

A TIME TO KILL¹: THE REALITY OF RAPE FOR MINORITY WOMEN

I. INTRODUCTION

“A Time to Kill,” based on a novel by John Grisham, tells the story of a black man on trial for murder of the men who raped his ten year old daughter.² Convinced the men will not be convicted, the main character, Carl Lee Hailey, fatally shoots them as they are led into court for trial.³ He then hires a young white attorney to defend himself.⁴ The case looks bleak until closing arguments when the attorney tells the all white jury to close their eyes.⁵ He vividly describes details of the assault.⁶ Once the jury has a clear picture of what happened to the young girl, he tells them to imagine the girl is white.⁷ They all gasp and open their eyes in shock.⁸ Not coincidentally, the jury acquits Carl Lee.⁹

The fact the jury is persuaded the act was justifiable only when they can imagine the same rape of a white victim raises issues about the interplay between race and rape. Was Carl Lee’s act based on an unreasonable thirst for revenge or was he simply seeking justice where there was unlikely to be any? Would the killing be more understandable had he waited to ascertain the verdict or was an acquittal a foregone conclusion?

Many erroneously believe the heinousness of rape has little to do with the victim’s race. Public perception also indicates that regardless of the victim’s race, all rapes are treated equally

¹ A TIME TO KILL (Warner Bros. 1996).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

in the criminal justice system.¹⁰ Race, however, is a strong predictor of the outcome when the victim is white and the perpetrator is black.¹¹

Equally illustrative is the fact that minority rape victims fail to attract media sympathy comparable to white rape victims. The Central Park Jogger case¹² demonstrates the level at which a rape can attract enduring media support. Tawana Brawley's case,¹³ in contrast, illustrates the degree of doubt and scrutiny people feel toward minority rape victims.

It is well known that gender stereotypes come into play when evaluating a rape claim. These include beliefs such as "many women lie about being raped because they want revenge, feel jealous, guilty, or embarrassed,"¹⁴ "sexually active women are not raped,"¹⁵ and "the victim brought [the rape] on herself."¹⁶ Adopting of these stereotypes can cause a police officer not to take a rape report seriously, a district attorney not to file charges, and a jury to acquit.

Race stereotypes compound gender stereotypes about race in that they objectify the victims. Specifically, race stereotypes together with gender stereotypes create firm categories whereby the subscribers believe all women of the race in question possess the same traits.

Rather than individual human beings with unique personalities, minority women are deprived of

¹⁰ See Michael Daly, *Another Time & Place, Same Kind of Horror*, DAILY NEWS, December 8, 2002 at 2 (indicating detectives work every rape with the same diligence regardless of the race of the victim).

¹¹ See Isabel Wilkerson, *Michigan Judge's Views Are Berated*, N.Y. TIMES, May 3, 1991, at A19 (reporting a Michigan judge's comment that the only time a minor should be allowed to get an abortion without parental consent is in cases of incest or rape of a white girl by a black man).

¹² This case involved the 1989 rape of a white investment banker in Manhattan that continues to receive wide media attention. The victim was raped and left for dead while she jogged through the park. Police investigation initially yielded a group of black teenage boys who were subsequently convicted of the crime. After the boys had served their sentences, the true assailant later confessed and absolved the boys of all wrongdoing.

¹³ This case involved the November 1987 kidnap and rape of a fifteen year old black girl in Up-state New York. Brawley was taken from a city street as she walked home and repeatedly raped by whom she later identified as several white police officials and the local district attorney. She was found four days later in a plastic bag with dog feces smeared over her body, racial slurs carved into her body, and her hair chopped off. A grand jury opined that Brawley fabricated the entire assault.

¹⁴ Sarah Gill, *Dismantling Gender and Race Stereotypes: Using Education to Prevent Date Rape*, 7 UCLA WOMEN'S L.J. 27, 46 (1996).

¹⁵ See *Id.*

¹⁶ Sandra McIntosh, *A Special Report: Getting Away with Rape? Some Victims of Rape in Fulton County Are Doubly Traumatized by a Justice System that Puts Rapists Back on the Street*, THE ATLANTA JOURNAL AND CONSTITUTION, October 10, 1993, at F1.

their individuality and thus dehumanized.¹⁷ Dehumanization creates a barrier to empathy. This barrier makes it easier for the perpetrator to victimize the woman and easier for society and the criminal justice system to disregard a minority woman's rape experience.

The added disadvantage minority women face as a result of the increased effect race and gender stereotypes have on them is that rape claims are even less believable than if the victim was white.¹⁸ For example, the stereotypes that "black women are [sexually] insatiable"¹⁹ and "blacks cannot be believed"²⁰ add to the difficulty making a successful rape claim because blacks are perceived as welcoming all sexual encounters and being prone to lying. So if a man rapes a black woman he does so with impunity because no one will believe her if she reports it.²¹ A white woman, on the other hand, would only have to contend with a gender stereotype which makes her claim more likely to be believed. Therefore, the compound effect of race and gender stereotypes creates a dimension to rape that is distinct from white women's experiences.

Stereotypes such as "Asian women are submissive,"²² or "Little Brown Fucking Machines"²³ have disastrous consequences for rape claims as well. Passivity is often translated into consent.²⁴ Consent can be used as an affirmative defense to a rape claim. Being a "Fucking Machine" indicates not only willingness, but eagerness to participate in sex acts. If the woman was a willing participant, then she could not have been raped. Based on these stereotypes, men are able to rape Asian women without consequence.

¹⁷ *Rape and Race*, I'M ALL EARS (The Listening Ear, East Lansing, M.I.) Winter 2002, at 3.

¹⁸ Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN L REV 581, 598 (1990). Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN L REV 1241, 1245 (1991).

¹⁹ MEN CAN STOP RAPE, RACISM AND RAPE: HOW ARE THEY CONNECTED? (1998).

²⁰ Crenshaw, *supra* note 18, at 1280.

²¹ *Id.* at 1277.

²² Billy King, *Rape Culture in the Entertainment Media*, MODELMINORITY.COM, (2004), at <http://modelminority.com/article642.html>.

²³ Sai Nowrojee and Jael Silliman, *Asian Women's Health: Organizing a Movement*, SOUTH END PRESS, 1997, available at <http://www.hsph.harvard.edu/Organizations/heathnet/WoC/reproductive/nowrojee.html>.

²⁴ Gill, *supra* note 14, at 38-39.

Latinas, in a rape context, suffer under the weight of stereotypes as well. Latinas are stereotyped as either overly passive or hyper-aggressive.²⁵ Additionally, they are seen as short-tempered.²⁶ Just as with “submissive” stereotype Asian women are labeled with, passivity creates an impression of consent.²⁷ If a woman consented to the sexual encounter, she could not have been raped. Further, a rape charge is difficult to prove when the woman is seen as hyper-aggressive because hyper-aggressiveness is incompatible with victimization. Thus, a hyper-aggressive woman is not viewed as a rape victim. The “short-tempered” stereotype undermines a rape charge in that it coincides with the stereotype that women who claim they were raped are just lying to get revenge.²⁸ A woman who is seen as short-tempered is more likely to fit the image of a vengeful liar. Hence, her rape report will be discredited.

Part II of this paper examines common beliefs about rape and how gender stereotypes are at work in those beliefs. Part III uncovers the complexity of race and rape throughout history as well as the modern intersection of race and gender stereotypes and how these factors give rise to rape’s differential impact on minority women.

II. THE INTERSECTION OF RAPE MYTHS AND GENDER STEREOTYPES

Part of the difficulty with bringing a successful rape charge is that many cases are weeded out based on perceptions of the victim. Police, prosecutors, judges, and juries²⁹ harbor stereotypes about women and rape and those who do not fit the stereotypes are not considered

²⁵ MEN CAN STOP RAPE, *supra* note 19.

²⁶ *Id.*

²⁷ Gill, *supra*, note 14, at 38-39.

²⁸ *Id.* at 46.

²⁹ *Id.* at 55 (discussing the amount of discretion these figures have in determining whether a rape case will go forward).

rape victims.³⁰ If there is no rape victim, there is no crime. It is important, therefore, to look at the stereotypes that have plagued rape victims and the effect they have on a case.

A. MOST WOMEN LIE ABOUT BEING RAPED³¹

One of the most common misconceptions is that women lie about being raped. Some even go so far as to believe that women have an “inclination” to lie about rape.³² The reality is that as few as two percent of rape reports are false.³³ It is not difficult, however, to see why this is a useful belief. Given the nature of rapes, the only witnesses to the act are often the victim and the perpetrator(s). If the perpetrator can prove the victim is lying, he is off the hook. A rape case thus becomes a battle for credibility.

Men often have a leg up because women have long been viewed as deceptive temptresses. Perhaps the earliest example is Eve.³⁴ She told Adam to eat the forbidden fruit which in turn led to him being thrown out of the Garden of Eden.³⁵ This is analogous to a rape situation where the man feels tempted by the woman’s “persuasive powers.” When he falls prey to her, her deception is to blame.

Similarly, the biblical figure Samson’s downfall was Delilah.³⁶ After he fell in love with her, Samson’s enemies conspired with her to make him so weak he could not defend himself against them.³⁷ Accordingly, she coaxed him into telling her the secret to his strength was his

³⁰ See Jane Gross, *203 Rape Cases Reopened in Oakland As the Police Chief Admits Mistakes*, N.Y. TIMES, September 20, 1990, at A14.

³¹ David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J CRIM L & CRIMINOLOGY 1194, 1297 (1997).

³² Stacey Pastel Dougan, *With Justice for Whom? The Presumption of Moral Innocence in Rape Trials*, 71 IND LJ 419, 428 (1996).

³³ Bryden, et al., *supra* note 31, at 1298.

³⁴ BIBLE, *Genesis* 3.

³⁵ *Id.* at 3:17-23.

³⁶ BIBLE, *Judges* 16.

³⁷ *Id.* at 16:5.

hair.³⁸ Once, she found this out, she shaved it while he slept and then summoned his enemies.³⁹ The enemies then gouged his eyes out and condemned him to rot in prison.⁴⁰ Samson's story is even more illustrative of a stereotypical rape scenario. Similar to Delilah, a woman in a rape scenario tempts the man with her charms until he is so under her spell that he is not rational. Samson's weakness is analogous to a man who is a slave to his sexual desires. The rapist, like Samson, becomes weak when the woman arouses him and thus strips him of his power of rationality. When she calls his "enemies," the police, he ends up in prison. The man is the true victim and his predicament is completely attributable to the woman's deception.

Recently, a modern female temptress emerged in the media. Black female pop star Janet Jackson performed with white male pop star, Justin Timberlake in the Super Bowl half-time show on February 1, 2004. The two performed Timberlake's song "Rock Your Body" in which one of the lyrics is "Gonna have you naked by the end of this song." To punctuate the lyric, Timberlake ripped a swatch from Jackson's blouse, which revealed her bare breast. This scenario illustrates rape stereotypes. The combination of the lyric and the act of ripping Jackson's clothing simulates a rape. Rather than persuading Jackson to remove her clothing or asking her, Timberlake informs her that he *will* have her naked. He then tears her blouse from her body the way a rapist would during a sexual assault.

The blame for the incident illustrates public acceptance of the stereotype that women are deceptive temptresses. The event was referenced in the media continuously during the days following the show. It was described, "Janet Jackson's Super Bowl stunt,"⁴¹ "...Jackson (with

³⁸ *Id.* at 16:17.

³⁹ *Id.* at 16:18-19.

⁴⁰ *Id.* at 16:21.

⁴¹ Gabriel Jay Rochele, *Image and Icon*, MORNING CALL, March 6, 2004, at D9.

Timberlake's help) flashed her way into notoriety...,⁴² and various other ways attributing the incident to Jackson. Timberlake's culpability was diminished or non-existent.

Further, Jackson bore the ridicule entirely. One newspaper opinion letter stated, "Parents need to be outraged and make a point not to buy Janet Jackson's new album or support her music in any way"⁴³ yet failed to mention anything about Timberlake. Live television shows that were scheduled to have Jackson as a guest either considered or decided to impose a time-delay specifically for Jackson's appearance but not for other guests.⁴⁴ Most notably, the Grammy Awards, which aired the Sunday following the Super Bowl, canceled Jackson's performance⁴⁵ but allowed Timberlake to perform in several numbers throughout the show conditional to his token apology for the Super Bowl incident.⁴⁶

Though most seem to agree the incident was planned, judging from the disparate backlash, the public seems to believe that Jackson was *responsible* for what happened. This is the case even though the two were performing Timberlake's song, the song glorified forcible clothing removal as a seduction technique, and he actively and single-handedly tore Jackson's clothing from her body. At the very least, the two should be equally responsible yet Timberlake is viewed as a secondary and even innocent party to Jackson's deceptive attempt to expose herself to the nation. This illustrates the public's willingness to view the woman as an instigator who leads the man into temptation while the man is an innocent party who could not help but fall victim to her charms.

⁴² *People in the News*, CENTREDAILY.COM, April 9, 2004, at <http://www.centredaily.com/mld/centredaily/news>.

⁴³ Debra Henley, *Uproar is Justified*, TULSA WORLD, February 8, 2004, at G2.

⁴⁴ *People in the News*, *supra* note 42 (reporting that "On-Air with Ryan Seacrest" which usually airs live would impose a seven second delay specifically for Jackson's appearance on the show and "Saturday Night Live" considered imposing a delay when Jackson was set to host the show but ultimately decided not to presumably for the sake of ratings).

⁴⁵ David Bauder, *Janet Bleeped on Letterman*, TODAY @ ABS-CBNNEWS.COM, April 15, 2004, at <http://www.abs-cbnnews.com>.

⁴⁶ *Playing the Blame Game*, LEDGER-ENQUIRER.COM, April 15, 2004, at <http://www.ledger-enquirer.com/mld/ledgerenquirer/news/columnists>.

Many men see themselves as potential victims of women's deception and fear the consequences. As a result, they further cling to the idea that women have a tendency to concoct stories about being raped.⁴⁷ A study concluded that when female officers interviewed the victim, only two percent of rape reports were deemed false, which is consistent with projections.⁴⁸ Male officers who took reports, on the other hand, listed as many as twenty-four percent as false or unfounded,⁴⁹ sometimes without even interviewing the victim.⁵⁰ These data indicate the significant barrier the stereotype poses to getting a minimal investigation.

The stereotype invades the prosecution as well. Even if the police department forwards the case to the prosecutor's office, the prosecutor may determine based on the same criteria that the case is not worth pursuing. Additionally, the prosecution considers whether the victim will make a good witness in front of the jury.⁵¹ If the prosecution perceives the jury will view her as less credible than the perpetrator, the prosecution will not charge the perpetrator with rape.⁵² While it may not necessarily be the case that the prosecutor thinks the victim is lying about the attack, the end result is the same—the perpetrator goes free.

Similarly, at the trial level, a fact finder must determine the witnesses' credibility in order to decide the defendant's guilt. Since rape cases typically involve "he said, she said," whether a man is convicted of rape depends on whether the jury believes the victim is honest.

⁴⁷ See Douglan, *supra* note 32, at 428. See Bryden, et. al, *supra* note 31, at 1304-06 (explaining that to combat this fear, police use what is known as "founding criteria" to determine whether a rape report merits investigation. The criteria vary by department but can include things like the victim's profession, whether she has substance abuse issues, whether she has a mental illness, and the timeliness with which she filed the report).

⁴⁸ Bryden, et. al, *supra* note 31, at 1308-09.

⁴⁹ A rape is considered unfounded if it is determined that the rape never happened.

⁵⁰ Gross, *supra* note 30.

⁵¹ Bryden, et al, *supra* note 31, at 1306.

⁵² *See Id.*

Extrapolating from the fact that a majority of men arrested for rape are not convicted,⁵³ the fact finder had to have thought the woman was lying.

In sum, the stereotypical rape complainant is viewed as a liar from the outset. Even though the data suggest that very few rapes reports are false, there are significant hurdles at every level of the criminal justice system to bringing a successful rape charge. Underlying these hurdles is the belief that women who report rapes are liars.

B. SEXUALLY ACTIVE WOMEN ARE NOT RAPED

Prior to the advent of rape shield laws⁵⁴ a woman's sexual history could be paraded in front of a jury. If the jury perceived the woman as unchaste, they were less likely to convict the defendant.⁵⁵ Even today, the popular conception remains that rape is not punishable if the woman is sexually active.⁵⁶

This trend is most apparent in cases where the victim is a prostitute. An investigation of the Oakland, California Police Department yielded that somewhere between 143 and 203 rapes were not investigated when the women who reported them were prostitutes.⁵⁷ Although the police indicated they usually did not investigate the rapes because the witness was uncooperative,⁵⁸ this rationale is suspect. If the victim went through the trouble of reporting the crime, she initially wanted the police to take some form of action. It is certainly possible that she changed her mind because she was scared or intimidated but this does not explain why thirty-seven victims were not even interviewed.⁵⁹ Furthermore, the police listed rapes involving a

⁵³ See Crenshaw, *supra* note 15, at 1277.

⁵⁴ FED. R. EVID. 412 (states that evidence of prior sexual behavior or sexual predisposition of an alleged victim of sexual assault is generally inadmissible).

⁵⁵ See Crenshaw, *supra* note 18, at 1266.

⁵⁶ Gill, *supra* note 14, at 57-58. See also Crenshaw, *supra* note 15, at 1268-1269 (describing instances where juries acquitted defendant's because the victim's attire was suggestive or she had an active sexual life).

⁵⁷ Gross, *supra* note 30.

⁵⁸ *Id.*

⁵⁹ *Id.*

prostitute as unfounded, where unfounded meant no rape occurred.⁶⁰ The fact the police did not consider the rape to have occurred without any form of investigation further casts doubt on the uncooperative rationale because even if the victim was uncooperative, it would not necessarily warrant the conclusion that the rape did not occur. Thus, the most probable rationale is that the rape reports were considered false *because* the victims were prostitutes.

One explanation for why police and prosecutors do not devote much time to prostitute rape cases is that they are often unsuccessful in court⁶¹ because jurors do not sympathize with the victims.⁶² Jurors consider the sexual activity of the victim when deciding their verdict and typically comment, "...she...wasn't a virgin anyway."⁶³ The implication is that if a woman is not a virgin then she could not have been raped or the rape is not punishable. A system that fails to punish a rapist when his victim is unchaste demonstrates that rape laws do not exist to protect sexually active women.

In summary, the stereotype that sexually active women cannot be raped pervades the criminal justice system. A woman's sexual history dictates whether the police will do even a cursory investigation or whether the jury will convict a man when the woman he raped fails to comport with its image of the true chaste rape victim.

C. THE VICTIM CONTRIBUTED TO HER ATTACK

A core stereotype women face when bringing a rape charge is the deeply rooted belief that the victim somehow contributed to her attack.⁶⁴ Jurors consider factors such as the circumstances surrounding the attack, the clothing the victim was wearing, and her overall

⁶⁰ *Id.*

⁶¹ *Id.* Gill, *supra* note 14, at 44.

⁶² *See Id.*

⁶³ Crenshaw, *supra* note 18, at 1279.

⁶⁴ McIntosh, *supra* note 16.

appearance.⁶⁵ If they perceive she somehow put herself at risk for being attacked, they are less likely believe or be concerned about the rape.⁶⁶ As discussed above, if police or district attorneys perceive a jury will not convict, they will not pursue charges against the assailant.

Jurors look for severe physical injuries when determining if a woman was actually raped.⁶⁷ If a woman is not half dead or did not put up a “sufficient” amount of resistance, jurors often doubt a rape occurred.⁶⁸ Or, what is worse, they believe that the victim welcomed the attack.⁶⁹ This is particularly disturbing because studies show that the more resistance a victim presents, the more likely she is to be seriously injured or killed.⁷⁰ The power of this stereotype is that the victim, in order to strengthen the criminal case against her attacker, would have choose between survival and securing a conviction. A high price to pay.

Surprisingly, female jurors subscribe to the viewpoint that rape victims contributed to their attack as well as male jurors.⁷¹ They look for the slightest mistake the woman made in order give less credence to her rape claim.⁷² It may be that she was walking alone at night or accepted a ride from a stranger, had someone in her apartment late at night, or wore something suggestive.⁷³ Female jurors find comfort in blaming the victim because it makes them feel they are in control of what happens to them.⁷⁴ If they cannot find anything the victim did wrong, anyone can be raped.⁷⁵ If anyone can be raped, they could be raped as well.⁷⁶ This realization is too unsettling for them so they cling to their belief in this stereotype.

⁶⁵ *See Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

To summarize, the belief that the victim somehow brought the attack on herself presents an overwhelming obstacle for women who press charges against their attackers. A claim will typically be unsuccessful if the woman behaved in a way that put her at risk for being attacked. The same is true if she failed to fight the attacker with sufficient gusto or did not sustain injuries serious enough to bolster her rape claim. Female jurors are not exempt from this stereotype. As a result, law enforcement either does not pursue a case or the case results in the attacker's acquittal when a victim's attack does not fit the image this stereotype supports.

In conclusion, gender stereotypes are undoubtedly prevalent in the criminal justice system when it comes to evaluating rape charges. Stereotypes that women are liars, sexually active women are not rape victims, and the victim contributed to her attack make it more difficult for women to secure their rapists' convictions if the scenario falls outside the realm of these deeply embedded beliefs.

III. THE INTERSECTION BETWEEN RACE AND THE REALITY OF RAPE

There can be no doubt that rape is a concern for all women. For minority women, however, rape has an added dimension. Minority women are at a marked disadvantage when bringing rape claims because the weight of stereotypes disproportionately affects them. Although there is a history of disregarding rapes of minority women,⁷⁷ many argue that contemporary rape has little to do with race⁷⁸ and others simply assume rape affects all women equally.⁷⁹ Given that minority women are raped,⁸⁰ they are given much less media attention than

⁷⁶ *Id.*

⁷⁷ Gill, *supra* note 14, at 37.

⁷⁸ See Daly, *supra* note 10.

⁷⁹ Harris, *supra* note 18, at 598.

⁸⁰ *Study Finds Correlation Between Rape as Adult and Molestation as Child*, THE BALTIMORE SUN, January 16, 1994 at 20A (reporting that 41.2 percent of black women, 16.7 percent of Latina women, and 15.4 percent of Asian-American women indicated that they had been raped as an adult). Gill, *supra* note 13, at 42 (citing that most rape victims are black, contrary to public perception).

similar white rape victims,⁸¹ and the perpetrator's sentence varies based on the race of the victim,⁸² a closer analysis reveals the error inherent in the belief that rape and race are unrelated.

A. THE HISTORICAL RELATIONSHIP BETWEEN RAPE AND RACE

Various historical institutions have impacted the way rape is viewed when the victim is a minority. Based on these institution's practices, minority women's rape has become acceptable and unpunishable. Thus, these women's rape cries go unheeded.

1. Black Women

The most prominent historical example of the relationship between rape and race in the United States is within in the context of slavery. Under the slavery regime, by law, black women were considered their slave owner's property.⁸³ Slave owners, as part of their property rights, were free to do with the slaves as they wished.⁸⁴ Thus, slaves were routinely and legally raped.⁸⁵

Even when slavery was abolished, rape of black women was still legally sanctioned both in law and in practice.⁸⁶ The fact that black people were not considered fully human explains this phenomenon.⁸⁷ Since they were not human, they were not considered to have possessed the moral faculties white people possessed.⁸⁸ Because they were considered immoral, they were also considered unabashedly promiscuous.⁸⁹ A promiscuous, or in other words, unchaste woman cannot be raped under the stereotypical perception discussed above. As a result, both slaves and former slaves could be raped without consequence.

⁸¹ Egon Mayer, "Human Beings Can Be Awful Cruel to One Another"; *When Rape Makes News*, N.Y. TIMES, June 17, 1989, at 1-22 (arguing that rapes of minority women do not make the news because they happen with "cruel predictability" and thus are not newsworthy).

⁸² Gill, *supra* note 14, at 41 (citing the average prison sentence given to a man convicted of raping a white woman is ten years, five years for raping a Latina woman, and two years for raping a black woman).

⁸³ *Id.* at 36.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See Id.*

2. Asian Women

Immigration laws in the 1800s have played a vital role in shaping race and rape stereotypes for Asian women.⁹⁰ Exclusionary laws prohibited women from Asian countries from immigrating to the United States.⁹¹ Once they were lifted, men in the U.S. imported Asian women in groves for both domestic and industrial labor as well as for sex.⁹² Treating Asian women like commercial commodities, purchased to serve white men, created an image of Asian women as objects rather than people.⁹³ As discussed above, objectification dehumanized the women thus making rape more likely. Additionally, the fact that these women were part of the domestic and unskilled labor workforce made them accessible.⁹⁴ This combined with the notion that women belonged in the home with their families gave the impression they invited sexual encounters with the men whom they came into contact.⁹⁵ Since they had invited the contact, rape reports were not believed.⁹⁶ Therefore, Asian women could be raped without consequence.

Military action overseas also shaped rape stereotypes about Asian women.⁹⁷ A key element in waging war is to dehumanize the enemy in order to lower the psychological barrier to killing. Once this was accomplished, servicemen stationed in Asian countries routinely raped native women.⁹⁸ Servicemen stationed in Asia were also depicted wearing shirts labeling Asian women as “Little Brown Fucking Machines.”⁹⁹ Since the nation’s heroes viewed these practices as acceptable, the rest of the nation followed suit. Therefore, the rape of Asian women was implicitly sanctioned.

⁹⁰ Nowrojee, et al., *supra* note 22.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Gill, *supra* note 14, at 37.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Nowrojee, et al., *supra* note 23.

⁹⁸ *See Id.*

⁹⁹ *Id.*

Based on common experiences of many Asian prostitutes during wartime came stories like “Miss Saigon.” “Miss Saigon” is a Broadway musical about a Vietnamese prostitute who is sold for sex with an American Marine.¹⁰⁰ She falls in love with him, gets pregnant, and kills herself in an attempt to get him to take their child to America.¹⁰¹ Nonetheless, he leaves and does not look back.¹⁰² This is a “love story.”¹⁰³ The female is portrayed as having been redeemed when she has the fortune of being used by an American soldier who helps her to find love and meaning in her otherwise pathetic life. To both the soldier and the prostitute, her life is worth nothing except to please him. The effect of this and similarly glamorized stereotypical depictions of white American sex with Asian women is to propagate the belief that Asian women exist solely for the pleasure of men, particularly white men. Given this purpose, any pain they suffer when men use them in this context is par for the course. They have not been raped but rather have fulfilled their role. Hence, an Asian woman’s rape claim is not viewed as credible.

3. Latinas

Like Asian women, Latinas have also faced significant barriers to immigrating to the United States. The southern border of the United States is strictly policed to prevent Latin-Americans from crossing. Comparatively, the northern border is not as strictly policed. Immigration standards also make it more difficult for Latin-Americans to immigrate to the United States though citizens from other Western nations do not face such obstacles to immigrating.¹⁰⁴ Due to the extreme levels of poverty and oppression present in third world

¹⁰⁰ Holly Hee Won Coughlin, *My Breakup with Miss Saigon*, THE MINNESOTA WOMEN’S PRESS, July 7, 1999, at <http://www.womenspress.com/newspaper/1999>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Mexican Americans*, MICROSOFT ENCARTA ENCYCLOPEDIA (2001).

Latin-American countries, many Latinas have immigrated to the United States, nonetheless, in search of better opportunities than available in their home nations.¹⁰⁵

Once they have arrived, however, they are vulnerable to deportation because they lack the requisite documentation to live and work in America.¹⁰⁶ As a result, they are forced to take jobs for low pay and unfair working conditions.¹⁰⁷ For Latinas, this has usually meant working as a domestic laborer of some sort.¹⁰⁸ Since Latinas have had to work in domestic settings, they, like Asian women, were also seen assessable, and therefore promiscuous.¹⁰⁹ Coupled with this was their illegal status. The status has been used as leverage against them for men seeking sexual encounters.¹¹⁰ These women have thus been forced to either perform sexual acts or be deported.¹¹¹ Hence, they had no recourse when they were raped.

Another effect working as a domestic servant has had on Latinas stereotypes, is by creating the image that Latinas are passive and obedient.¹¹² Subservience is viewed as consent. As discussed above, consent defeats a rape claim. Thus, rape claims that do get reported are not believed.

The “Zoot Suit Riots”¹¹³ also helped to define stereotypes about Latinas. During the riots, Navy sailors marched through Los Angeles breaking into bars, theaters, and various other

¹⁰⁵ *Id.*

¹⁰⁶ *See Id.* (explaining immigration consequences to illegal entry into the United States).

¹⁰⁷ *Id.*

¹⁰⁸ Gill, *supra* note 14, at 36.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 43 n.88.

¹¹¹ *Id.*

¹¹² *See* Kristen L. Homquist, *Cultural Defense or False Stereotype? What Happens when Latina Defendants Collide with the Federal Sentencing Guidelines*, 12 BERK W.L.J 45, 46 (1997) (presenting the stereotypes of Latinas as illustrated in the criminal justice system).

¹¹³ Riots between Latinos and US sailors that occurred during the first week of June 1943 in Los Angeles, California. During that week, off-duty sailors attacked a group of Mexicans, named “Zoot Suits” due to the prevailing fashion at the time. The soldiers continued on a rampage attacking any and every Latino they could find. Once the victims were beaten, they were stripped of their clothing. Police often accompanied the mob and arrested the beating victims. The sailors were never punished though the Navy finally put an end to the riots by declaring Los Angeles off-limits to military personnel.

establishments and proceeded to attack every Latino in their path.¹¹⁴ Reportedly, not only did they physically attack the men, but they forced them to watch as they raped the women. Police stood by and never arrested the sailors.¹¹⁵ Since the sailors outnumbered Latinos and had police reinforcement, men were powerless to prevent the women from being raped. Further, since police did not intervene during the rapes, they demonstrated to onlookers, the sailors, and the women themselves that Latinas could legally be raped.

In sum, historical institutions have left an indelible mark on the images of minority women. Slavery, immigration practices, war, and legally sanctioned riots have created a rape climate for minority women. Often times, minority women's rapes were glorified and celebrated. They were, however, never prosecuted. As a result, history has born and fed the stereotype that these women deserve and welcome sexual attack.

B. MODERN INTERSECTION OF RACE STEREOTYPES AND RAPE

Many of the stereotypes that existed historically endure today. These beliefs reflect a disregard for minority women's sexual autonomy and a belief that minority women are even more prone to lying than white women. As a result, reports of rapes perpetrated against minority women receive less attention from both the media and the criminal justice system.

1. Devaluation of Minority Women's Sexual Autonomy

Stereotypes about minority women reflect a belief that they are hypersexual. This is particularly damaging because, as discussed above, when a woman is considered sexually active the criminal justice system is less concerned about her sexual autonomy and thus refuses to hold men accountable for raping them.

a. Black Women

¹¹⁴ *Zoot Suit Riots*, SUAVECITO'S, (2004), at <http://www.suavecito.com/history.htm>.

¹¹⁵ *Id.*

The stereotype that black women are (sexually) insatiable¹¹⁶ taken together with the stereotype that sexually active women are not raped, creates a presumption that black women are not raped. Therefore, when they make rape reports, they are less likely to be believed than white women who file rape reports.¹¹⁷

This has been directly born out in countless scenarios. One juror in a rape case involving a young black girl successfully argued to other jurors that the defendant should be acquitted because “a girl her age from that kind of neighborhood probably was not a virgin.”¹¹⁸ The stereotypes represented in this statement are two fold. One, by assuming that the girl “probably was not a virgin,” the juror is making judgments based on stereotypes related to the girl’s racial identity. Although he states it is based on the neighborhood she lived in, given that most neighborhoods are monoracial, neighborhood is an easy proxy for race. Two, the juror determines the value of the case based on whether or not the victim was a virgin because sexually active girls cannot be raped. As a direct result of these beliefs, the perpetrator was acquitted¹¹⁹ thus demonstrating the power that sexualized race stereotypes have on rape prosecutions.

Perhaps the most chilling example where this stereotype played a critical role is with fifteen year old black teen, Tawana Brawley. Tawana had been missing for four days when she was found barely alive in a vacant lot.¹²⁰ Her nose and ears were stuffed with urine soaked cotton, her hair was chopped off, cigarette burns covered over a third of her body, and “KKK” and “Nigger” were carved into her torso.¹²¹ The local assistant district attorney, a highway

¹¹⁶ MEN CAN STOP RAPE, *supra* note 19.

¹¹⁷ Gill, *supra* note 14, at 36.

¹¹⁸ Crenshaw, *supra* note 18, at 1279.

¹¹⁹ *See Id.*

¹²⁰ Gill, *supra* note 14, at 44.

¹²¹ *Id.* at 44-45.

patrolman, and a local police officer had brutally and repeatedly raped and sodomized her.¹²² The perpetrators were all white.¹²³ When the story broke, Tawana was vilified as “wild” and less than innocent.¹²⁴ Many claimed she was ruining the reputation of upstanding white men in the community.¹²⁵ The grand jury thus refused to indict the men on the grounds that they did not believe the rape happened.¹²⁶

Again, this is a case where two damning stereotypes subverted justice. First, characterizations of Tawana as “wild” and “not innocent,”¹²⁷ were used to attack her credibility. The implication is that if she was not sexually “innocent” she could not have been raped and thus was lying. This is particularly troubling because the evidence concerning the attack was overwhelming. To be sure, there can be little doubt that the rape occurred because of the nature of the injuries and the fact that the girl was barely alive when she was found. Yet based on ideas about Tawana’s sexuality, the grand jury decided not to indict. Second, the comparison to the white perpetrators in such a light that their reputation is more highly valued than Tawana’s sexual autonomy illustrates a minority woman’s gross devaluation in rape a case.

b. Asian Women

The entertainment industry couples the stereotype that Asian women are sex toys¹²⁸ with the stereotype that women enjoy being raped.¹²⁹ Mainstream, PG-13 films such as “The Big Hit” and “The Transporter” depict Asian women as hostages, bound and gagged, in sexually suggestive positions at the hands of white male protagonists.¹³⁰ At the climax of these so-called

¹²² *Id.* at 45.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *See Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ King, *supra* note 22.

¹²⁹ Gill, *supra* note 14, at 46.

¹³⁰ King, *supra* note 22.

“rape culture” films,¹³¹ the Asian female character falls in love with and engages in consensual sex with the white male protagonist.¹³² These movies feed the stereotype that Asian women cannot be raped because they are sex toys who engage in simulated rape for pleasure.

Moreover, since Asian women are underrepresented in the media, the images that are projected are even more insidious. This is true because many people live and socialize in homogeneous groups whether their larger community is diverse or not. Hence, they do not have a lot of personal experience with people of other races. The information they gather about minority groups comes mainly from television and movies. Since the images of Asian women are so limited and relatively consistent,¹³³ many take the media image as accurate of the group as a whole. As a result, the public gains a perception that Asian women cannot be raped because rape is a normal sexual practice they enjoy. Thus, when an Asian woman makes a rape claim, it is not treated seriously.

The collision of rape and race stereotypes is also evident in the news media. Though it is estimated that seventeen percent of Asian-American women have been sexually assaulted at some point in their lives,¹³⁴ rarely is an Asian woman’s rape covered in the news. Further, the U.S. Department of Justice reports incidents of rape based on race but lumps Asian women in a category labeled “Other” which also includes American Indians, Aleut, and Eskimos.¹³⁵ It is therefore difficult to get an accurate picture of the incidence of rape against Asian women specifically. The lack of information about Asian rape victims gives the impression their rape is an aberration and thus not of concern.

¹³¹ *Id.*

¹³² *Id.*

¹³³ In fact, only a handful of Asian actresses circulate around Hollywood such that the same people repeatedly play the same roles. This confuses people even further because they come to believe the character and the actress are one in the same.

¹³⁴ Nowrojee, et al., *supra* note 23.

¹³⁵ *Criminal Victimization in the United States, 2002 Statistical Tables*, US DEPT OF JUSTICE (2003) at 43a.

c. Latinas

The media image of Latinas falls into two categories. Jennifer Lopez personifies the hypersexual Latina. She wears flashy, revealing clothing or very little clothing at all and excessively publicizes her love life. Rosario from “Will & Grace”¹³⁶ personifies the asexual, servile Latina. She is a maid who wears exclusively a gray maid’s uniform and speaks with a heavy Spanish accent. Her boss, Karen, orders her around, insults and demeans her for entertainment. Rosario makes snide remarks in return but is generally loyal and does what she is told. She has no love life, rather her life is devoted to serving Karen. The significance of these two images is the compound effect they have on existing rape myths. A hypersexual Jennifer Lopez type is sexually active and sexually active women are not considered rape victims. So, a Latina who fits into this category would have trouble proving she was raped. An asexual, servile Rosario type will have trouble proving her rape claim because dutiful passive women are not considered rape victims either because they are seen as eager to please and obedient.

The stereotype that Latinas are short-tempered¹³⁷ together with the stereotype that women lie about being raped in order to get revenge¹³⁸ makes it doubly difficult for Latinas to bring a successful rape claim. It is no small leap to conceive of a short-tempered woman also being a vengeful one because people who lose their tempers tend to want to get even. So, if women in general lie about being raped to get revenge, a woman who is short-tempered is considered even more likely to lie in order to get revenge. Thus, a Latina, saddled with the weight of both stereotypes faces an immense challenge when trying to convince law enforcement that she was raped.

¹³⁶ “Will & Grace” is a sitcom that airs Thursday nights on NBC.

¹³⁷ MEN CAN STOP RAPE, *supra* note 19.

¹³⁸ Gill, *supra* note 14, at 46.

Like Asian women, Latinas are largely ignored in the discourse since race is too often seen as a “black and white” issue. As a result, there has been very little media coverage or academic discussion on rape’s impact on Latinas specifically. Furthermore, the Department of Justice rape statistics do not have a separate category for statistics about Latina rape.¹³⁹ There are, however, statistics published about black and white rape victims.¹⁴⁰ The effect of the lack of attention given to rape occurrences where the victim is Latina is that it is not viewed as a concern or something that happens with any degree of frequency. Since it is not seen as common, it is that much more difficult for these women to get justice for the crime that has been perpetrated against them. This evident from the fact that the average sentence for those who are convicted of raping a Latina is five years compared to the average sentence for someone convicted of raping a white woman which is ten years.¹⁴¹ Therefore, it is clear that society does not value these women’s sexual autonomy.

d. Minority Women in General

The Oakland prostitute example is illustrative of how minority rape victims’ sexual autonomy is undervalued. The police department readily dismissed rape reports involving prostitutes with little or no investigation.¹⁴² The vast majority of these women were minorities.¹⁴³ These women fit neatly into the stereotype of being hypersexual because their profession involves having sex for money. As a result, the police decided that they could not have been raped and even if they had been, their sexual autonomy was not worth protecting.

¹³⁹ See U.S. DEPT OF JUSTICE, *supra* note 130, at 42.

¹⁴⁰ *Id.*

¹⁴¹ Gill, *supra* note 14, at 41.

¹⁴² Gross, *supra* note 30.

¹⁴³ *Id.*

What is more, the belief that “most rape involves a black man violating a white women”¹⁴⁴ is particularly damning when a minority woman reports a rape. This stereotype leads police, jurors, and the media to turn a blind eye to rape reports by minority women. If they believe that rape only has to do with white women, when minority women report rape they are less likely to see the report as valid or important. The repercussions are apparent in a Michigan judge’s comment in which he said one of two cases where he would authorize an underage abortion without parental consent is when a white girl is raped by a black man.¹⁴⁵ The fact that he distinguished between rape in this context and rape in general shows his primary concern is not for minority rape victims but simply white women raped by black men. The disregard for minority rape victims is at least partially attributed to this belief.

To summarize, minority women’s image as overtly sexual and/or servile has disastrous consequences for rape victims. Since minority women are prejudged as promiscuous and since promiscuous women are considered liars, their experiences are not labeled rape. In addition, since rape is seen as an issue primarily of concern for white women, minority women’s sexual autonomy is disregarded and devalued.

2. Comparative Analysis: Brawley vs. Central Park Jogger

Tawana Brawley’s attack and rape and the Central Park Jogger’s attack and rape demonstrate the dramatic impact stereotypes have on how relatively similar attacks can be viewed drastically different based on the victim’s race. Though the two women were attacked under relatively similar circumstances, both in New York within less than two years of each other, and each had horrific injuries, the Central Park Jogger, a white woman, was treated completely different than Tawana Brawley, a black teen. The disparity in the way their

¹⁴⁴ MEN CAN STOP RAPE, *supra* note 19. It is important to note that most rape is intraracial.

¹⁴⁵ Wilkerson, *supra* note 11.

respective attacks were treated was so pronounced that the courts and media ultimately determined Tawana fabricated her entire attack while no one so much as implied anything of the sort with respect to the Central Park Jogger.

In April 1989, a twenty-nine year old white investment banker was brutally beaten and raped while jogging in Central Park.¹⁴⁶ She was found early the following morning barely alive with her hands tied in front of her face, in a pool of blood.¹⁴⁷ Shortly thereafter, a group of black teenage boys were arrested for the attack.¹⁴⁸ The attack received unprecedented media attention¹⁴⁹ that continues today.¹⁵⁰ There was no doubt the attack was heinous.

Less than two years earlier, in Wappingers Falls, New York, black teen Tawana Brawley, was walking home from a bus stop when some white police officers and an assistant district attorney kidnapped her, held her captive for four days and raped her.¹⁵¹ As mentioned above, she was found barely alive in a plastic bag, with dog feces smeared over her body, and the words “KKK” and “Nigger” etched into her torso.¹⁵² Though she identified the perpetrators, no one was ever arrested for the attack.¹⁵³ In fact, a grand jury concluded Tawana fabricated the entire the attack.¹⁵⁴ Like the Central Park Jogger case, this too received unprecedented media attention but all critical of the victim.

¹⁴⁶ Craig Wolff, *Youths Rape and Beat Central Park Jogger*, N.Y. TIMES, Apr. 21, 1989, at B1.

¹⁴⁷ *Id.*

¹⁴⁸ *See Id.*

¹⁴⁹ *See* Crenshaw, *supra* note 18, at 1268 (Donald Trump took out a newspaper ad in reaction to the attack calling for a re-instatement of the death penalty as well as countless television reports and newspaper articles culminating in her first television interview on Dateline NBC in 2003).

¹⁵⁰ The victim made her first television interview on Dateline NBC in April 2003.

¹⁵¹ Gill, *supra* note 14, at 44.

¹⁵² *Id.*

¹⁵³ “*We the Grand Jury*”: *Text of Its Conclusions in the Tawana Brawley Case*, N.Y. TIMES, October 7, 1988, at B4 [hereinafter WE, THE GRAND JURY].

¹⁵⁴ *Id.*

The circumstances surrounding both attacks are not that different. Both were out at night,¹⁵⁵ both were alone.¹⁵⁶ Both were interracial attacks.¹⁵⁷ Both were found outdoors, quivering, in shock and unable to speak.¹⁵⁸ Neither remembered much about the attack when they regained consciousness.¹⁵⁹

Given these remarkable similarities, the two women were treated very differently upon discovery. Upon finding the Central Park Jogger, a concerned citizen attempted to help her.¹⁶⁰ Medical personnel arrived, quickly concluded she was beaten, raped and was suffering from shock.¹⁶¹ Unable to ascertain her true name, hospital and police personnel nicknamed her the Central Park Jogger.¹⁶² Even though her identity was subsequently determined, the nickname endured to protect her privacy.¹⁶³ In contrast, no one approached Tawana when they observed her in a plastic bag in a lot outside an apartment complex. Instead, a neighbor called police after he observed Tawana behaving “very strange.”¹⁶⁴ When medical personnel arrived, they found Tawana and physically attempted to open her eyes.¹⁶⁵ After she resisted, they callously told her, “I know you can hear me so open your eyes.”¹⁶⁶ Even though Tawana was a minor, there was no affectionate, catchy nickname, rather the media widely reported her true name. The disparate treatment they received notwithstanding similar circumstances surrounding their discovery

¹⁵⁵ *Brawley Case: Stubborn Puzzle, Silent Victim*, N.Y. TIMES, February 29, 1988, at A1 [hereinafter STUBBORN PUZZLE]. Wolff, *supra* note 140.

¹⁵⁶ *Id.*

¹⁵⁷ Gill, *supra* note 14, at 44. Wolff, *supra* note 140. It was later determined the perpetrator in the Central Park Jogger case was not black.

¹⁵⁸ STUBBORN PUZZLE, *supra* note 155. *Dateline* (NBC television broadcast, Apr. 2003).

¹⁵⁹ *Id.*

¹⁶⁰ *Dateline* (NBC television broadcast, Apr. 2003).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ STUBBORN PUZZLE, *supra* note 155.

¹⁶⁵ WE, THE GRAND JURY, *supra* note 153.

¹⁶⁶ *Id.*

makes it evident the Central Park Jogger was considered a victim from the outset whereas Tawana was presumed a liar.

Both Tawana's and the Central Park Jogger's injuries were severe and shocking yet not one person cast doubt on the Central Park Jogger's attack though Tawana was swimming in doubt. To start, both were found in a semi-conscious state and barely alive.¹⁶⁷ The Central Park Jogger had serious head injuries that doctors did not expect her to recover from. She was unable to walk for weeks.¹⁶⁸ Tawana had also been beaten. Racial slurs were carved into her torso using a razorblade, urine soaked cotton was stuffed into her ears and nose, cigarette burns covered her body,¹⁶⁹ and she was unable to walk for weeks after the attack.¹⁷⁰ The Central Park Jogger is still unable to remember any of the attack.¹⁷¹ Tawana is unable to remember any details after she was initially taken to a wooded area on the day she was kidnapped.¹⁷²

Once again, though the injuries bore significant similarities, the fact that the Central Park Jogger was unable to remember the attack at all was never considered suspicious. Instead her amnesia was attributed trauma.¹⁷³ On the other hand, Tawana was frequently described as "uncooperative" for her inability to recall details of the attack.¹⁷⁴ Ultimately, the public¹⁷⁵ and the grand jury¹⁷⁶ used her memory gaps as reason to conclude she was lying about the entire ordeal. Some were even emphatic that she was lying as in the following quote: "It seemed obvious, long before a grand jury said so, that there was no substance to Tawana Brawley's story

¹⁶⁷ Gill, *supra* note 14, at 44. *Dateline*, *supra* note 160.

¹⁶⁸ *Dateline*, *supra* note 160.

¹⁶⁹ Gill, *supra* note 14, at 44-45.

¹⁷⁰ WE, THE GRAND JURY, *supra* note 153.

¹⁷¹ *Dateline*, *supra* note 160.

¹⁷² STUBBORN PUZZLE, *supra* note 155.

¹⁷³ *Dateline*, *supra* note 160.

¹⁷⁴ STUBBORN PUZZLE, *supra* note 155.

¹⁷⁵ Robert D. McFadden, *Brawley Case: Public's Conflicting Views*, N.Y. TIMES, at Sect. 1 p. 1. *The Brawley Case and New Yorkers' Conflicting Perceptions*, N.Y. TIMES, at Sect. 1 p. 32. Charles Law McCabe, *Brawley Aftermath: Less Black Justice*, at A26. Don Wycliff, *Blacks and Tawana Brawley*, N.Y. TIMES, at A26.

¹⁷⁶ WE, THE GRAND JURY, *supra* note 153.

of gang rape by white law enforcement officers.”¹⁷⁷ This individual further stated, “...to focus on the facts of the Brawley case is to see the trees and miss the forest.”¹⁷⁸ There is, however, nothing obviously concocted about the facts in Tawana’s case. To overlook the facts, as he suggests, is to be willfully blind to the truth that negative stereotypes are the only reason why such compelling and disturbing facts are looked upon as a black teenage girl’s sick fantasy. The public’s and the criminal justice system’s extreme disbelief in the Tawana Brawley case as compared to the Central Park Jogger case is attributable solely to the difference in the race of the victims and the stereotypes that accompany that racial difference.

Another area of comparison is the investigation and prosecution in the Central Park Jogger case as compared to the Tawana Brawley case. In the Central Park Jogger case, law enforcement did everything possible to investigate and prosecute suspects in the attack. It was quite the opposite in Tawana’s case. To begin with, investigation in the Central Park Jogger case was swift. Police identified a group of black teens, brought them into the station, and interrogated them until they confessed.¹⁷⁹ Based solely on their confessions, they were then charged, convicted, and imprisoned.¹⁸⁰

In contrast, when Tawana’s aunt and mother went to the police station to report her missing, the police stonewalled them.¹⁸¹ Police told them to bring back Tawana’s picture, then told them to go to another police department, then sent them back to the original department before finally the police filed a report the on day Tawana was found.¹⁸² The police, however, did

¹⁷⁷ Don Wycliff, *supra* note 168.

¹⁷⁸ *Id.*

¹⁷⁹ *Dateline*, *supra* note 160.

¹⁸⁰ *Id.* Though the Central Park Jogger did testify at the hearings, she was unable to relate details or identify the defendants because she had no recollection of the attack. The convicted teens, however, were later exonerated when DNA and a confession proved someone else committed the rape.

¹⁸¹ *See* STUBBORN PUZZLE, *supra* note 155.

¹⁸² *Id.*

interview Tawana when she was brought to the hospital after the attack.¹⁸³ She explained what she could remember on that and at least two other occasions. Notwithstanding, investigators remarked that they were unable to prove the rape without a full story especially since they did not know whether the attack actually occurred.¹⁸⁴ Another officer further stated, “Even if someone came in this minute to confess, we still wouldn’t be able to solve this case. We can’t solve it until we hear from the victim.”¹⁸⁵ This is distinct from the Central Park Jogger case, where they never had a factual account from the victim and a confession did suffice for a conviction.

An overwhelmingly white grand jury convened to investigate Tawana’s case. Rather than the prosecution building a case to prove the suspects Tawana accused were involved, the prosecutor seemed to work to prove the case was a hoax. This in light of the strong physical evidence to the contrary. There was also evidence corroborating Tawana’s suspect identification. During her disappearance, it was proven the suspects were together.¹⁸⁶ Also, a car matching the license plate number and description of one of the suspect officers was seen in the area the day Tawana was found.¹⁸⁷ The officer who owned the car shot himself to death four days later.¹⁸⁸ Despite these facts, the grand jury exonerated all of the suspects and concluded Tawana was neither kidnapped nor raped.¹⁸⁹ Thus, unlike the Central Park Jogger case, no one was ever arrested or charged in Tawana’s case.¹⁹⁰

Notwithstanding the Tawana Brawley case, the fact that there were other equally heinous attacks in New York the *same* week the Central Park Jogger was raped against minority victims

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ WE, THE GRAND JURY, *supra* note 153.

¹⁹⁰ Though the assistant district attorney accused in the rape won an \$885 million defamation suit against Brawley for the accusation.

that law enforcement did believe occurred also illustrates the impact race stereotypes has on a case because those attacks did not get any media attention.¹⁹¹ Among the victims, seventeen were black, seven were Latina, and two were Asian.¹⁹² One minority woman was raped, sodomized, and thrown fifty feet off the top of a four-story building in Brooklyn.¹⁹³ Witnesses reported hearing her tortured screams all the way down as she fell.¹⁹⁴ She narrowly survived with two broken ankles, a shattered pelvis, and extensive internal and external injuries.¹⁹⁵ Prosecutors admitted the Brooklyn rape was the most brutal in years but the public did not notice.¹⁹⁶

Egon Mayer, sociology professor, argues the reason minority rapes are not widely publicized is not that the public does not care about minority rape victims, but rather they are not novel enough to warrant the same amount of attention.¹⁹⁷ It may be true that only the most unusual crimes make headlines but that does not explain why race is the only factor considered when determining the novelty of a rape. That is to say, should not then, the brutality of the attack make more difference than just the race of the victim? Furthermore, many adopt the stereotype that most rape involves a white victim and a black perpetrator.¹⁹⁸ If Mayer's contention were correct, the Central Park Jogger case would not have received the attention it got since it would not have been novel. That case, however, is one of the most publicized cases and an admittedly more heinous attack on a minority woman received scant publicity. Novelty cannot explain the difference. Rather, race stereotypes that value a white victim more than a minority victim best explains the phenomenon.

¹⁹¹ Don Terry, *In Week of an Infamous Rape, 28 Other Victims Suffer*, N.Y. TIMES, May 29, 1989, at B25.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Mayer, *supra* note 81.

¹⁹⁸ MEN CAN STOP RAPE, *supra* note 19.

To summarize, even though there are arguably many similarities between the Central Park Jogger case and the Tawana Brawley case, the disparity between the way they were perceived illuminates the fact that minority rape victims are viewed with suspicion and doubt whereas white victims are seen and treated with more compassion and sympathy. This disparity grows out the differential value placed on the sexual autonomy of white women versus minority women based on stereotypical notions of racialized sexual identity.

C. THE SPECIAL IMPACT OF RAPE ON MINORITY WOMEN

It cannot be overstated that the stereotypes discussed in this paper have a very real impact for minority rape victims as distinct from white rape victims. The criminal consequences as well as the discourse are different thus creating distinguishable experiences.

Of these differences is the fact that minority women can be raped with impunity.¹⁹⁹ White men accused of raping minority women seldom face arrest let alone conviction²⁰⁰ and black men accused of raping minority women are often given a more lenient punishment if at all.²⁰¹ On the other hand, white rape victims, particularly if the perpetrator is black, receive much greater protection from the criminal justice system.²⁰² This creates an added dimension of powerlessness for minority rape victims because not only does the woman have to cope with the rape but, she has to cope with the fact that the system does not value what has been taken from her.²⁰³ For both minority rape victims and those who are fortunate enough not to have been victims, this reality poses significant restraints on their liberty. They must be hyper-vigilant at all times. They must make sure they stay out of compromising romantic situations, lock and double lock their doors, think three or four times before they decide to go out at night, and still this may

¹⁹⁹ Crenshaw, *supra* note 18, at 1277.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 1275. Harris, *supra* note 18, at 600.

²⁰² *Id.* at 1277.

²⁰³ Harris, *supra* note 18, at 601.

not be enough. Ultimately, they must face the fact that the system does not work the same for everyone and should they meet an unfortunate fate, the public and law enforcement is less likely to rally behind them as they would their white neighbor, classmate, or coworker.

Furthermore, the discourse ignores issues related to race and minority rape victims.²⁰⁴ Since the discourse either ignores the intersection of race and rape as it relates to minority women or simply assumes that rape is the same regardless of race,²⁰⁵ it adds to the stereotypes that proliferate about rape. Beliefs that most rape victims are white and the system protects everyone equally go unopposed. As a result, there is little awareness of the problem and thus few solutions.

IV. CONCLUSION

In conclusion we return to Carl Lee. Was he unreasonable in believing that the men who raped his daughter would not be brought to justice? As we have discovered, there are a wealth of actual cases that mirror the fiction John Grisham created. Cases that because police, jurors, judges, and media harbored stereotypes about female minority sexuality and veracity, the perpetrators went free. As a result, those women undoubtedly suffered a compound effect not only of the rape but the prejudice that denied their peace of mind in knowing their rapist is off the streets. Thus, we are unable to say that Carl Lee was at all unreasonable in his pessimism toward the criminal justice system.

²⁰⁴ See generally Crenshaw, *supra* note 18, at 1276-78 (discussing how the preoccupation with unjust rape accusations against black male perpetrators detracts from the impact rape has on their minority rape victims).

²⁰⁵ Harris, *supra* note 18, at 598.