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Walking the Tightrope: Reflections of a Black Female Law Professor

NJERI MATHIS RUTLEDGE*

In a sobering moment, I realized that my success (and that of many people of color) stems from our ability to normalize daily racism — Njeri Rutledge (2020)¹

As a Black female law professor, I often walk an invisible tightrope, carefully avoiding any misstep for fear of falling. The problem of racism makes that tightrope particularly difficult. There is a misperception that racism does not impact successful people, but only those who are uneducated or have a low socioeconomic status. Nothing could be further from the truth. As a Black professional woman, I deal with racism constantly.

I walk a daily tightrope where I must appear as though all is well despite the barrage of images of unarmed Blacks being killed, racist attacks, and the growth of white supremacy. Even the legal academy fails to provide a haven from racist attitudes.² My career as a law professor has spanned

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1. Njeri Rutledge, *I Thought I Never Personally Experienced Racism. Then I Realized I Just Normalized It.*, USA TODAY (Sept. 15, 2020, 8:23 AM), <https://www.usatoday.com/story/opinion/voices/2020/09/15/racism-every-day-black-women-column/5793258002/> [<https://perma.cc/9WK7-V5NN>].

2. See, e.g., Max Cohen, 'Racist'? UPenn Prof. Amy Wax Says U.S. Better with More White than Non-White Immigrants, USA TODAY (July 23, 2019, 3:15 PM) <https://www.usatoday.com/story/news/education/2019/07/23/upenn-penn-law-professor-a-my-wax-immigration-racist/1797101001/> [<https://perma.cc/5B2W-DFPG>]; John N. Mitchell, Penn Law Students of Color Want 'Racist' Professor Fired, PA. CAP.-STAR (Oct. 15, 2019), <https://www.penncapital-star.com/education/penn-law-students-of-color-want-racist-professor-fired/> [<https://perma.cc/4URV-ABY8>]. See generally, PRESUMED INCOMPETENT

fifteen years. I love teaching and mentoring students. I must teach my students to review the law objectively. When race is germane, I must have the courage to raise it, and when it is not, I must have the courage to raise that as well, while defending my choice. I must serve as a role model without favoring my minority students, although I vividly remember being in their shoes. I know what it is like to sit in class when a controversial case about race comes up in property, contracts, constitutional, or criminal law.³ As a professor, when the topic of race is raised, I have to cautiously navigate giving my minority students the freedom to speak and the freedom to remain silent, knowing that few people embrace the burden of serving as a mouthpiece for an entire race.

In 1895, poet Paul Laurence Dunbar wrote “We Wear the Mask”⁴ based on his reflections on racism in America after the Civil War. It reads:

We wear the mask that grins and lies,
 It hides our cheeks and shades our eyes,—
 This debt we pay to human guile;
 With torn and bleeding hearts we smile,
 And mouth with myriad subtleties.
 Why should the world be over-wise,
 In counting all our tears and sighs?
 Nay, let them only see us, while
 We wear the mask.
 We smile, but, O great Christ, our cries
 To thee from tortured souls arise.
 We sing, but oh the clay is vile
 Beneath our feet, and long the mile;
 But let the world dream otherwise,

IN ACADEMIA (eds. Gabriella Gutierrez y Muhs et. Al.) (2012) (featuring personal narratives and studies related to the challenges faced by women faculty of color).

3. See Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABAJ. (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent?fbclid=IwAR0ahDg7coFW_6zrmpEGrBWaWf2NsbpanIcOWjUa7OLGzjTQrcnQKYJNFM [https://perma.cc/5U8N-DGDD].

4. Paul Laurence Dunbar, *We Wear the Mask*, POETRY FOUND., <https://www.poetryfoundation.org/poems/44203/we-wear-the-mask> [https://perma.cc/297R-HDWJ].

We wear the mask!⁵

I reflected on Dunbar's powerful poem after George Floyd's tragic death⁶ and the subsequent outcry and protests around the world.⁷ As horrific as Floyd's murder was, it was a watershed moment for many Americans to pause and reflect on racism in America. For me, it was an opportunity to reflect on my frustration with how racism has impacted my own life as a Black female professional.

Floyd was the Black male victim, but I was haunted by thoughts of his Black mother. Within the week, my own daughter woke up crying and asked me if the police were going to kill us. Initially, I was speechless; then, I felt hurt to be forced to have such a painful conversation with my ten-year-old daughter. I wanted to be immune from talking to my daughter about the reality that good and bad police existed. I wanted to reassure her that of course the police would never kill us, but sadly, I also needed to reassure myself.

For some, the term *racism* refers to an abstract idea from the past that is overused. For others, racism is an evil that must be dealt with daily. For me, racism is not theoretical—it is personal. I attended Spelman College and Harvard Law School. In spite of my achievements, racism constantly impacts my life.⁸ My Black husband has green eyes and we both have a light skin tone, which poet Caroline Randall powerfully describes as “rape-colored.”⁹ Our very appearance is a constant reminder that our ancestors' American experience included the violence of slavery. Whether I experience it directly through individuals or indirectly through oppressive systems, racism constantly seeks to attack my peace and often succeeds. The pain is compounded by the long list of victims of police abuse.

5. *Id.*

6. Maria Cramer et al., *What We Know About the Death of George Floyd in Minneapolis*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/article/george-floyd.html> [https://perma.cc/VX58-2LYW].

7. See, e.g., Helier Cheung, *George Floyd Death: Why US Protests Are So Powerful This Time*, BBC (June 8, 2020), <https://www.bbc.com/news/world-us-canada-52969905> [https://perma.cc/2GX8-SLBE]; Tracy Wilkinson, *Massive Protests Fill Washington to Decry Killing of George Floyd*, L.A. TIMES (June 6, 2020, 9:17 AM), <https://www.latimes.com/politics/story/2020-06-06/george-floyd-washington-dc-protest> [https://perma.cc/M9JD-TRJ].

8. See Rutledge, *supra* note 1.

9. Caroline Randall Williams, *You Want a Confederate Monument? My Body Is a Confederate Monument*, N.Y. TIMES (June 26, 2020), <https://www.nytimes.com/2020/06/26/opinion/confederate-monuments-racism.html> [https://perma.cc/LA9S-REQV].

Police violence has not been limited to Black men. It has also impacted Black women and children.¹⁰ The countless victims, like seven-year-old Aiyana Stanley-Jones,¹¹ twelve-year-old Tamir Rice,¹² Atatiana Jefferson,¹³ and Breonna Taylor,¹⁴ all remind me of friends and relatives. The violence committed against them, the growing list of new victims, and the inequities in the criminal justice system are traumatic. Sadly, for too many of us, when the police kill another unarmed Black person, it is no longer shocking—it has become commonplace. Racism is “[s]o interwoven in our nation’s fabric, its pervasiveness has made it seem normal — hence deniable. The normalization of racism props up a powerful façade of acceptability, even to its victims.”¹⁵ Killing a child who is playing in the park with a BB gun¹⁶ or sleeping on her grandmother’s couch¹⁷ should not be a regular occurrence. Neither should the acquittal or mistrial of the police officers

10. The African American Policy Forum has worked diligently to bring attention to the Black women victims of police violence, who tend to receive less media attention, through its #sayhername campaign. *Our Mission*, AFRICAN AM. POL’Y F., <https://www.aapf.org/> [<https://perma.cc/Y5ED-PQSW>].

11. See Mary M. Chapman & Susan Saulny, *Tragedy in Detroit, With Reality TV Crew in Tow*, N.Y. TIMES (May 21, 2010), <https://www.nytimes.com/2010/05/22/us/22detroit.html> [<https://perma.cc/KL49-CZZW>] (“Aiyana, 7, asleep for the night on a sofa under the window, died from a bullet to the neck [A]ccording to the police, a stray bullet hit Aiyana after at least one officer had entered the first-floor flat and came into contact with Ms. Jones, Aiyana’s grandmother.”).

12. See Samaria Rice, *My 12-Year-Old Son, Tamir Rice, Was Killed by Police. I’m Not Allowed to Be Normal.*, ABC NEWS (July 13, 2020, 3:27 AM), <https://abcnews.go.com/GMA/News/12-year-son-tamir-rice-killed-police-im/story?id=71654873> [<https://perma.cc/GD2T-J7WV>] (“Tamir Rice, a 12-year-old Black child, was shot and killed by a white police officer while playing with a pellet gun outside a recreation center in Cleveland, Ohio Both officers involved were cleared of criminal charges”).

13. See Erik Ortiz, *Fort Worth Police Officer Who Fatally Shot Atatiana Jefferson Indicted on Murder Charge*, NBC NEWS (Dec. 20, 2019, 2:02 PM), <https://www.nbcnews.com/news/us-news/fort-worth-police-officer-who-fatally-shot-atatiana-jefferson-indicted-n1105916> [<https://perma.cc/64ZN-4XPZ>] (“Dean and another officer were responding to an early-morning house call after a neighbor became concerned when they noticed the front door of a home, which belonged to Jefferson’s mother, was left ajar Dean failed to identify himself before firing his weapon, striking Jefferson.”).

14. See Richard A. Opiel, Jr., Derrick Bryson Taylor & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor’s Death*, N.Y. TIMES (Jan. 6, 2021), <http://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/P538-2XLB>] (“Breonna Taylor was a Black medical worker who was shot and killed by Louisville police officers in March during a botched raid on her apartment . . .”).

15. Rutledge, *supra* note 1.

16. Rice, *supra* note 12.

17. Chapman & Saulny, *supra* note 11.

who shot them,¹⁸ yet we know it is becoming normalized because it continues to occur. Cell phones and body cams allow Americans to become unwitting witnesses to police violence on a regular basis.

The killing of George Floyd felt different, partly because of the global pandemic, partly because of the unsettlingly calm demeanor of the officer who pressed his knee against Floyd's neck—it was difficult to look away; you could not avoid the pain Floyd's death invoked. It is traumatic seeing and knowing people suffer because they share your race, even if you have never met them. Hearing Floyd cry out for his deceased mother¹⁹ struck a haunting chord in the hearts of not only Black mothers but mothers everywhere.²⁰ The burden of reassuring Black children while warning them to be careful, respectful, and a list of other rules when interacting with law enforcement is yet another tightrope we must balance. Yet, even after watching a blatant disregard for Black life, society expected Black people to operate as if Floyd's death was just one of countless others. We were called to return to wearing our masks and act like normal in the midst of trauma. James Baldwin said to be Black in America “and to be relatively conscious is to be in a state of rage almost, almost all of the time.”²¹ The National Alliance on Mental Illness referred to racism as a public health crisis that impacts the mental health of Blacks.²² That trauma is compounded for Black women for Black women have to navigate sexism

18. See Ashley Fantz et al., *Tamir Rice Shooting: No Charges for Officers*, CNN (Dec. 28, 2015, 7:22 PM), <https://www.cnn.com/2015/12/28/us/tamir-rice-shooting/index.html> [<https://perma.cc/7NVA-ENR7>]; Elisha Anderson, *Mistrial Declared in Case of Cop Accused of Killing Girl*, USA TODAY (June 18, 2013, 4:23 PM), <https://www.usatoday.com/story/news/nation/2013/06/18/detroit-girl-killed-police-trial/2435219/> [<https://perma.cc/Z5RE-D8ZJ>]; George Hunter, *Cop in Aiyana Stanley-Jones Shooting Back on the Job*, DETROIT NEWS (Apr. 17, 2015, 8:22 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2015/04/17/officer-weekley-aiyana-stanley-jones-back-job/25963313/> [<https://perma.cc/DMV4-RAK4>].

19. Christy Oglesby, Opinion, *I Need White Mamas to Come Running*, CNN (May 29, 2020, 3:14 PM), <https://www.cnn.com/2020/05/28/opinions/george-floyd-cry-for-mama-hits-home-oglesby/index.html> [<https://perma.cc/Z7DR-SHDC>] (“[Floyd’s] final minutes in the custody of the police were captured in a devastating video, as he screamed ‘Mama.’”).

20. *Id.* See generally A. Rochaun Meadows-Fernandez, *The Unbearable Grief of Black Mothers*, VOX (May 28, 2020) https://www.vox.com/first-person/2020/5/28/21272380/black-mothers-grief-sadness-covid-19?__c=1 [<https://perma.cc/9K5M-DPG6>].

21. Paige Osburn, *To Be In A Rage, Almost All The Time*, 1A (June 1, 2020), <https://the1a.org/segments/to-be-in-a-rage-almost-all-the-time/> [<https://perma.cc/X669-9DXZ>].

22. NAMI’s Statement on Recent Racist Incidents and Mental Health Resources For African Americans, NAMI (May 29, 2020), <https://nami.org/About-NAMI/NAMI-News/2020/NAMI-s-Statement-On-Recent-Racist-Incidents-and-Mental-Health-Resources-for-African-Americans> [<https://perma.cc/32B5-H5AD>] (“The effect of racism and racial trauma on mental health is real and cannot be ignored Racism is a public health crisis.”).

and racism.²³ Minimizing the trauma is a matter of survival. The only other option is to live stuck in anger and fear.

In spite of my many life experiences,²⁴ when a fellow law professor asked me if I had ever personally experienced racism, I instinctively and without thinking denied its existence in my life. I realized in that moment that I had normalized and ultimately minimized my experiences as a coping mechanism.²⁵ Each day, I must choose either to confront covert racism and be labeled as angry, or to smile, ignore, and pretend it does not impact me. Either choice is exhausting. Navigating the tightrope of asserting myself without being labeled with the angry Black woman stereotype is frustrating, particularly when that anger is justified.

Over the years, I have become a master of wearing the mask Dunbar described in his poem.²⁶ At any point during a single day, I may be teaching and writing as a law professor, counseling and encouraging as a mother, or analyzing and arguing as an attorney. During all of those moments I am always a Black woman and that identity is an important part of who I am. Legal scholar and professor Kimberlé Crenshaw coined the term *intersectionality* to refer to the unique position of those of us who must confront issues related to both gender and race.²⁷ Being both Black and female has shaped who I am. It is through this unique lens that I perceive the world, and through which the world sees me.

Society constantly depicts Black women using negative adjectives and stereotypes—angry, hypersexual, gold diggers, mammies.²⁸ Black women are also frequently disrespected and undervalued. In 1962, Malcolm X called the Black woman “[t]he most neglected person in America.”²⁹ After

23. Rochaun Meadows-Fernandez, *supra* note 20.

24. As a young girl growing up in the South, I experienced racism many times. I was uninvited to my friend’s birthday party and called the N-word as I was playing in my front yard. I have experienced countless incidents of covert and overt racism for years. Sadly my story is not unique. *See* Rutledge, *supra* note 1.

25. Rutledge, *supra* note 1.

26. Dunbar, *supra* note 4.

27. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140–41 (1989).

28. *See* Lisa Rosenthal & Marci Lobel, *Stereotypes of Black American Women Related to Sexuality and Motherhood*, 40 PSYCH. WOMEN Q. 414 (2016).

29. Christine Emba, *Black Women Deserve Better*, WASH. POST (Jan. 9, 2019, 7:05 PM), https://www.washingtonpost.com/opinions/black-women-deserve-better-will-2019-be-the-year-of-change/2019/01/09/fc40e842-1439-11e9-803c-4ef28312c8b9_story.html [https://perma.cc/MY42-Q76E].

nearly six decades, we still have the highest maternal mortality rate³⁰ and a greater likelihood of being murdered in an abusive relationship.³¹ COVID-19,³² police violence,³³ and mass incarceration³⁴ disproportionately impact Black women. Racism's cuts and bites are never-ending. Sometimes the racism is overt and other times covert, but sadly it feels ever-present. The stakes may be higher for me, as a professional Black woman, but the tightrope is the same for all Black women.

Microaggressions in the professional realm come with the territory for many people of color, particularly Black women. If you're successful, there may be increased motivation to "put you in your place." Early in my legal career, I was tasked with representing one of three named parties in a mediation. At the time, I worked at a large law firm. I was the only woman and the only person of color; the other lawyers were all white males. During the mediation, the plaintiff's attorney leaned over, and pointed at me, and said, "I am never going to negotiate with you." I was both stunned and shaken by the vitriolic tone that accompanied his words. It felt deeply personal; however, I did not respond. At the time, I felt the extra burden of wondering if my very personhood may have disadvantaged my client. I was

30. *Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 5, 2019), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> [<https://perma.cc/E2QX-JD83>] ("Non-Hispanic black (black) . . . women experienced higher [pregnancy-related mortality rates] . . . than all other racial/ethnic populations" from 2007 through 2016).

31. Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 CTRS. FOR DISEASE CONTROL & PREVENTION MORBIDITY & MORTALITY WKLY. RPT. 741; see also Samone Ijoma, Comment, *False Promises of Protection: Black Women, Trans People & the Struggle for Visibility as Victims of Intimate Partner and Gendered Violence*, 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 255, 255–56 n.3 (2018) (citing studies that have identified racial disparities in prevalence of domestic violence cases); Amber Simmons, *Why Are We So Mad? Behind "Angry" Black Women and Their Legal Invisibility as Victims of Domestic Violence*, 36 HARV. BLACKLETTER L.J. 47, 48 (2020) ("Black women experience intimate partner violence at disproportionately higher rates than other ethnic groups and races in the United States.").

32. Brandi Jackson & Aderonke B. Pederson, Opinion, *Facing Both Covid-19 and Racism, Black Women Are Carrying a Particularly Heavy Burden*, WASH. POST (Sept. 4, 2020, 1:35 PM), <https://www.washingtonpost.com/opinions/2020/09/04/facing-both-covid-19-racism-black-women-are-carrying-particularly-heavy-burden/> [<https://perma.cc/JSE9-L4LY>].

33. Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39, 52–79 (2017).

34. Nekima Levy-Pounds, *From the Frying Pan into the Fire: How Poor Women of Color and Children Are Affected By Sentencing Guidelines and Mandatory Minimums*, 47 SANTA CLARA L. REV. 285, 298 (2007).

eventually successful in getting the case dismissed. Long after the case ended, the memory lingered.

I reflected back on that moment when watching the vice-presidential debates. When Kamala Harris reminded Mike Pence that “I’m speaking,” she was not just asserting her right to be heard.³⁵ She was asserting her right to be treated with respect. Her assertion resonated with many. I recognized the tightrope Harris walked during the debate because I have walked that same thin line myself. Harris balanced the tightrope by firmly standing up for herself. In that moment, she stood up for all of us who have been silenced or underestimated.

The inequitable treatment directed towards Harris has been traumatic for many Black women to watch. Many see the attempts on Harris to silence and banish her to obscurity as an attempt to put her in the same obscure place that they have tried to relegate other Black women to. Misogynoir, a term coined over a decade ago,³⁶ aptly describes the challenge faced when sexism and racism collide to target Black women. Black women live with these collisions every day. Unsurprisingly, misogynoir has been on bold display during the 2020 election season. Even before Joe Biden announced Kamala Harris as his running mate, the negative comments towards the Black women candidates on his shortlist became more focused against Harris.³⁷ One example of misogynoir at work was criticism that Harris had the audacity to be too ambitious.³⁸ Biden’s decision to consider primarily Black women and ultimately choose Harris was an important step towards giving Black women a place at the table which they helped build, knowing the road to the table has not been smooth.

35. Li Zhou, “Mr. Vice President, I’m Speaking”: Kamala Harris Repeatedly Shut Down Mike Pence’s Interruptions at the Debate, VOX (Oct. 8, 2020, 12:10 AM), <https://www.vox.com/2020/10/8/21507194/mike-pence-interruptions-kamala-harris-vice-presidential-debate> [https://perma.cc/28FA-NHTP].

36. Christina Carrega, *For the Few Black Women Prosecutors, Hate and ‘Misogynoir’ Are Part of Life*, ABC NEWS (Mar. 21, 2020, 9:05 AM), <https://abcnews.go.com/US/black-women-prosecutors-hate-misogynoir-part-life/story?id=68961291> [https://perma.cc/LT6V-C7TP].

37. Jasmine Wright, *Harris Talks Ambition in Women of Color after Personal Attacks During Biden’s VP Search*, CNN (Aug. 3, 2020, 2:25 PM) https://www.cnn.com/2020/07/31/politics/kamala-harris-ambition-remarks/index.html?fbclid=IwAR2jL8p3FrmDeuRtacSIT4IAxdwRAAWyqxsp_UW_pSG9PVkd988vSbC-ZkL [https://perma.cc/5MUJ-NT6Z]; see also Njeri Mathis Rutledge, ‘Kamala-mala-mala:’ If Her First Name Is Supposedly So Difficult to Say, Try ‘Sen. Harris,’ USA TODAY (Oct. 21, 2020, 7:00 AM) <https://www.usatoday.com/story/opinion/voices/2020/10/21/kamala-harris-name-pronunciation-david-perdue-trump-race-column/5992734002/> [https://perma.cc/RGN2-R9MX].

38. Wright, *supra* note 37.

In preparing for the debate, Harris had to consider an issue that no prior vice-presidential candidate had ever dealt with before: countering the angry Black woman stereotype while keeping her seat at the table.³⁹ Watching Harris has been a painful reminder that education, success, and money do not exempt a person from racism. But watching Harris take her oath as the 49th Vice President of the United States is an inspiring reminder to keep pressing forward.

Black people—and Black women specifically—suffer from ongoing racism and trauma. It is time to stop normalizing racism in everyday life. It is time for the masks to come off and for survivors of racism, and all society, to stop minimizing the pain and the trauma that racism inflicts. It is time Black women gained the freedom to step down from the tightrope.

39. Earl Ofari Hutchinson, *Harris' Toughest Debate Opponent Wasn't Pence but a Stereotype*, CNN (Oct. 8, 2020, 4:47 PM), <https://www.cnn.com/2020/10/08/opinions/vice-presidential-debate-harris-angry-black-woman-stereotype-hutchinson/index.html> [<https://perma.cc/ZE93-WYU9>]; see also Maggie Astor, *Kamala Harris and the "Double Bind" of Racism and Sexism*, N.Y. TIMES (Nov. 3, 2020), <https://www.nytimes.com/2020/10/09/us/politics/kamala-harris-racism-sexism.html> [<https://perma.cc/82KX-46RK>]. See generally Simmons, *supra* note 31, at 50.