believe that UC Press is the right place for this book. I look forward to discussing the book further with you.

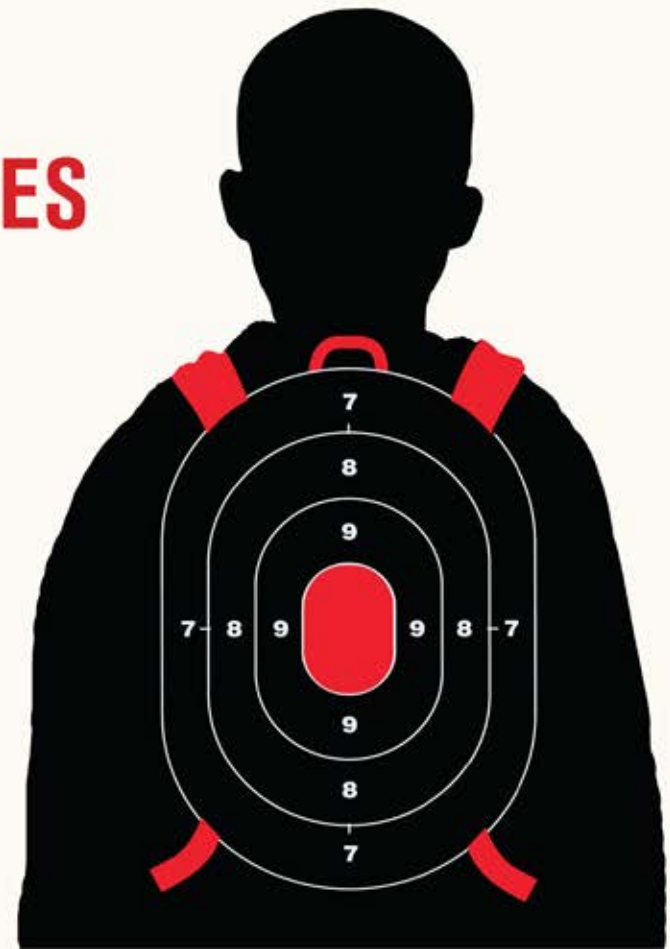
Sincerely,

Leigh Goodmark

THE RAGE OF INNOCENCE

HOW AMERICA CRIMINALIZES BLACK YOUTH

KRISTIN HENNING



THE RAGE OF INNOCENCE

How America Criminalizes Black Youth

Kristin Henning

Pantheon Books, New York

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Introduction

Molotov Cocktail or Science Experiment?

I first heard about "Eric"* on the evening news when I saw the headline "Teen Arrested for Bringing Explosive Device to D.C. School." The story immediately caught my attention. It sounded serious, and as a defense attorney practicing in Washington, D.C.'s juvenile court, I knew I would likely see Eric in court the next day. Indeed, as fate would have it, just as I walked into the courthouse, a teenage girl approached me to ask if I could represent her brother—Eric. Coincidentally, I had met Eric's sister a few months earlier in a drama workshop at a local high school. As I checked in with the court staff, I learned that I had already been appointed to Eric's case.

Within minutes of talking to Eric in the juvenile lockup, I realized that what sounded so shocking on the news wasn't so serious after all. Eric was a typical thirteen-year-old boy who was watching a movie and saw someone with a Molotov cocktail. Eric thought it was "cool" and wanted to see if he could make something that "looked" like that. He grabbed an empty bottle from under the kitchen sink and started filling it with household products—bleach, Pine-Sol, stainless steel cleaner—whatever he could find. He didn't research it. He didn't look up "Molotov

*Throughout this book, I have changed the names of my clients and their family members to preserve their confidentiality.

cocktail" on the internet, and he didn't know if any of the products he grabbed were flammable. He was just being creative. He taped up the entire bottle with black tape and put a long piece of toilet paper underneath the cap so it hung out of the bottle like the wick of a cocktail. After admiring his design, Eric put the bottle in his book bag so it wouldn't spill on his mother's white carpet and moved on to his next source of entertainment for the day. This all happened on a Saturday night, and like most thirteen-year-olds, he had completely forgotten about it by Monday morning when his mother drove him to school.

As he did every school day, Eric walked through a metal detector and put his bag on an electronic conveyor belt. A police officer assigned to the school as a "school resource officer" saw the bottle and stopped Eric to ask about it. Eric responded without thinking, "Oh, that's nothing. You can throw it away." He walked on to class. Little did he know this was the beginning of a very long and painful ordeal for him and his family in juvenile court.

Eric was pulled out of class, questioned by the police, and arrested. No one believed him when he told them he forgot the bottle was there and was not planning to blow up the school. Eric spent the night in the local juvenile detention center and was brought to D.C. Superior Court the next day. The prosecutor charged him with possession of a Molotov cocktail, attempted arson, and carrying a dangerous weapon. When I heard the prosecutor read out the charges, I kept expecting there to be more to the story—maybe a letter or some cryptic online message by Eric threatening to hurt a teacher. Maybe Eric was sad, isolated, and bullied by his classmates. Maybe Eric had a history of depression and dressed in all black. None of that turned out to be true. There was nothing more to the story.

Quite to the contrary, Eric was a happy and creative Black boy living in Southeast D.C. with his mother and little brother. Although his father was in prison at the time, Eric was raised in a large close-knit family, including two older sisters in college and another in the U.S. Air Force. His mother worked in a hospital

and catered food a bit on the side while studying for her nursing degree. His father was a college graduate who had worked for many years as an emergency medical technician before his incarceration. I visited Eric's home many times and met many of his family members over the next several months. I saw nothing other than a well-adjusted boy who loved to show me his kittens and play with his brother. He was active in youth theater, participated in the city's local youth orchestra, and tutored second- and third-grade students in reading four days a week. He also enjoyed youth activities at church. His teachers described him as calm and respectful, and he had never been in trouble at school or with the police.

The only thing that could really explain the school's extreme reaction to Eric's duct-taped bottle was our country's outsized fear of school shootings. And for a while, I accepted that as the reason. I let myself believe that our schools were just being extra careful in the era of mass violence. But then something happened that forever changed my view of this case. Several months after I met Eric, I shared his story at a conference in New Haven, Connecticut. When I finished, a White woman walked over and said, "My son did exactly what you described. He tried to make a Molotov cocktail and took it to school." When I asked what happened to her son, she said, "They rearranged his class schedule so he could take a chemistry course."

No, we are not just afraid of school shootings. And we are not just afraid of children with guns. We are afraid of Black children. There was nothing Eric could have done or said that day to convince the police or anyone else that he was not a threat to the school.

Eric was suspended and banned from all after-school activities. For the next nine months, he met weekly with a probation officer, was forced to attend anger management classes, and had to pee in a cup to prove he was not using drugs. At the city's expense, lawyers on both sides of the case spent hours investigating, preparing, and arguing about every legal question we could think of. Our defense team even hired an arson expert to prove that the

liquids in the bottle would never catch on fire and the toilet paper hanging out of it would never work as a wick. Only after months of advocacy were we able to persuade the judge to dismiss Eric's case under a special law in D.C. that allows a judge to throw out a juvenile case when it is "in the interest of justice." Fortunately, our judge thought the school and the police had overreacted. Unfortunately, the dismissal could never undo the agony, embarrassment, and fear Eric and his family experienced that year.

That was ten years ago, when Eric was thirteen—one of the most important years in his, and any child's, life. He was in his early adolescence and beginning his teenage years. For most youth, adolescence offers a prolonged period of self-discovery from age ten to nineteen—and sometimes into the early twenties. It is the time when children complete their formal education and develop the mental, emotional, and social skills they need to succeed and thrive as adults. Although family remains important, adolescents seek independence and begin to forge new identities apart from their parents. Parents and teachers hope their children and students will grow into healthy young adults with a positive sense of who they are and a robust idea of what their futures might hold.

Adolescence is a time when young people enjoy the freedoms of childhood while starting to figure out how to be an adult. We hope they will be curious, creative, and at least a little adventurous. We anticipate that they will take risks, test boundaries, and challenge authority. We expect them to show off for their classmates and be fiercely loyal to their friends. We are not surprised when they are impulsive, make poor decisions, or even experiment with sex or drugs. And despite our nervousness about the seeming recklessness of adolescence, we tend to show teenagers a great deal of grace. We are confident that most youth will grow out of their mischief. "Boys will be boys," the adults say. Girls are "just going through a phase." The risk and adventure of ado-

lescence is socially accepted as a rite of passage, and maybe even encouraged as a source of amusement. But those rules apply only if you are White.

Eric's adolescence looked quite different. While White youth have the freedom and privileges of adolescent irresponsibility, mischief, and play, Black youth like Eric are seen as a threat to White America. Two boys made a "Molotov cocktail," but only one was treated like a criminal. I was struck by everyone's refusal to believe Eric when he said the cocktail wasn't real. There was nothing intimidating about his appearance or suspicious about his behavior when he entered the building. Eric put his book bag through the conveyer belt without hesitation. He answered the resource officer's questions freely and handed over the bottle immediately when he was asked about it. He was searched thoroughly and clearly had nothing else in his possession by the time he went to class. With the bottle safely in their custody, the officers were able to remove any potential threat from the school and have the fire department examine the bottle's contents to confirm that it wasn't flammable. Yet nothing dispelled their fears. The officers and administrators treated Eric like a potential mass murderer—evacuating the school, disrupting learning for everyone in the building, and arresting him in front of his classmates and teachers.

By the next day, the whole school knew Eric was the reason for the evacuation. And everyone had their theories—teachers, students, and staff. Some, knowing that his father was incarcerated, speculated that "maybe his father put him up to it." Others thought he did it to get a day off from school. Still others were convinced he was a terrorist with a master plan to blow up the campus. Students started calling him "Osama bin Laden" and yelled out, "Ticktock boom!" whenever he walked by. Very few thought he was just being curious and creative. Although his teachers admitted that he was a quiet kid who had never been in trouble, they claimed not to know him well enough to say he wouldn't do anything violent. It was only those who knew him

best—from drama, art, and the youth orchestra—who could see Eric for who he really was: an imaginative child who was just being a child.

Eric's arrest was a very public event that took on even greater importance in his thirteen-year-old mind. Every choice the adults made that day was critically important to Eric's development. The school resource officer created negative attention for Eric at a time when status and reputation matter a lot to young people. The police embarrassed him in front of his classmates when we want teenagers to develop a strong social network and feel good about themselves. Eric was still trying to make and keep friends, win approval from the adults in his life, and walk the thin line between fitting in with the crowd and standing out with a unique style and diverging interests. The public spectacle branded him a "troublemaker" when we want young people to resist the negative influence of students who are into mischief and gravitate toward those who are well behaved and excelling in their classes.

The arrest caused many to underestimate Eric's potential at a time when young people begin to internalize what others think of them. This was especially true for Eric, who was already thinking about what he wanted to do "when he grew up" and was keenly aware of what his teachers thought he could and could not achieve in the future. The school also suspended him when we most need to help adolescents think wisely about their actions and improve their decision-making skills. They excluded him from the drama program when we most want to encourage creativity and surround youth with mentors. And they removed him from class and structured activities when we most need young people to be supervised by adults who will keep them focused and help them regulate their emotions and control their behaviors.

This book grew out of my anger and indignation about what happened to Eric. But Eric is just one of the Black teenagers whose stories I share in this book. I have met many Black teens in

the last twenty-five years whose adolescence was interrupted by police encounters like the one Eric experienced. And I have met many Black youth who were dehumanized in the court system instead of nurtured and supported in their community.

My first memory of juvenile court occurred when I was a college freshman in Durham, North Carolina, interning at the local district attorney's office. On my first day, I was instructed to meet the prosecutor at the courthouse at 9:00 a.m. As I turned down the hall leading to the youth division, I stopped dead in my tracks. Eight boys—mostly Black and Latino—were being escorted down the hall in a single file by a bailiff. They had metal handcuffs tight around their wrists. "Belly chains" locked their arms and hands close to their stomachs, and metal links connected the shackles on each of their ankles, clanking loudly as they walked slowly and clumsily from the awkwardness of the restriction. I had no idea we chained children in courts and detention facilities in America. As a Black woman born in the South, all I could think of was Alex Haley's 1970s television miniseries *Roots*. The imagery of slavery was unmistakable. But this was 1988 and slavery had ended more than a century before. That image has stuck with me. That was the day I knew I wanted to go to law school and fight for children.

My shock and outrage about the way we treat Black children in America continue today. In my first year of law school, I took a clinical course—much like an apprenticeship—that allowed me to represent children in special education, abuse and neglect, and delinquency cases. The children I met in New Haven looked like those I met in Durham. They were Black and Latinx in a city that had plenty of White children. And their judges, lawyers, and bailiffs, like those I saw in North Carolina, were almost all White.

After law school, I was drawn to Washington, D.C., to work at the Public Defender Service, an office known for its deep commitment to advocating for the rights of the accused and reforming the criminal legal system. This time, I went in expecting my clients to be Black based on the city's reputation. As James

Forman Jr. wrote in his book, *Locking Up Our Own,* D.C. is quite different from New Haven. It is a city where many—if not most—of the decision makers controlling the juvenile and criminal legal system are also Black: judges, bailiffs, probation officers, the city's attorney general, city council members, and the mayor. We have had a Black police chief and many police officers who are Black.

By the time I met Eric in 2011, I had already been representing teenagers in Washington, D.C., for fifteen years. I could—and still can—count on one hand the number of White children I have ever represented, or even seen, in D.C.'s juvenile court. By then it was easy to forget that White youth were committing the same kinds of "crimes" my clients were; they just weren't being arrested. My conversation with a White mother at the conference in New Haven was a jarring reminder that Eric's arrest wasn't a normal or necessary response to most adolescent behaviors. Eric's arrest was evidence of America's deep-seated fear, distrust, and intolerance of Black adolescence.

I have now been representing children in D.C. for twenty-five years, mostly as the director of the Juvenile Justice Clinic at Georgetown Law, where I supervise law students and new attorneys defending children charged with crimes in the city. I also spend a good deal of time traveling, training, and strategizing with juvenile defenders across the country in partnership with the National Juvenile Defender Center. From the East Coast to the West, from the Deep South to the North, Black children appear in juvenile and criminal courts in numbers that far exceed their presence in the population. Black children are accosted all over the nation for the most ordinary adolescent activities—shopping for prom clothes, playing in the park, listening to music, buying juice from the convenience store, wearing the latest fashion trend, and protesting for their social and political rights.

In D.C., our elected attorney general is more attentive now to the harms and disparities impacting people of color, so maybe the prosecutors wouldn't pursue Eric's case so zealously today. But even with these changes, I have still spent much of the last two

decades fighting for Black children who have been arrested and prosecuted for "horseplay" on the Metro, breaking a school window, stealing a pass to a school football game, throwing snowballs (a.k.a. "missiles") at a passing police car, hurling pebbles across the street at another kid, playing "toss" with a teacher's hat, and snatching a cell phone from a boyfriend. I have seen Black children handcuffed at ages nine and ten; twelve- and thirteen-year-old Black boys stopped for riding their bicycles; and industrious sixteen- and seventeen-year-old Black boys detained for selling water on the National Mall. The list goes on.

We live in a society that is uniquely afraid of Black children. Americans become anxious—if not outright terrified—at the sight of a Black child ringing the doorbell, riding in a car with white women, or walking too close in a convenience store. Americans think of Black children as predatory, sexually deviant, and immoral. For many, that fear is subconscious, arising out of the historical and contemporary narratives that have been manufactured by politicians, business leaders, and others who have a stake in maintaining the social, economic, and political status quo. There is something particularly efficient about treating Black children like criminals in adolescence. Black youth are dehumanized, exploited, and even killed to establish the boundaries of Whiteness before they reach adulthood and assert their rights and independence.

It is no coincidence that Emmett Till was fourteen when he was lynched, Trayvon Martin was seventeen when he was shot by a volunteer neighborhood watchman, Tamir Rice was twelve when he was shot by the police at a park, Dajerria Becton was fifteen when she was slammed to the ground by police at a pool party, and four Black and Latina girls were twelve when they were strip-searched for being "hyper and giddy" in the hallway of their New York middle school. It is also no coincidence that George Stinney—the youngest person in modern America to be executed—was fourteen when he was sent to the electric chair. These early encounters with Whiteness teach Black children that there are limits on where they can go and what they can achieve

in America. These encounters, and the self-serving claims of "Black threat" that follow, reinforce White fears about Black youth purportedly run amok in society.

Contrary to myth and legend, Black youth aren't as dangerous as people think they are. Very few youth arrests involve violent crimes like murder, rape, robbery, and aggravated assault. The same is true for Black youth. Violent crime makes up only a small portion, approximately 9 percent, of all arrests for Black youth.[1] Research on adolescent development offers additional evidence that Black children are no more dangerous or impulsive than their White peers.

Youth of every race, class, and ethnicity take risks, chase excitement, act impulsively, and are easily influenced by their friends. Yet, even as youth arrests and juvenile detention have gone down all across the country, disparities in the way we treat Black and White youth have held fast or continue to grow. Black youth were arrested at a rate 1.6 times that of White youth in 1980, 2.1 times that of White youth in 2008, and 2.6 times that of White youth in 2018.[2] Although Black youth made up 16 percent of the youth population aged ten to seventeen in 2018, they accounted for half (50 percent) of all youth arrests for violent crimes that year, and 42 percent of arrests for property crimes.[3]

After arrest, Black youth are more likely to be detained, prosecuted, and punished more harshly—even when they are charged with similar offenses and have similar prior histories.[4] Although the total number of youth whom juvenile court judges transferred to adult court decreased by almost half from 2005 to 2018, racial disparities grew.[5] The child was Black in 39 percent of the cases transferred to adult court in 2005. In 2018, Black youth made up more than 51 percent of these transfers despite accounting for only 35 percent of all cases in juvenile court that year. Meanwhile, White youth made up almost 44 percent of juvenile court cases, but accounted for only 32 percent of cases judges transferred to adult court. Even when White youth do exceptionally violent things, we still treat them like children.

Our nation's obsession with policing and incarcerating Black

America begins with Black children. The history of mass incarceration and police violence against Blacks has been well told in books like *The New Jim Crow* (Michelle Alexander), *Policing the Black Man* (edited by Angela Davis), *Chokehold* (Paul Butler), and *Locking Up Our Own* (James Forman Jr.), but the policing of Black adolescence requires a special telling. Although the recent flurry of highly visible police killings of Black Americans has drawn national and international attention, the day-to-day abuses of policing remain largely hidden from public view. These high-profile incidents don't tell us enough about the physical and psychological effects of policing in neighborhoods where law enforcement is a constant presence in the lives of Black youth.

There are now generations of Black youth who have grown up under the constant surveillance and persistent threat of abuse by the police. And the effects are traumatic—for the youth, their families, and the community. In many Black neighborhoods, police are parked on the corner, are stationed at the front door of the school, and drive through the community at all hours of the day and night asking young people to lift their shirts to prove they aren't carrying guns in their waistbands. Black youth are stopped and harassed by the police for doing what teenagers do all over the world—talking on the phone, laughing with friends, shooting hoops at the local recreation center, flirting with a classmate on social media, or posting political views online.

Tensions between Black youth and the police are at an all-time high, with bias and mistrust running in both directions. Police expect Black youth to be violent and aggressive; Black youth expect the police to be biased and antagonistic. Black children have learned to adapt their behaviors to survive under the relentless scrutiny of police officers who see and treat them as a perpetual threat. At its worst, the discriminatory and aggressive policing of Black adolescence has socialized a generation of Black teenagers to fear, resent, and resist the police.

This is a book about the criminalization of Black adolescence in America. It is a book about the excessive intrusion of police into the lives of Black teenagers and the intolerant—sometimes

deadly—reactions that police and civilians have toward Black children. But in the end, this is also a book about extraordinary resilience. It is a story about Black youth who learn to define themselves as peaceful, talented, and intelligent despite media profiles that seek to label them otherwise. It is about strong Black families, heroic parenting, and valiant teaching that help Black youth develop affirming racial identities and learn to speak out against injustice in safe and constructive ways. It is about survival and success in the face of pervasive injustice—well beyond anything that is expected of White middle-class youth who enjoy the privileges of physical safety, public affirmation, and protracted periods of academic and social freedom.

In May 2020, once again, the nation—and the world—exploded with outrage at the brutal police killing of yet another Black American. George Floyd wasn't the first and, sadly, I am sure he won't be the last Black American to be killed by the police. But his killing was one tragedy too many, and his murder added fuel to a growing movement of Black people who are unwilling to accept the continued dehumanization of people who look like them. Young Black voices have been central to that movement. Drawing attention to the issues that impact them most, Black youth are asking elected officials to defund the police, remove police from schools, invest in health and social services to support all youth, and treat Black children with the humanity to which they are entitled. Black youth want the country to acknowledge their innocence, power, purpose, and beauty. I do too.

This book is for everyone who cares about improving the lives of Black youth in America. It is for everyone who wants to change the way Americans view and engage with Black children. And it is for everyone who is willing to radically reduce the footprint of police in the day-to-day lives of Black youth. But, most important, it is for everyone who believes that Black children are children too.

A Feminist Critique of Police Stops

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Prospectus
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Police Stops: A Feminist Critique

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OVERVIEW

In certain neighborhoods throughout the United States, individuals who are otherwise going about their business are stopped, questioned, ordered against a wall and touched in ways that would be called sexual harassment or even sexual assault if performed by civilians instead of police officers. We're talking about the police practice that lawyers call "stop-and-frisk." From Ferguson, Missouri to New York City, most men, women and teenagers subjected to these pedestrian stops are innocent.

How the courts imagine stop-and-frisk is very different from how it feels to those who experience it. As a professor at Howard University School of Law, I teach a class on the constitutional limits of policing. When police walk up to a civilian and ask questions, hoping to develop evidence for an arrest, courts often describe such interactions as consensual. According to the Supreme Court, if you don't want to stop and talk to a police officer, you should walk away. And if an officer asks to frisk your body or search your bag and you do what you are asked, you can't complain later unless you are brave enough to tell the officer that you refuse consent. We can learn a lot from the current #Metoo campaign and the history of sexual abuse against women. Rules about consenting to police mirror noxious laws about consenting to sex, where rape victims in the past were expected to forcefully resist their aggressors even when they felt too scared to do so.

Policing is at a crossroads in the United States as people grapple with the Black Lives Matter movement that shines a spotlight on the killings of unarmed men and the mistreatment of women. President Trump famously called for an expansion of stop-and-frisk but he was wrong. There's only one justification for stop-and-frisk: it's supposed to uncover crime. However, there are insurmountable flaw in the theory of how stop & frisk detects wrong-doing, such as possession of drugs. As this book proves, the Supreme Court's strategy for fighting crime through stops and frisks relies upon vulnerable civilians consenting to stop, consenting to answer questions and submitting to "consent" searches. As the #Metoo stories remind us, it is difficult to say no to a person who holds power over you. Consent is a sham when it involves a police officer and a civilian. And once we admit that consent is actually coercion, then stop & frisk fails too.

Even when trustworthy officers "frisk" breasts and groins in the manner they were taught, this can feel like a sexual invasion to the women, men and teenagers on the receiving end. Stop-and-frisk victims who "consent" to police pay a steep price in emotional harm. But I argue that we all pay a price for these rules. When the Supreme Court treats obedience to police as if it were voluntary consent, it guts our constitutional protections. Anyone who thinks the harm is contained, that the damage ends at the ghetto boundary, does not realize that constitutional rights belong to all of us. It is time to end the practice that tramples the freedoms and dignity of some and the rights of all.

CHAPTER SUMMARY

Introduction

Before Robert became a law student at Howard University in Washington, D.C., he lived in New York City and worked at a restaurant. One evening when he was 18, weeks away from graduating high school, he became a victim of a police practice known as "stop-and-frisk" as he walked home from work. This book begins with his story. Three themes emerge from his account. First, stop-and-frisk creates emotional harms akin to those recently revealed by the #MeToo campaign. What happened to my student should be called sexual abuse. Second, police officers control everything during these encounters from their initial decision to target someone until they tell the civilian "you can go" or, in my student's case, arrest him on a trumped-up charge of assaulting a police officer. Third, *Terry v. Ohio* and Fourth Amendment consent cases look different from the vantage point of the street than they do from a law school podium. This book provides the civilian perspective; even encounters lacking visible violence may be deeply disturbing and coercive to the person who submits to someone who wields power over them.

To properly balance the harms caused by police stops against the notion that the practice keeps people safe, we should truly understand the harms and also recognize the fallacy that these harms can be avoided by asking police to act politely as they feel for weapons all over someone's body. We ignore the cries from Robert and other victims of stop-and-frisk at our own peril.

Part I: Bye, Bye Bill of Rights

Chapter 1: **Waive Your Rights**: *That's How Stops and Frisks Can Work*

Most people assume that stop-and-frisk only violates people's fundamental rights when police behave badly. However, even the theory of how stop-and-frisk fights crime, I argue, undermines vital constitutional protections. In *Terry v. Ohio*, the Supreme Court reasoned that an officer's reasonable suspicion that a person is committing a crime can ripen into probable cause when an officer detains the person a short time while posing a few questions. But the Court never explained how this theory was supposed to work. Readers will learn that *Terry's* crime-fighting strategy envisions vulnerable civilians waiving fundamental rights such as their right against self-incrimination or their right to say "no" to consent searches. The Court provides no other justification for detaining or patting down civilians on less than probable cause.

As a former criminal defense attorney, I developed a health skepticism when reading Supreme Court cases on search and seizure. But when I began training teenagers how to respond to police stops and frisks, my perspective shifted even more dramatically. While judges view the issue from the facts known to the police officer, I now focused on the civilian's dilemmas.

What began as a one-time training for at-risk youth turned into a regular event. Every other Saturday for two years, my law students and I headed to D.C. Superior Court to participate in Youth Court, a now defunct diversion program in Washington D.C. There, teenagers arrested for minor misdemeanors (such as fighting or truancy or marijuana possession) avoided juvenile court by submitting to a jury of their peers. After a hearing, the peer jury might require the accused to write an apology or attend mentoring sessions. At a minimum, every teenager must return to Youth Court to serve as a peer juror seven times before his or her charge would be dismissed. My law students and I taught boys and girls, ages 10 to 17, how to be thoughtful jurors. In addition, we included a segment about the constitutional limits on police power that I called *Know Your Rights*.

One day when I participated in a training session that took place in D.C. Superior Court, I met a 16-year-old kid named Jamal from a poor black Washington D.C. neighborhood. Jamal had been stopped, searched, and then arrested for possession of marijuana, which was why he attended the training. I asked Jamal how often he had been stopped that year. Jamal thought for a moment and then answered, "in the last twelve months? About ten times I guess." With an unhappy shrug, Jamal added, "I try not to go out if I don't have to." Instead of a normal life, the 16-year-old suffocates in his family's small apartment, too scared to leave. Since Jamal was not arrested in nine of those ten encounters, his fear hinted at the trauma endemic in stop-and-frisk itself.

The Supreme Court places the burden on civilians to exercise their constitutional rights or lose them. But Part I shows the gap between the theory and the law as lived. Police requests are as coercive as the advances described in #MeToo posts or sexual harassment lawsuits even when police are simply doing their jobs. Police officers are taught to control every encounter. In some jurisdictions, departments order police to deploy stop-and-frisk as a means to control whole neighborhoods. Anyone who thinks the harm is contained, that the damage ends at the ghetto boundary, does not realize that constitutional rights belong to all of us.

Chapter 2: **The Most Dangerous Right:** *Walking Away from an Officer*

The Supreme Court often intones that a person approached by an officer need not stop, but "*may go on his way."* This "free to leave" doctrine is a cornerstone of the Court's conception of limited police power under the Fourth Amendment. However, there's a fatal gap between the Court's pronouncement and how it translates for civilians in real life. My Howard law students illuminated this paradox one day as I prepared them to train boys and girls, ages 10 to 17, in how to exercise their constitutional rights.

My law students teach the bulk of the *Know Your Rights* sessions, but beforehand, I always make sure they understand the nuances of Fourth and Fifth Amendment guarantees. Because this

Fourth Amendment right is only available to those who actively exercise it, I thought that we should include "free to leave" as a fundamental right. My Howard law students saw things differently. They explained that in their neighborhoods, if you walk away, "you can get yourself arrested" . . . "or shot." Most chilling perhaps was the comment from the former police officer in the class: "It would be irresponsible for us to tell young people that they can walk away from police," he declared. My ex-cop was not speaking lightly. To teach these boys and girls the actual law would set them up for an arrest or physical retaliation.

My law students were right. There are now hundreds of online video clips that show officers using excessive force. There's such a high risk of police retaliation for fleeing that experts gave a nickname to the injuries suffered: they call it a "foot tax," meaning that police will punch or beat suspects who flee. Sometimes police even kill people who run away, like Walter Scott in South Carolina.

Even walking away can get you hurt. A 2015 video shows a male police officer tackling a pregnant woman in a school parking lot because she had the gumption to exercise her right to leave. It began as the most minor of disputes, an argument between two women in a school parking lot in Barstow, California, on January 26, 2015 when Charlena Michelle Cooks, a black mother, dropped off her child at school. Unlike Walter Scott, who was not legally free to walk or run, Charlena Michelle Cooks followed the letter of the law by slowly walking away when the officer lacked the reasonable suspicion to detain her. As Ms. Cooks cried, "Don't touch me, don't touch me; I'm pregnant," the officer's body-mounted camera jerked like an old-fashioned movie and it was clear she was being forced to the ground.

Despite the dangers of resisting, when people submit, judges ask "why didn't she walk away? If she didn't leave, she must have wanted to stay." Judges treat the submission as a consensual encounter. Reminiscent of outdated notions of domestic abuse, the law as constructed blames the victim for failing to leave. If they submit, they forfeit their right to suppress evidence or complain about the officer lacking reasonable suspicion for the stop; but they exercise this right at their peril. This gap between *law on the books* and *law in action* creates a double-bind for civilians.

Many foot tax examples will be explored in this chapter. Readers will come to understand the subtle relationship between the law on stop-and-frisk and the dangerous "free to leave" right. Although the Supreme Court distinguishes "free to leave" from "consent" to search, the doctrines overlap, and this chapter sets the stage for a feminist investigation of Fourth Amendment "consent" in chapter 3.

Chapter 3: **Consenting to Searches:** *What We Can Learn from Feminist Critiques of Sexual Assault Laws*

Consent is an important concept in the law of sexual assault, yet most people don't realize that consent also plays a major role in police encounters. Ordinarily, the Fourth Amendment requires police to have "probable cause" before police may search a person or their belongings. But if they obtain consent, the police need no justification for the search at all. It

sounds easy: just say no. Teaching *Know Your Rights* to youth showed me the civilian perspective.

Sitting in a crowded middle school classroom in Chicago one spring, I watched two Howard law students command the classroom.

> "You are our next volunteer," Stanley announced to a small eighth-grader sitting at one of the round tables near the front of the room. Handing the kid a backpack, Stanley set the scene: "You are walking home from school and I am a cop," he explained. "Remember your job is to avoid getting arrested and avoid getting searched." During the skit, Stanley, who weighs twice as much as this kid does, boomed, "Where are you going? I see you have a backpack. . . . Any knives or weapons in there? Any drugs?" (The kid shakes his head no.) "No? Well then you don't mind if I take a look?" Stanley intoned, as he holds out his hand. The kid hands him the backpack.
>
> "Cut! Okay," said Stanley, "let's do it again and this time say to the officer: 'I never consent to searches.'" The kid did the skit again but with the same result. Even running the skit through a third time, the kid once again quickly passed the bag to Stanley as if there were gravitational pull on the fabric.

This teenager is hardly alone in waiving his rights. More than 90 percent of searches in the United States are consensual. Consent is "an acid that has eaten away the Fourth Amendment," wrote Rutgers University Law Professor George Thomas because it allows police to search people without a shred of evidence against them.

There are striking parallels between victims of stop-and-frisk who submit to police demands and victims of sexual aggression who, historically at least, were supposed to fight back even if they feared retaliation. Feminists have analyzed the line between submission and consent in the context of sexual assault. University of Southern California Law Professor Susan Estrich published a feminist critique of rape law in the United States, where she argued: "[Y]ou don't need actual violence to force a non-consenting woman to engage in sex …. Power will do." This is equally true for police practices. Police do not need articulated threats or actual violence to coerce civilians to consent to searches; their inherent ability to wield power will do.

A few years ago, I supervised a law student in the Howard University Criminal Justice Clinic who represented a client who was charged with possession of heroin. The case fleshes out how these issues arise during the course of a motion to suppress evidence. While our client described being stopped and searched as he walked on a DC sidewalk, the police claimed the whole encounter was consensual. The government was looking for jail time, but if my student won the motion to suppress the heroin seized from his pocket would be excluded from his trial and Mr. Thompson would walk out of court a free man. However, if my student lost the motion, the court in effect would be telling Mr. Thompson that the charges were his own fault because he stayed to talk to the officers instead of walking away and because he consented to the search. Our client would have only himself to blame because he acquiesced to a search.

Women are blamed for wearing the wrong clothing, walking in the wrong place and for not fighting back against aggressors. The Fourth Amendment effectively does the same thing, blaming adults and children alike for walking in a "high crime neighborhood," wearing a hoodie or high heels (depending upon whether it's a stop of black teenager or a transgender woman) and finally, for submitting to the officer's wishes.

Chapter 4: **Beyond Miranda's Reach:** *How Stop-and-Frisk Undermines the Right to Silence*

By and large, Americans feel protected by Miranda rights, unaware that these rights provide scant protection in police stations and even less on the streets. In *Know Your Rights* trainings, we focus on post-arrest silence where the rules are easier to explain, and even so, young people are easily confused. False confessions are common, especially among youth. According to a University of Michigan Law School study, in the first fourteen years following the advent of DNA science, forty-two percent of all exonerated juveniles falsely confessed or made damaging admissions leading to their wrongful convictions.

Teenagers in Youth Court enjoy learning how to take the *Miranda* form and write across it: "I want a lawyer." But a related lesson confuses them. My students write on the board: *Police Are Allowed To Lie To You*. One day as my student began to explain this, a hand shoots up: "So the cop will just say I waived my rights no matter what I do," says one teenager. Others nod. "And you just told us to stay and ask 'am I free to leave' and not to run, but the cop will just say I ran no matter what I do or don't do," chimes in another. "The cops will just lie and say I had the blunt on me," the first kid says, processing this new lesson aloud. The teens now think everything we taught them up to this point was futile. All along they suspected that constitutional guarantees were just rich lawyer words, and this proves they were right and we are just wasting their time.

Drawing the line between permitted lies and forbidden ones for young people is a minefield. "Are you telling us police don't lie in court?" asked on incredulous teenager midway through this lesson. Some improper police lies are "so common and so accepted in some jurisdictions," writes University of Florida College of Law professor Christopher Slobogin, "that the police themselves have come up with a name for it: 'testilying.'" Our young trainees could not distinguish between these two types of lies because they viewed "testilying" as an inescapable part of an unfair justice system. The *Know Your Rights* classroom taught me how the Court's fine distinctions undermine the moral authority of police. When the Supreme Court permits police to use deception to encourage suspects to confess, this strips officers of any respect they otherwise might have earned. The twisted rules guarantee ongoing battles and ongoing disrespect.

In the stop-and-frisk context, both types of lies combine with a muddy doctrine on pre-trial silence to make navigation especially treacherous for civilians. There's an unexamined tension between the Fifth Amendment right to silence and legally sanctioned stop-and-frisk procedures. That tension goes to the core of how these encounters occasionally solve crimes.

Officers question people in an attempt to turn nebulous suspicions like "furtive movements" and "high crime area" into probable cause to search and arrest by extracting admissions of wrongdoing. Yet "you have a right to silence" means practically nothing during pedestrian stops where police often use silence to infer guilt.

Chapter 5: **Punishing Disrespect:** *No Free Speech Allowed Here*

Police are very big on respect -- when it comes to how people treat them. When it comes to how they treat others, well, not so much. There's a double standard, one that unfortunately remains deeply ingrained in the culture of law enforcement.

Punishing disrespect is so widespread that we begin our *Know Your Rights* training with a skit that dramatizes it. This lesson presents challenges because we recognize that here we are not teaching constitutional law, but its opposite. Police violate free speech rights when they punish disrespect. Paradoxically, while seeking to empower young people, the first lesson at *Know Your Rights* trainings teaches kids to relinquish their democratic right to challenge authority. Even more uncomfortable, the lesson is loaded with racial tensions.

"Why should I respect them if they don't respect me?" asked a talkative kid during a *Know Your Rights* training in Youth Court training one Saturday. He was sitting in the jury box in Courtroom 111 in the Superior Court of the District of Columbia, swiveling slightly in his chair to see if any of the other teenage "jurors" would back him up. Police had recently arrested this young man for truancy. That's why he was sitting in Youth Court. I loved his question. Indeed, why should this young man show respect when the officer was disrespecting him? Why should he give up his dignity just to make some police officer feel better? Were we perpetuating the modern-day version of "yes, mass'r?" Here's how my Howard law student responded:

> *"Out on the street the police officer always wins. He's got the badge; he's got the gun; he's got the power of arrest. Our goal is for you to survive this encounter. We don't want you to get arrested. We don't want you to be searched. We want you to leave as soon as it is safely possible. Live to make a complaint later."*

Disturbing the peace, disorderly person, failure to obey an officer: these are typical charges that police levy on disrespectful civilians. I've handled my share of these cases as a defense lawyer and we called them "attitude tickets"; elsewhere they are known as "contempt of cop" charges. My law student nicknamed the practice "know your place 101" after she was pulled over by a Georgetown cop and given four expensive driving tickets for questioning his motives.

"The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state," the Supreme Court intoned in 1987. Yet during police encounters, free speech dissolves into another legal fiction, another example of the gap between *law on the books* and *law in action*.

The video of Sandra Bland's arrest exposes ugly truths about the cost of police retaliation for disrespect. As viewers can see, coercing respect is so ingrained in policing that Trooper

Encinia honestly believed he was doing his job by arresting Sandra Bland because of her bad attitude. The Texas trooper even used his "contempt of cop" arrest for what we in the teaching profession call "a teachable moment." Slapping down a warning ticket he had written on the hood of her car, the Texas Trooper explained that he initially planned to give Ms. Bland the warning and let her drive away, but he changed his mind because of her behavior towards him. The Black Lives Matter movement is raising the temperature by encouraging verbal resistance and generating backlash. As Sandra Bland's treatment illustrates, when race and/or gender augment an officer's need to exert control, the result is toxic.

Sociologist William Westley explained in his pioneer work, *Violence and the Police: A Sociological Study of Law, Custom and Morality*, that the "attempt to coerce respect from the public" is deeply entrenched within American policing culture. The need to coerce respect stems from an "us against them" mentality, a sense that police officers occupy communities as outsiders. Law professor Frank Rudy Cooper uses masculinity theory as a way to explain both the culture of policing and the aggressive behavior of individual officers. As Professor Cooper explained, some officers use stops and frisks as a forum to prove their manliness against those with less status. To test this thesis, this chapter will investigate the disorderly conduct arrest of Harvard Professor Henry Louis Gates, Jr. in 2009 and retaliation against a middle-class white couple in the Washington metro area who rebuffed police attempts to search their home without a warrant.

A police culture that coerces respect necessarily implicates stop-and-frisk. In addition to depriving civilians of free speech, it explains why many officers retaliate when civilians exercise any of the rights explained in these chapters. The culture of coercion helps explain why Officer Michael Slager decided to shoot Walter Scott in the back as he ran away and it underpins other aggressive policing stories. Unfortunately, culture is notoriously impervious to outside changes, such as better training.

SECTION TWO – SECTION TWO: RACE, SEX AND TRAUMA

Chapter 6: The Frisk: "*Injuries to Manhood" and to Womanhood*

> *One Saturday morning, my students and I were in "Youth Court" to teach a new group of teenagers their constitutional rights. I stood on the side of the jury box listening to my law students present. Not far from me, in the jury box in a DC Superior Court courtroom, sat a slender 16-year-old dressed in the ubiquitous District of Columbia uniform of tee shirt, jeans and sneakers. This young man kept his phone in his pocket and leaned forward in the jury box chair, listening intently. When the law students took a moment to switch scenes, the teenager beckoned me over to ask me a question. The last time he was searched, said the 16-year-old, "it felt like rape." He wanted to know whether there was something he could do about that.*

This was not an easy question to answer and it motivated me to write this book. Even when a police officer follows proper stop-and-frisk procedures, this may feel like sexual harassment or rape to the person touched.

When people think about policing and sexual assault, they think of police arresting the perpetrator. But what do you do when a frisk feels like a rape? One film that had the courage to look at this situation was *Crash*, the winner of the 2004 Oscar for Best Picture. Terrence Howard plays the driver, a black man coming home at night with his lighter-skinned wife, played by Thandie Newton. The couple appear well-off, drive a nice S.U.V. and are wearing cocktail attire. In the car, Thandie is pleasuring her husband and they are laughing. The primary officer, a patently white racist (played by Matt Dillon), observes this behavior from his police car. Although the behavior certainly violates a regulation or two, the audience knows that the racist officer, believing that the couple is interracial, is making a power play. The scene is filled with tension that escalates when the racist officer orders the passenger out of the car. Inebriated and angry, the affluent passenger (played by Thandie Newton) tells the officer to get his hands off of her. The racist white officer then begins to touch Thandie Newton's character as she stands with her hands on the hood of the van dressed in a shimmering dress and heels. It starts as a pat-down that travels down Ms. Newton's sides and legs, but eventually the officer's hands move up under her dress. At what point does the law say that the frisk becomes a sexual assault? Do we draw a line on her body or do we look at the officer's intent from the start?

Fiction precedes fact, for years later, people are finally learning that sexual abuse of women is widespread. Although most abuse stays hidden, the Cato Institute found that "sexual assault rates are significantly higher for police when compared to the general population." The Buffalo News compiled its own database in 2015 and summarized its findings in this provocative sub-headline: "Every five days, a police officer in America is caught engaging in sexual abuse or misconduct. Others are never caught." These reports mostly involve male police officers and female civilians, because male on male touching is rarely prosecuted.

Seven years before Eric Garner was put into chokehold, he filed a lawsuit against the NYPD, alleging under oath that police stopped him on the street, patted him down against a cruiser, handcuffed him, and while Eric Garner remained handcuffed, the officer performed a "cavity search on me by … digging his fingers in my rectum in the middle of the street." In the box asking for injuries, the then 36-year-old Eric Garner wrote "injuries to his manhood." Fast forward to 2015. What precipitated Eric Garner's death was his verbal resistance to a stop, frisk or search where police lacked probable cause. As the police surrounded him, moments before they would tackle and strangle him, he pleaded with them to "just leave me alone. Please, please, don't touch me." In the context of his earlier experience at the hands of the police, Eric Garner's final plea for dignity and liberty gathers new meaning.

Like other areas of the Fourth Amendment, it is sometimes difficult to pinpoint when a frisk that passes constitutional muster turns into an unconstitutional search or into a sexual assault. Transgender individuals have long complained of "gender checks" where officers humiliate them during stops with unnecessary searches or gropes. We are more likely to recognize sexual assault when the officer is male and the civilian is a woman or a girl. We must start understanding that men can be victims of sexual assault too. It is because we are finally talking about abuse against women and girls, including Transgender women, that we can finally talk about abuse against men in a more open and honest way.

Chapter 7: **The Fallout:** *Invisible Scars*

Stop-and-frisk encounters cause untold invisible scars. Most research explores whether aggressive stop-and-frisks and other forms of abusive policing erode people's trust in the police and how that in turn hurts the ability of police to investigate crimes. True, but it's wrong to end the critique there. That's like criticizing Harvey Weinstein's non-consensual encounters because he would make better movies if he didn't frighten away actresses. Missing from this critique is empathy for the victims and an understanding of the scope of the harm.

Literature about harms caused by sex-based and race-based workplace harassment provides a rich source of information. In both situations, -- one in the workplace, the other on the street -- a person of authority interferes with an individual's sense of autonomy. Studies have shown that harassment at work is psychologically damaging when the unwanted conduct is repetitive, and it is especially harmful when it involves unwanted physical touching.

Mirroring earlier sexual harassment results, new research suggests that aggressive, repeated or discriminatory stops cause trauma, including PTSD, in some individuals. Just as we learned about the harms caused by sexual harassment, psychological damage can result from unwanted repetitive police conduct or even from a single instance of unwanted physical touching. Alarmingly, it is not only the targeted individual who suffers trauma. People who have never been stopped feel anguish and anger when they witness police target others or when they learn about police abuse from family and friends. Sociologists call this "vicarious experiences." "People do not have to be inside the criminal justice system to feel the effects of the criminal justice system," explained one researcher. The harms ripple outward, reaching friends, family and whole communities. Aggressive policing methods "shape the health of people who have not yet entered into its gates."

Decades before sociologists studied the fallout from stop-and-frisk, James Baldwin described experiences in a way that foreshadowed what researchers now unearth. *The Fire Next Time*, published in 1963, starts with Baldwin's early life in New York City.

> When I was ten, and didn't look, certainly, any older, two policemen amused themselves with me by frisking me, making comic (and terrifying) speculations concerning my ancestry and probable sexual prowess, and for good measure, leaving me flat on my back in one of Harlem's empty lots.

Although Baldwin wrote this book three decades after the abuse, readers feel the trauma's reverberations.

Sociology Professor James D. Unnever argued that aggressive policing actually increases crime because of how people react to debasement. The "more African Americans perceive criminal justice injustices" such as unfair stop-and-frisks, "the more likely they are to defiantly offend" Unnever explained in his book *A Theory of African American Offending*.

For Baldwin, the humiliation and danger of repeated police encounters joined similar messages at work and school to work their spell. Baldwin forthrightly recounts how his

transformation to criminality began, and how he narrowly avoided this fate when he threw himself into the Christian church:

> Crime became real…for the first time—not as *a* possibility but as *the* possibility… One needed a handle, a lever, a means of inspiring fear. It was absolutely clear that the police would whip you and take you in as long as they could get away with it.

It is difficult to imagine the willowy and erudite Baldwin as a drug dealer or pimp. If the talented James Baldwin considers himself lucky to escape a career in crime, it begs key questions: How many people have succumbed to criminal behavior as a result of our criminal justice messages? It defies common sense to continue crime-fighting strategies that turn honest kids into criminals.

There is also some interesting literature on how trauma can be transmitted from one generation to the next. Children can inherit race-based trauma through nature as well as nurture. When it comes to African-Americans, Sociology Professor Joy DeGruy argues that continued discrimination and violence extended the harmful effects of slavery, affecting the psychological and physical well-being of current generations. The literature on inter-generational trauma suggests that current stop-and-frisk practices are stressors that may cause negative health outcomes to both current and future generations of African-Americans. The potential for serious long-lasting damage to men, women and children makes ending stop-and-frisk policing an urgent issue.

Chapter 8: **High Court Camouflage:** *How the Supreme Court Hides Police Aggression and Racial Animus*

The Supreme Court justices must engage in willful blindness to conclude that any strip-search is a consensual exercise, especially one where the civilian was young, female and black. But that's precisely what they did in *United States v. Mendenhall*, a confusing 1980 decision where drug enforcement agents stopped a young woman in an airport and brought her to a small room. When the female officer asked Sylvia Mendenhall to disrobe, she complied, taking off her blouse, brassiere, skirt, pantyhose, slip, and panties as directed. Thanks to the strip search, the officer emerged triumphant, carrying two small packages of heroin. Sylvia's lawyer moved to prevent the prosecution from introducing the drugs at trial because the DEA agents did not have a good reason to detain and search her. The case illustrates the need for a feminist analysis of Supreme Court precedent.

The justices who called the strip-search "consensual" finessed some key facts. During the hearing, the female officer admitted: "She kept saying she had a flight to catch" even though she began to undress under the officer's directions. That sounds like a 22-year old's timid request to please let her go. But the trial judge chose his own interpretation that most of the Supreme Court justices adopted. Sylvia's words were "simply an expression of concern that the search be conducted quickly," and they did not indicate any "resistance to the search." In other words, if Sylvia had wanted to leave she would have said something like "no way" or "get your hands off my body."

Law Professor Devon Carbado critiqued the way the Supreme Court manipulates race in their opinions by making it appear and disappear in ways that help maintain the status quo. Gender, race and the war on drugs all come together in the tale of Sylvia Mendenhall's fateful stop and search. In *United States v. Sylvia Mendenhall*, the majority conveniently dodges the racial dimension in drug profiles, and it's not just race that disappears. The Court pretends that there is nothing coercive about three male police officers taking a woman to an isolated room and telling her they want her to wait for a female agent to conduct a strip search. By erasing the power differential in the re-telling, I argue, the Court allows aggressive policing to thrive. This chapter illustrates how the Court distorts police aggression by presenting officers as no more threatening than a neighbor seeking a cup of sugar or a girl scout selling cookies.

One current Supreme Court justice refuses to camouflage police aggression. Justice Sonia Sotomayor tells it like it is in her impassioned dissent in *Utah v. Strieff*, a 2016 stop-and-frisk case that expanded the power of police to conduct unconstitutional stops without penalty. "The indignity of the stop is not limited to an officer telling you that you look like a criminal" explains Justice Sotomayor. The majority's decision "says that your body is subject to invasion while courts excuse the violation of your rights." Unlike most court opinions, her dissent was written directly to civilians like you and me, who should "recognize that unlawful police stops corrode all our civil liberties and threaten all our lives." While Supreme Court justices can only address unconstitutional policing, I can add: even lawful police stops corrode all our civil liberties and threaten all our lives.

Too often the battle surrounding stop-and-frisk concerns whether it is constitutional or not. That's the wrong question to ask because if courts label the interaction as consensual, then it will pass the constitutionality test. That doesn't make the police behavior right or fair. Feminists have paved the way for this book through their analysis of sexual abuse and harassment, their insistence on listening to personal experiences that are not part of the official narrative, and their use of empathy as a tool for justice. By flipping the narrative so that we put ourselves in the position of the person stopped, we see that consent is a cynical concept that props up stops, frisks and searches at the expense of our fundamental rights. It is time to abolish the aggressive policing practice known as stop-and-frisk.

Epilogue: *"It Stops Today"*

"The Wire," a 60-show series that was broadcast on HBO from 2002 to 2008, introduced the public to "the corner kids" of Baltimore, teenagers who sell drugs on the street after school. Although fictional, the series arose from years of experience by a Baltimore detective and a newspaper reporter who collaborated on the script. Viewers came to know these young people and mourn their fate for these TV kids never had a chance to lift themselves above the poverty line through education, hard work and luck. Most will end up in prison or dead, victims as much as the people who bought drugs from them. Like their buyers, these youths are victims of a drug war that failed to take into account generations of poverty, lack of jobs, a scarcity of hope, an overwhelmed educational system and the psychological damage caused by ugly violence in the neighborhood and sometimes in the home. Police sweep in periodically to frisk them, order them to move off the block, and occasionally to seek information about other crimes. But the officers

do nothing to improve the lives of these young people, not because police are heartless, but because that is how the system is set up. That's the war on drugs in action, a criminal response to social problems.

Stop-and-frisk feeds the hungry drug-war machine by creating opportunities for police to discover illegal substances and lodge charges against people who live in poor neighborhoods. Ultimately, the practice of stop-and-frisk fails for the same reasons the war on drugs and mass incarceration failed. As an entry point for mass incarceration, stop-and-frisk leads to ruined lives without improving the lives of Americans overall and by hurting the communities most impacted, communities of color. Still, mass incarceration and racial inequality describe only some of the damage. As this book has shown, stops and frisks corrode all our civil liberties. In addition, a consent doctrine runs through it, forcing adults and children to choose between fundamental rights and safety. Not only does consent doctrine direct courts to deny redress for unwanted stops and frisks, but they do so while blaming the victims of unwanted attention and unwanted touching for submitting to authorities.

Andrea Ritchie believes that women and girl's experience with aggressive policing is qualitatively different from the abuse men experience, although both are equally worthy of our concern. While she is correct that young women are more likely to be asked on dates and that trans women are more likely to have their genitals investigated, there is enough sexual abuse all around to suggest that the similarities outweigh the differences. Recognizing what happens to men as sexual abuse is key. The feminist movement has long and hotly debated whether "rape is about power, not sex." In other words, do most rapists seek sexual gratification or is the sexual assault an assertion of patriarchal power? Most psychologists would resist this dichotomy since human impulses are multi-faceted. Once we understand that domination and sexual gratification are not exclusive concepts, then we can create a definition of sexual abuse by police that encompasses the woman police officer who squeezed a young man's tentacles so hard he heard a pop on the one hand, and male officers who conduct emasculating anal searches of male suspects on city sidewalks on the other. Once we recognize that sexual humiliation is often about power, then we can appreciate why men who are stopped repeatedly are as fearful of inappropriate touching as I was as a teenager when strange men approached me in New York City at night. Only by admitting that female victimization is mostly hidden from view and that male sexual victimization is practically invisible will we begin to recognize the depth and breadth of the wounds wrought by frisks.

We must abolish stop-and-frisk so that once again, people can walk to and from the stores without being jacked up against a wall or without having a stranger's hands touch them with impunity. If we do not work to curtail it, stop-and-frisk will continue to undercut the moral authority of police and create lasting damage beyond our criminal justice enterprise. As Eric Garner told police before officers grabbed, tackled, and held him in a chokehold: "Every time you see me, you want to mess with me. I'm tired of it. It stops today." This country would be better off if it did stop today.

CONTRIBUTION TO THE EXISTING LITERATURE

After Michelle Alexander's ground-breaking *The New Jim Crow* (The New Press, 2010) became a best seller, several books about criminal injustice have reached large audiences. These include books that works on prosecutorial abuse and mass incarceration, such as Bryan Stevenson's *Just Mercy* (Spiegel & Grau, 2014) and James Forman's *Locking Up Our Own* (Farrar, Straus & Giroux, 2017), and publications that investigate aggressive policing methods, such as Alice Goffman's *On the Run* (University of Chicago Press, 2014) and Paul Butler, *Chokehold: Policing Black Men* (The New Press, 2017). Collectively, these exceptional books advance the public's understanding of the intersection of race and criminal justice and the part that racial profiling plays in this endeavor. Building on these insights, I aim to expand the public's understanding of how current policing methods harm individuals and communities, but through a feminist lens.

Co-authors Michael White and Henry Fradella are first to devote a book to the controversial practice known as stop and frisk. In *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic* (NYU Press, 2016), the criminologists support the practice as long as it is reformed to avoid constitutional abuses. In contrast, *Police Stops* challenges their conclusions that the practice is effective or that reforms can cure the problems they describe.

AUDIENCE

Sitting at the intersection of criminal justice and feminism, this book claims three natural audiences: (1) scholars, lawyers and non-lawyers interested in police reform; (2) second and third wave feminists; and (3) advocates and ordinary readers seeking new ideas about racial justice. In addition, *Police Stops* could easily be assigned in criminal justice or gender-studies classes.

Likely, this book will attract wider audiences than most academic press offerings because of its central argument that stop and frisk guts multiple constitutional protections. Americans become passionate about the Bill of Rights when they perceive their freedoms as under attack. In addition, these pages describe Supreme Court cases in a manner designed for non-lawyers to understand, while the analysis and arguments are nevertheless sufficiently sophisticated to advance the legal scholarship.

Women readers will be drawn to this book for three reasons. First, the book includes stories of women and girls that share equal prominence with narratives of men and boys. Second, as the #MeToo movement proved, personal autonomy remains at the forefront of the working generations' struggle for equality. Not only is personal autonomy central to the Fourth Amendment, but these pages describe the physical and psychological cost of stops and frisks and consent searches, intentionally engaging readers who understand the cost of submission to a boss or celebrity. Third, feminism is no longer a dirty word as young people today claim a broader view of feminism, one that includes intersectionality with race, gender and poverty.

Finally, the President's stances on criminal justice and sexual assault boost public interest in the subject matter of *Police Stops*. Readers who never thought about stop and frisk became

interested when Donald Trump called for a national expansion of New York-style stop and frisk policing. This book will appeal to educated readers who are puzzled by the current controversies over whether stop and frisk prevents crime and whether it's constitutional.

MANUSCRIPT DETAILS AND TIMING

I anticipate a book length of approximately 200-pages, not including the notes and index. Several chapters are already underway, and I plan devote my full attention to this project in June and July. I anticipate producing the first five chapters by September of 2018 and completing the manuscript no later than July of 2019, although I would be willing to accelerate the timeline.

AUTHOR'S BIOGRAPHY

I am a full professor of law at Howard University School of Law. In addition, I have taught courses at Michigan State University College of Law and at the University of the Western Cape in Cape Town, South Africa. Before coming to Howard, I taught at Boston College of Law.

Before entering academia, I was a criminal defense lawyer in Massachusetts for seven years. For many of my years in the academy, I served as a clinical professor, supervising law students who represented adults charged with a range of offenses such as possession of drugs or assault on a police officer. I supervised students in the Boston courts and in the District of Columbia. As part of the Criminal Justice Clinic at Howard, I began volunteering with law students to teach at-risk youth their constitutional rights. My current courses include Criminal Procedure, Evidence, and a seminar I created on the television show, The Wire.

A large portion of my scholarship examines issues at the intersection of race, gender and criminal justice. Recent work focuses on the Fourth Amendment, including stop and frisk. In 2010, The Harvard Journal of Race and Ethnic Justice published *Blaming the Victim* as their lead article, my first work to use feminist theory to critique Supreme Court policing cases. *Blaming the Victim* compared consent within the Fourth Amendment to consent within rape law. My latest article also uses feminist insights to investigate policing. Previous work ranges from marriage equality to the constitutional right to confront witnesses at trial. My articles have appeared in reputable legal journals, including the Journal of Criminal Law & Criminology, Seattle University Law Review and the Harvard Civil Rights-Civil Liberties Law Review.

I look forward to promoting the book by reaching out to law schools and booksellers, drawing upon the networks I have formed over years of teaching and presenting. For the past two years, my work has connected me to The Justice Roundtable in Washington DC, a conglomeration of organizations concerned with criminal justice reform, including Open Society Foundations and the ACLU. The people I have come to know through these meetings will be a huge source of help when it comes time to promote this book. In addition, for the last four years, I co-chaired the legal scholarship committee within the for the American Association of Law Schools Clinical Section, engaging with law professors in dozens of schools. Fortunately, the dean of Howard University School of Law, Danielle Holley-Walker champions my book. Not only will she provide me with the time to travel and to publicize, but she will also help me connect to Howard alumni all over the country.

To complement my outreach to professors, activists and bookstores, I plan on writing opinion essays on current events relating to the substance of this book. Once at a bookstore or

university podium, I know how to engage an audience. I have given over sixty (60) talks outside the classroom. In the last few years alone, varied audiences have engaged me to speak about policing and racial bias in the wake of Ferguson and NYC cases (Voice of America television, December 2014); about dealing with irate or aggressive police officers (WHUR radio, Washington, DC, April 2015); about mass incarceration and police brutality (Congressional Black Caucus Annual Legislative Conference, Washington, D.C., September 2016); about freeing a client after 22 years in prison through clemency (again on WHUR radio, Washington, D.C., October 2016); about stop and frisk (American Association of Law Schools [AALS] Annual Meeting San Diego, January 2018), to name a few. I have also presented outside the United States, about the line between submission and consent in stop-and-search (Birkbeck University School of London, England, October 2015); about an interdisciplinary approach to American policing (Lancaster University, England, November 2015); and about the American policing crisis (International Human Rights Law Conference, Saskatoon, Canada, February 2016).

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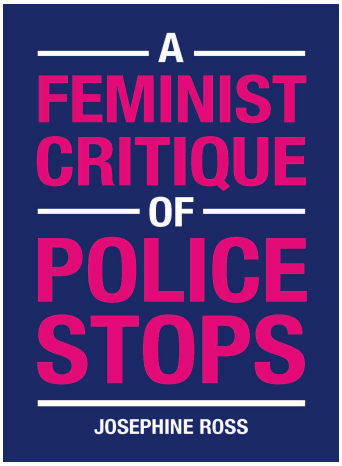
A Feminist Critique of Police Stops

Josephine Ross

Howard University School of Law



A Feminist Critique of Police Stops examines the parallels between stop-and-frisk policing and sexual harassment. Law professor Josephine Ross trained teenagers to protect their rights only to discover that our constitutional rights are a mirage. In reality, we can't say no when police seek to question or search us. Building on feminist principles, Ross demonstrates why the Supreme Court got it wrong when it allowed police to stop, search and sometimes strip-search people and call it consent. Using a wide range of sources - including her law students' experiences with police, news stories about Eric Garner and Sandra Bland, social science and the work of James Baldwin - Ross sheds new light on how police use stop-and-frisk to threaten and marginalize vulnerable communities. This book should be read by everyone interested in how Court-approved police stops sap everyone's constitutional rights and how this form of policing can be eliminated.

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'A compelling critique of the indignities of routine police stops. Using feminist principles such as the need for bodily integrity and consent, Ross exposes how the criminal justice system weakens the constitutional rights of all of us.'
Naomi Cahn,
The George Washington University Law School and co-author of Shafted: The Fate of Women in a Winner-Take-All World and Red Families v. Blue Families