

## FROM TIKTOK TO RACIAL VIOLENCE: ANTI-BLACKNESS IN THE GENDERED SPHERE

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### INTRODUCTION

The impact of Covid-19 on racial and social consciousness during 2020 was significant.<sup>1</sup> While much of the world was in social incapacitation, we passed the time by tuning into our televisions and social devices. The local and national news told stories of the rising number of deaths lost to the virus. Particularly hard hit by the virus were people of color in Black and Brown communities.<sup>2</sup> Additionally, we witnessed Black life being lost specifically to the ongoing spectacle of anti-Black policing, which is nothing new.<sup>3</sup> What was stark in

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<sup>1</sup> See Lauren Bauer et al., *Ten Facts About Covid-19 and the U.S. Economy*, BROOKINGS (Sept. 17, 2020), <https://www.brookings.edu/research/ten-facts-about-covid-19-and-the-u-s-economy/>.

<sup>2</sup> See Akilah A. Jefferson Shah, *Covid-19 Has Devastated the Black Community. Here's Why and What Needs to Change*, HUFFPOST (June 8, 2020), [https://www.huffpost.com/entry/coronavirus-black-american-community-devastated\\_n\\_5ed6a2c2c5b68113b7e4c1ee](https://www.huffpost.com/entry/coronavirus-black-american-community-devastated_n_5ed6a2c2c5b68113b7e4c1ee); see also Brooke Wolford, *African Americans Die from Coronavirus at Disproportionate Rate, Reports Say*, MIA. HERALD (Apr. 6, 2020, 10:48 PM), <https://www.miamiherald.com/news/coronavirus/article241819496.html> (reporting that the Lawyers' Committee for Civil Rights Under Law “cited multiple news articles and local health data that indicated ‘African Americans in some cities and counties are being infected and dying from COVID-19 at higher rates than their white counterparts’”).

<sup>3</sup> I have written prolifically on this subject. See generally Donald F. Tibbs, *Foreword*, 10 DREXEL L. REV. 567 (2017); Donald F. Tibbs & Tryon P. Woods, *Requiem for Laquan McDonald: Policing as Punishment and Abolishing Reasonable Suspicion*, 89 TEMP. L. REV. 763 (2017); Donald F. Tibbs & Shelly Chauncey, *From Slavery to Hip-Hop: Punishing Black Speech and What's Unconstitutional About Prosecuting Young Black Men Through Art*, 52 WASH. U. J.L. & POL'Y 33 (2016); Donald F. Tibbs, *Racial Profiling in the Era of Black De-Constitutionalism*, 23 WASH. & LEE J. CIV. RTS. & SOC. JUST. 181 (2016); Donald F. Tibbs, *Towards an Abolition Democracy: The Death Penalty, Circa 2015*, 25 WIDENER L.J. 83 (2016); Donald F. Tibbs, *Of Law and Black Lives*, 50

contrast, however, was the immediacy at which anti-Black policing occurred as soon as we began to emerge from our respective homes. Almost instantly, we witnessed George Floyd suffocated by Minneapolis police officer Derek Chauvin.<sup>4</sup> We witnessed Breonna Taylor being shot and killed during a police raid of her home.<sup>5</sup> We witnessed Ahmaud Arbery being killed while jogging through his neighborhood.<sup>6</sup> It felt like the slow re-opening of this country signaled an “open season” on Black life. To say the least, watching these murders continued the feeling of hopelessness that many Black people experience in this country where the true measure of Democracy is supposed to occur since it is a country of the people, by the people, and for the people. And you wonder: why take a knee?<sup>7</sup>

As some people Facebooked, Tweeted and Instagrammed; I discovered the social media platform known as TikTok. To those who are unaware, TikTok is a cell phone application that allows users to express themselves by recording and posting a micro-video, that last 15 seconds long.<sup>8</sup> You can find father-daughter dancing duets, artists playing the saxophone to hip hop songs, and ranchers freestyle rapping while there are cows and sheep in the background.<sup>9</sup> I admit, watching these videos taught me to appreciate the true diversity of this nation in ways that I had never considered possible. I also learned that we are much more united than I originally believed. While TikTok has many upsides, including spending hours glued to your cell phone screen laughing and enjoying

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*Years Later: Race and Policing in the Aftermath of the Moynihan Report*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSP. 85 (2016); Donald F. Tibbs, *Hip Hop and the New Jim Crow: Rap Music's Insight on Mass Incarceration*, 15 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 209 (2015); Donald F. Tibbs, *From Black Power to Hip Hop: Discussing Race, Policing, and the Fourth Amendment Through the War on Paradigm*, 15 J. GENDER, RACE, & JUST. 47 (2012); Donald F. Tibbs, *Who Killed Oscar Grant?: A Legal-Eulogy of the Cultural Logic of Black Hyper-Policing in the Post-Civil Rights Era*, 1 J. RACE, GENDER, & POVERTY 1 (2010); Donald F. Tibbs & Tryon P. Woods, *The Jena Six and Black Punishment: Law and Raw Life in the Domain of Nonexistence*, 7 SEATTLE J. SOC. JUST. 235 (2008).

<sup>4</sup> See Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Apr. 21, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

<sup>5</sup> See *Breonna Taylor: What Happened on the Night of Her Death?*, BBC NEWS (Oct. 8, 2020), <https://www.bbc.com/news/world-us-canada-54210448>.

<sup>6</sup> See Elliott C. McLaughlin, *What We Know About Ahmaud Arbery's Killing*, CNN (May 12, 2020, 4:58 PM), <https://www.cnn.com/2020/05/11/us/ahmaud-arbery-mcmichael-what-we-know/index.html>.

<sup>7</sup> See Patrick Jennings, *Colin Kaepernick: From One Man Kneeling to a Movement Dividing a Country*, BBC SPORT (Oct. 11, 2017), <https://www.bbc.com/sport/american-football/41530732>.

<sup>8</sup> For an excellent discussion of TikTok and all of its capabilities and uses, see *TikTok 101: A Guide to Understanding the Latest Social Media Craze*, WIXBLOG (July 13, 2020), <https://www.wix.com/blog/2020/07/what-is-tik-tok/> (stating that TikTok is not just about the user content that is posted, but rather it is “a culture of its own”).

<sup>9</sup> That has been some of the content that I have “liked,” “followed,” and enjoyed in my daily feed. Like other social media platforms, when you find some content that you enjoy, you simply “like” it, which on TikTok is known as a follow completed by clicking on a heart shaped icon. See *Liking, TIKTOK*, <https://support.tiktok.com/en/using-tiktok/exploring-videos/liking> (last visited Apr. 29, 2021).

how truly talented and creative people are; it also has a downside: the platform is controlled by algorithms. Simply, the more types of videos you watch, or “like,” the more videos of that kind it sends you.<sup>10</sup> In that regard, you can find yourself going down a deep rabbit-hole watching the same kinds of videos repeatedly.

For me, what began as a fun attempt to watch people perform fun or silly dance challenges, and watch artists perform amazing feats of musicianship, somehow changed to something extremely alarming as I stumbled upon a series of disturbing videos. These series of videos captured random White women attempting to exert a privileged power over other adults, and then acting irrationally angry when they were rebuffed. In some instances, their outbursts involved them threatening to call the police to report someone recording their actions in a point-of-view style video. In other instances, the threat materialized. I watched astonishingly as they claimed, with great enthusiasm and certainty, that “you are violating my privacy,” which is not true; or “this is my country, which is also not true; and my absolute favorite, “it’s people ‘like you’ who make this country awful,” again, certainly not true. Obviously, the latter being remarked to Black, Brown, and Muslim people; a comment that we have all heard many times before.<sup>11</sup> As I watched a couple of these videos, I must have “liked” one, and TikTok’s algorithms went to work: the platform showed me more and more, until eventually I was trapped in a steady reoccurrence of videos. It was at that moment that I really began to understand what #KarenTikTok meant.<sup>12</sup> I was stunned.

After deeper inspection, and I must admit a slight intrigue, I learned a lot about these new micro-video stars. First, I learned that a “Karen,” is a pejorative nickname for White women captured engaging in outlandishly childish behavior based on their White privilege.<sup>13</sup> Additionally, I learned that sometimes these interactions were completely innocuous and an overt expression of White

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<sup>10</sup> See Molly McGlew, *This is How the TikTok Algorithm Works*, LATER (June 18, 2020), <https://later.com/blog/tiktok-algorithm/> (explaining that the hashtags you use, location, and music choices all influence the algorithm; right down to the very first video that you like). So, choose wisely.

<sup>11</sup> This is not an uncommon remark by white racists hurled at people of color. Even the ex-President of the United States, Donald J. Trump, once told women of color to go back to their countries, thereby earning the moniker of “racist in chief.” See Jason Silverstein, *Trump Tells Democratic Congresswomen of Color to “Go Back” to Their Countries*, CBS NEWS (July 15, 2019, 5:59 PM), <https://www.cbsnews.com/news/donald-trump-racist-tweets-progressive-democratic-congress-women-go-back-to-countries-nancy-pelosi-slam-president/>; see also Rep Tlaib Calls Trump ‘Racist-in-Chief’ as She Voices Support for Impeachment, NBC NEWS (Jan. 13, 2021), <https://www.nbcnews.com/video/rep-tlaib-calls-trump-racist-in-chief-as-she-voices-support-for-impeachment-99403845900> (showing Representative Rashida Tlaib calling Trump “racist-in-chief”).

<sup>12</sup> For examples of #KarenTikTok see TikTok Compilations, *Karen | TikTok Compilation*, YOUTUBE (June 12, 2020), <https://www.youtube.com/watch?v=BYnfE-iPyBs>.

<sup>13</sup> See Suzy Weiss, *What Is a Karen? The Dreaded ‘White Lady’ Meme Nickname Explained*, N.Y. POST (July 22, 2020, 10:38 AM), <https://nypost.com/article/what-is-a-karen-meme-name-meaning-explained/>.

privilege and entitlement.<sup>14</sup> After perhaps 10 to 20 videos later, a pattern revealed itself: these situations typically involved a White woman calling the police on a Black person, or a person of color, for doing something that was non-criminal, and also legally and socially harmless. This occurrence, of calling the police on Black people, was not only normative, but their civic duty: as if they somehow owed it to this country to engage in policing Black behavior. I was stunned. It is one thing to know that things like this happen, but it is different to actually witness it and come to grips with its frequency.

As a critical scholar of race and policing, particularly one who relies upon African American legal history to inform his understanding of contemporary structural paradigms, I realized that the record of what has happened to Black people, particularly Black men, when White women called the police, revealed a more serious, non-comical, side of this behavior.<sup>15</sup> These TikTok videos should not be discarded as innocuous random occurrences of an average person engaging in disagreeing behavior towards another person; instead, they should be seen for what they really are: White women exposing their White privilege and weaponizing their Whiteness in a way that is gendered, racist, and from a legal perspective, per-se criminal.<sup>16</sup> This article argues that in this post-Covid moment, we are, not only, witnessing a rise in White supremacy and White nationalism as exhibited by the January 6th raid on the U.S. Capitol,<sup>17</sup> but we are also witnessing an increase in White women weaponizing their race in ways that parallels historical anti-Black White supremacy in a gendered sphere.<sup>18</sup>

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<sup>14</sup> See *id.*

<sup>15</sup> See Janice Gassam Asare, *Stop Calling the Police on Black People*, FORBES (May 27, 2020, 3:09 AM), <https://www.forbes.com/sites/janicegassam/2020/05/27/stop-calling-the-police-on-black-people/?sh=72fb0e5164c0>.

<sup>16</sup> The frequency of these events has led some states to enact laws punishing falsely reporting crimes as hate crimes when the reports are motivated by race. See Hogan, *infra* note 100. See generally A03566, N.Y. STATE ASSEMBLY, [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A03566&term=2019&Summary](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03566&term=2019&Summary) [hereinafter A03566] (last visited Apr. 25, 2021) (“Includes falsely reporting an incident in the third, second, and first degrees as a specified offense for the purposes of hate crimes.”).

<sup>17</sup> See Haleigh Whisted, *With Rise of Trump Came the Rise of White Nationalism, Critics Say*, CAP. NEWS SERV. (Apr. 2, 2020), <https://cnsmaryland.org/2020/04/02/with-rise-of-trump-came-rise-of-white-nationalism-critics-say>; Elizabeth Thomas, *White Supremacy and White Nationalism Have Re-Entered Our Political Conversation. But, What Do They Mean?*, ABC NEWS (Apr. 19, 2019), <https://abcnews.go.com/Politics/white-supremacy-white-nationalism-entered-political-conversation/story?id=64998396>; Robert Farley, *The Facts on White Nationalism*, FACTCHECK.ORG (Mar. 20, 2019), <https://www.factcheck.org/2019/03/the-facts-on-white-nationalism/>; Alvaro Huerta, *White Nationalist Barbarians Storm the Gate(s) of the U.S. Capitol*, COUNTERPUNCH (Jan. 14, 2021), <https://www.counterpunch.org/2021/01/14/white-nationalist-barbarians-storm-the-gates-of-the-u-s-capitol/>; Neil MacFarquhar, *The Coronavirus Becomes a Battle Cry for U.S. Extremists*, N.Y. TIMES (May 3, 2020), <https://www.nytimes.com/2020/05/03/us/coronavirus-extremists.html>.

<sup>18</sup> See generally Jayy Dodd, *Why I'm Scared of White Women*, MEDIUM (Oct. 11, 2016), <https://medium.com/the-establishment/why-im-scared-of-white-women-89bcdce25959>; Ruby Hamad, *How White Women Use Strategic Tears to Silence Women of Colour*, GUARDIAN (May 7, 2018), <https://www.theguardian.com/commentisfree/2018/may/08/how-white-women-use-strategic-tears-to-avoid-accountability>; Angelina Chapin, *How White Nationalists Weaponize Motherhood*, THE CUT (July 31, 2020), <https://www.thecut.com/2020/07/sisters-in-hate-how-white-nationalists->

This article proceeds in four sections. Section I begins with a brief historiography of the danger of White gendered racism to Black life; specifically, when White women falsely accuse Black men of crimes. The seriousness of this provocative history is undisputed. It has been captured as a movie adaptation of a famous novel,<sup>19</sup> well documented in academic scholarship,<sup>20</sup> sang in negro spiritual songs,<sup>21</sup> described in countless media stories,<sup>22</sup> and documented by the federal government when the accusations involved brutal retaliation-style killings.<sup>23</sup> After discussing the historical underpinnings of gendered racism, Section II uses a case study of a White woman, named Amy Cooper, who falsely accused a Black man, Christian Cooper, of a crime, not only putting his life in danger, but using the privilege associated with her Whiteness as a weapon

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weaponize-motherhood.html; Chauncey DeVega, *White Women and the Racist Right: Marjorie Taylor Greene is Not an Aberration*, SALON (Mar. 1, 2021), <https://www.salon.com/2021/03/01/white-women-and-the-racist-right-marjorie-taylor-greene-is-not-alone/>; Shannon Keating, *The Racism of White Women*, BUZZFEED NEWS (May 28, 2020, 3:28 PM), <https://www.buzzfeednews.com/article/shannonkeating/amy-cooper-white-women-racism-george-floyd-racial-justice>.

<sup>19</sup> See *“To Kill a Mockingbird” Published*, HISTORY, <https://www.history.com/this-day-in-history/harper-lee-to-kill-a-mockingbird-published> (last visited Apr. 25, 2021). See generally HARPER LEE, *TO KILL A MOCKINGBIRD* (1960). Harper Lee’s book was awarded a Pulitzer Prize in 1961, and the next year was made into an Academy Award winning film.

<sup>20</sup> See generally Tracey Owens Patton & Julie Snyder-Yuly, *Any Four Black Men Will Do: Rape, Race, and the Ultimate Scapegoat*, 37 J. BLACK STUD. 859 (2007); Quaylan Allen & Henry Santos Metcalf, *“Up to No Good”: The Intersection of Race, Gender, and Fear of Black Men in US Society*, in HISTORICIZING FEAR: IGNORANCE, VILIFICATION, AND OTHERING 19 (Travis D. Boyce & Winsome M. Chunn eds., 2019); Justin Louis Mann, *What’s Your Emergency?: White Women and the Policing of Public Space*, 44 FEMINIST STUD. 766 (2018); Travis D. Boyce & Winsome M. Chunn, *Towards a Post-Racial Society, or a ‘Rebirth’ of a Nation?: White Anxiety and Fear of Black Equality in the United States*, in HISTORICIZING FEAR: IGNORANCE, VILIFICATION, AND OTHERING, *supra*, at 124.

<sup>21</sup> Acclaimed African American singer, Billie Holiday, performed her song “Strange Fruit” in 1939, which was originally written as a “protest poem, exposing American racism, particularly the lynching of African Americans.” See *Strange Fruit*, BILLIE HOLIDAY, <https://billieholiday.com/signaturesong/strange-fruit/> (last visited Apr. 25, 2021) (providing the song and it accompanying lyrics).

<sup>22</sup> One of the best news accounts of the multitude of White women who have blamed Black men (and women) for crimes is best captured by Nsenga K. Burton, a professor of Journalism and Mass Communication at the University of Georgia, Athens. For the individual stories, see Nsenga K. Burton, *White Women and ‘Blame a Black Man’ Syndrome*, THE ROOT (Feb. 1, 2012, 10:17 AM), <https://www.theroot.com/white-women-and-blame-a-black-man-syndrome-1790889717>; Eric Shorey, *White Woman Who Falsely Accused Black Men of Rape Reportedly Rolls Eyes During Sentencing*, OXYGEN (Aug. 27, 2018, 1:09 PM), <https://www.oxygen.com/crime-time/nikki-yovino-who-falsely-accused-black-men-of-rape-rolls-eyes-during-sentencing> (providing a news story of a white woman who falsely accused two Black men of rape to garner sympathy).

<sup>23</sup> The murder of 14-year-old Emmett Till, by Roy Bryant and his half-brother J.W. Milam, is the most well-known case of a Black man killed because of a false reporting of a crime by a White woman. Allegedly, Till whistled at Roy Bryant’s wife, Carolyn, and was kidnapped, beaten, shot in the head, and had a large metal fan tied to his neck with barb wire, and thrown in the Tallahatchie River. Not only were Bryant and Milam never convicted for the crime, there has never been one single piece of proof that Till violated the White supremacist custom that he was killed for: perhaps making his murder the most famous case of a Black man falsely accused of a crime by a White woman. See generally *Emmett Till*, FBI, <https://www.fbi.gov/history/famous-cases/emmett-till> (last visited Apr. 25, 2021) (providing a link to the FBI’s file on Emmett Till).

against Black freedom and equality. Her story is important, not only because of the absurdity of her actions, which we all were able to see due to social media, but because they connect the anti-Black racism of the past to our present. By taking a deep dive into the narrative of that unbelievable historical moment, I reveal her actions for what they really are – contemporary racial violence; and she for who she really is – a White woman who weaponized her race and gender, without compunction, to put an innocent Black man in harm’s way. This section also dissects her actions as a set of specific acts that you see repeated again-and-again by White women who routinely call the police on Black people. I call it a White women’s anti-Black racist “playbook.”

This article concludes with a brief discussion of some of the legal solutions that have been enacted to deter and punish this behavior. I use this conclusion not to say that the law can fix the very problem that it created, the stereotype of Black men as criminals and rapists, but to reveal that society can legislate away hate and racism. In other words, the Law, which more often is a problem for Black existence, has the potential to serve as a solution by empowering police departments and prosecutors to punish White women (and men) who make false accusation to the police. While punishment under these laws might, at first, seem harsh, their real value lies in the fact that they have the potential to put White people on notice of their privilege, and change the cultural narrative of White privilege in this country. Of course, it should go without saying that the only real value of these laws would be their usage by the Criminal Justice System, which seems unable to convict White people of committing crimes when the victim is Black.<sup>24</sup>

## I. THE HISTORY OF WHITE WOMEN AND ANTI-BLACK MALE VIOLENCE

The history of White womanhood and its influence on Black Male violence infamously dates back to the era of Reconstruction. At the conclusion of the Civil War, the federal government amended the Bill of Rights to include several Reconstruction Amendments: including the 13th, 14th, and 15th Amendments.<sup>25</sup> While the 14th Amendment focuses on many issues related to fundamental fairness in the courts and equal application of the laws, more notably, it granted citizenship to newly freed slaves.<sup>26</sup> The issue of a new Black citizenry

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<sup>24</sup> See *White People Who Committed Heinous Crimes and Didn’t Go to Prison*, NEWSONE (Apr. 30, 2019), <https://newsone.com/playlist/white-crimes-no-prison/>; cf. *Black People Who Got More Time than Paul Manafort for Doing Less*, NEWSONE (Mar. 8, 2019), <https://newsone.com/playlist/black-people-harsh-prison-sentences/item/1> (describing how Black men are sentenced to more prison time for the same crime than white men).

<sup>25</sup> See generally Eric Foner, *The Strange Career of the Reconstruction Amendments*, 108 YALE L.J. 2003 (1999).

<sup>26</sup> See generally Richard Fleischman et al., *The U.S. Freedmen’s Bureau in Post-Civil War Reconstruction*, 41 ACCT. HISTORIANS J. 75 (2014) (noting the transition from slavery to freedom was assisted by the Freedman’s Bureau which worked diligently to overcome state resistance to Black freedom).

was significant because since the ruling in *Dred Scott v. Sandford* in 1857, the Supreme Court infamously declared that “[the black man] ha[s] no rights which the White man [is] bound to respect.”<sup>27</sup> But, after the passage of the 14th Amendment, the issue of race and shared space became, both, a social and legal issue.<sup>28</sup> For the first time in American history, White men and women were being asked, legally, to share common social space with newly freed Black slaves. The idea that Black people, more importantly Black men, could move through the streets unencumbered by law, relegated their safety to social custom. It is at this moment that the foundations for a post-Slavery style of White supremacy emerges.<sup>29</sup> Simply, Black freedom signaled a decline in White superiority and supremacy, and Whiteness (as a social construct and ideology) searched for a way to criminalize the presence of Blackness.<sup>30</sup>

Since White men, based on their Whiteness and their maleness, could not openly express a fear of being around Black men; whether it was true or not, they searched for a scapegoat. That scapegoat became White women and White purity.<sup>31</sup> In other words, this new brand of White supremacy legitimized itself based on a narrative involving Black freedom as an existential threat to White female purity, and the purity of the White race through potential race mixing.<sup>32</sup> When viewed through this lens, rather than celebrating the end of Slavery as a moment of racial inclusion, instead it gave rise to a new form of White supremacy which directly brought White women and gender, into the racial-political economy.

If White womanhood became the rallying point for racial purity, then Black male sexuality became its evil deity. However, to be clear, the issue of comingling races through sexual contact was nothing new. White slave owners routinely brutalized, devalued, and raped Black female slaves during Slavery.<sup>33</sup> White women engaged in consensual sexual encounters with Black slaves in

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<sup>27</sup> *Scott v. Sandford*, 60 U.S. 393, 407 (1857). This specific quote has been recognized as a display of the ongoing racism of the Supreme Court towards Black people, as well as Chief Justice Roger Taney’s false attempt to use Constitutional Originalism to mask his racism. See Harry V. Jaffa, *Dred Scott Revisited*, 31 HARV. J. L. & PUB. POL’Y 197, 200–01 (2008).

<sup>28</sup> See Robert E. McGlone, *Race, Place, and the Law, 1836-1948*, 14 W. LEGAL HIST. 193 (2001) (reviewing DAVID DELANEY, *RACE, PLACE, AND THE LAW, 1836-1948* (1998)). McGlone, in his review of David Delaney’s book, explains how the 1948 rulings in *Hurd v. Hodge*, 334 U.S. 24 (1948), and *Shelley v. Kraemer*, 334 U.S. 1 (1948) were cases that legitimized restrictive covenants in housing in efforts to preserve “white purity.” McGlone, *supra*, at 195.

<sup>29</sup> For an excellent discussion on the rise of White supremacy in the aftermath of Slavery, see Nancy A. Heitzeg, *On the Occasion of the 50th Anniversary of the Civil Rights Act of 1964: Persistent White Supremacy, Relentless Anti-Blackness, and the Limits of the Law*, 36 HAMLIN J. PUB. L. & POL’Y 54, 61–63 (2015).

<sup>30</sup> See *id.* (providing some common examples including lynching, Black Codes, literacy tests, grandfather clauses, and threats of White terror).

<sup>31</sup> See Patrick Lynn Rivers, *Race, Sex, Violence, and the Problem of Agency in North Carolina, 1889-1903*, 28 AUSTRALASIAN J. AM. STUD. 34, 37 (2009).

<sup>32</sup> See generally Warwick Anderson, *Racial Conceptions in the Global South*, 105 ISIS 782 (2014).

<sup>33</sup> See Esmeralda Thornhill, *Focus on Black Women!*, 1 CAN. J. WOMEN & L. 153, 159 (1985).

secrecy and silence.<sup>34</sup> The actual existence of consensual relationships between White women and Black slaves were not the real problem; the problem was their discovery by White men. These discoveries resulted in numerous deaths of Black men: death by lynching. In many instances, these murders were the result of White women who falsely accused Black men of rape in the aftermath of the discovery of their consensual sexual encounter.<sup>35</sup>

The racist history of the South is drenched in the blood of Black men lynched because of White women. Numerous scholars have openly discussed this issue. According to cultural theorist Apryl Williams, “when a white woman, in the past, made an accusation about a Black man, it resulted in his death . . . maybe, it’s a little bit harder for people of White backgrounds to see, but for the Black community, we can see those dots connected very easily.”<sup>36</sup> Professor Williams is referencing the long historiography of White fears of Black males as sexual predators and deviants vexed against White female purity and virtuousness.<sup>37</sup>

In her book, *Beyond the Pale: White Women, Racism, and History*, Professor Vron Ware notes that of the 4,761 lynchings that occurred between 1882 and 1930, about three-quarters of them were of Black men.<sup>38</sup> The lynching of Black men was so prolific in the South that it caught the attention of Black female activists and artists. Famed journalist and Black feminist Ida B. Wells, notes in several of her works that the over-abundance of Black men lynched was directly attributed to the trope of White women’s purity.<sup>39</sup> In her work, *A*

<sup>34</sup> See RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* 59 (2004); see also J.M. Allain, *Sexual Relations Between Elite White Women and Enslaved Men in the Antebellum South: A Socio-Historical Analysis*, 5 *INQUIRIES J.* (2013), <http://www.inquiriesjournal.com/articles/1674/sexual-relations-between-elite-white-women-and-enslaved-men-in-the-antebellum-south-a-socio-historical-analysis> (noting that “when a planter’s daughter or wife was discovered to be pregnant by a slave, great pains were taken to cover up the pregnancy”).

<sup>35</sup> For some of the best books on the history of White women’s role in lynching, see generally JENNIE LIGHTWEIS-GOFF, *BLOOD AT THE ROOT: LYNCHING AS AMERICAN CULTURAL NUCLEUS* (2011); AMY L. WOOD, *LYNCHING AND SPECTACLE: WITNESSING RACIAL VIOLENCE IN AMERICA, 1890-1940* (2011). See Ryan Bomberger, *Supremely Wrong: Men Were Lynched Because of False Sexual Allegations*, *TOWNHALL* (Sept. 27, 2018, 9:00 AM), <https://townhall.com/columnists/ryanbomberger/2018/09/27/supremely-wrong-men-were-lynched-because-of-false-sexual-allegations-n2523149> (noting “charges of sexual assault—rape specifically—have led to thousands of deaths through lynchings and other horrific murders”).

<sup>36</sup> *Who Is “Karen” and Why Does She Keep Calling the Police on Black Men?*, WNYC STUDIOS (May 29, 2020), <https://www.wnycstudios.org/podcasts/otm/segments/who-karen-and-why-does-she-keep-calling-police-black-men-on-the-media> [<https://perma.cc/ZWZ2-V9VV>] [hereinafter *Who Is “Karen”*] (with guest Apryl Williams).

<sup>37</sup> See Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 *AM. U. L. REV.* 863, 909–10 (2020); see also Jennifer Wriggins, *Rape, Racism, and the Law*, 6 *HARV. WOMEN’S L.J.* 103, 125 (1983) (noting in one case the Supreme Court “described the rape of a white woman by a Black man as ‘a crime . . . [which] soil[ed] for life her purity, the most precious attribute of all mankind.’”).

<sup>38</sup> See VRON WARE, *BEYOND THE PALE: WHITE WOMEN, RACISM, AND HISTORY* 171 (2015).

<sup>39</sup> See generally IDA B. WELLS, *A RED RECORD: TABULATED STATISTICS AND ALLEGED CAUSES OF LYNCHINGS IN THE UNITED STATES 1892-1893-1894* (1895) [hereinafter *A RED RECORD*]; IDA



*Red Record*, which provides both photos and news stories of every lynching in America, Wells noted that one of the major justifications for lynching Black men was to avenge alleged assaults upon White women.<sup>40</sup> The thought of Black men assaulting White women aroused a racist panic regarding shared social spaces that “fill[ed] the soul of [White men] with horror, loathing and fury [to consider] the outraging of a White woman by a [Black man].”<sup>41</sup> According to Wells, the South shielded its racist homicides “behind the plausible screen of defending the honor of its [White] women.”<sup>42</sup> However, it is clear that the justification for lynching Black men because of their assaults on White women was, perhaps, the greatest lie ever told. Simply, these assaults against White women were not happening. In fact, Black male assaults on White women were a myth created to justify the lynching of Black men after other excuses, like trying to vote, no longer made sense.<sup>43</sup>

Since the assaults of White women were simply not occurring, Black men were thus lynched because of false accusations mostly made up by White women complicit in their falsity. Wells points to a number of these examples in her work. She explains that White women, compelled by threats of violence and a wish to save their reputations, often felt forced to make accusations after their consensual relations with Black men were discovered.<sup>44</sup> It was deemed impossible for a White woman to have consented to sexual relations with a Black person, due to stereotypes of their Whiteness.<sup>45</sup> So, when the false accusations against Black men were leveled, White women’s trope of purity, innocence, and weakness, took precedence. Simply, their account of the events was taken at face value, based solely on their word and without further proof.<sup>46</sup> In fact, White women’s virtuousness was so powerful, that Black men were lynched solely to spare White women the mortification of testifying in a court of law as to what happened.<sup>47</sup>

And if there was a trial, or a White woman did testify, Black men still never fared well. If the accused was a Black man and the victim was a White woman, the jury was granted the power to draw inferences about the veracity of the testimony based solely on the race of the parties.<sup>48</sup> In those instances, social norms, rather than legal mandates, authorized the jury to consider, “that a White woman

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B. WELLS, *SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES* (1892) [hereinafter *SOUTHERN HORRORS*].

<sup>40</sup> See *A RED RECORD*, *supra* note 39, at 10–11.

<sup>41</sup> *SOUTHERN HORRORS*, *supra* note 39, at 17.

<sup>42</sup> *Id.* at 14.

<sup>43</sup> See *A RED RECORD*, *supra* note 39, at 10 (explaining that the previous excuse for the killings had been to prevent the domination of Black people over White people; however, once Black people had been eliminated from participation in state and national elections, that excuse was no longer sustainable).

<sup>44</sup> See *id.* at 60, 62.

<sup>45</sup> See *id.* at 11.

<sup>46</sup> See *SOUTHERN HORRORS*, *supra* note 39, at 7.

<sup>47</sup> See *id.* at 14.

<sup>48</sup> See Wriggins, *supra* note 37, at 111.

would never consent to sex with a Black man,” solidifying that White women’s accusations had the power over life and death for Black men.<sup>49</sup>

African American history is replete with examples of the legal system serving as a tool for lynching. Ida B. Wells tells a story of a wife of a minister in Ohio who accused a Black man of raping her, claiming that he forced entry into her home.<sup>50</sup> Despite his denials, and without a single piece of factual evidence, her trial testimony was validated over his, and he was convicted.<sup>51</sup> She later admitted her perjury in court and confessed that he was innocent and that her lie was an attempt to save her reputation. In another example, 17-year-old Norma Padgett told the police that she was abducted and raped by four Black males in Lakeland, Florida. Later dubbed the “Groveland Four,” one of the boys was chased by a posse of 1,000 White men and shot over 400 times when he was found hiding under a tree.<sup>52</sup> The other three were charged, imprisoned, and beaten.<sup>53</sup> Later, one was sentenced to life in prison by an all-White jury, and the other two were sentenced to death. Padgett’s accusation also was false. Finally, there were the Scottsboro Boys who were accused by two White women, Ruby Bates and Victoria Price, of rape during a train ride through Alabama.<sup>54</sup> As the news of their arrest circulated, an angry White mob surrounded the jail to lynch them. The Alabama National Guard had to be called in to rescue the boys. Their trial led to the 1932 landmark ruling in *Powell v. Alabama*, setting an important legal precedent for enforcing the right to adequate counsel in criminal trials.<sup>55</sup> In their work, *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners*, professors Cassia Spohn and David Holleran explain that in sexual assault cases involving no weapons, prosecutors were four times more likely to file charges if the victim was a White women which

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<sup>49</sup> *See id.*

<sup>50</sup> *See* SOUTHERN HORRORS, *supra* note 39, at 7.

<sup>51</sup> *See id.*

<sup>52</sup> *See* Brendan Farrington, *Florida Pardons 4 Black Men Accused of 1949 Rape*, AP NEWS (Jan. 11, 2019), <https://apnews.com/article/babc9f1b13be4419a27af6438ba0b304>.

<sup>53</sup> *See* Ian Stewart, *Accused of Florida Rape 70 Years Ago, 4 Black Men Get Posthumous Pardons*, NPR (Jan. 11, 2019, 5:45 PM), <https://www.npr.org/2019/01/11/684540515/accused-of-florida-rape-70-years-ago-4-black-men-get-posthumous-pardons> [<https://perma.cc/N5VU-T5SP>].

<sup>54</sup> *See* *Scottsboro Boys*, HIST. (Jan. 16, 2020), <https://www.history.com/topics/great-depression/scottsboro-boys> (noting that Ruby Bates recanted her story of being raped, at the second trial, meaning she falsely accused the Scottsboro Boys in the first trial, and that but for the Alabama National Guard, the Scottsboro Boys would have been lynched based on a false accusation of a White woman).

<sup>55</sup> *See* *Powell v. Alabama*, 287 U.S. 45, 71 (1932) (noting that adequate counsel is “so vital and imperative that the failure of the trial court to make an effective appointment of counsel was . . . a denial of due process . . .”).

signifies that White women are more likely to be seen as victims in cases involving interactions with Black men.<sup>56</sup>

As this history reveals, there is a very real danger to the life and liberty of Black men when they are accused of a crime by a White woman. If the accusation is false, it is more than a micro-aggression. Instead, it has real socio-legal implications to life, liberty, and justice for Black men. Accepting this history of lynching, White female purity, and believability, demonstrates why incidences involving White women who call the police on Black men to falsely accuse them of a crime, should cause us alarm in the context of race and the law.

## II. FROM THE HISTORICAL TO THE CONTEMPORARY: THE CASE OF AMY COOPER

Although our modern history is replete with examples of White women calling the police to falsely accuse Black men (and sometimes women) of crimes,<sup>57</sup> an issue I will cover later in this article, perhaps no incident is more notable than the case of Amy Cooper. Famously dubbed the “Central Park Karen,” Amy Cooper called 911 emergency services on a Black man in Central Park and falsely accused him of the crime of assault. The incident began after a Black man named Christian Cooper (not related),<sup>58</sup> a Harvard educated, senior biomedical editor and avid bird watcher, was in a place known as the Ramble in Central Park. While in the Ramble, Amy Cooper arrived with her dog, Henry, off-leash. Christian politely asked her to leash her dog, per the law of the park, but Amy claims the dog needs to exercise and the dog runs are closed. Christian then attempts to offer the dog some treats that he carries in case a dog in the area is off-leash, and Amy Cooper went ballistic. “Don’t you touch my dog,” she yelled and Christian then takes out his phone and starts recording

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<sup>56</sup> See Cassia Spohn & David Holleran, *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners*, 18 JUST. Q. 651, 680–81 (2001).

<sup>57</sup> For other contemporary examples, see generally Christina Zhao, ‘BBQ Becky,’ *White Woman Who Called Cops on Black BBQ, 911 Audio Released: ‘I’m Really Scared! Come Quick!’*, NEWSWEEK (Sept. 4, 2018, 5:42 AM), <https://www.newsweek.com/bbq-becky-white-woman-who-called-cops-black-bbq-911-audio-released-im-really-1103057> [<https://perma.cc/VK26-75ZL>] (reporting an incident where a White woman called the police on a Black family who was barbecuing); Greg Evans, *Woman Attempts to File a Police Report on a Black Woman That She Had Just Called the ‘N-Word’*, INDY100 (June 12, 2020), <https://www.indy100.com/article/woman-south-holland-illinois-racism-viral-video-9562616> [<https://perma.cc/M97D-2MA2>] (reporting an incident where a White woman called the police on a Black woman after using racial slurs); Jacob Shamsian, *A White Woman Called the Police on a Black Student Who Was Napping in a Yale Dorm Room*, INSIDER (May 11, 2018, 1:08 PM), <https://www.insider.com/yale-university-white-woman-calls-police-on-black-student-sleeping-dorm-2018-5> (reporting an incident where a White female student called the police on a Black female student for sleeping in the common area of a dormitory).

<sup>58</sup> See Jessica McBride, *Christian Cooper: New York City Man Posts Viral Central Park Video*, HEAVY (May 26, 2020, 4:37 PM), <https://heavy.com/news/2020/05/christian-cooper-video/> (identifying Christian Cooper and providing the video and a transcript of his encounter with Amy Cooper).

her.<sup>59</sup> In the video, Amy can be seen telling Christian, “I’m taking a picture and calling the cops. I’m going to tell them there’s an African American man threatening my life.”<sup>60</sup> It should be noted that nothing about their interaction in the video demonstrates that Christian is aggressive, belligerent, or threatening towards her in any manner.

Amy became hysterical and dials 911 emergency services because Christian was recording her, though, perhaps, he was doing so for his own safety. Upon connecting with 911, Amy can be seen and heard saying, “I’m in the Ramble and there is a man, African American. He has a bike helmet. He is recording me and threatening me and my dog . . . I’m being threatened by a man in the Ramble, please send the cops immediately.”<sup>61</sup> Based on the video, these are clear lies. As she talks to the police, we can see, in real-time, that Christian is posing no threat to her. He is not talking, is not advancing towards her, and is not even trying to leave. He is simply standing his ground and recording. It is in this moment that we witness, for the first time, the racist anti-Black past of White women falsely accusing Black men of crimes, coming to fruition. We also see that this moment oddly mirrors other times when hysterical White women call the police on Black men, in particular, and Black people in general. This familiar paradigm, which I refer to as “White women’s anti-Black playbook,” further connects the historical to the present, whether it be expressly or implicitly. This “playbook” contains four components that build upon each other chronologically and in intensity: White women first activate general, racist White fear towards Black people; next, they call the police to force Black compliance; then they report Black people committing crimes that actually are not crimes; and finally, in an effort to seal-the-deal, they scream, act irrational, and use tears to deploy the notion that they are the victim.

#### A. AMY RELIED UPON RACIST WHITE FEAR TOWARD BLACK PEOPLE

When asked about the event, Christian Cooper did not acknowledge Amy as a racist, but he certainly thought her actions were racist.<sup>62</sup> The history of anti-Blackness details that Black people are acutely aware that White people not only have an irrational racist fear of Black people, but that this fear is deeply rooted in the mistaken stereotype of Black criminality.<sup>63</sup> The racist fear of Black

<sup>59</sup> See *id.* (drawing from Christian Cooper’s recollection of his encounter with Amy Cooper).

<sup>60</sup> See *id.* (linking the video of the encounter between Christian Cooper and Amy Cooper).

<sup>61</sup> See *id.*

<sup>62</sup> See Laura Ly et. al., *Dog Returned to White Woman Who Called Police on Black Man Bird-Watching in Central Park*, CNN (June 5, 2020, 6:34 PM), <https://www.cnn.com/2020/06/05/us/amy-cooper-dog-returned-trnd/index.html> (“I think her apology is sincere, . . . ‘I’m not sure that in that apology she recognizes that while she may not be or consider herself a racist, that particular act was definitely racist.’”).

<sup>63</sup> See generally Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876 (2004); Nick J. Sciullo, *The Ghosts of White Supremacy: Trayvon Martin, Michael Brown, and the Specters of Black Criminality*, 117 W. VA. L. REV. 1397 (2015); Christina Mancini et al., *Whites’ Perceptions About Black Criminality: A Closer Look at*

criminality is overtly expressed when Amy Cooper calls the police and tells the dispatcher, “There’s a man, an African-American (Christian Cooper), he’s recording and threatening me and my dog,” when in fact he, clearly, is not.<sup>64</sup> What is noticeable in her reporting the alleged crime to the dispatcher is not only the incredible lie she is levying against this innocent Black man, but the fact that she is certain to call out his race because, in her narration to the police, his race matters to create a real risk of life requiring urgency.

It is worth noting, that as I watched these videos on TikTok, I noticed that the demonstration of racist fear of Black people was a familiar pattern. So, too was calling 911 to report alleged criminal behavior, when there was none. James Juanillo knows this all too well. Juanillo was stenciling “Black Lives Matter” on his own home, when a woman named Lisa Alexander, walks by and tells him to stop.<sup>65</sup> She is seen on video talking to him in a condescending manner and claiming that she knows the owner of the property, when she did not: Juanillo was actually the new owner of the property. Then, as if matters of overt White racism cannot get any worse, her husband chimes in, telling Juanillo that he is committing a crime. Alexander threatens to call the police, and interestingly Juanillo encourages her to do so and Alexander eventually calls.

Juanillo’s encouragement of Alexander to call the police was his opportunity to confront the overt racism of White women who feel self-entitled to act out their racist belief that Black criminality is occurring in their presence. As Juanillo explained incredulously to CBS, “Again? This? Again? And she decided to call men with guns, because of my chalk art.”<sup>66</sup> At the end of his video, Juanillo pans the camera to the stencil on his property and can be heard saying, “and that, people, is why Black Lives Matter,” marking that even the simple words about Black equality are enough to draw the ire of White racists in general, and White privileged women specifically.<sup>67</sup> Worthy of our discussion is that the Black Lives Matter movement exists because these types of encounters with deeply entrenched White supremacy in American culture are commonplace today. Said differently, Black existence is so intertwined with criminality that even an expression of Black freedom is somehow criminal per se: enough to call the police to use weapons and other tactical gear to restrict First Amendment freedoms around the issue of Black equality.

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*the Contact Hypothesis*, 61 CRIME & DELINQ. 996 (2015); Blanche Bong Cook, *Death-Dealing Imaginations: Racial Profiling, Criminality, and Black Innocence*, 63 WAYNE L. REV. 9 (2017).

<sup>64</sup> See *Ruff Going: Who is Christian Cooper and What Happened in Central Park?*, U.S. SUN (May 28, 2020, 4:06 PM), <https://www.the-sun.com/news/899552/christian-cooper-amy-central-park-new-york-city/>.

<sup>65</sup> See *Woman Apologizes After “Karen”-Like Confrontation with Resident Goes Viral and Draws Backlash*, CBS NEWS (June 17, 2020, 6:38 AM), <https://www.cbsnews.com/news/lisa-alexander-karen-apologizes-james-juanillo-san-francisco/>.

<sup>66</sup> *Id.*

<sup>67</sup> See *id.*

## B. CALLING THE POLICE TO INSTILL FEAR AND FORCE COMPLIANCE

By now, the police murder of Black and Brown people with impunity is a well-known fact.<sup>68</sup> As such, this gives us a greater depth into our analysis by suggesting that racist White women, like Cooper, are aware of the danger to Black life by calling the police and they do not care. This is a phenomenal statement unto itself, as it also suggests that they are using the tactic, of threatening to or actually calling the police, to scare Black and Brown men and women into compliance or departing quickly. In other words, not only is Amy Cooper aware that calling the police on Christian Cooper is essentially a death threat, but she also wants to scare Christian to comply with her wishes or to leave promptly. According to Apryl Williams, “Amy Cooper reacted to being told she was in the wrong by using an implicit threat of police violence to try to maintain her White supremacy and control over the situation.”<sup>69</sup> Worse, points out Williams, is that “if the police had come out, because of [Amy Cooper], there may have been an altercation . . . this Black man could very well have ended up dead. And that’s the scary part.”<sup>70</sup>

The rates of Black death when the police are called are real and undeniable.<sup>71</sup> When it comes to fatal shootings by the police, statistics suggest that Black Americans are killed at a much higher rate: 28% of those killed, despite only making up 13% of the United States population.<sup>72</sup> Even more recently, in 2019, 54% of those who died as a result of harm from police (whose race was identified) were People of Color, compared to 50% in 2014.<sup>73</sup> The statistics already suggest that the problematic threat to Black life during police interdictions are real, but backing up those statistics are the cases surrounding the murders of George Floyd, Breonna Taylor, and Elijah McClain,<sup>74</sup> just to name a

<sup>68</sup> See Li Cohen, *Police in the U.S. Killed 164 Black People in the First 8 Months of 2020. These Are Their Names. (Part I: January-April)*, CBS NEWS (Sept. 10, 2020, 4:39 PM), <https://www.cbsnews.com/pictures/black-people-killed-by-police-in-the-u-s-in-2020/>; see also *Number of People Shot to Death by the Police in the United States from 2017 to 2021, by Race*, STATISTA, <https://www.statista.com/statistics/585152/people-shot-to-death-by-us-police-by-race/> [hereinafter *Number of People Shot*] (last visited Apr. 25, 2021) (providing a chart of the number of people shot to death by police in the United States from 2017 to 2021 by race).

<sup>69</sup> Apryl Williams, *Ken and Karen are White Supremacists*, MEDIUM (July 1, 2020), <https://medium.com/berkman-klein-center/ken-and-karen-are-white-supremacists-eeb0b283be5d>.

<sup>70</sup> *Who Is “Karen”*, *supra* note 36, at 15:39.

<sup>71</sup> See *Number of People Shot*, *supra* note 68.

<sup>72</sup> See generally MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited Apr. 23, 2021) (noting police have killed 319 people in 2021 and in 2020 Black people were 28% of those killed by police despite being only 13% of the population).

<sup>73</sup> Deidre McPhillips, *Deaths from Police Harm Disproportionately Affect People of Color*, U.S. NEWS (June 3, 2020, 4:07 PM), <https://www.usnews.com/news/articles/2020-06-03/data-show-deaths-from-police-violence-disproportionately-affect-people-of-color>.

<sup>74</sup> See generally Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES, <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> (last updated Mar. 18, 2021); Richard A. Oppel Jr. et. al., *What We Know About Breonna Taylor’s Death*, N.Y. TIMES (Jan. 6, 2021), <https://www.nytimes.com/article/breonna-taylor-police.html>; Claire Lampen, *What*

few. Thus, each time a White woman dials the police on an innocent Black person, the potential for Black fatality is very real. According to Williams, “maybe it’s a little harder for people of White backgrounds to see, but for the Black community, we can see the dots connected very easily.”<sup>75</sup>

### C. REPORTING NON-CRIMINAL ACTIVITY

It is easy to view Amy Cooper’s behavior myopically and conclude that her brand of anti-Black racism is an anomaly, and our reaction to her actions are exaggerated. However, the act of White racists calling the police on Black people to report non-criminal behavior occurs frequently. In fact, this tactic runs the gambit of the Black family: exposing Black women and children to anti-Black racism. For example, one White woman called the police on a little Black girl innocently selling water in front of her own home. The woman claimed that the little girl was “illegally selling water without a permit.” So, she was dubbed “Permit Patty.”<sup>76</sup> Another White woman called the police on 12-year-old Reggie Fields who was mistakenly mowing her front lawn.<sup>77</sup> He had been mowing the neighbor’s lawn to earn some extra money and had mistakenly strayed into her patch of lawn. And there are more instances like these.

The police were called on a Black man who was reading a book about Christianity while watching the ocean.<sup>78</sup> The police were called on a Black man because an LA Fitness employee believed that he had not paid for his gym visit, when in fact, he was using a guest pass.<sup>79</sup> The police were called on Black kids waiting for their school bus.<sup>80</sup> The police were called on Black women leaving an Airbnb.<sup>81</sup> The police were called on a Black woman who was smoking

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*We Know About the Killing of Elijah McClain*, THE CUT (Feb. 22, 2021), <https://www.thecut.com/2021/02/the-killing-of-elijah-mcclain-everything-we-know.html>.

<sup>75</sup> *Who Is “Karen”*, *supra* note 36, at 15:28.

<sup>76</sup> Morgan Gstalter, *Viral Video Shows White Woman Calling Police on Young Black Girl Selling Bottled Water*, THE HILL (June 23, 2018, 5:12 PM), <https://thehill.com/blogs/blog-briefing-room/news/393809-viral-video-shows-white-woman-calling-police-on-young-black>.

<sup>77</sup> See Cleve R. Wootson, Jr., *A White Woman Called Police on a Black 12-Year-Old –For Mowing Grass*, WASH. POST (June 30, 2018, 2:45 PM), <https://www.washingtonpost.com/news/post-nation/wp/2018/06/30/a-white-woman-called-police-on-a-black-12-year-old-for-mowing-grass/>.

<sup>78</sup> See Cleve R. Wootson, Jr., *‘I Was Just Reading a Book’: Canadian Cops Called on Black Man Reading C.S. Lewis in His Car*, WASH. POST (July 15, 2016, 8:30 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/15/i-was-just-reading-a-book-canadian-cops-called-on-black-man-reading-c-s-lewis-in-his-car/>.

<sup>79</sup> See David Porter, *Gym Employees Accuse Black Member of Not Paying, Call Cops*, WASH. TIMES (Apr. 19, 2018), <https://www.washingtontimes.com/news/2018/apr/19/la-fitness-apologizes-to-black-customer-3-employee/>.

<sup>80</sup> See Neetzan Zimmerman, *Three Teens Arrested for Waiting While Black*, GAWKER (Dec. 2, 2013, 9:24 AM), <https://gawker.com/three-teens-arrested-for-waiting-while-black-1474787941>.

<sup>81</sup> Daniel Victor, *A Woman Said She Saw Burglars. They Were Just Black Airbnb Guests.*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/us/airbnb-black-women-police.html>.

outdoors in a parking garage.<sup>82</sup> Security was called on a Black father while walking his baby.<sup>83</sup> The police were called on a Black real estate investor trying to inspect a home.<sup>84</sup> And who can forget, the police being called on the two Black men sitting at a Starbucks waiting to meet a business partner—their crime, as reported, was that they were loitering because they had not yet ordered a beverage.<sup>85</sup> Not only were the police called on them, they were arrested, handcuffed, and escorted from the Starbucks.<sup>86</sup> It should be noted that they settled with the city of Philadelphia for \$2.<sup>87</sup>

While it is true that calling out these forms of anti-Black racism or dubbing the perpetrator with a hashtag moniker acts as a form of vindication; it ignores the everyday trauma under which Black people live. Setting aside the real danger to Black lives, which I have highlighted above, there is a social danger associated with feeling like you cannot simply enjoy yourself without having the police called on you. As such, Black people will find themselves under a constant state of internal conflict of having fun but being scared of having too much fun. Black people constantly have the police called on them for engaging in activities that are not crimes. The moniker #LivingWhileBlack has attempted to capture the very real notion that Black people in this country are treated differently than White people, and that often, the perpetrators of White privilege happen to be racist White women.<sup>88</sup>

<sup>82</sup> Monique Judge, *#NewportNancy Wants Black Neighbor Evicted for Smoking Cigarettes in the Parking Lot*, THE ROOT (July 3, 2018, 1:06 PM), <https://www.theroot.com/newportnancy-wants-black-neighbor-evicted-for-smoking-1827320227>.

<sup>83</sup> Angela Helm, *White Woman Calls Security on ‘Suspicious Man with a Baby’ at Park in Washington, DC*, THE ROOT (May 16, 2018, 3:15 PM), <https://www.theroot.com/black-fatherstopped-by-security-after-white-woman-call-1826082634>.

<sup>84</sup> Joshua Rhett Miller, *Cops Shut Down White Woman Who Called 911 on Black Real Estate Investor*, N.Y. POST (May 16, 2018, 4:17 PM), <https://nypost.com/2018/05/16/cops-shut-down-white-woman-who-called-911-on-black-real-estate-investor/>.

<sup>85</sup> Erik Ortiz, *Two Black Men Arrested at Starbucks Settle with Philadelphia for \$2*, NBC NEWS (May 3, 2018, 8:19 AM), <https://www.nbcnews.com/news/us-news/two-black-men-arrested-philadelphia-starbucks-are-settling-city-2-n870816> (noting that the employee who called the police was subsequently fired and sued Starbucks).

<sup>86</sup> For the record, I lived down the street from the Starbucks where this happened: on Spruce Street in Rittenhouse Square. The neighborhood is not only predominantly wealthy, but it also predominantly White. And, as a frequent patron of that specific Starbucks, I can attest that White college students from the University of Pennsylvania, Drexel University, and Temple University, sit, congregate, meet, and work in that specific Starbucks for hours without ordering a beverage. Additionally, on the Starbucks website, it claims that “It’s not unusual to see people coming to Starbucks to chat, meet up or even work. We’re a neighborhood gathering place, a part of the daily routine – and we couldn’t be happier about it. Get to know us and you’ll see: we are so much more than what we brew.” *Company Information*, STARBUCKS, <https://www.starbucks.com/about-us/company-information> (last visited Apr. 25, 2021). Thereby, these two Black men had police called on them for no other reason than they were Black; they certainly were not doing anything criminal.

<sup>87</sup> Ortiz, *supra* note 85.

<sup>88</sup> Matthew Fleischer, *Opinion: America is at its Breaking Point and White Women Still Won’t Stop Frivolously Calling Police on Black People*, L.A. TIMES (June 3, 2020, 12:57 PM), <https://www.latimes.com/opinion/story/2020-06-03/svitlana-flom-amy-cooper-george-floyd-police-racism>; Morgan Jerkins, *Why White Women Keep Calling the Cops on Black People*, ROLLING STONE (July 17, 2018, 9:00 AM), <https://www.rollingstone.com/politics/politics-features/why->



## D. BECOMING THE VICTIM

In her book *Feminist Theory: From Margin to Center*, bell hooks extolls the absurdity of White feminists who act out their racism and then submerge into the role of the victim. Discussing her own experiences as a Black feminist pushed to the margin and othered: “[o]ften in situations where White feminists aggressively attacked individual black women, they saw themselves as the ones who were under attack, who were the victims.”<sup>89</sup> She explains the ways that White women often “flip the script” so that they act out, act up, and then claim victim status when rebutted. Hooks refers to this as a false image, a distortion of reality, that basks in the sun of White privilege. According to hooks, White women purport to be “[p]owerless, passive victims and deflect attention away from their aggressiveness, their power (however limited in a White supremacist, male-dominated state) their willingness to dominate and control others.”<sup>90</sup> One way to surely pull this off is to feign fear by the use of what is known as “crocodile tears.”<sup>91</sup> This is when White women strategically cry or act with an irrational hysteria to mask their anti-Black racism, and to project an image of being the powerless victim.

Returning to Amy Cooper, we see the example of her tears and overt hysteria while calling the police on Christian Cooper.<sup>92</sup> One might ask, why the excitement? Why the tears? He is doing nothing to either confront her or move in her direction. Yet, she practically screams at the dispatcher to send the cops immediately.<sup>93</sup> This method of “becoming the victim” raises the likelihood of two critical factors in the scenario: urgency and believability. It relies on a masculinist view of White womanhood, as one that is fragile and beyond reproach by Blackness. But it is more. Indeed, it is much more. It involves the use of gendered fragility to allow White women to act in a racist manner toward the person(s) they are targeting. By activating that fragility, and using it to mask anti-Black racism, this conduct seeks to garner sympathy from any witnesses, and increase the likelihood of the police coming to their aid: which, as discussed above, might prove fatal for an innocent Black person. Apryl Williams captures

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white-women-keep-calling-the-cops-on-black-people-699512/; Leah Carroll, *A Running List of White Women Calling the Cops on Black People for Ridiculous Reasons*, REFINERY29 (Oct. 12, 2018, 5:36 PM), <https://www.refinery29.com/en-us/2018/10/213902/white-women-call-cops-on-black-people-for-dumb-reasons>.

<sup>89</sup> BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 13 (1984).

<sup>90</sup> *Id.* at 14.

<sup>91</sup> See generally *No Faking It, Crocodile Tears are Real*, SCI.DAILY (Oct. 4, 2007), <https://www.sciencedaily.com/releases/2007/10/071003151131.htm> (explaining that “crocodile tears” are a false sincere display of emotion that involves crying fake tears of grief. The expression comes from an anecdote that crocodiles weep for their victims while they are eating. Biologically, this may be true as crocodiles, who have tear ducts, weep to lubricate their eyes, most notably when they have been out of the water for a long time. Evidence suggests that this tearing may also be triggered when they are feeding).

<sup>92</sup> See McBride, *supra* note 58.

<sup>93</sup> *Id.*

this behavior best, “when there’s a calling of account of that racism, tears are often used to draw attention away from the harm that they’re causing and turn the attention back on them as the innocent.”<sup>94</sup>

Besides Amy Cooper, consider another excellent example of this conduct: Miya Ponsetto. Ponsetto lost her cellular phone and returned to the Arlo Hotel, a local hotel in Manhattan’s SoHo neighborhood, to search for it. Upon seeing 14-year-old Keyon Harrold, Jr., a young Black man, with a cell phone that she claimed, “looked like hers,” she immediately accused him of stealing her phone. It should be noted that her cell phone was an iPhone without a cover: exactly how I carry my personal cell phone. Convinced that Keyon had stolen her phone, she called the security of the Arlo hotel even though she was not a guest at this hotel. Keyon was a guest. When Keyon told her it was his phone, she flipped into a rage and amped up her hysteria, making her accusation more believable. And as these scripts often play out, rather than asking Ponsetto to calm down, provide proof of her accusation, and provide them with some identification, hotel security instead approached Keyon and asked to see his phone, which they had no legal right to do. However, Keyon’s father, Harrold Sr., another guest of the hotel and noted jazz musician, intervened, providing the proper legal resistance, and attempted to take Keyon away from the situation as he declined the request and tried to walk away. At that point, Ponsetto attempted to tackle young Keyon to prevent him from leaving the hotel. Soon thereafter, an Uber driver returned to the hotel and gave Ponsetto her phone, which she had left in his car.<sup>95</sup>

More examples abound. A White woman (dubbed Police Station Polly) reportedly called a Black woman the N-word during an encounter and was then filmed attempting to make a report at a police station against the woman she had just verbally abused for no apparent reason. Police Station Polly believed the police would take her side. In the video, she visibly and audibly paints herself as the victim and cries and acts hysterical. Appearing flustered, she says “I’m sorry. I’m sorry for the looting. I’m sorry for everything. What do you want from me?” and she later says “I can’t take this anymore. I’m trying to move out.” Yet, she never acknowledges that she was wrongfully filing a criminal complaint against this Black woman.<sup>96</sup>

A woman later dubbed “Road Rage Karen” broke down in crocodile tears after she allegedly cut off Karlos Dillard, a Black man, in traffic, flipped him off, called him the N-word, and tailed his car. When she noticed Dillard was filming her, she attempted to flee, and Dillard followed her, nonthreateningly, to confront her behavior. In the confrontation, she cries hysterically, saying that

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<sup>94</sup> *Who Is “Karen”*, *supra* note 36.

<sup>95</sup> Jon Rogers, ‘SoHo Karen’ Who is Miya Ponsetto and What Happened at Arlo Hotel with ‘SoHo Karen’?, U.S. SUN (Jan. 8, 2021, 3:54 PM), <https://www.the-sun.com/news/2066628/miya-ponsetto-soho-karen-arlo-hotel-new-york/>.

<sup>96</sup> Evans, *supra* note 57.

she supports the Black Lives Matter movement and has a Black husband: all irrelevant to her actions, and shameful if she is using the N-word and is married to a Black man. The noise attracted a good deal of attention, with a White man even coming to her aid, assuming that she was in trouble. Whether intentional or not, she was able to make herself the victim when clearly, she was not.<sup>97</sup>

Finally, who can forget the infamous example of a racist White woman dubbed “BBQ Becky,” who called the police on Black people barbecuing in a public area at Lake Merritt, Oakland. In a video of the incident, Jennifer Schulte (BBQ Becky’s real name) is confronted about her choice to call the police and remains steadfast until she is connected with a dispatcher, at which point she activates the tears and hysteria to sound panic stricken. In the released audio of the call, the dispatcher questions her veracity asking, “what’s the panic over a barbecue? I don’t understand.” In other words, why are you calling 911 emergency dispatch? Because Black people are barbecuing? In the video, Schulte claims that she has been waiting two hours for the police and searches for something to hurry their arrival: which perhaps is not true. Nonetheless, Schulte begins to act hysterical and cry, saying “I want the police to come,” and “I need help here,” while crying. However, from the video it is clear she is not in any danger. Eventually the police arrive, and Schulte, in efforts to cast herself as the believable victim, cries so profusely that she can hardly report the alleged crime.<sup>98</sup>

The examples presented in these four sections not only reveal the pattern of White women acting out their racism by calling the police on Black innocents; but also support the possibility of criminalizing the behavior if the reported crime is based solely on the person’s race.<sup>99</sup> Said differently, it is possible to use the law to legalize and enforce the reality that Black Lives Matter. This article concludes with a brief discussion of how a few, progressive, states are enacting legislation to protect Black life and punish White racism.

### III. CONCLUSION:

#### BLACK LIVES MATTER, BLACK LIVES ARE VALUED, AND WHITE SUPREMACIST RACISM IS NOT

While the Black community, and others, have attempted to publicize and publicly shame White women acting on their anti-Black racism, some states

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<sup>97</sup> Bryan Rolli, *Video Shows ‘Road Rage Karen’ Screaming ‘I Have a Black Husband’ After Being Accused of Using N-Word (Updated)*, DAILY DOT (June 23, 2020, 5:20 PM), <https://www.dailydot.com/irl/road-rage-karen-black-husband/>.

<sup>98</sup> Zhao, *supra* note 57; see Benjamin Fearnow, *Video: White Woman Calls Police on Black Family’s BBQ for ‘Trespassing’ in Oakland Park*, NEWSWEEK (May 10, 2018, 11:44 AM), <https://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355>.

<sup>99</sup> Pierre Meilhan et. al., *Jussie Smollett Indicted by Grand Jury on Six Counts for Making False Reports, Special Prosecutor Says*, CNN (Feb. 11, 2020, 9:01 PM), <https://www.cnn.com/2020/02/11/us/jussie-smollett-indictment/index.html>; see *supra* Parts I & II.

have pushed to legislatively deter this conduct. New York proposed Bill A03566, dubbed the “Amy Cooper Bill,”<sup>100</sup> meant to punish falsely reporting a crime that is motivated by or perceived to be motivated by race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation.<sup>101</sup> The goal of the New York statute uses the race-based motivation for the false reporting as an element to categorize it as a hate crime.<sup>102</sup> The bill would amend New York’s existing laws against false reports, and allows this crime to be charged as a misdemeanor or as a felony.

California has followed suit. Lawmakers in the golden state plan on introducing legislation that would criminalize racially motivated 911 calls.<sup>103</sup> Shamann Walton, a supervisor for the City of San Francisco, argued that it should be illegal to make racist calls to the police.<sup>104</sup> Walton named his proposed ordinance the CAREN Act (Caution Against Racially Exploitative Non-Emergencies), which acknowledges the popular culture categorization of this behavior by racist White women as “Karens.”<sup>105</sup> Similar to New York, the California ordinance specifically targets these crimes committed by racist White women.

In Washington, the legislature amended the current law of falsely reporting crimes to include using the 911 system to “weaponize” the police, recognizing that it results in “serious dangers and even lost lives.” “The term ‘swatting,’ according to the newly enacted law, ‘describes falsely reporting of an emergency with the goal of having a police unit or special weapons and tactical team (S.W.A.T.) deployed.’ By the specific language of the law, the state of Washington recognizes that ‘the reckless act of “swatting”, often motivated by the perpetrators bias towards protected classes, has caused death and trauma in some cases.’”<sup>106</sup> Washington has deemed that false reports leading to injury or death will be charged as a felony.<sup>107</sup>

Whether these proposed ordinances will be effective, or even enforced by the police and local prosecutors, remains an open question. Nonetheless, we should recognize that they are a step in the right direction to combatting overt expressions of anti-Black racism. Ideally, the enforcement of these should show

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<sup>100</sup> Bernadette Hogan, *Cuomo Wants State Lawmakers to Pass ‘Amy Cooper’ 911 False Accusation Bill*, N.Y. POST (June 5, 2020, 5:43 PM), <https://nypost.com/2020/06/05/cuomo-wants-to-pass-amy-cooper-911-false-accusation-bill/>.

<sup>101</sup> *See generally* A03566.

<sup>102</sup> *Id.*

<sup>103</sup> Elizabeth Castillo, *Could Racially Motivated 911 Calls Become Hate Crimes?* CAL MATTERS (July 1, 2020), <https://calmatters.org/politics/california-legislature/2020/06/criminalizing-911-calls-racial-hate-crimes/>.

<sup>104</sup> Anna Bauman, *SF Supervisor’s CAREN Act Would Make ‘False Racially Biased’ Calls to Police Illegal*, S.F. CHRON. (July 8, 2020, 5:28 PM), <https://www.sfchronicle.com/bayarea/article/SF-supe-proposes-CAREN-Act-to-prohibit-false-15392969.php>.

<sup>105</sup> *Id.*

<sup>106</sup> WASH. REV. CODE § 9A.84.040(2)(a) (2020).

<sup>107</sup> *Id.*

racist White women, as well as men, that it is neither civically responsible, nor legal, to treat the police department as your private security force. In other words, these laws, in the least, should send the message that the anti-Black racist conduct, of calling the police on non-criminal behavior, will not be tolerated by society, nor the criminal justice system. Perhaps the social outing, through TikTok videos and other streams of social media, combined with the criminalization of anti-Black racist conduct can serve as an overt acknowledgement by this country that Black lives do matter, Black lives are valued, and White supremacist racism is not.