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Piercing the Prison Uniform of Invisibility for Black Female Inmates

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BOOK REVIEW

PIERCING THE PRISON UNIFORM OF INVISIBILITY FOR BLACK FEMALE INMATES

MICHELLE S. JACOBS*

PAULA C. JOHNSON, *INNER LIVES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON* (NEW YORK AND LONDON: NEW YORK UNIVERSITY PRESS, 2003). 339 pp.

I. INTRODUCTION

For professionals working with the issues of women and criminality, the lean years of working without the support of solid empirical data are coming to an end. In the past, professionals working on women and crime toiled in the dark as there were few studies which focused specifically on women's criminality, and little empirical data existed to support theoretical approaches. Lawyers and women's advocates sensed that crime committed by women was different from crime committed by men and that each type of crime affected society in different ways. However, the only information available to support these beliefs was anecdotal stories. Today, a combination of factors gives women's advocates new tools to support their arguments that crimes committed by women are different than those committed by men. Not only do men and women follow different paths into crime,¹ but their crimes also cause different types of harm to society.²

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¹ The two most prominent works on women's pathways to crime come out of the research of Kathleen Daly and Beth Richie. See generally KATHLEEN DALY, *GENDER, CRIME, AND PUNISHMENT* (1994) (comparing male and female crime in Connecticut criminal court where Daly identified five paths through which women engaged in criminal conduct); BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN* (1996) (studying detained black women at Rikers Island facility in New York where Richie identifies six paths for women's crime).

The treatment needs of women who offend are different than men,³ and large scale incarceration of women creates another set of problems, increasing the number of children who live with other relatives or who are forced into foster care.⁴ Today, the empirical data which criminologists, sociologists, and psychologists began to collect in the late 1970s and throughout the 1980s is available to tell us about women's crime. The Bureau of Justice now tracks and analyzes FBI statistics on women's crime.

The statistics provide a startling picture. The advent of mandatory sentencing schemes and strict punishment for drug offenses has been devastating to women. Many states have adopted harsh mandatory sentencing schemes. The Federal Sentencing Guidelines, which eliminated gender and family responsibility as factors for consideration at the time of sentencing, were adopted.⁵ The policy of eliminating gender and family responsibility, combined with heightened penalties for drug related violations, has caused the level of women's incarceration to spiral upward. For the year 1999, 1 in 109 women were under correctional supervision.⁶ In 1997, African American women had an incarceration rate of 200 per 100,000 compared to 25 per 100,000 for non-Hispanic white women.⁷ Recently, the media turned its attention to prisons, prisoners, and the financial and societal impact that mandatory sentencing guidelines are having on the rate of incarceration of men and women.⁸ The articles have

² See LAWRENCE A. GREENFIELD & TRACY SNELL, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: WOMEN OFFENDERS (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/wo.pdf>. The statistics showed, for example, that the overwhelming number of women who commit crimes have engaged in nonviolent offenses and that even where violence is present, injuries to women's victims tend to be less severe.

³ A larger number of female inmates have suffered either sexual or physical abuse than have male inmates, and female inmates have higher levels of mental health problems than male inmates.

⁴ See Leslie Accoca & Myrna Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 STAN. L. & POL'Y REV. 133, 136 (1999); Phyllis Goldfarb, *Counting the Drug War's Female Casualties*, 6 J. GENDER RACE & JUST. 277, 295 (2002). According to Accoca and Raeder, foster homes and agencies were responsible for nearly five percent of the children of female offenders compared with not quite one percent of children of male offenders.

⁵ Accoca & Raeder, *supra* note 4, at 135; see also Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905, 930-49 (1993) (analyzing the decisions to eliminate gender and family responsibility as sentencing criteria).

⁶ GREENFIELD & SNELL, *supra* note 2, at 6.

⁷ PAULA C. JOHNSON, *INNER LIVES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON* (2003).

⁸ Fox Butterfield, *With Cash Tight, States Reassess Long Jail Terms*, N.Y. TIMES, Nov. 10, 2003, at A1. At least ten states are reconsidering severe sentencing policies adopted in the early 1990s as costs of maintaining record levels of prisoners begins to crush already

drawn attention to the increasing rates of women being incarcerated and the severity of their sentencing.⁹ In *Inner Lives: Voices of African American Women In Prison*, Professor Paula Johnson has written about the most invisible of these incarcerated women—incarcerated African American women.¹⁰ The statistics of the Bureau of Justice that Professor Johnson shares in her book demonstrate that the number of women incarcerated in the United States increased by seventy-five percent between 1986 and 1991.¹¹ Of these women, a disproportionate number are black women.¹² The percentages vary by region and by the nature of institution (county jail, state prison or federal facility), but the bottom line remains the same. In every instance, black women are incarcerated at rates disproportionate to their percentage in the general population. For example, of the number of women incarcerated in state prisons, only 33% are white, while 48% are black, 15% are Hispanic and 4% other.¹³ A similar pattern exists in local jails: 36% of women were white, 44% black, 15% Hispanic and 5% other.¹⁴ The numbers for white women are even lower in the federal prisons where 29% are white, 35% black and Hispanic women account for 32% of the number of women incarcerated.¹⁵ The only correctional status which does not reflect this pattern is women on probation. Of the number of women on probation, 62% are white, 27% black, 10% Hispanic and 1% other.¹⁶ This statistic reveals that white women are far more likely to be given probation than any other group of women in the system.¹⁷

tight state budgets. *Id.* Supreme Court Justice Anthony M. Kennedy has joined the critics of mandatory sentencing. See Justice Anthony M. Kennedy, Address at the A.B.A. Association Annual Meeting (August 9, 2003), available at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html (last modified Aug. 14, 2003).

⁹ *Id.*; see also Fox Butterfield, *Women Find a New Arena for Equality: Prison*, N.Y. TIMES, Dec. 29, 2003, at A9.

¹⁰ JOHNSON, *supra* note 6.

¹¹ GREENFIELD & SNELL, *supra* note 2, at 8.

¹² Black women represent only 12.1% of the population. GREENFIELD & SNELL, *supra* note 2, at 2. However, black women represent 48% of those incarcerated. JOHNSON, *supra* note 7, at 34.

¹³ GREENFIELD & SNELL, *supra* note 2, at 7.

¹⁴ *Id.*

¹⁵ *Id.* The differential rate for Hispanic/Latina is due to federal prosecutions of drug related offenses. *Id.*

¹⁶ *Id.*

¹⁷ There seems to be no statistical basis for the difference. According to Greenfield and Snell, more than half of female violent offenders are described as white, while just one third are described as black. *Id.* at 2. Black and white women commit the same percentage of robberies and nearly the same percentage of aggravated assaults. *Id.* White females account for 58% of simple assaults, while only 31% of simple assaults are attributable to black women. *Id.* at 13.

Although the statistics vary somewhat by state, the ratios do not change. For example, in New York, 53% of women confined in state prison are African American, 27% Latina and 19% white.¹⁸ The three states with the highest number of women incarcerated are California, Texas and Florida.¹⁹ However, Oklahoma has the highest per capita rate of incarceration for women.²⁰ The casual reader would miss the overwhelming presence of women of color, particularly black women, in prisons. Media attention, when it has elected to focus on women prisoners, tends to portray white female inmates as the image of the incarcerated woman.²¹

In *Inner Lives*, Professor Johnson offers African American incarcerated women an opportunity to push back the veil of invisibility and to claim for themselves the right to control their stories and their own images. The women accepted the opportunity.²² The image they present in their own words is a complex one. The women talk about the strengths they had to have to survive sexual abuse, physical abuse, lack of resources and drug addiction. They speak of the strength required to survive not only incarceration, but the awareness that they harmed their victims, the victims' families,²³ their own family members, and themselves.²⁴ The stories test the limits of our understanding of individual responsibility on the one hand, and wholesale societal failure to provide a safety net for some of our most vulnerable citizens on the other.

A. TO WHOM DOES THE BOOK SPEAK?

Inner Lives evolved out of Paula Johnson's ongoing work on the topic of African American women and crime. In the course of writing the book, she interviewed over 300 women, their family members, service providers who interact with them, and criminal justice professionals. In this project, Johnson addresses multiple audiences, each with a different level of education and knowledge about the functioning of law. Most importantly,

¹⁸ THE CORRECTIONAL ASSOCIATION OF NEW YORK, *Women in Prison Fact Sheet*, at http://www.correctionalassociation.org/images/Fact_Sheets_2002.pdf (last modified March 2002).

¹⁹ GREENFIELD & SNELL, *supra* note 2, at 9.

²⁰ *Id.* at 10.

²¹ See Butterfield, *supra* note 8; Butterfield, *supra* note 9. In photographs featured in both articles, only white female prisoners were portrayed.

²² See JOHNSON, *supra* note 6, at 15-16. Even this act of reclaiming their identities was resisted by the federal government, which refused to allow the women's real names to be used, despite the fact the women chose to use their own names.

²³ See *id.* at 71-72, 76-77.

²⁴ *Id.* at 105.

the book is directed towards the women whose life stories are relayed, as well as the hundreds of thousands of incarcerated women who have had remarkably similar experiences. The book acknowledges the existence of these women and validates them as members of the larger community as well as valued members of the black community. The level of education attained by these women varies greatly: from near illiteracy to college credits attained while incarcerated. No matter the level of education, Johnson manages to keep the material accessible to this critical audience.

At the same time, Johnson uses the book to address lawyers, judges and legal scholars who, while well versed in the law, lag behind in their understanding of the conditions facing African American women who are accused of committing crimes. This is a critical audience, because their actions seriously curtail the ability of African Americans accused of crimes to gain access to justice. Moreover, the ignorance of the legal audience keeps the women's issues off the political radar, preventing meaningful consideration of allocation of resources to address women's conditions of confinement.

Johnson's third audience is composed of professionals who work in the criminal justice system, either as policy makers or as administrators charged with implementing policy. Criminal justice professionals are just beginning to come to terms with the existence of large numbers of women in the correctional setting and the unique problems that accompany this inmate population. Johnson's book is a timely and important addition to the arsenal of information now available to policy makers and law enforcers regarding the needs of female inmates in general, and of the specific needs of African American female inmates.

Finally, Johnson constructs the project such that everyone in society is forced to acknowledge the humanity of incarcerated black women. Through their voices, Johnson warns us of the ultimate costs of wholesale incarceration of black women which includes, at the very least, a continued break down of already fragile family and community structures. In addition to the women's voices, Johnson adds another weapon. She uses her skills as a free-lance photographer and gives us an actual picture of each of the women whose narrative is used. On the surface, having a photograph would not seem to add much, but when one actually sees the photographs, that presumption is readily dismissed. It is easy to remain detached from the statistical information. While the statistics are interesting, and some may argue compelling, they are just numbers on a sheet of paper. The narratives bring life to the numbers, but the photographs make the women real. It is impossible to look at a photograph of Betty Tyson, a woman who served twenty-five years for a murder she did not commit, and not feel the

weariness that has been etched into her face. Or the distant sadness of Millicent Pierce, who in order to protect herself, killed the man she loved the most. It is impossible not to see the determination in the face of Joyce Ann Brown, who served ten years for a crime she did not commit. What measure of strength and hope do the countenances of Rae Ann and Marilyn provide us all? The photographs remind us that these women reflect all of our humanities and that we are accountable to them just as much as they are accountable to us.

B. SETTING THE HISTORICAL STAGE

Inner Lives is divided into three sections. Section I opens with a current statistical summary of women's crime. Johnson then grounds this portion of the book with her historical research on black women's interactions with American law. She describes the major historical aspects of law that have devalued the existence and humanity of African American women and the manner in which black women's behavior was construed as criminal. Her historical analysis moves from the colonial era and takes us to contemporary times, where she traces stereotypical and racialized notions of black women and criminality to contemporary cases of racial profiling of black women. In colonial times, black women received no protection under the law.²⁵ A white man could rape or kill a black woman with impunity.²⁶ At the same time, black women who committed crimes were treated more harshly and offered none of the benefits of chivalry that may have been extended to white female offenders.²⁷ Many of the women executed in colonial times were black female slaves.²⁸ As far as the courts were concerned, black women were seen and treated the same as black men, that is, as field animals who were the personal property of the slave master.²⁹ This history of differential treatment is well documented.³⁰ What has not always been as clear is the systematic way in which the historical bias against black women has continued to influence modern criminal justice policies.

Professor Johnson demonstrates the connection between the past and the present in two different time periods. She takes us through post-

²⁵ *Id.* at 22.

²⁶ *Id.*

²⁷ Paula C. Johnson, *At the Intersection of Injustice: Experiences of African American Women in Crime and Sentencing*, 4 AM. U. J. GENDER SOC. POL'Y & L. 1, 25, 29 (1995).

²⁸ *Id.* at 13.

²⁹ JOHNSON, *supra* note 6, at 21.

³⁰ See A. LEON HIGGENBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS, THE COLONIAL PERIOD* (1978) (examining the development of law in the original colonies with respect to the treatment of Africans).

Reconstruction policies and uses Mississippi's Parchman Farm as an example.³¹ Parchman Farm was established for convicts in Mississippi and came to be known as one of the most well run plantations since the Civil War.³² Inmates sentenced to Parchman were leased out by the state to private citizens to be used as manual laborers.³³ It was said that prisoners sent to Parchman were frequently worked to death.³⁴ Johnson cites examples where white women were not sent to Parchman even though the severity of their crimes would dictate that they should have been sent there.³⁵ No such reluctance surfaced with regard to sending black female defendants to the farm to serve their sentences. When the women's unit at Parchman was opened, there were twenty-six female inmates, all black.³⁶ Ten years later, there were still no white female inmates at Parchman Farm.³⁷

The stereotype of black women as deviants that developed during the slave era continued to be the way that states viewed black women after the Civil War. There was, therefore, no hesitancy in sending a black woman to a penitentiary. White women, on the other hand, enjoyed what Cheryl Harris called the ideology of white womanhood.³⁸ This construct viewed white women as gentle creatures needing the protection of men. It was impossible for judges to view black women, who were seen as just above animal, as being similar to the lofty ideal of white women.

The same racist ideology that led to the belief that black women should be sent to Parchman is still reflected in law enforcement's attitudes toward black women today.³⁹ Johnson uses the example of the U.S. Customs agents' program of racially profiling black women travelers at Chicago's O'Hare Airport. In 1997, forty-six percent of the women strip searched because they were suspected of being drug mules, were black women.⁴⁰ Customs agents subjected the women to horribly degrading detention experiences. The treatment the women received reflected law enforcements perception that African American women were likely to be

³¹ JOHNSON, *supra* note 6, at 32 (citing DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1996)).

³² OSHINSKY, *supra* note 31.

³³ JOHNSON, *supra* note 6, at 34.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See OSHINSKY, *supra* note 31, at 169.

³⁷ *Id.*

³⁸ Cheryl I. Harris, *Myths of Race and Gender in the Trials of O.J. Simpson and Susan Smith—Spectacles of Our Times*, 35 WASHBURN L.J. 225, 238 (1996).

³⁹ JOHNSON, *supra* note 6, at 40.

⁴⁰ See *id.* at 40, 43.

engaged in criminal activity.⁴¹ The congressional testimony of one of the women tells of customs agents calling her “thing” during her detention.⁴² No drugs or contraband were found on any of the women who testified at the hearing.⁴³

The Section is brought to a close by detailing the pernicious effects that the so called “War on Drugs” is having on women of color. Johnson identifies a two-fold attack on black women. In the first instance, Johnson argues that through the “War on Drugs” black women’s bodies have become a “battleground[] for ideological wars regarding reproductive rights and drug enforcement.”⁴⁴ She discusses the increase in state efforts to prosecute poor black women who become pregnant while they are drug addicted. Johnson identifies the true issues as constitutional ones regarding the right to privacy and the right for black women to exercise reproductive choices.⁴⁵ The second aspect is, of course, the combination of mandatory sentencing and tough drug statutes which has tripled the number of incarcerated women.

It appears that Section I speaks mainly to a legal audience and to criminal justice professionals. While many scholars have written about the overwhelming number of black men subjected to correctional supervision in this country,⁴⁶ far fewer are aware that black women are also over-represented as defendants in the criminal justice system. Even before September 11, 2001, when as a country we could still talk about racial profiling as a bad thing, few discussions even mentioned that black women, as well as men, were being subjected to racial profiling on the suspicion that they were drug couriers or mules. The failure to include black women’s vulnerability to improper police conduct points to the invisibility of black women, both in the larger legal community as well as in their own black communities. In Section I, Johnson provides a crash course on the reality of black women’s experiences in American criminal law.

Though Section I does not appear to be pitched to the inmate audience, Johnson manages to include something here for them as well. She attempts

⁴¹ *Id.* at 40.

⁴² *Id.* at 42.

⁴³ In fact, according to Johnson, of all groups passing through the airport, black women were the least likely to be carrying drugs. *Id.* at 43. A group of women filed a class action suit against the U.S. Customs Service. *See Anderson v. Comejo*, 199 F.R.D. 228 (N.D. Ill. 2000). The case is still pending, although three managerial agents who were defendants were dismissed from the suit. *Anderson v. Comejo*, 355 F.3d 1021 (7th Cir. 2004).

⁴⁴ JOHNSON, *supra* note 6, at 44.

⁴⁵ *Id.*

⁴⁶ *See* MARC MAUER, *THE CRISIS OF THE YOUNG AFRICAN AMERICAN MALE AND THE CRIMINAL JUSTICE SYSTEM* 3 (1999).

to inform them through the history that many other black women have shared the burden of stigma that criminal conviction carries, and that others suffered and were tortured despite their innocence. But more importantly, Johnson informs them that other black women resisted, and many survived.⁴⁷ Perhaps these women will find a message of hope and strength in this Section.

II. THE WOMEN SPEAK

The heart of *Inner Lives* is found in Section II of the book, for here we actually begin to hear incarcerated black women speaking for themselves. Johnson divides this Section into three components: (1) the narratives of women who are incarcerated; (2) the narratives of women formerly incarcerated, presently at liberty; and (3) interviews with criminal justice professionals who interact with black women inmates at every level. The group includes a judge, an assistant warden, the operators of a halfway house, a lawyer, an advocate for women and children, an artist who helps the women express the pain of their lives creatively, and finally, one family's united response to the incarceration of their beloved mother and sister. At least four themes are intertwined throughout the interviews and correlate to the "hard" data which studies are now producing. The first theme is the connection between the women who offend and their experiences with violence against them, either in the form of physical or sexual abuse. Second is the troublesome issue of race loyalty and the conflicting demands it creates for a woman who is confronted with limited choices that may lead to criminal activity. The third theme is the connection between poverty and lack of community-based resources and criminality. Finally, one cannot escape the connection between unduly harsh or even undeserved sentences and lawyering practices.

A. DOMESTIC VIOLENCE IN THE BLACK COMMUNITY

In *Inner Lives*, the reader is introduced to Don Alda, Mamie, Donna, Martha, Marilyn, Bettie Gibson, Betty Tyson, Millicent, and Donna Hubbard Spearman, each of whom suffered episodes of violence. Whether it was from a parent who beat them until they bled,⁴⁸ the sharecropper overseer who attempted to sexually molest them,⁴⁹ or violent husbands and boyfriends or pimps who beat them until they were unrecognizable, these

⁴⁷ Johnson includes the story of Eliza Gallie, a free black woman in slave-era Virginia who had the resources to challenge her conviction for petty theft. Although ultimately the conviction was upheld, her punishment was reduced. JOHNSON, *supra* note 6, at 26.

⁴⁸ *Id.* at 160 (recounting the experiences of Betty Tyson based on a personal interview).

⁴⁹ *Id.* at 134 (recounting the experiences of Bettie Gibson based on a personal interview).

women knew about violence. Donna, for example, would be beaten when she did not come home or when she came home but without enough money.⁵⁰ She thought being beaten was part of being a “whore.”⁵¹ Yet each of these women had some coping mechanism that allowed them to continue to live. Some, like Mamie, picked up and left.⁵² Don Alda left at least twice and, at one point, actually had her spouse prosecuted.⁵³ It was when he came after her upon being released from prison that she shot him.⁵⁴ Betty Tyson armed herself with a knife.⁵⁵

The statistics inform us that up to sixty percent of female inmates have been subject to either sexual or physical abuse, many before reaching the age of eighteen.⁵⁶ The narratives in *Inner Lives* helped to highlight the prevalence of violence in the pre-incarceration lives of women. Scholars and defense lawyers who represent women of color argued that the courts, lawyers and correctional facilities do not view black women’s behavior through the same lens which is used to examine white women.⁵⁷ This is particularly so when representing low income black women who are involved in protecting themselves against domestic violence. Initially, when “learned helplessness” was the buzz phrase to explain why battered women stayed with their abusers until their mental will was worn down to the point of retaliation, judges had a hard time seeing black women brought into the court as victims of “learned helplessness.”⁵⁸ Black women did not “look” like victims to the court, and victimhood was a great part of earlier efforts to describe the complex phenomenon of posttraumatic stress syndrome as it arose in the battering context.⁵⁹ Black women had to contend with racialized stereotypes that prevented them from being viewed either as reasonable, a necessary element for self defense, or as credible

⁵⁰ *Id.* at 111 (recounting the experiences of Donna based on a personal interview).

⁵¹ *Id.*

⁵² *Id.* at 80 (recounting the experiences of Mamie based on a personal interview).

⁵³ *Id.* at 59-60 (recounting the experiences of Don Alda based on a personal interview).

⁵⁴ *Id.* at 60.

⁵⁵ *Id.* at 161 (recounting the narrative of Bettie Tyson based on a personal narrative).

⁵⁶ GREENFIELD & SNELL, *supra* note 2, at 1. The figure for Johnson’s population was seventy percent, well above the national levels. JOHNSON, *supra* note 6, at 52. Both Beth Richie and Kathleen Daly identified battering as a pathway to women’s crime.

⁵⁷ See Harris, *supra* note 38; JOHNSON, *supra* note 6, at 31-33.

⁵⁸ Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003.

⁵⁹ See RICHIE, *supra* note 1, at 119 (recounting experiences of April who relays that her lawyer told her to act like a “white girl”).

witnesses.⁶⁰ As a result, the women would do time for murder instead of serving time for manslaughter or being acquitted. Slowly but surely, courts are beginning to understand that women react in many ways to the phenomenon of battering.⁶¹ While some will exhibit what is recognized as learned helplessness, others will not. Unfortunately, this development has not changed the stereotype of black women.

In listening to the stories in *Inner Lives*, we can see why judges and lawyers, whose only view of women subjected to violence was as victims, would have a hard time relating to the sheer strength of the women in the book. The drive of these women to survive is nothing short of heroic. Yet, what is viewed as heroic for some women may be seen as negative traits for black women. Linda Ammons states:

[B]lack women are trapped between sub and super human imagery and expectations. . . . For example, as previously discussed, African Americans have been characterized as strong and independent. They are blamed for the break up of their families. . . . Often the strength of black women to survive and progress despite the almost insurmountable obstacle and odds is labeled as pathological at one extreme and disloyal at the other.⁶²

There has been little evidence that the dilemma of racialized imagery used against black women is abating.

Feminists and other activists who work in the area of domestic violence have struggled to find solutions to eliminate violence against women. But even in the early years of the feminist movement, and frankly well into the 1990s, advocates for women of color argued that mainstream feminists failed to take the particular situation of battered women of color into consideration when attempting to shape lawmaking and national policies.⁶³ In the battle to eliminate violence against women, the next stage was the push to encourage states to adopt mandatory arrest policies when a complaint of violence was made. Many women of color argued against the adoption of mandatory arrest policies. Their opposition was based on the knowledge that law enforcement officials behaved differently when responding to communities of color than they did when responding to white

⁶⁰ Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 24 (1998).

⁶¹ See Mary Ann Dutton, *Understanding Women's Response to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) (analyzing variety of post traumatic stress experiences of women).

⁶² Ammons, *supra* note 58, at 1055.

⁶³ See, e.g., Fenton, *supra* note 60, at 51-55; Ammons, *supra* note 58, at 1022; Kimberle Crenshaw, *Mapping The Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1421 (1991) (contrasting experiences of women of color and white woman with rape and domestic violence); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 587-88 (1990).

communities. Although police in white communities were still reluctant to arrest abusers, the community viewed the police as allies, and the police did not see community members as perpetrators.⁶⁴ The same could not be said in communities of color, where protecting black women against violence was never a law enforcement priority.⁶⁵

Activists of color worried that mandatory arrest policies would have several negative results.⁶⁶ First, they could decrease the number of black women who would actually call the police for fear that they would be contributing to the already unbearable level of criminal justice intrusion into the lives of black men.⁶⁷ Second, mandatory arrest policies might actually heighten the rate and severity of violence that women were experiencing. They could also lead to an increased number of women of color being charged with domestic violence, since the police and the courts do not view black women as victims of domestic violence, but rather as mutual combatants in assault cases.⁶⁸

Many feminists, on the other hand, frustrated by years of police inaction in the face of severe violence taking place in the private sphere, pushed for mandatory arrest policies. They either did not understand the dynamics of such a policy on communities of color, discounted the effects that the policy would produce on women of color, or sacrificed the needs of women of color to achieve the more important goal of finally being able to hold the police accountable for failing to act when a battered woman has called for assistance.⁶⁹

Mainstream feminists now acknowledge that earlier efforts may have been essentialist.⁷⁰ In fact, many of the predictions made by women of

⁶⁴ Fenton, *supra* note 60, at 51 (commenting on the incidence of violence within the black community that is perpetrated by the police).

⁶⁵ Ammons, *supra* note 58, at 1022.

⁶⁶ Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 247-48 (1997).

⁶⁷ See RICHIE, *supra* note 1, at 95-96.

⁶⁸ Ammons, *supra* note 58, at 1019. Ammons states that black women have to contest racialized stereotypes that they are culturally prone to violence, that they are accustomed to it, and that, in some cases, they like it. *Id.*

⁶⁹ See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 809 (2001) (critiquing Cheryl Hanna for suggesting that some battered women's needs may have to be sacrificed for progress, analogizing battered women to the first African American children whose security was threatened in the course of accomplishing school integration).

⁷⁰ See ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING, 62-64 (2000); see also Holly Maguigan, *Wading into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic*

color have actually come to pass. The Bureau of Justice crime statistics, for example, state that violent crime committed by females has been on the decline for the past ten years, in all categories except one: aggravated assault.⁷¹ The authors of the study believe the increase in the rate of assault by women is attributable to the increase in the number of women being charged with assault when police respond to calls of domestic violence.⁷²

Mandatory arrest policies have been in effect for several years now. Donna Coker, a feminist scholar, revisited the issue and made an assessment of the early impact of such programs.⁷³ She concluded that mandatory arrest policies do indeed have many negative impacts in poorer communities, including heightened violence and increased levels of governmental intrusion into the lives of the women who call the police and the lives of their children.⁷⁴ There now also seems to be empirical evidence suggesting that mandatory arrest policies, in some economic categories—such as when used against unemployed men, actually tend to increase the rate of violence.⁷⁵ More significantly, Coker stated that studies have yet to be produced which demonstrate that mandatory arrest policies are any more effective than other efforts to end violence, including those which a battered woman may cobble together for herself.⁷⁶

B. GENDER ENTRAPMENT OR THE PROBLEMS OF RACE LOYALTY

A woman's struggle to protect herself from violence in the home is difficult under any circumstance; however, African American women have an added dimension to their struggle. In addition to the gendered nature of violence, they must also contemplate the effect that reporting violence may have on the black community in which they live. Frequently, black women are asked to subordinate their own needs as women to the needs of the

Violence, 11 AM. U. J. GENDER SOC. POL'Y & L. 427, 431 (2003) (critiquing the movement's over reliance on the government to protect women).

⁷¹ GREENFIELD & SNELL, *supra* note 2, at 5-6.

⁷² *Id.*

⁷³ See Coker, *supra* note 69.

⁷⁴ *Id.* at 830-41. Coker claims that feminists over-rely on the state's ability to protect women, particularly poor women, and undervalue the damage which state action can cause in the lives of women who are already marginalized. These problems include the possibility that the woman herself will be arrested when the police respond, introduction into the family of supervision through child welfare agencies and the possible exposure to prosecution for other crimes. *Id.*

⁷⁵ *Id.* at 815-16.

⁷⁶ *Id.* at 826. Maguigan is in agreement. She calls for a moratorium on any additional states adopting mandatory arrest policies citing the need for empirical research to determine the effectiveness of the policies. Maguigan, *supra* note 70, at 428.

community.⁷⁷ Cooperating with authorities against black men can “result in community abandonment or scorn because of the perception that black men are selectively penalized.”⁷⁸

The reality confronting black women requires a multidimensional approach to evaluating the lawbreaking of black men and a woman’s response to such activities.⁷⁹ Black women know the experience of living in an oppressed community. They know their communities are both underserved by the police and at the same time are subject to “hyper-aggressive policing[,]” resulting in large scale arrest and incarceration of black men and other men of color.⁸⁰ Black women feel the effects of racism on their community and the economic consequences of racism, not only for themselves, but for their men as well.⁸¹ Many black women, even those experiencing violence at the hands of black men, will try to avoid subjecting black men to the possibility of law enforcement oversight or control.⁸² Black women “may connect the physical abuse with racism.”⁸³

⁷⁷ There are numerous examples of this phenomenon. The confirmation hearings of Justice Clarence Thomas nearly produced a crisis in the black community. Anita Hill was portrayed as a traitor to the community for making public that the black man being considered for a Supreme Court nomination had sexually harassed her. It was believed that by suggesting that Thomas harassed her, Hill was playing into the hands of white racism, which viewed black men as savages with unrestrained libido. See Kimberle Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CAL. L. REV. 1467 (1992); Fenton, *supra* note 60, at 39-42. The same dilemma came up again when the boxer Mike Tyson was charged with raping Desiree Washington. See Darci E. Burrell, *Myth, Stereotype, and The Rape of Black Women*, 4 UCLA WOMEN’S L.J. 87, 89 (1993). The trial of O.J. Simpson for the deaths of Nicole Simpson and Ronald Goldman presented another moment when the complexities of race loyalty had occasion to surface. See Harris, *supra* note 38. When the O.J. Simpson verdict of not guilty was rendered by the jury comprised of eight black women, two black men and two others, many in the white community were outraged. White feminists attacked the intelligence of the black women on the jury, claiming the black women did not understand what the case was about. Fenton, *supra* note 60, at 43. White feminists could not understand that the black women on the jury could hear an additional narrative besides the white women’s narrative about domestic violence. The possibility that law enforcement was targeting a successful black man was credible and real to them. It was not that the black women did not understand domestic violence. The statistics demonstrate that the black community is just as prone to violence against women as any other. It was just that the multidimensional aspect of black women’s reality required so many more factors to be weighed than the presence of a dead white woman and a husband with a history of violence. See *id.* at 44-55.

⁷⁸ See Ammons, *supra* note 58, at 1023.

⁷⁹ See PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 22-28 (1991) (describing how the experiences of black women create a reality for them that is different from the reality of white women).

⁸⁰ Coker, *supra* note 69, at 852-53.

⁸¹ RICHIE, *supra* note 1, at 62.

⁸² *Id.* at 96; Fenton, *supra* note 60, at 51-52.

In her research on battered black women, Beth Richie coined the phrase “gender entrapment” to explain black battered women’s interplay of loyalty and racial identity.⁸⁴ Richie posits that gender entrapment helps keep black women locked into relationships where violence occurs.⁸⁵ The loyalty trap affects the ability of black women to seek protection and effective counseling. For example, African American women do not feel comfortable discussing their problems in an integrated setting.⁸⁶ The fear is that the disclosure may hurt the community.⁸⁷ Therefore the prohibition against airing dirty laundry becomes more important than healing.⁸⁸

This complex play of loyalties surfaced in the narratives of the women in *Inner Lives*. Their narratives poignantly depict the struggle the women face between choosing what is best for themselves and choosing what is best for their black community, or more specifically what is best for their men. Their positions, both as women and as black people in subordinated communities, “colored” their decision making at every moment. This is reflected in the narrative of Marilyn who refused to testify against her co-defendant, a boyfriend who brutalized her. Her failure to plead and testify against him earned her a sentence of twenty-two years to life.⁸⁹ Judge Juanita Bing Newton, whose narrative appears in the third section of *Inner Lives*, also mentions the phenomenon of loyalty in connection with the case of Angela Thompson. Thompson, a young black woman, played a small role in a drug ring run by her uncle. She was arrested and faced a possible sentence of fifteen years to life under New York’s Rockefeller drug laws. Judge Newton later learned that Thompson had refused a plea which would have exposed her to only three years in prison because she believed if she accepted the plea she would be required to testify against her uncle, who raised her after her parent’s death.⁹⁰

What do black women receive in return for race loyalty? Does the level of violence against them drop? Are they valued and respected more in the community? It does not appear that they are. Black women who have

⁸³ Ammons, *supra* note 58, at 1023.

⁸⁴ RICHIE, *supra* note 1, at 62. Richie describes gender entrapment as the culmination of a process of identity development for African American women. *Id.* at 62, 70. Their identity as valued women within their own family, family loyalty and racial/ethnic identity combine to make them particularly vulnerable to long term abuse.

⁸⁵ *Id.* at 62.

⁸⁶ Ammons, *supra* note 58, at 1024.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 126-27. See also RICHIE, *supra* note 1, at 122, 129, for two examples of women who refused to press charges against their abusers or who dropped charges because of concerns about racism against black men.

⁹⁰ JOHNSON, *supra* note 6, at 213.

been incarcerated have a difficult time re-entering their own community. Wives, girlfriends and mothers make efforts to see incarcerated men, and the men are welcomed back to the community upon release. The same cannot be said of black women who serve time. They do not receive the same number of visitors as black men.⁹¹ Karen Michele Blakney, for example, received no visits from her family while she served time in a federal prison. They simply could not afford to travel to where she was incarcerated.⁹²

In contrast, when a black man who has children is arrested, the children's mother, his mother or grandmother may assist in raising the children. When a woman goes to jail, who maintains her family? Very rarely is it the father of the children. If she has immediate relatives who are able, they may take her children; otherwise they are placed into the foster care system.⁹³ If her incarceration is extended, she may lose her children.⁹⁴ She may not even know where her children are.⁹⁵ In the narratives of many of the women, they expressed concern about the wellbeing of their children and they worried about how to keep their families intact.⁹⁶ Joyce Ann Brown, Ida McCray, and Donna Hubbard Spearman have all started organizations since their releases to address the conditions women are facing in prison.⁹⁷ In particular, Joyce Ann Brown and Ida McCray seek to help women maintain ties with their children by arranging visits between child and mother, and by providing counseling for the children. Sandra Barnhill's organization (AIM) does the same. They also provide support services to the caregivers who step in for the mother while she is

⁹¹ See *id.* at 240 (describing an interview with Sandra Barnhill, the Executive Director of Aid to Children of Imprisoned Mothers (AIM)).

⁹² *Id.* at 173.

⁹³ Children may be put in foster care if there is no relative available or willing to raise them while the mother is incarcerated. *Id.* at 241. Alternatively, the mother herself may be facing charges of neglect or abuse of the children. *Id.* at 254.

⁹⁴ See, e.g., The Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997), which seeks to move children from foster status to permanent adoptive homes more quickly. The statute encourages states to initiate termination of parental rights in several situations, including where the parent is subject to an extended period of incarceration.

⁹⁵ JOHNSON, *supra* note 6, at 203.

⁹⁶ *Id.* at 201-02 (recounting the experience of Donna Hubbard Spearman based on her personal interview).

⁹⁷ Joyce Ann Brown formed *Mothers (and Fathers) for the Advancement of Social Systems* (MASS), which helps both incarcerated and released women with issues of housing, jobs, support for caregivers and programs for youth. Ida P. McCray founded *Families With a Future*, which is a network of advocates dedicated to keeping incarcerated women united with their children. Donna Hilliard Spearman founded *Revelation Seed*, a Christian ministry for incarcerated women.

incarcerated, who are frequently stressed and subject to the same living conditions that the incarcerated woman faced.⁹⁸

Once black women are released from prison, they do not receive the same reception from the community that black men do. In the words of Donna Hubbard Spearman:

[M]en are almost made martyrs and heroes when they come out of prison and go back into the community. But when we go back into our communities, we are not only unfit people, now we're unfit mothers, and it's hard to trust us. . . . The communities want women who come back from prison to become gray shadows and to disappear, because if you are there, then we have to address you.⁹⁹

Through her work, Rhodessa Jones of the *Medea Project: Theater for Incarcerated Women* helps the women learn who they are, to think through the unresolved issues in their lives, and to gain discipline through performance.¹⁰⁰ She helps the women find their voices and gives them an outlet to express the emotions which may be trapped inside.

Despite the adversities which they have all experienced, the black women of *Inner Lives* refused to remain silent. These women will not be gray shadows. In telling their powerful stories they demonstrate that they are a force to be reckoned with both while incarcerated and upon release.

C. POVERTY AND CRIMINALITY

The analysis of the Bureau of Justice statistics demonstrates an overwhelming connection between poverty and women's crime. Though poverty is implicated in crimes committed by men, the statistics show that the economic conditions of women who offend are more desperate than those of men who offend.¹⁰¹ Only four out of ten women reported that they had been employed full-time prior to their arrest, as compared to six out of ten men.¹⁰² More strikingly, just under eight percent of male inmates had been receiving welfare assistance prior to arrest, while nearly thirty percent of female inmates reported receiving welfare assistance at the time just before arrest.¹⁰³ Richie identified poverty as one of the pathways to crime, as a result of her work with the women on Riker's Island.¹⁰⁴ While Daly

⁹⁸ JOHNSON, *supra* note 6, at 240.

⁹⁹ *Id.* at 203.

¹⁰⁰ *See id.* at 249.

¹⁰¹ *See* GREENFIELD & SNELL, *supra* note 2, at 8.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See* RICHIE, *supra* note 1, at 120. Richie uses this path to categorize property crimes and other economically motivated crime.

did not have a separate pathway formed as a result of poverty, she identified economic circumstances as factors that influenced three of her categories.¹⁰⁵

Woven throughout the women's narratives in *Inner Lives* is the constant need to find ways to support themselves and in some cases their families. Betty Tyson recalls having to steal food and clothes for her seven brothers and sisters. She says, "[M]y mother never questioned where the food came from. . . . We were literally starving. We ate peanut butter and jelly sandwiches for dinner and never had any meat."¹⁰⁶ Other women such as Martha and Bettie Gibson were born into families where the parents were sharecroppers, trying to scratch a living out of the earth. "All we got were hand-me-down clothes from White people. I used to go to school with bare feet in the winter-time."¹⁰⁷ Prostitution and theft frequently were the only options the women could envision. Bettie Gibson tried prostituting. In the process, she discovered she also had the ability to pick pockets. "Once I found out that I could pick pockets, I was able to leave home and have my own place. This is what drove me into the street, and I felt that was really the thing to do."¹⁰⁸ Selling drugs was another option that the women saw. Rae Ann, explains how she wanted to change her life after her children were born, so she stopped prostituting. She tried to support herself with jobs and welfare. She explains how far the \$192 monthly welfare check had to stretch, making it impossible for her to leave money aside to go back and forth to work.¹⁰⁹ She began to sell drugs. Eventually, her family's life was complicated with long term drug addiction, which only increased their economic need.

Lack of education or incomplete education, lack of access to resources, and economic need combined to produce dangerous conditions for the women of *Inner Lives*. Their stories point to the exceedingly complex way in which environmental conditions reduce viable options that may help a woman avoid offending. The lack of access to resources cannot be undervalued. Donna Hubbard Spearman was arrested twenty-seven times. She states that no one counseled her about drug treatment or advised her of the availability of any program that she could attend to help her with her addiction.¹¹⁰ Mamie also talks about the lack of support available to her. After years of being separated from her children, one of whom had mental

¹⁰⁵ DALY, *supra* note 1, at 46-48.

¹⁰⁶ JOHNSON, *supra* note 6, at 159.

¹⁰⁷ *Id.* at 117.

¹⁰⁸ *Id.* at 136.

¹⁰⁹ *Id.* at 101.

¹¹⁰ *Id.* at 198.

health problems, Mamie was reunited with her children. She tells the harrowing tale of being reunited with her children:

When they gave me my kids, they didn't have clothes, anything. I had to scrape up some clothes for them, scrape up some food for them, because they left me empty-handed. It was like you just go for yourself. They had given me the runaround for a long time, and I kept running for help, running for help. They never explained about their medical history or anything. They never told me what I had to face, so I had to face it alone and I had to deal with it day by day.¹¹¹

She was arrested for involuntary manslaughter, for the death of one of her daughters, only three weeks after her children had been permanently placed with her.¹¹²

Economic difficulties continue after release and make re-entry complicated for the women. The administrators of Grace House, a half-way house for female inmates, speak of the difficulty of finding employment for the women after release. The women's low level of education and lack of work history outside of low wage employment, such as fast food restaurants, makes it difficult to help make them economically self sufficient.¹¹³ Prison does not necessarily leave the women in any better position to improve their economic conditions upon release. Looking beyond the disabilities that having a criminal record create for a job seeker, we can turn to the lack of prison efforts to train women or provide them with work opportunities. Equity in vocational training has been an issue in a number of prison lawsuits brought on behalf of women.¹¹⁴ It is not uncommon for penal institutions to offer male inmates vocational training, such as an air conditioning mechanic or a construction worker, that will allow them to earn up to twenty-six dollars an hour after they are released. Women's institutions, however, rarely offer anything more substantive than cosmetology, food services and low level secretarial skills, such as data input.¹¹⁵ The average hourly income a woman can derive from such employment is rarely above five dollars an hour, which is certainly not enough for her to support herself and her family after she is released from prison. Gender bias even affects programs such as work release, where the

¹¹¹ *Id.* at 81-82.

¹¹² *Id.* at 82-83.

¹¹³ *Id.* at 234.

¹¹⁴ Many lawsuits challenging disparate vocational training have been filed on behalf of female inmates. See, e.g., *Glover v. Johnson*, 934 F.2d 703 (6th Cir. 1991); *Canterino v. Wilson*, 546 F. Supp. 174 (W.D. Ky. 1982).

¹¹⁵ See Donna L. Laddy, *Can Women Prisoners Be Carpenters? A Proposed Analysis for Equal Protection Claims in Gender Discrimination in Education and Vocational Programs At Women's Prisons*, 5 TEMP. POL. & CIV. RTS. L. REV. 1 (1995); Marya P. McDonald, *A Multidimensional Look at the Gender Crisis in the Correctional System*, 15 LAW & INEQ. 505, 510 (1997).

inmate is released from prison during the day to report for work and returns during the evening. Lawyer Brenda Smith explains that in one program only one woman at a time participated in work release, whereas the men had up to sixty participants at one time.¹¹⁶ Both Smith and Sandra Barnhill, another lawyer featured in *Inner Lives*, participated in law suits that challenged, among other things, the lack of vocational opportunities for incarcerated women.

D. LAWYERING AND REPRESENTATIONAL DEFICIENCIES

There are many repeated themes running through the women's narratives, but one that is particularly important for the legal audience involves the women's dissatisfaction with the services of their lawyers. While it is not unusual for a convicted defendant to complain about his or her lawyer, it is unfortunate but true that poor people do often receive minimal assistance from counsel for a number of reasons.¹¹⁷ The already low level of assistance can be compounded by a lawyer's lack of awareness of issues that impact women's criminality, which may cause the lawyer to overlook defenses that are appropriate and will be most effective for the women. Don Alda, for example, was arrested for killing her abusive husband. She had him arrested previously at least twice for violence against her. When she killed him to protect herself, she hired the only private lawyer she knew, the one who had represented her husband on his previous cases. The lawyer never presented any evidence about her abuse. She did not learn of a principle called "conflict of interest" until she read about it in the prison law library after her conviction.¹¹⁸

Similarly, consider the narrative of Cynthia who faced charges which exposed her to the possibility of life in prison.¹¹⁹ She met with her lawyer just four times. She remembers that during one of their four meetings, he was angry because his theory of defense was that she was insane, but the psychological exam had determined she was not insane. She also mentioned that the judge told the jurors that the case was a lesbian case, to see if any of the jurors would be offended, but she had never had a

¹¹⁶ JOHNSON, *supra* note 6, at 257.

¹¹⁷ See Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 HOW. L.J. 257 (2001) (arguing that the legal profession does not perceive poor clients as worthy of quality legal representation).

¹¹⁸ See JOHNSON, *supra* note 6, at 60-61. Her lawyer's behavior seems to be a clear violation of the Model Rules of Professional Conduct which state that "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client" A.B.A.'s MODEL RULES OF PROF'L CONDUCT R. 1.7(b) (2001).

¹¹⁹ JOHNSON, *supra* note 6, at 64-77.

discussion with her own lawyer about his feelings about the issue of her sexuality, or whether she wished for that to be an issue at trial.¹²⁰ She did not know whether her own lawyer had difficulty with the issue of her sexuality.

Or take the narrative of Martha, arrested for a drug sale. Her lawyer was given access to her safe deposit box and helped himself to the cash in it.¹²¹ In another example, Marilyn was represented by a public defender when she was charged with robbery committed by her abuser. The victim was killed in the robbery, and Marilyn was therefore eligible for the death penalty. Her family raised \$4000 and hired a private lawyer, who then wanted her to plead guilty.¹²² The stories continue among the women who had served their time and were now back in the world. Betty Tyson, a former prostitute who was charged with killing a businessman, alleged that her confession had been beaten out of her by the police. She only saw her lawyer four times, mostly right before trial.¹²³ He never took pictures of the bruises she received from the police beating. He did not prepare for trial. Each of these narratives raises the possibility of clear violations of ethical mandates.

The problem of poor legal representation is not exclusive to women inmates, although in the context of battering and its effects, it is clear that many lawyers do not know how to effectively represent women. Sarah Buel has written about the problems associated with counsel's lack of knowledge in representing battered women and judicial attitudes towards those defendants.¹²⁴ Some of the instances which she relays in her article echo the experiences of the women in *Inner Lives*. In the most egregious example, she relates a conflict of interest between a lawyer and the woman, Betty Lou Beets, he represented in a capital case. The lawyer never disclosed the conflict, nor did he present evidence of the history of violence in the woman's life.¹²⁵ Beets was convicted, sentenced to death, and despite the unethical behavior of her lawyer, Beets's appeals were denied and she

¹²⁰ *Id.* at 70-71. At the very least the lawyer was ineffective in discussing the client's needs and goals. One wonders whether Cynthia wanted her counsel to make this an issue at trial.

¹²¹ *Id.* at 121; see A.B.A.'s MODEL RULES OF PROF'L CONDUCT R. 1.5 (2001) (requiring lawyers to safeguard a client's property).

¹²² JOHNSON, *supra* note 6, at 126.

¹²³ *Id.* at 164-65. The A.B.A.'s MODEL RULES OF PROF'L CONDUCT R. 1.1 (2001) requires lawyers to provide competent representation, and MODEL RULES OF PROF'L CONDUCT R. 1.4 (2001) requires the lawyer explain matters to the client so that the client can make informed decisions regarding representation.

¹²⁴ See Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217 (2003).

¹²⁵ *Id.* at 221.

was eventually executed.¹²⁶ Other scholars have also documented how poor lawyering adversely affects women defendants' cases where a viable defense could have been presented but was not.¹²⁷ Buel calls for a comprehensive training of students in law school and education of lawyers already licensed to ensure that they are competent to handle some of the complicated issues of representing battered women.¹²⁸

The American Bar Association (A.B.A.) also believes that lawyers need to be better educated about the pervasive effects battering has on women's legal interests in a variety of settings. The organization has a national commission dedicated to the study of domestic violence. In 1996, the A.B.A. published educational materials for lawyers to help them identify warning signals that domestic abuse might be an issue material to their representation of clients.¹²⁹

The interview with lawyer (now law professor) Brenda Smith also sheds light on the ways in which lawyers can compound the problems of women who are incarcerated. For example, through Smith's work with the National Prison Project and the women at the D.C. jail and at Lorton Minimum Security annex, she learned that many of the women were not being advised of court dates when their parental rights were being decided.¹³⁰ Neither their social workers nor their lawyers had made efforts to contact the women in prison, nor had requests been made to have the women present in court. Yet, both the social workers and the lawyers represented to the court that it was the women who did not stay in contact.¹³¹ Interestingly, Smith states that when the Project made it known

¹²⁶ *Id.*

¹²⁷ See Linda A. Ammons, *Why Do You Do The Things You Do? Clemency for Battered Incarcerated Women, a Decade's Review*, 11 AM. U. J. GENDER SOC. POL'Y & L. 533 (2003) (citing statements from the Governor when granting clemency to convicted battered women for ineffective assistance of counsel); Elizabeth M. Schneider, *Resistance to Equality*, 57 U. PITT. L. REV. 477 (1996); Kathleen Waits, *Battered Women and Their Children: Lessons From One Woman's Story*, 35 HOUS. L. REV. 29 (1998) (describing how helping professionals, including lawyers, failed to hear the woman's story so that her needs and the needs of her children could be addressed); see also Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027 (1995) (discussing the lack of material written to advise civil lawyers how to identify battered women among the client population).

¹²⁸ Buel, *supra* note 124, at 336-47; Sarah M. Buel, *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 309 (2003).

¹²⁹ AM. BAR ASS'N, *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE* (Deborah M. Goelman et al. eds., 1996).

¹³⁰ JOHNSON, *supra* note 6, at 254-55.

¹³¹ *Id.* at 255.

that the women's rights were not being protected, the lawyers became angry at Smith because they felt the project was trying to make them look bad!¹³²

The interview of Judge Juanita Bing Newton of New York's Supreme Court is also relevant here. Judge Newton grew up in a New York City public housing project and explains how the perspective of someone who is from the community can help shape a judge's understanding of a defendant and as a consequence help improve the lawyers' performance on both sides of a case.¹³³ She spoke of the difficulty of sitting as the judge in the Angela Thompson case where a young black woman faced severe sentencing under New York's notoriously tough Rockefeller drug laws. By all accounts, Ms. Thompson had engaged in some criminal conduct, but the severity of her exposure was disproportionate to her role in the offense. Judge Newton departed from the statutory guidelines because she recognized that Ms. Thompson had limited choices to begin with.¹³⁴ Though the case was overturned at the appellate level, Judge Newton's contextual treatment of defendants like Ms. Thompson demonstrates that knowledgeable judges can play a key factor in defendants' access to justice.¹³⁵ It is clear that legal professionals still have much to do in educating themselves about the intricacies of providing competent representation to women charged with crimes.

III. WHAT NEEDS TO HAPPEN NEXT?

In the final section, Professor Johnson gathers the threads of the narratives together and summarizes how the women's stories support trends identified by empirical data. Her summary prevents us from getting lost in the compelling individual stories and losing sight of the overall concerns regarding imprisonment of African American women. Johnson asks the reader to think about possible solutions to the problems the women's experiences have raised. If there are any weaknesses in the book, it is here that they surface. The women's life stories are so compelling and forceful that, if anything, Johnson's recommendations seem far too tame.

Johnson identifies four areas which require re-evaluation. She calls for additional examination into the specific conditions of incarceration for African American women, suggesting that the correctional facilities need programming that is specific to African American women's rehabilitative

¹³² *Id.*

¹³³ *Id.* at 207-19.

¹³⁴ *Id.* at 216-17. Thompson was raised by her uncle who was the primary offender in the case. See JOHNSON, *supra* note 6, for a complete analysis of the case.

¹³⁵ See Lynn Hecht Schafran, *There's No Accounting for Judges*, 58 ALB. L. REV. 1063 (1995) (citing examples of judicial attitudes which help foster domestic violence).

needs and development of their self-awareness.¹³⁶ If one gives credence to the statistics and to the narratives, this recommendation can certainly not be challenged. She also argues that more attention must be given to the issue of female inmates as primary caretakers of children and the effects that wholesale incarceration of women have on family structure and stability, both for the individual woman as well as for their communities.¹³⁷ This certainly is an important issue, which is complicated further by state and federal policies which encourage termination of parental rights in order to speed the movement of children from foster care into adoptive homes.¹³⁸

The last two recommendations call for an end to American practices of over-reliance on incarceration to resolve societal ills.¹³⁹ As most women are nonviolent offenders, Johnson feels their cases are ideally situated for alternative sentencing because they pose a lower threat to the community.¹⁴⁰ She argues that more community based programs and transitional programs must be provided upon the women's release.¹⁴¹ Finally, Johnson argues that as a society we need to think about increasing our attention to crime prevention; she identifies three factors which can contribute to crime prevention. At the first level, Johnson ties in the statistical connection between offending and past physical and sexual abuse.¹⁴² In order for crime to be prevented, African American girls have to have the opportunity, indeed the right, to be safe in their own homes and communities, so that they can grow to be secure women. Secondly, she recommends eliminating mandatory drug sentencing laws, as they are counterproductive, particularly with regard to drug addicts who also sell.¹⁴³ Johnson points to recent state efforts to amend mandatory sentencing as examples that state actors are also beginning to see the negative effects of the sentencing schemes.¹⁴⁴ The third factor Johnson mentions is judicial oversight of the prisons, arguing

¹³⁶ JOHNSON, *supra* note 6, at 281.

¹³⁷ *Id.* at 281-82.

¹³⁸ The Adoption and Safe Families Act, *supra* note 93. Under the act, states must terminate parental rights if a child has been in foster care for fifteen of the proceeding twenty-two months. For a discussion of state law that is influenced by AFSA act see Erica D. Benites, *In Defense Of The Family: An Argument For Maintaining The Parental Rights of Incarcerated Women In Texas*, 3 SCHOLAR 193 (2002).

¹³⁹ JOHNSON, *supra* note 6, at 282.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 283.

that the judiciary must educate itself about prison conditions and adjust the belief that prisoners' litigation is frivolous.¹⁴⁵

All of Johnson's recommendations are sound. The bigger question is how will they be accomplished? What specific actions need to be taken to produce concrete results? What strategies can be employed to assist African American incarcerated women and, by extension, all incarcerated women? Nothing short of a national coordinated effort will produce an impact in this area. There have been other coordinated and successful national efforts on behalf of a population of vulnerable women. Women's advocates were successful in their efforts to mobilize for the purposes of drafting the Violence Against Women Act (VAWA)¹⁴⁶ and its subsequent amendment. The VAWA movement was a collective effort of many women's organizations, lawyers and politicians. A campaign was undertaken not only to educate Congress about violence, but also to lobby for the passage of the bill. The bill caused some unintended hardships for women of color, particularly in the immigrant community, once again highlighting the invisibility of the needs of women of color within the context of the larger feminist movement.¹⁴⁷ Some of the problems were addressed in VAWA II.¹⁴⁸ The need for a similar national effort to address the conditions of women in prison is incontrovertible. Lawyers and women's groups need to gather to draft suitable legislative efforts to address the problems of incarcerated women. Legislators need to be educated and lobbied. Of course, such an effort would be extremely difficult. The intersection of race and crime is powerful. In particular, racial stereotyping of black women as unworthy and inherently prone to crime and violence, would seriously hamper an ability to bring such a coalition together. Nowhere is this clearer than within the women's movement itself. Traditional women's groups are largely silent on issues

¹⁴⁵ *Id.* (citing as an example, The Prison Reform Litigation Act, Pub. L. No. 104-134 §§ 801-10 (1996)).

¹⁴⁶ Violence Against Women Act, 42 U.S.C. § 13981 (1994).

¹⁴⁷ See Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U. L. REV. 665, 672 (1998). Among the dilemmas posed for immigrant women, the author identifies the problem immigrant women faced if they reported their batterers to the police. The arrest and prosecution of men who battered immigrant women led to difficulty for women attempting to gain citizenship or resident status as dependents of the men who were arrested. VAWA attempted to resolve this dilemma by allowing battered immigrant women to petition in their own right, however, the evidentiary hurdles created by the statute made it incredibly difficult for immigrant women to avail themselves of the relief of these provisions in the statute.

¹⁴⁸ See Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Protections Under VAWA I and VAWA II*, 17 BERKELEY WOMEN'S L.J. 137 (2002).

that impact poor women and lead them to engage in crimes such as prostitution and drug dealing, perhaps fearing that they will be tainted as "bad women" if they fight for bad women. Outside of the women's movement, it will also be difficult to find legislators who will publicly speak out on behalf of prostitutes, thieves and drug dealers. During the process of moving the VAWA legislation, politicians could gain mileage by standing up and recounting personal narratives of female family members who were subjected to violence in their homes. It is a little harder to imagine those same legislators standing up and claiming personal knowledge of female relatives who were prostitutes. Still, the difficulty of the task does not mean it should not be attempted. Perhaps this effort could be the vehicle by which America decides to confront its own conflicted history with African American women and to take the first steps in extending to African American women full protection under the law.

IV. CONCLUSION

Notwithstanding the tameness of the conclusion, the stories of the women in *Inner Lives* alone would be sufficient to make the book a compelling read, but in keeping with the multiple audiences that Johnson is addressing, she adds two appendices to the book. The first is a self study course on African American Women's History, which is an extensive reading list of material about African American women. In Johnson's words, "self-awareness and education are essential to African American women's empowerment and self-sufficiency."¹⁴⁹ Therefore, if anyone who reads *Inner Lives* is motivated to learn more about the strengths of African American women, they have only to turn to the back of the book for a place to begin their educational journey. Initially, I believed the self study course was for the audience of incarcerated women, but everyone can benefit from it. Lawyers who do not know anything about their clients' lives can benefit from reading it. Feminists and policy makers can sensitize themselves to the needs of others by reading it. Judges can learn about the positive side of the strength of black women by reading it. Corrections staff and managers can educate themselves about the needs of this particular prison population by reading it.

The second appendix is an actual resource guide which includes listings of legal and social support organizations, health services, groups which provide information about issues of sexual orientation, advocacy groups for female inmates and their families, and educational and literary groups which focus on female inmates. It should no longer be necessary for a female inmate to wonder, as many of the women in *Inner Lives* did, how

¹⁴⁹ JOHNSON, *supra* note 6, at 289.

she can get assistance, or to whom she can turn for help. If she can get to a copy of *Inner Lives*, she will at last have a place to start getting answers. By providing those two appendices, Johnson, a critical race theorist, has achieved what few theorists have done. She has managed not only to demonstrate how the actual voices of women support feminist theory, but she has also bridged theory and *praxis* by creating a legal work that actually creates a real and tangible benefit for an important population and, before this work, an invisible population, within the racially oppressed African American community.

