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A NOTE FROM THE EDITORS

Editors of the Harvard BlackLetter Law Journal

Thank you very much for taking the time to read the 35th Anniversary Volume of the *Harvard BlackLetter Law Journal*. Those who contributed to this Volume include activists, lyricists, a negotiator, a person who is currently incarcerated, a person who was incarcerated in the past, poets, professors, and students, among others. To them, we owe a great debt. We hope that their contributions will prove to be interesting, informative, useful, and otherwise valuable to you.

At the outset, we wish to highlight the fact that, due to an error on the part of the Editors, we were not able to consider submissions for publication in this Volume that were sent to us by mail. We deeply regret this error, and will fully consider each of those submissions for publication in our 36th Volume, which is scheduled to go to print in the spring of 2020.

We have written this note in order to introduce and contextualize what follows, which includes discussions of various forms of violence.

First, a brief description of some aspects of our identities, which inform in infinitely complex ways, our approach to the editorial process.¹ We are Black, South Asian, East Asian, Latinx, and white.² We are cis-gender³ women and men. We come from low-income, middle-income, and upper-income neighborhoods in rural, suburban, and urban areas. We are Queer and straight. We grew up speaking Spanish and English. We all attend Harvard Law School. We are all living in the so-called “free world.” We are all able-bodied. We all speak English. We are all able to read and write. None of us is incarcerated. And, lastly, we all take issue with the status quo of legal scholarship.

1. In the spirit of the renowned law professor and critical race theorist Patricia Williams, we think that “subject position is everything in [our] analysis of the law.” PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 3 (1991).

2. We capitalize certain terms and uncapitalize others, which we understand to be “naming that is part of counterhegemonic practice.” Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1710 n.3 (1993).

3. According to Susan Stryker:

The prefix *cis-* means ‘on the same side as’ (that is, the opposite of *trans-*, which means “across”). It is meant to mark the typically unstated or assumed privilege of being nontransgender. The idea behind the term is to resist the way that ‘woman’ or ‘man’ can mean ‘nontransgender woman’ or ‘nontransgender man’ by default, unless the person’s transgender or nonbinary status is explicitly named.

SUSAN STRYKER, *TRANS GENDER HISTORY: THE ROOTS OF TODAY’S REVOLUTION* 13 (2017).

With the benefit of these differences and similarities, we came together in August 2018 and agreed that much should change with regard to our Journal. In search of guidance as to how we should move forward, we first looked backward. As we have studied our past, we learned a great deal from those who came before us, and, as the Black, lesbian, feminist theorist Audre Lorde reminds us, “[t]o learn from their mistakes is not to lessen our debt to them. . . .”⁴ Through this process, we learned that the Journal was established in the early 1980’s to focus on Black issues in the United States context. Nearly 35 years later, it appeared that the original purpose of the Journal had been forgotten. We thought that we ought to return to our original purpose, and this Volume is an attempt at such a return. As part of this return, we changed the name of the Journal from the *Harvard Journal of Racial and Ethnic Justice*, back to the *Harvard Black-Letter Law Journal*, which is what our Journal had been called prior to 2009.

In addition to looking *backward* we also looked *beyond*—beyond the legal materials and legal methods we have learned to understand and employ during our time in law school—to extralegal materials and methods. We decided to turn to materials and methods outside of law because we found that law journals, in general, left much to be desired. We found that law journals were, generally speaking, outmoded, inaccessible, and uninteresting. Upon review, we decided that our own Journal was susceptible to the same criticism. In the end, we sought to reshape our Journal in the image of *Liberator Magazine*,⁵ rather than that of the *Harvard Law Review*.⁶

For this Volume, we chose to focus on the intersection of anti-Blackness and capitalism, adopting Charlene A. Carruthers’s pithy definitions of both of these terms.⁷ We also suggested⁸ that those who submitted work to the Journal engage with the 2018 National Prison Strike⁹ in order to invite and stimulate thought. Answering the same Call for Content, Contributors submitted work on a considerably wide range of topics,

4. Audre Lorde, “Learning from the 60s,” in *SISTER OUTSIDER: ESSAYS AND SPEECHES* BY AUDRE LORDE 138 (2007).

5. See CHRISTOPHER M. TINSON, *RADICAL INTELLECT: LIBERATOR MAGAZINE AND BLACK ACTIVISM IN THE 1960s* (2017). See also, *Online Roundtable: Radical Intellect: Liberator Magazine and Black Activism in the 1960s*, AFR. AM. INTELL. HIST. SOC’Y (Feb. 4, 2019), <https://www.aaihs.org/online-roundtable-radical-intellect-liberator-magazine-and-black-activism-in-the-1960s/>.

6. With no disrespect intended to our colleagues, classmates, and friends who call Gannett House home.

7. Charlene A. Carruthers defines *capitalism* as “an economic system in which the means of production, access to goods, and the value of goods are controlled by private individuals and corporations.” Carruthers defines *anti-Blackness* as “a system of beliefs and practices that destroy, erode, and dictate the humanity of Black people.” CHARLENE A. CARRUTHERS, *UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS* x (2018).

8. Our 2018 Call for Content can be found on our website. See *2018 Call for Content!*, HARV. BLACKLETTER L.J. (Oct. 4, 2018), <https://harvardblackletter.org/2018-call-for-content/>.

9. See *Prison Strike 2018*, INCARCERATED WORKERS ORGANIZING COMMITTEE, <https://incarceratedworkers.org/campaigns/prison-strike-2018>.

writing from a considerably wide range of perspectives, and expressing themselves in considerably varied ways. For example, Lil Riq, a young, incarcerated artist describes his experience with police in Harrisburg, Pennsylvania's capital city, in the form of written song lyrics. Delrish White, on the other hand, a recent graduate of Harvard's Graduate School of Education, writes in essay form on California's exploitation of incarcerated firefighters. And the list goes on.

While it may appear that we have brought much change to the Journal (and we think that this is certainly true), this nonconformist, critical approach is nothing new for us. In 1986, for example, Patricia Williams published an article, entitled *A Brief Comment, with Footnotes, on the Civil Rights Chronicles*,¹⁰ in the pages of this Journal. In that article, Williams "mocked the formal conventions of law reviews,"¹¹ according to Williams herself. Our Journal's new project fits comfortably within this tradition.

Hereinafter, you will find a carefully cultivated arrangement of materials designed to (1) challenge ideas about who can legitimately create and promulgate knowledge related to law; (2) delight and entertain curious readers; and (3) inform those engaging in struggle against anti-Blackness and related forms of oppression. This Volume represents 35 years of development in knowledge, activism around knowledge production, agitation, and collective struggle. Let us continue developing, activating, agitating, and struggling.

10. We, of course, have to footnote this for ironic effect. Patricia Williams, *A Brief Comment, with Footnotes, on the Civil Rights Chronicles*, 3 HARV. BLACKLETTER J. 79 (1986).

11. Patricia Williams, *Critical Race Theory/Law and Literature*, in LEGAL INTELLECTUALS IN CONVERSATION: REFLECTIONS ON THE CONSTRUCTION OF CONTEMPORARY AMERICAN LEGAL THEORY 116 (James Hackney, ed. 2012).

CAPITALISM, ANTI-BLACKNESS, AND THE LAW: A VERY SHORT HISTORY

*Jonathon Booth**

Six centuries ago, capitalism and white supremacy arose hand in hand from the Atlantic Ocean; these twinned structures have together defined much of human history ever since. The practice of racism and the meaning of race have shifted repeatedly over the centuries, but anti-blackness has remained ever-present. This relationship has been traced and theorized by W.E.B. Du Bois, Cedric Robinson, Thomas Holt, and Sylvia Winter, among many others.¹

For thousands of years Europeans have been familiar with the populations to their south and east. Long before Marco Polo, European kingdoms and empires had traded and fought wars against other powers in Asia and Africa. Though these distant partners and rivals had different skin tones, these differences were not hugely meaningful. In the fifteenth century, however, as Spanish and Portuguese ships learned to sail along the coast of Africa, south of Cape Bojador and later across the equator, skin color began to be imbued with special significance in European social thought and, significantly, in law.

The clearest example of this monumental shift occurred in Spain. Europeans had long held slaves but before the fifteenth century, that slavery was never racialized. As Iberians began to travel to western Africa, there were still large numbers of slaves from Eastern Europe and the Caucasus in Spain. Coincidentally, this source of enslaved humans began to dry up after the conquest of Constantinople, just as Spanish traders began to bring enslaved Africans back to Europe in increasing numbers. As Debra Blumenthal shows, Spanish law clearly forbade the enslavement of Catholics, and many of the first captured Africans brought to Spain received trials to determine their religious status. Soon, however, Spanish authorities began to accept black skin as *prima facie* evidence of non-Christianity. If a captive was African, he was enslaveable; no trial was necessary. Suddenly, then, the law attached meaning to skin color to help buttress an exploitative and expanding system of slavery. This order of events, in which law created racial meaning in the service of exploitation, would be repeated over the coming centuries in the Western Hemisphere.

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1. For more examples, see the bibliography that follows.

This year marks the four-hundredth anniversary of the arrival of the first twenty enslaved Africans in Virginia. But those unfortunate men were neither the first Africans to be enslaved in what is now the United States – enslaved Africans were held in Spanish Florida as early as 1565 – nor the first enslaved in the British Empire. To see the origins of hyper-exploitative slavery we must look to the Caribbean. It was in the English colony of Barbados that slave codes first defined racial hierarchy in the service of a growing economy that exported sugar to sweeten the tea and coffee of European consumers. For example, Barbados's first slave and servant code allowed enslaved Africans, but not European servants, to be captured and whipped by any freeman who would receive a reward – paid in sugar – for his work. The Barbadian slave code was copied in other Caribbean slave colonies, such as Jamaica, and later in South Carolina and Virginia. The English planters of Barbados aimed to profit by producing sugar, but the economic and legal structures they built were necessarily rooted in anti-blackness.

The legal development of slavery in Virginia shows how race and gender intersected in crucible of capitalism. Kathleen Brown, a professor of history at the University of Pennsylvania, shows that in Colonial Virginia, black women were subject to a poll tax, but white women were not. The legal distinction was made on the theory that black women, like black men, were productive laborers growing tobacco for export. White women, on the other hand, were seen as wives and adjuncts to their free husbands and their domestic labor considered unproductive. Virginia law supported an export economy by drawing a line not only between black and white Virginians but between black women and white women.

By the mid-nineteenth century, Virginia's most important export was no longer tobacco but rather enslaved people. In the half century after American independence the slave economy expanded rapidly, propelled by the invention of the cotton gin and the violent expulsion of indigenous people from the Mississippi Valley. The Deep South offered some of the richest cotton land in the world, all that was needed was enslaved people to work in the newly created labor camps. With the transatlantic slave trade banned in 1808, these enslaved workers came from the Upper South. Whether they were marched across the Appalachian Mountains or taken by sea, most ended up in the vast slave markets of New Orleans where the wealthiest people in America purchased them and put them to work. The vast demand for enslaved laborers in the Mississippi Valley transformed slavery in the Upper South. The former tobacco plantations now raised children for export. The forced labor of these people made cotton America's most valuable export, and King Cotton's reign of terror lasted another half century.

Between 1861 and 1865 all four million enslaved black Americans won their freedom and by 1868 all had, formally, the same rights as white Americans. The large political and economic gains achieved by black Southerners during Reconstruction were rolled back through open violence. Assassinations, lynchings, and massacres perpetrated by white Southerners – and ignored by the federal government – made formal guarantees of rights for black Southerners a dead letter. At the same

time, the New South still required black labor in the cotton economy. Labor relations shifted immensely. Gang labor and the whip was eliminated – except for those convicted of crimes – but white supremacy continued to structure the law and economy. Since no land was redistributed after the Civil War, many black Southerners were left with the perpetual peonage of sharecropping, growing cotton on land they did not own and being cheated year after year. Others had their labor requisitioned by more direct state intervention. Newly created police forces arrested thousands of black Southerners who were convicted of minor crimes and sent to the chain gang or leased to private corporations. In addition to the racist enforcement of neutral laws, this new, post-slavery period necessitated new race-based laws that maintained white supremacy. One telling example is the new technology of streetcars which were generally segregated, but with an exception for black nurses taking care of white children. As always, the law defined race and defined power.

Massive economic changes have similarly transformed our post-Civil Rights Movement era. Even with equal rights more firmly protected in law, anti-blackness still structures the economy and shapes law enforcement. Notably prison profiteers such as Securus and the GEO Group profit from the state violence of mass incarceration. What is more, illegal discrimination in housing, lending, and hiring remains endemic and makes enormous profits for banks and other corporations.

Despite the pervasiveness of anti-blackness in our history, moments of successful resistance shine through. In a speech at the 1893 Chicago World's Fair, just five years after slavery was finally abolished in Brazil, Frederick Douglass reflected on his long and transformative life. He gave thanks to all those who had fought for abolition, from David Walker to William Wilberforce to John Brown. But he concluded "we owe incomparably more to Haiti than to them all."

Like Douglass, we must avoid the temptation of fatalism, and must remember that every moment of the history of anti-blackness also featured resistance. From the earliest slave revolts to the civil rights movement and on through the prison strikers of today, millions of people have fought against the exploitation of capitalism and for black liberation. For that reason, a remembrance of Fred Hampton Jr. on the fiftieth anniversary of his assassination is included in this volume. May his memory, and the memory of the freedom fighters who have come before and since, propel us forward into a new era of resistance.

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COLDEST WINTER EVER

Amanda "330" Carter

cold weather hot-headed leather jacket no hat outside forever, finally
caught a cab
girl called me with an attitude
told her I'd call her back

fuckin up my chakras now I'm fussin with the driver driver can you can
you step on it
like a roach you're trying to hide beside the sofa with the girl you just met
on it

or paper money on the sidewalk getting away
I usually try to be patient but I didn't today
I just didn't have it in me, word to Kendrick, forgive me
30 always been an organ short of a symphony
now this is not a diss track
this is just a reference to the boy down in Georgia in the gym mat and I
just sort of did that
cuz all my shit is tight
flexing my muscles like a gym rat
dog, I don't take it lightly at all
but the more attention we give it the quicker is getting solved free DJ Fia,
my cousin behind bars
sickest I remember it just isn't affluenza

now I think they're saying something like six or seven Decembers until he
can see his kids, pick them up cook them dinner
now that's a lot of long winters but his faith is in God
all praises to the most high, Alhamdulillah

they say the best is yet to come, hallelujah we movin to the future two
heads better than one, even better now we're moving together I'm not
afraid what's coming gone come
and it ain't no tellin where I end up

dun dun dun dun dun

crashin the party bust a move on the dance floor
stepping between depression and delusions of grandeur
im free to do me but as you see I've been paying for it
it's not the type of thing that this community stands for

I've been up, I've been down
 various methods of transport:
 pills, narcotics, pilots landing in airports
 always been someone who wanted to understand more
 way before I had the black trapper keeper with the Jansport
 I've been taking notes I want to know what we're here for

Vo arranging notes and you wasn't prepared for
 we exchange notes, outline them and therefore
 got your hands up like you got all of the answers
 now what you know about 30 on the microphone
 I go in like James Hood, Vivian Malone, hold on-
 stop the track, Google that if you don't know em
 they say the best is yet to come, hallelujah we movin to the future two
 heads better than one, even better now we're moving together I'm not
 afraid what's coming gone come
 and it ain't no tellin where I end up
 dun dun dun dun dun

well it's the sickest 16th, right beside the 3rd letter they keep sending me
 links, I tell em I've heard better shit drop out of my anus into porcelain
 containers
 spin counterclockwise, nosedive beside the baby wipes flow sweet like
 my auntie's sweet potato pie
 I give em a taste, they shake their heads

it's nothing they can say about it
 except whew- this gone make you famous child
 but can't everybody make it right, like potato salad that's why I got a plan
 B.A. from the Mecca
 cuz things fall apart I'm just trying to keep it together that's word to
 Achebe cuz things been crazy
 with no sign of ever getting better
 it's the coldest winter ever.

BLACK, WHITE & BLUE

*Shannon Cumberbatch**

As our rich dark skin melts into the pitch dark night
the Blue draws to the Black
like moths drawn to the light
with cuffs that clutch us
in the system's clutches
caging our culture for profit
in the guise of justice

they say it is our darkness
that draws them—dangerously close
that makes us bad
that makes them mad
that makes Blue draw red from Black
blow Blue holes through Black backs

they say it is our darkness
that warrants our bondage
that makes despondent fathers
fatherless daughters
barred brothers
lonely, mourning mothers
mornings learning yet another
hashtag

flashback
to the promise of liberation
back about 154 years
roughly 1,848 months
over 8,030 weeks
since supposed emancipation
and still no peace
still more grief
still Black bodies slain in Black streets
by Blue forces
borne of white sheets with lit torches
they torture us

* Staff Attorney, The Bronx Defenders. J.D., New York University School of Law.

Black boys & girls
behind Black bars
Black mothers
wearing Black scarves
to bury their babies
their brothers
their lovers
to bury their grief!

The roots run deep
In the soil beneath the trees
where Black bodies hung limp
and blew in the breeze like leaves

THE GREAT RURAL BOON: RACIAL POLITICS AND THE CRIMINALIZATION OF THE URBAN POOR

Darnell Epps*

America loves a good story. And in today's era, where stories of "injustice" are a thing of podcasts and "ripped from the headlines" television, it's quite easy to lose ourselves in anecdotes, and to overlook the *policies* that subjected 2.8 million blacks to our nation's criminal legal system.¹ Alice Johnson's clemency and the First Step Act notwithstanding, there has been *no* seismic shift in America's response to crime. By "crime" I don't mean acts of supposed moral turpitude. Rather, I'm talking about the criminalization of the black urban underclass—by all means, an "industry" vital to the American economy.

Indeed, blacks make up just 12 percent of the population but a third of all prisoners.² We're hardly living in the era of President Lyndon B. Johnson's "War on Poverty." In 2014 state expenditures on prisons—as opposed to anti-poverty programs—approached \$60 billion.³ Yet roughly two-thirds of incarcerated adults between the ages of 27 and 42 earned less than \$23,000 a year when arrested.⁴ Many on the Right disagree that race has played a role in incarceration rates, claiming instead that the spike in crime during the so-called "crack years" is to blame. Yet this situates the "tough-on-crime" politics of the 1970s and 80s in a vacuum, removed from controversy over affirmative action and housing discrimination, from the mythic "welfare-queen," and from full-page ads calling for the death penalty for the "Central Park Five."

Although concentrated in inner cities, crime was a *boon* for rural America. Between 1982 and 2007, as incarceration rates grew to an all-time high and as manufacturing employment rapidly

* Undergraduate student, Cornell University. Prior to enrolling in college, Mr. Epps was incarcerated for 17 years.

1. Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html>.
2. John Gramlich, *The gap between the number of blacks and whites in prison is shrinking*, PEW RES. CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>.
3. *Trends in U.S. Corrections*, SENTENCING PROJECT (2016) <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.
4. Bernadette Rabuy & Danile Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, PRISON POL'Y INITIATIVE (July 9, 2015) <https://www.prisonpolicy.org/reports/income.html>.

declined, the criminal legal system created 2.5 million jobs.⁵ Nationwide, nearly 70 percent of prison employees are white,⁶ and 70 percent of the 1,152 prisons built between 1970 and 2000 are in rural areas.⁷ It is quite the coincidence that just as the economy slowed in the nation's "Rust Belt" and small towns, a massive transfer of black bodies helped shore up America's most precious resource—white jobs.

What is more, the twentieth century's forced migration of urban blacks to rural American prisons had serious political implications. The nation's "prison boom" began in the 1970s, following passage of the Voting Rights Act, and soon after the Warren Court ended malapportionment in rural congressional districts.⁸ Prison expansion tripled the number of prisons nationwide, leading to wide-scale "prisoner gerrymandering" that *re-disenfranchised* the black urban voter, and helped restore the overrepresentation of rural areas that existed prior to the Warren Court's malapportionment decisions.⁹

Naturally, with *de jure* segregation replaced by an exploitative criminal legal system, the focus would eventually turn to the Supreme Court, the most significant institutional ally of the Civil Rights Movement. Long removed from its *Dred Scott*¹⁰ days, the twentieth century Federal judiciary became, for a time, a bulwark protecting black citizens' rights. From the Scottsboro case¹¹ to *Brown v. Board*,¹² the Court stepped up to protect black citizens left vulnerable to the vagaries of "States' Rights." Yet, due largely to the legislative compromises of Clinton era "New Democrats," the federal judiciaries steps towards ensuring procedural fairness and equal protection in criminal cases abruptly ended in the mid-1990s, as incarceration rates swelled.

Soon after pledging to "end welfare as we . . . know it,"¹³ which included limiting aid to mothers with incarcerated spouses, President Bill Clinton became a *de facto* signatory to Newt Gingrich's "Contract with America."¹⁴ As part of that "contract," Congress passed the Antiterror-

5. See JOSEPH MARGULIES, *WHAT CHANGED WHEN EVERYTHING CHANGED, 9/11 AND THE MAKING OF NATIONAL IDENTITY* 109 (2013).

6. See Rachel Gandy, *In prisons, Blacks and Latinos do the time while Whites get the jobs*, Prison Pol'y Initiative (July 10, 2015) https://www.prisonpolicy.org/blog/2015/07/10/staff_disparities/ (census numbers are from 2005).

7. See John M. Eason, *Why prison building will continue booming in rural America*, CONVERSATION (Mar. 12, 2017) <https://theconversation.com/why-prison-building-will-continue-booming-in-rural-america-71920>.

8. See *Baker v. Carr*, 369 U.S. 186 (1962); see also, Robert M. Crea, Note, *Racial Discrimination and Baker v. Carr*, 30 J. LEGIS 289 (2004).

9. See generally, Julie A. Ebenstein, *The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners' Political Representation*, 45 FORDHAM URB. L.J. 323 (2018).

10. *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

11. *Powell v. Alabama*, 287 U.S. 45 (1932).

12. *Brown v. Board of Education*, 347 U.S. 483 (1954).

13. Alana Semuels, *The End of Welfare as We Know it*, ATLANTIC (Apr. 1, 2016), <https://www.theatlantic.com/business/archive/2016/04/the-end-of-welfare-as-we-know-it/476322/>.

14. REPUBLICAN CONTRACT WITH AMERICA, REPUBLICAN PARTY (1994), <https://web.archive.org/web/19990427174200/http://www.house.gov/house/Contract/CONTRACT.html>.

ism and Effective Death Penalty Act (“AEDPA”), placing what scholars have described as the “most significant” constraints on the federal courts’ power “that had. . . ever been enacted,”¹⁵ and leaving federal judges hamstrung to oversee a growing number of state criminal convictions. As no statute had ever done, AEDPA required federal courts defer to state judges *on matters of federal law*.¹⁶ Although Congress rejected similar bills 13 times in the 40 years prior to AEDPA’s passage,¹⁷ it remains the law despite recent estimates placing the rate of wrongful convictions at anywhere between 2 and 10 percent—that is, between 46,000 and 230,000.¹⁸

But not only was the disproportionately poor and black prison population stripped of plenary federal review of state criminal proceedings, they were further stripped of federal oversight of prison *conditions*. A year after AEDPA, the Gingrich-Clinton coalition passed the Prison Litigation Reform Act (“PLRA”), erecting “exhaustion” barriers and imposing hefty filing fees for prisoner lawsuits alleging abuses by guards or inhumane living conditions.¹⁹ Prisoners often could not afford the fees and were unaware of the state and remedies they were now required to exhaust. As civil rights law professor Margo Schlanger recently commented, “[t]he preservation of prisoners’ civil rights now depends on their ability to dot i’s and cross t’s,” something the PLRA has proven “they’re not so good at.”²⁰

Given the twentieth century’s changing economic and political climate, poor black citizens went like lambs to the slaughter. Racial criminalization became both a jobs program to combat economic decline in rural America and preferred policy response to urban poverty. Mass incarceration perpetuates many of the exploitative laws of our nation’s past, none different than the Black Codes or Jim Crow. Crime, while certainly an issue in black neighborhoods, was largely an *excuse* for much of white America. Jobs for black Americans, not *bars*, would have been a much better solution to crime.

15. Stephan I. Vladeck, *The New Habeas Revisionism*, 124 HARV. L. REV. 941, 941 n.2 (2011) (emphasis added).

16. 28 U.S.C. § 2254(d)(1).

17. The stricter proposals were put forward in the wake of *Brown v. Allen*, 344 U.S. 443 (1953), which adopted a plenary review standard for habeas petitions.

18. See John Grisham, *Why the innocent end up in prison*, CHICAGO TRIBUNE (Mar. 14, 2018), <https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-innocent-prisoners-innocence-project-death-row-dna-testing-prosecutors-0315-story.html>.

19. 42 U.S.C. § 1997e.

20. Rachel Poser, *Why it’s nearly impossible for prisoners to sue prisons*, NEW YORKER (May 30, 2016), <https://www.newyorker.com/news/news-desk/why-its-nearly-impossible-for-prisoners-to-sue-prisons>.

MIRROR, MIRROR: ANTI-BLACKNESS AND LAWYERING AS AN IDENTITY

*Brandon Greene**

Anti-Blackness manifests itself in a myriad of ways, not all of which are intentional. That is what makes this work so challenging, so draining, so exhausting. Particularly if you, like me, see yourself as an impacted person first, and a lawyer second because to survive and thrive, the most important, most visceral parts of your identity – Black, male, child of a formerly incarcerated person – must take a back seat to the least important part of your identity – lawyer. After all, being a lawyer pays the bills, and the trauma, gravity, and import of being the Black son of a formerly incarcerated person is often a bit too much for people to handle in a profession like mine, where there are so few people with similar experiences.

That all of these parts of my identity come across as being a little too heavy, a little too real, a little too extra is made plain in various ways. At the same time that I am representing clients who look like me and share many aspects of my background, the reality is that, according to the natural order of the world I see around me, people like me, like us, are to be advised, not listened to. Black Lives Matter is a slogan for folks to rally around and sticker their desks with, and Kendrick Lamar's "We Gon' Be Alright" is great for folks to listen to, but the import of both is lost in the spaces I occupy.

My earliest memories of anti-Blackness entering my life were in preschool. While I did not understand the full extent of what was going on at the time, it became much clearer when, decades later, my preschool teacher ran into my mother and told her how she had been afraid of me, the four-year-old Black boy in her class. It seemed that my whole academic career was spent being removed from class or having parent teacher conferences, in spite of the fact that I excelled academically. In middle school, I, like other kids my age who were consumed with hip-hop, wanted a starter jacket. When my mother told me that she could not afford one, I – never one to accept limitations – decided to save my lunch money toward the purchase. That Christmas, my mother and grandmother combined their money with the money I had saved and purchased me a Charlotte Hornets jacket. Not two months later, I found myself in the principal's office accused of stealing the jacket. This would

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not be the last time I was falsely accused of wrongdoing. By the time I exited high school, I was convinced that I was cursed. I thought that maybe degrees would insulate me, but this never bore out the way I had anticipated. More money, degrees or access would not provide me the comfort of safety.

I did not realize it when it happened, but in hindsight, the jacket incident was a perfect example of how capitalism will not save Black people. Hard work would not stave off anti-Blackness. A penny saved or a penny earned will not insulate me from harm and in fact, the pursuit of increased access or increased financial stability may exacerbate the harms. We are likely to be seen as alien, even when we believe we have arrived. The trauma and conditions of the great paper chase may be too much for us to bear and that the gains may not match the losses.

I remember interviewing for a position at the public defender's office and explaining how criminal justice work is deeply personal to me, how serving as a public defender would allow me to obstruct the system and to defend folks like me. I explained how, as a child and as a young adult, prison felt like it was not only a possible reality but at times an inevitable destination. I explained how my own experiences have demonstrated for me from a very young age that I was always, both literally and metaphorically, one wrong turn away from facing incarceration. I explained how, as a college student in my first semester, my friends and I were pulled over. In the car surrounded by flashing lights, we sat in a dazed state as infrared beams penetrated our vehicle. After some time, we were told to exit the car and we were held by officers at gunpoint. No immediate explanation was given, but when we were finally able to get a response, we were told that two Black kids had pulled a gun on a white lady and fled in a black car. There we were, five of us, in a white car, but close enough as far as the officers were concerned. This was not my first or last time "fitting the description." Several years later, as I was driving in my neighborhood, I was pulled over three times in less than ten minutes. The third time, I was handcuffed as an additional squad car pulled up with a witness inside. The witness said that I "sort of" looked like I could be the person who had committed the crime, but that I seemed maybe a little young. If her answer had been different, I would have been facing an armed robbery charge. I detailed these experiences because I wanted those interviewing me to know what was on the line for me, that I had skin in the game. That the color of my skin meant I was inextricably and forever trapped in the game, even if I did not want to play, and that with that knowledge, I saw no option but to do my best to defend others who, like me, were trapped.

Fortunately, I got the job. My understanding was that I was the first Black male hired in a decade. I was a unicorn of sorts. It was not long before I really grasped what that meant for me. Some folks, even those on the same side, even fellow public defenders on my own team, viewed my interactions with judges and other parties very differently than they viewed their own. When I felt I was being treated unfairly by a white male judge, it turned out that in this particular court house, this white male judge was the judge that everyone, except me, believed to be the

most reasonable. One day, as I attempted to detail how a bailiff, also a white male, had disrespected me, this judge took it upon himself to respond by saying that folks were having a conversation about my behavior at lunch and that he had heard a different tale. He then attempted to accuse me of unprofessional behavior, in front of my colleagues. While a couple of them stood up for me, one later suggested that the disparate treatment I was receiving was because I was not deferential enough, that I pushed back too much. This was despite this particular individual having a well-earned reputation for arguing with judges. For the same behavior, she had been labeled a zealous advocate; I had been labeled disrespectful.

Incidents like this were not rare and made me question what I was doing in this line of work. Was I really making an impact? And even if so, was it worth the stress? Of course, it did not help that we were being paid substantially less than our district attorney counterparts and that we did not receive any benefits. The pressures of being the first in my family to make it as far as I have while consistently feeling as though I was on the cusp of financial ruin was a sort of dissonance that made the racialized elements of the work that much harder to handle. My office mate at the time, a white male several years younger than me, was staying rent-free at his parents' house; no doubt we had different concerns. However, the breadth of the gulf between us became more clear when my older cousin was arrested. I was driving home preparing to celebrate winning a trial when the call came in, so did the embarrassment of knowing that I did not have the financial means to help, that my cousin would likely have to remain incarcerated while his case was resolving, which almost certainly meant that he would have to take a plea. At this time, I was making more money than I had ever made and it still was not enough to help those closest to me. This in turn made me question the point of it all.

I began to feel like a cog in a wheel. I felt that, regardless of how many motions or trials I won, I would just have a new stack of cases waiting for me in my mailbox. There did not seem to be much value in my being the only Black male in court who was not actively being prosecuted for a crime.

Eventually, I decided to leave and pursue work that felt more oriented toward systems change. This decision was extremely difficult for me to make and as I am wont to do, I consulted with several people before making it. One of those people, a friend and felony attorney in the office, attempted to convince me to stay. I am certain that he did not and likely still would not view his pitch as anti-Black, but I did. Specifically, he implored me to stay by asking me to think about what other place I could get paid six figures to represent poor people. Perhaps this is a true sentiment; still, it felt gross. We represented mostly Black people, and despite being an office that took a high rate of cases to trial, many of our cases pled. We were, despite our best perceptions of ourselves, a part of a system that disproportionately harmed people like me. Despite this reality, the best pitch he could come up with to convince me to stay was one that would force me to think about how I personally could profit from this system. I declined.

Currently, I make less money than I did then, albeit with benefits now. I would be lying if I did not admit that I sometimes think about the pitch my friend made for me to stay and question if I made the right decision. I live in one of the most expensive areas of the country and could have used that extra money to pay for my son's preschool instead of taking out a loan. In a perverse way, the moneyed interests positioned me and the interests of my family against my morals and the interests of my broader community. This push and pull is not without potential consequences: According to a recent Forbes article, "Black and Latino families with a member holding a four-year degree own just a fifth of the wealth of equivalent white families. In fact, they own less wealth than a white family whose head has just a high school diploma."¹ A recent post from the Brookings Institute declares that Black children from middle class homes are downwardly rather than upwardly mobile: "Even black Americans who make it to the middle class are likely to see their kids fall down the ladder."²

In other words, even when capitalism seems to work for us, it does not. A recent piece by Tiana Clark, titled "This is What Black Burnout Feels Like," detailed the stresses of capitalist pursuits:

Am I burned out because I'm still subconsciously wanting the American dream to be true, despite the odds stacked against my skin color? Do I want to be the exceptional black person who actually makes it out of my circumstances? Or am I wanting to be something I will never be: a rich, white man – seemingly carefree, with a sizeable Roth IRA, unafraid to walk to his car at night without his keys Wolverine-d in his hands? But if the American dream isn't even possible for upwardly mobile white people anymore. . . then what the heck am I even striving for? Where do I actually see myself?³

I now help run a legal clinic focused on the decriminalization of poverty and I train law students. We are able to directly represent people and allow that representation to also inform our policy work. In many ways, it is the antithesis of the public defender's office. Yet still, I remain the only Black male attorney, the only one in my office and most of the coalitions of which we are a part. This is important. At a recent community clinic, a colleague, a Black woman, and I left to get coffee. When we returned, we were denied reentry by two Latino men who were repairing the door. These same men had previously seen us enter, but refused to open the door for us. One of our white male students witnessed this and got up from a table that we had set up outside to invite folks in to the clinic.

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1. Josh Hoxie, *Blacks and Latinos Will be Broke in a Few Decades*, FORBES (Sept. 19, 2017), <http://fortune.com/2017/09/19/racial-inequality-wealth-gap-america/>.
 2. Edward Rodrigue and Richard v. Reeves, *Five Bleak Facts on Black Opportunity*, BROOKINGS (Jan. 15, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/01/15/five-bleak-facts-on-black-opportunity/>.
 3. Tiana Clark, *This is What Black Burnout Feels Like*, BUZZFEED NEWS (Jan. 11, 2019), <https://www.buzzfeednews.com/article/tianaclarkpoet/millennial-burnout-black-women-self-care-anxiety-depression>.

Immediately, the door was opened. This incident bothered the student so much that he spoke about it with his supervisor. Later, there was a debrief session where the incident was discussed. I was not present for this discussion. However, though the incident was discussed, not a single person followed up with my colleague and me, even as story after story about Black folks being policed in public were dominating the news cycle. The incident was not surprising. I faulted myself for wearing our organizational t-shirt instead of a suit. I knew better. During my first legal job, I always wore a suit, even as others wore jeans. At one point, the communications director asked my why; I told him quite honestly if I were to walk outside and say I am a lawyer but not look the part, folks would not readily believe me.

I still often have a hard time grappling with the ways anti-Blackness rears its head – how it is inescapable, even as I take very seriously my role of teacher and I do my best to use data, client stories, and personal experiences to enable my students to gauge what it is like to walk through the world in our shoes. I am uncertain if I am successful in this. Recently, I taught a seminar on race and poverty and one of the student evaluation responses crystalized for me my dilemma. The response was as follows:

Brandon is a really great guy, with a super interesting (and unique, as far as Berkeley instructors go) perspective. He seems like he's sometimes too cool for school though, as if he can't be seen putting in an effort, even though it's clear he does in fact care. And honestly, the most interesting part of the class was when he would go on a monologue of some crazy shit he'd seen either as a PD, attorney at EBCLC, or in his pre-attorney life.

Reading this, I cannot help but wonder what does “too cool for school mean” in this context? Why was the most interesting part of the class my sharing of real world, painful experiences, and was “interesting” meant as informative, or just a description of me being seen through a performative lens? Student evaluations are anonymous so I could not ask. But it does beg the question, how can I or should I engage students to think about the ways in which anti-Blackness results in not only policy and practices that harm folks like me but in ways that create an almost parallel universe of pain and trauma – a universe many of them will never inhabit? More importantly, should I endeavor to engage students on this topic without sharing any anecdotes about my own experiences? Lately, I have taken to asking students how many of them have ever been pulled over – not handcuffed or arrested, but just pulled over. The responses, while unsurprising, have been jarring. Most of the students I encounter have not been pulled over. The reality of cops flashing lights behind them and triggering the inevitable nervous reactions so central to my lived experience is foreign to them. Their reality is so far from what I, and people like me, experience that when I shared this anecdote with a family member, he laughed out of shock.

My wife, also a lawyer, is white. She sees how the world reacts to our children. Her fear of the dangers of driving while Black has led her to take a prophylactic approach to my safety by not allowing me to drive on

long trips, under the auspices that if pulled over, I may face less danger with her behind the wheel, or perhaps we will not be pulled over at all. (Time will tell if this strategy will work.) The difference between my wife and some of my students is proximity. She sees and feels anti-Blackness in a deep way in her day-to-day life by watching the way it circles around her husband and children.

Yet and still, even close proximity is not always enough to make clear to the non-Black community the pervasiveness and insidiousness of anti-Blackness, as evidenced by my experiences at the public defender's office. Proximity certainly is not enough to eradicate complicity. This is evidenced by the story of Frank Somerville, as presented in the National Public Radio Podcast, *Invisibilia*.⁴ In the episode titled "The Culture Inside," Mr. Somerville, a Bay Area reporter, discussed his realization that anti-Black bias also lived in him, despite his self-described progressive views.⁵ The incident Mr. Somerville described was one in which he felt the need to observe and potentially protect a middle aged white woman as she was being approached by a Black man with his "cap down. . . dressed kind of streetish."⁶ What Mr. Somerville failed to notice initially was that this Black man was just walking down the street with his toddler son.⁷ There was nothing nefarious about him.⁸ This reality of his anti-Black bias shocked and even disgusted Mr. Somerville, who had recently had a conversation with his adopted Black daughter about how her race may impact the way people profile, approach, and interact with her.⁹ This conversation came in the wake of the murder of Mike Brown.¹⁰ Fueled by disappointment, Mr. Somerville declared that he would never allow his bias to flare up again.¹¹

The problem is, Mr. Somerville is not alone – anti-Black bias can infect us all. Even Black folks. This is also made clear in the *Invisibilia* episode, through the story of Sergeant Ray Rice, a St. Louis police officer.¹² In the episode, he detailed how he was on the receiving end of anti-Black bias through several instances of police profiling both as a teenager and as an adult.¹³ However, it was not until Mr. Rice went through an implicit bias training that he realized that he too, a Black male, was complicit in anti-Black bias.¹⁴ Not even proximity and lived experiences together could insulate him.¹⁵

4. *Invisibilia: The Culture Inside*, NAT'L PUB. RADIO (June 8, 2017), <https://www.npr.org/templates/transcript/transcript.php?storyid=532955665>.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

The NPR piece discusses a strategy known as “detect, reflect, and reject.”¹⁶ First, you detect the negative bias when it arises, then you reflect on where that bias comes from, then you reject it as unfounded and replace it with a different response, as in the example of the Black man approaching the white woman, realizing he may just be a father walking with his son.¹⁷ This strategy has been shown to work. The strategic issue is how to institutionalize this when those in power may not so readily accept their own biases and opt in.

All of this leaves me to wonder: Can the pain of anti-Blackness be taught, through proximity or otherwise? Does personal experience even matter, if even those of us who experience anti-Black bias regularly can also be complicit in perpetrating it? What is the cost of it all? Even if we are somehow able to successfully navigate the racist waters we swim in, are we still suffering by virtue of our complicity and participation in a financial system that subjects us to drawing lines between our needs and our community’s? I don’t know the answers to these questions, but I do know that they are ones that we must grapple with as we endeavor to change systems controlled mostly by folks who won’t have had the visceral life experiences that could easily demonstrate the harm of the current system. In the short term, I believe that we have to find some peace with our decisions and the roles that we can play and resources that we have at our disposal. The offensiveness of my friend’s suggestion aside, I believe that I was fighting the good fight as a public defender. The answer to my cousin’s issue with the criminal justice system wouldn’t have been for me to make more money; it is for me to engage in work that will change the system so that other people’s cousins are impacted positively. The answer to making spaces I occupy more welcoming for folks like me is to use whatever privilege I have to open doors for others. The answer to others knowing the harms of anti-Blackness is for me to be authentically me and boldly challenge perceptions systems that thrive off of anti-Blackness.

16. *Id.*

17. *Id.*

21ST CENTURY HARRIET TUBMAN?: AN INTERVIEW WITH SUSAN BURTON

*Bryonn Bain**

*Then the Lord said to Moses, Rise up early in the morning
and present yourself to Pharaoh,
as he goes out to the water, and say to him, 'Thus says the Lord,'
"Let my people go, that they may serve me."*

—Exodus 8:20

Los Angeles is ground zero for mass incarceration. With an average of 17,000 people incarcerated daily (as of 2015),¹ LA incarcerates more people than any city in the world. The City of Angels is, in fact, the City of Incarceration.

I have worked in prisons for over 30 years. In the late 1980s, I began performing hip hop, spoken word, blues and theater in prisons on the other side of the country in New York. But it was only after I was racially profiled and wrongfully jailed by the New York City Police Department that I saw the power of my work as an artist to be used for activism. I have spent my career since working to build transformative learning communities by bridging prisons and institutions dedicated to the arts and education. After more than a decade of facilitating and teaching programs linking facilities like Rikers Island and Sing Sing prison to institutions like NYU, Columbia University and Carnegie Hall, I was invited to UCLA to develop a Prison Education Program linking the nation's leading public university² to those incarcerated in Los Angeles.

* Director of the UCLA Prison Education Program and Associate Professor of African American Studies and World Arts and Cultures/Dance at the University of California, Los Angeles. J.D., Harvard Law School. This article was written as a part of the *Narrative of Freedom* (NOF) Research Collective, a participatory oral history project that explores the effects of racialized hyper-incarceration on families. I would like to thank Matthew Griffith, Rosie Rios, Dianna Williams, Joanna Navarro, and other members of the NOF Collective for their research contributions and suggestions. Lastly, and most importantly, many thanks to Ms. Susan Burton whose unyielding commitment to liberation is a beacon of light for me and many others around the world.

1. Breeanna Hare & Lisa Rose, *Pop. 17,049: Welcome to America's largest jail*, CNN (Sept. 26, 2016), <https://www.cnn.com/2016/09/22/us/lisa-ling-this-is-life-la-county-jail-by-the-numbers/index.html>.
2. *See Top Public Schools: National Universities*, U.S. NEWS & WORLD REP. (2019), <https://www.usnews.com/best-colleges/rankings/national-universities/top-public> (rank-

While the carceral crisis in LA has led the United States' devastation of Black, Brown, working and marginalized communities, there are also extraordinary leaders, grassroots and community-based organizations here in abundance. From Youth Justice Coalition, Dignity and Power Now, the Anti-Recidivism Coalition and Inside Out Writers, Angelenos have long organized to fight for change in this city, and have developed visionary strategies and programs to move the national conversation and policies in the left direction: towards the liberation of those of us who are system-impacted, formerly incarcerated, and/or surviving what some refer to as *Post-Traumatic Prison Disorder*.³

On an unforgettable February morning, I walked into a busy office in South Central, Los Angeles. A half dozen ethnically-diverse women staffers gathered around a table, trying to reconcile speaking requests from both near and far. That legendary church in Atlanta. Some classroom at Princeton. Somewhere across the pond in Portugal. At the head of the table, the woman at the center of this avalanche of invites dons a vibrant orange dashiki with black and blue trim, and listened to the discussion with the warmest smile and most gentle patience.

I stood at the entryway in anticipation of her embrace. A week earlier, we just missed each other on separate visits to the largest federal detention center in the country, the Metropolitan Detention Center in Brooklyn, New York City — a facility that would soon come under scrutiny by human rights activists and the city council after a power outage left men inside without heat for four days amidst a freezing polar vortex.⁴ As soon as we locked eyes, she welcomed me with a cool *hello* and warm hug. I was hoping I would not be an intrusion on the more important business of a woman regarded around the world as one of the great freedom fighters of our time.⁵ Her name is Susan Burton.

Ms. Burton is the founder of A New Way of Life Reentry Project (ANWOL).⁶ Since 1998, ANWOL has secured and provided housing, case management, pro bono legal services, advocacy, and leadership development for more than 1,000 women and children who are rebuilding their

ing the University of California – Los Angeles the number one public national university in the United States).

3. See Shawanna Vaughn, *Post-Traumatic Prison Disorder (PTPD) Concept Paper* (forthcoming) (on file with the author).
4. See Associated Press, *Power restored at federal detention center in Brooklyn where inmates had no heat during polar vortex*, L. A. TIMES (Feb. 3, 2019), <https://www.latimes.com/nation/la-na-new-york-detention-center-20190203-story.html>; see also Transcript of Evidentiary Hearing at 165-89, *United States v. Segura-Genao*, No. J257 (S.D.N.Y. Feb. 5, 2019), <https://assets.documentcloud.org/documents/5728706/Federal-Court-Hearing-Revealing-Neglect-at-a.pdf> (describing an inspection of the Metropolitan Detention Center in Brooklyn, NY by Judge Analisa Torres of the U.S. District Court for the Southern District of New York).
5. Michelle Alexander, *What I Learned From Susan Burton, a Modern-Day Harriet Tubman*, NATION (May 11, 2017), <https://www.thenation.com/article/what-i-learned-from-susan-burton-a-modern-day-harriet-tubman/>.
6. A NEW WAY OF LIFE REENTRY PROJECT, <http://anewwayoflife.org/> (last visited Apr. 20, 2019).

lives after prison.⁷ While countless voices in the rising movements for racial and gender justice call for “changing the narrative” around mass incarceration,⁸ Ms. Burton and her organization are changing *the narrator*. Through her advocacy, a formerly incarcerated, Black woman has become a central voice in leading the conversation on mass incarceration. In her inspiring memoir, *Becoming Ms. Burton*, she shares her personal story of healing, redemption and resilience. *Becoming Ms. Burton* has received overwhelming acclaim since its 2017 release.⁹ In fact, her publisher’s website crashed after the book received a shout out from Michelle Alexander, legal scholar and author of the *New Jim Crow*, causing her book release announcement to go viral.

This is the new normal for the formerly incarcerated *CNN Hero* who has quickly become regarded as one of the leading civil and human rights activists of our time.¹⁰ Without any hint of hyperbole, her name is being compared today to legendary women including Angela Davis, Ida B. Wells, Sojourner Truth, and yes, even Harriet Tubman.¹¹

Bryonn: *Becoming MS. BURTON*: now has over 11,000 copies in print.¹² Congratulations!

Ms. Burton: Thank you.

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7. See *What We Do*, A NEW WAY OF LIFE REENTRY PROJECT, <http://anewwayoflife.org/what-we-do/> (last visited June 6, 2019).
 8. See, e.g., Marian Wright Edelman, *Changing Our Racial Narrative*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffpost.com/entry/changing-our-racial-narra_b_11354146; *Building a Narrative to Address Violence in the U.S.*, Opportunity Agenda, <https://www.opportunityagenda.org/explore/resourcespublications/building-narrative-address-violence-us> (last visited Apr. 20, 2019).
 9. See SUSAN BURTON & CARI LYNN, *BECOMING MS. BURTON: FROM PRISON TO RECOVERY TO LEADING THE FIGHT FOR INCARCERATED WOMEN* (2019); see also, Elaine Elinson, *An Arduous but Triumphant Journey*, Los Angeles Review of Books (Jun. 21, 2017), <https://lareviewofbooks.org/article/an-arduous-but-triumphant-journey#!>; Upstanders: Breaking the Prison Pipeline, Starbucks Stories, <https://stories.starbucks.com/stories/2016/upstanders-breaking-the-prison-pipeline/>.
 10. Kathleen Toner, *‘Magic happened’ after she gave ex-cons a chance at new lives*, CNN (Feb. 19, 2010), <http://www.cnn.com/2010/CRIME/02/18/cnnheroes.burton/>.
 11. Expansive definitions of carcerality and liberation are used here. Beyond the shackles of the prison industrial complex, there are metaphorical shackles — the confinement of Black women’s bodies by patriarchal, white supremacist institutions, traditions, policies and practices. The connection between Burton and these women is that she follows in their legacy — a tradition of radical, Black feminist activism fighting for the liberation of oppressed people. While Burton’s work (and the work that came before her) is deeply impactful, however, this article’s intention is not to reify false notions of freedom. For this reason, this work must continue to be in conversation and concert with abolitionist critiques of marginal reforms, and committed to the “non-reformative reform,” also being led by Black women activists. See, e.g., Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N. Y. TIMES MAG. (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.
 12. See Liz Button, *‘Becoming Ms. Burton’ Publisher Encourages Booksellers to Join Prison Distribution Initiative*, AM. BOOKSELLERS ASS’N (Jan. 30, 2018), <https://www.bookweb.org/news/%E2%80%9Cbecoming-ms-burton%E2%80%9D-publisher-encourages-booksellers-join-prison-distribution-initiative>.

Bryonn: I know it's been a long journey to get here. Can you tell us a bit about your journey towards becoming Ms. Burton?

Ms. Burton: I was born in a housing project. My mother and father, through the conditions of the South, came to California looking for a better life for themselves and had six children. I was the only girl. I had five brothers. The household was full of stuff. There was laughter, there was fun, but there was also lots of trauma, violence and childhood – different levels of abuse.

And I endured, and I endured, and I endured all types of abuse up until the time I lost my son. My son, KK. He was five years old. He was accidentally killed by an LAPD detective and at that point I kind of fell off.¹³ My body couldn't hold any more pain, disappointment and especially the grief of losing a son, so I began to drink and that escalated to illegal drug use. It was during the time that our communities were saturated with cocaine that escalated to crack, and I succumbed to using it and was imprisoned for that.

For 20 years, I traveled in and out of incarceration because of a drug addiction – really because of medicating the pain, the loss, the grief and the disappointment of life¹⁴. And in 1998 I found a place on the west side, in Santa Monica, that gave me treatment for my addiction and counseling for the grief and trauma and early childhood abuse,¹⁵ and I became stronger.¹⁶

And that led me to look at what happened in that westside of Santa Monica area – how people were not sent to prison for the things that we were sent to prison for in South LA. And I began to think that if women had a safe place to go, if they had a place, that if they would find safety and a welcoming community like I experienced in Santa Monica, then just perhaps they wouldn't go back to prison.

I saved my few little dollars from a minimum wage job and got a house. And I would begin to greet women at the bus station, as they got off the bus and welcome them back to the community, and offer them a bed at my home, which I called *A New Way of Life*.

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13. See BURTON & LYNN, *supra* note 9, at 239 (“Unarmed blacks are killed by the police at five times the rate of unarmed whites. At least one in three blacks killed by police were identified as unarmed. In 2015, police killed at least 102 unarmed Black people, nearly two each week. Of these cases, only ten resulted in police being charged, and only two cases saw convictions of the officers involved. One officer received a four-year prison sentence. The other officer was sentenced to jail for one year, though he was allowed to serve his time exclusively on weekends.”).
 14. *Id.* at 2 (“The United States, with 2.2 million people behind bars, imprisons more people than any other country in the world.”).
 15. *Id.* at 41 (“More than 60 percent of incarcerated women report having been sexually assaulted before the age of eighteen.”).
 16. *Id.* at 93 (“It is estimated that as many as 94 percent of incarcerated women were victims of physical or sexual abuse.”).

Bryonn: What was the reaction of women at the bus station when you first approached? Did they expect you to be there?

Ms. Burton: They did not expect me to be there. Some women were cautiously suspicious. Some women were glad to have a place to go,¹⁷ and some women declined so it was a mixture of responses to the offer of a safe place.¹⁸

Bryonn: What are the major challenges women coming home from prison in South LA experience?

Ms. Burton: First of all, every woman that comes back to south LA gets off a bus at the downtown Greyhound bus station on Skid Row and there are lots of predators¹⁹ waiting for women to step off that bus. You're very vulnerable. You are a woman, so we carry certain attributes. Period.

So, you know people are just so ill-prepared to begin their lives without an ID, without a safe place to go. Women have so much around keeping the family together that they carry that burden of motherhood – getting back into the community to make a life, make a way and being vulnerable to relationships that might have been why they were incarcerated in the first place – hailing from the abuse of not only before incarceration but while incarcerated – beginning to understand how to make better choices, safer choices.²⁰ You know women are much different from men.

Bryonn: So, from the point at which you decided to purchase a home, meeting women coming home from prison, what were some of the major

17. *Id.* at 117 (“In large urban areas such as Los Angeles and San Francisco, up to half of those on parole are homeless.”).

18. *Id.* at 209 (“Nearly 80 percent of formerly incarcerated women are unable to afford housing after release. Most public housing authorities automatically deny eligibility to anyone with a criminal record. No other country deprives people of the right to housing because of their criminal histories.”).

19. Language matters. The *UCLA Prison Education Program and Narratives of Freedom Research Collective* ascribe to language forwarded by the *Center for NuLeadership on Urban Solutions* and the *UC Underground Scholars Initiative* — an organization of formerly incarcerated University of California students. Each of these organizations is committed to using more humanizing language instead of the pejorative portrayals of system-impacted people that are customary in the dominant narratives of the criminal legal system. Many of those on Skid Row are housing insecure and formerly or recently released from prison. We are in a constant discussion about ways to reframe how we talk about system-impacted people, and to acknowledge and communicate our diverse issues. The use of the word “predators” is an example of this discourse. See, e.g., Eddie Ellis, *An Open Letter to Our Friends on the Question of Language*, CTR. NULEADERSHIP URB. SOLUTIONS, <https://cmjcenter.org/wp-content/uploads/2017/07/CNUS-AppropriateLanguage.pdf> (last visited June 6, 2019); see also *Underground Scholars Initiative, The Language Guide for Communicating about Those Involved in the Carceral System*, BERKELEY UNDERGROUND SCHOLARS (Mar. 6, 2019), <https://undergroundscholars.berkeley.edu/news/2019/3/6/language-guide-for-communicating-about-those-involved-in-the-carceral-system>.

20. BURTON & LYNN, *supra* note 9, at 53 (“The majority of incarcerated women are mothers of underage children. Over 40 percent of these mothers, report that, upon incarceration, they were the only parent in the household.”).

challenges you faced to get A New Way of Life from that point to where it is today?

Ms. Burton: Bryonn, I was so happy to be able to make my life count and useful. I didn't realize the enormity of the challenges that I was taking on. It was so nice to see women and have that community of sisterhood in the household. I didn't really understand the enormity of the challenges I was facing because we were a community, we were all healing, we were all important to one another and so the outside prejudices and discriminatory practices didn't impact us to get in the way of our healing or our thoughts about what we meant to each other in that community.²¹ But going outside of that community and trying to get a job or trying to get a woman's child back, there were serious problems.

And I began to understand that after you do your time, you continue to do time with the level of practices and policies and laws that are in place and that led me to begin to do some advocacy and policy work to address the discriminatory policies²² and practices that all people who have been convicted of a crime face.²³

Bryonn: So, you say in your book – specifically in the letter that you write to incarcerated men and women, you say there are no *throw-away* people and you say your life matters and that's a big part of the message you've shared all around the country and internationally – I hear you've been invited to speak from Princeton to Portugal. So when you met Ingrid Archie was that a part of your message? What was that meeting like? And how did that relationship begin?

Ms. Burton: So, I first met Ingrid Archie in 2007 and she was a bright-eyed bubbly young woman and she had a little girl tagging along behind her, holding her hand. And they came into the home, and I would take her with me to meetings and we would share our story and we began to understand that sharing our story was an important part of getting the message across and our own personal power to voice. And she did well and she moved out and we always had this closeness and the bond and especially her little daughter.

21. *Id.* at 39 (“Black women comprise 40 percent of street prostitutes, though 55 percent of women arrested for prostitution are black, and 85 percent of women incarcerated for prostitution are black. Two-thirds of those working as prostitutes disclosed having been sexually abused as children—and more than 90 percent said they never told anyone. Only 1 percent reported having received counseling.”).

22. *Id.* at 179 (“Every year in L.A. County, 45,600 people are released on parole. A survey revealed that over 40 percent of L.A. employers would not hire a person with a criminal record.”).

23. *Id.* at 174 (“In the United States, one in three adults has a criminal record—though black men are six times more likely than white men to be incarcerated. Over 60 percent of the formerly incarcerated will still be unemployed a year after release. Those who do find employment are typically in low-level jobs, earning 40 percent less pay than adults with no criminal background.”).

Unfortunately, in 2015, Ingrid had to return because she ran into a store while she left her daughter in the car – and she was re-arrested²⁴ for child endangerment even though the child was not hurt, and I often wonder had Ingrid been in another part of town or if she had not been Black²⁵ would she have been given services – parenting classes, counseling instead of three years in prison and labeled a child endangerer?

Bryonn: The numbers that I’ve seen show that 75% of the women involved with A New Way of Life don’t return to prison?

Ms. Burton: For a third of the cost of incarceration – we can house a woman for a year and she’s much more functional, she’s much more able to provide for herself and her family, she becomes a tax paying, contributing member of our society.^{26/27} We spend \$75,000 a year to incarcerate a woman. And for \$16,000 women can be here at A New Way of Life and return to her power, beyond her power and to being a functional member of our society.

Bryonn: The work you’ve been doing for decades now has such an impact that I’ve heard multiple people in completely different situations refer to you as the Harriet Tubman of our time – that says so much. But I know a part of why you’re motivated by this work is because of the real lives that you’re impacting rather than the glorious claim of that kind of connection. How do you feel when you come across women like Ingrid, other women and see that because of the work you’ve been doing their lives have been so transformed? How does that feel?

24. *Id.* at 196 (“The California Department of Corrections and Rehabilitation has one of the highest recidivism rates in the country, with nearly half of women with a felony conviction returning to prison—and a 61 percent recidivism rate overall. The majority of people returned to prison within the first year of release.”).

25. *Id.* at 213 (“Black women represent 30 percent of all incarcerated women in the United States, although they represent less than 7 percent of the country’s population.”).

26. *Id.* at 227 (“In most states in America, anyone convicted of a felony loses the right to vote until their sentence plus parole or probation is complete. Voting rights may be permanently revoked in ten states (Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nevada, Tennessee, and Wyoming), even after someone has been released from prison and completed parole and probation—and while still requiring payment of taxes. Eight states (Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, South Carolina, and South Dakota) restrict voting for anyone convicted of a misdemeanor. Only two states, Maine and Vermont, allow voting from prison.”).

27. Ms. Burton and ANWOL maintain that “every person has inherent value and holds the power of possibility within”. See A NEW WAY OF LIFE REENTRY PROJECT, *supra* note 6. However, “tax-paying, contributing member of society” could imply a person’s value is based on their financial contribution to a society, rather than being valuable unequivocally, whether or not they add value to the capitalist market. We respect Ms. Burton’s invaluable work and include her choice of words as stated — especially since we recognize that her role as a grassroots leader requires her to regularly respond to conservative, financially-focused critics of decarceration. This piece aims to center the voice of those who are system-impacted and the work we must do in solidarity.

Ms. Burton: It feels so powerful to be a person in the midst of being a change agent – leading women to their purpose and leading women to their power and ultimately their freedom. You know, Ingrid is not a throwaway person and her children are not throwaway children and by Ingrid finding that path it also empowers her to become an efficient parent and lead her children in a way that they’ll become great women. Her children are girls.²⁸ And her 15-year old has an appointment to shadow Senator Holly Mitchell. Her daughter wants to aspire to be an elected official, and we’re able to support that and Ingrid is able to facilitate that because of who she is and who she’s becoming.

Bryonn: I want to shift a little bit and talk about some policy. We are living in a real exciting time with lots of changes happening, also a lot of challenges at the federal level. You have this whole tension between the federal government refusing to get rid of prohibition of marijuana, of cannabis, whereas half of the states in the union from California to Colorado and so on have decided to decriminalize marijuana. We are looking at it specifically in the sense – from Prop 64 to this recent ballot initiative last year – the issue has come up quite a bit. What are your thoughts on the impact of the *war on drugs*. Specifically, as it relates to women who have been involved with *A New Way of Life* – to what extent have drug-related crimes been a part of their journey ending up here?

Ms. Burton: So, we really are able to understand that we are living in a country that’s divided. There are the people who are liberal and want equality and fairness and then there are the people who are bigots and racists and capitalists. And we’re coming out of a time that our communities, urban communities, were under a hell of an attack through the war on drugs and that (those) attacks I believe, just devastated the women in our communities and drove them in droves, by the thousands, into prisons across this nation.²⁹ And now we’re realizing what happened and we’re beginning to repair that damage that happened through the war on drugs. While we’re having a divided country, a lot of the women who come into *A New Way of Life* have had drug convictions and non-violent crimes. But there are also the women who come into our communities and come into our homes that have had crimes that they’ve been tagged ‘violent’.³⁰

28. BURTON & LYNN, *supra* note 9, at 161 (“Most women are behind bars for social or victimless crimes—while the real victims, which the flawed system perpetuates, are the children. The number of children under age eighteen with a mother in prison has more than doubled since 1991. Approximately 10 million American children have or have had a parent in prison.”).

29. *Id.* at 147 (“The majority of offenses committed by women are nonviolent drug and property crimes, motivated by poverty and addiction. Most women offenders are under thirty years old, and are disproportionately low-income, black, and didn’t complete high school. The lifetime likelihood of imprisonment for white women is 1 in 118; for black women, it’s 1 in 19.”).

30. *Id.* at 202 (“Approximately 90 percent of women imprisoned for killing someone close to them had been abused by that person.”).

I don't see either of those women being different in the way of being able to recover from whatever happened in their past and many times these women were defending themselves³¹ and someone got hurt and they got labeled 'violent'.³² But each one of them have healed and each one of them are capable of being great members of our society, great parents³³ and contributing members – and I think that this country when it makes a distinction between a person whose been convicted of a non-violent versus a violent crime, I think they're making a big mistake because one instant cannot label a person, one instant cannot label a person deserving or not deserving because we really need to check that out and look at that and understand what we're doing making a distinction between the deserving and the undeserving.³⁴ Again, there are no throwaway people, and we're all able to recover from that instant or from that way of being.

Bryonn: Why do you think politicians, elected officials are trying to make that distinction so much – in conversations and how they frame some of the legislative proposals? What do you think is behind them in trying to label non-violent drug-related offences as something different from folks who have other kinds of offences?

Ms. Burton: So, politicians are not deep investors or risk takers. And right now, in this era of decarceration or mass incarceration – depending on how you look at it – it's safe to say, "Let's help the non-violent ones." It's not safe to say let's help everybody. You know, somebody always has to get thrown under the bus. And that's just not fair, or is it the best most effective approach when we look at cost and long sentences. I had a woman who came to *A New Way of Life* who had been incarcerated 47 years.³⁵ It doesn't take that to rehabilitate. Forty-seven years.

Bryonn: And you make the point about just the cost – obviously the deep cost to our communities, to our families, there's the human cost of it. But it doesn't make sense, even in the logic of these bigoted capitalist folks,

31. *Id.* at 93 ("It is estimated that as many as 94 percent of incarcerated women were victims of physical or sexual abuse.").

32. *Id.* at 111 ("Being abused or neglected as a child increases the likelihood of arrest as a juvenile by nearly 60 percent, and the likelihood of adult violent crime by approximately 30 percent.").

33. *Id.* at 29 ("More than 75 percent of incarcerated women had at least one child as a teenager.").

34. *Id.* at 132 ("Sixty-five million Americans with a criminal record face a total of 45,000 collateral consequences that restrict everything from employment, professional licensing, child custody rights, housing, student aid, voting, and even the ability to visit an incarcerated loved one. Many of these restrictions are permanent, forever preventing those who've already served their time from reaching their potential in the workforce, as parents, and as productive citizens. "The result is that these collateral consequences become a life sentence harsher than whatever sentence a court actually imposed upon conviction." —American Bar Association president William C. Hubbard.").

35. *Id.* at 187 ("Women commit far fewer murders than men, but receive far longer sentences. A woman who kills a male partner receives, on average, a fifteen-year sentence, while a man who kills a female partner typically receives two to six years.").

who actually are committing these resources you talked about, [it] is not an effective use of resources. If over 95% of the folks in prison are coming home, you'd rather invest in truly rehabilitating and educating, giving folks opportunities [not] keeping folks in this system that doesn't work. So, I'm curious to know if you think that using some of the resources – the taxes that are gonna be taken from the decriminalization of cannabis – using those resources towards community programs like legal aid, like drug treatment, addiction treatment, like community gardens and beautification of the community – if that's one effective step towards using those resources in a more responsible way?

Ms. Burton: So here we are in 2018, and on January 1, legalization of marijuana has taken place in California and there's a tax on there that will benefit the community. But, I think back to all the people that languished in prisons and were criminalized for this marijuana that's legal now³⁶, and the pain that we suffered on the back of marijuana being illegal. So, we can't undo the past, but we can step into a future that will help our communities become whole, safer, and resourced.³⁷

I also think about how people capitalized on the incarceration of folks for marijuana and now that it's legal, while we'll get some resources but who is also capitalizing off the marijuana industry now? Is it the same people who provided services and capitalized off the incarceration of folks? So, I guess we'll take the tax dollars and resources and try to make the most of it in our communities – but these other questions really linger in my mind.

Bryonn: NPR did a story a couple weeks ago where they talked about how all these major corporations were setting up to take advantage of the legalization – and they were put in place whereas – they spotlighted one sister in Oakland who had been in and out of prisons around multiple marijuana charges and she was having a hard time just getting the license to be someone who could actually benefit from the legalization. So as this contradiction happens, it seems like we should be concerned about who is going to make the most of it, who's gonna benefit actually from what seems like progress – but we've seen it before.

Ms. Burton: We've seen it before.³⁸

Bryonn: And the bait and switch is happening – so I think being cautiously optimistic is a way to approach it.

36. *Id.* at 86 (“Only around 15 percent of those serving time for a drug-related offense are given access to a drug treatment program with a trained professional.”)

37. *Id.* at 100 (“Though drug use and selling occur at similar rates across racial and ethnic groups, black and Hispanic women are far more likely to be criminalized. Black women are more than twice as likely to be incarcerated for drug offenses as white women.”).

38. *Id.* at 213 (“Because of the crack epidemic and the harsh, racially discriminatory policies of the Anti-Drug Abuse Act, one in three black men will see the inside of a jail cell. The average time served by African Americans for nonviolent drug offenses is virtually the same as the time whites serve for violent offenses.”).

Ms. Burton: So, we'll take the tax dollars, and try to do the most and the best that we can with them. But I have to interject and say – we know how to make our community safe – we know how to do that. Hopefully these tax dollars will resource us to do that.

Bryonn: The Department of Corrections and Rehabilitation in California – what can it do to more effectively incentivize rehabilitation – to support rehabilitation?

Ms. Burton: Ah, the Department of Corrections! When I was imprisoned it was called “Department of Corrections” – then they put “Rehabilitation” on the end of that, but it never did go back and correct its core mission which is to *punish*.³⁹ So, I believe we need to go back and look at that core mission and build out from there – you can't just tag a word on the back of a department and think that it's done. Its core mission is to punish and it needs to go back there and begin from there to push out its function from its mission.

Bryonn: I know we can't wait for any department to do the work we need to do. I think that's why I am so honored to know you and to have the opportunity to just share this time with you. Thank you.

Ms. Burton: Well, I am just one person. . . And I can't do this work alone. You are in the community and working in the prisons and on the campus too. So, I thank *you*.

Though our interview was over, Ms. Burton's day was just beginning — with a host of meetings and community events to come. While her hectic schedule highlights the overwhelming work being organized to end mass incarceration, it also speaks to something else: Ms. Burton's unyielding commitment to advocating for women and families.

Ms. Burton is a true change agent and has the results to prove it. Seventy-five percent of all women residents of *A New Way of Life* do not return to prison for at least 18 months.⁴⁰ The women go on to serve in their communities, find fulfilling work, and build meaningful relationships with their families and communities. From meetings with legislators to lectures at Princeton to Portugal, Susan Burton shares the same message: “There are no throwaway people; everyone's life matters.” She believes her work is to lead women to their power, their purpose, and ultimately, to their freedom. And it is that steadfast leadership and com-

39. *Id.* at 81 (“States with the toughest crime laws saw the largest spikes in prison population over the past two decades. California's Three Strikes law, one of the harshest sentencing policies in the country, sent people to prison for life for offenses as minor as petty theft. At one point, “strikers” made up a quarter of California inmates, serving extreme sentences that didn't fit the crime, on the taxpayers' dime.”).

40. See Kathleen Toner, ‘*Magic happened*’ after she gave ex-cons a chance at new lives, CNN (Feb.19, 2010) <http://www.cnn.com/2010/CRIME/02/18/cnnheroes.burton/index.html>.

mitment to others' liberation that has drawn comparisons to Harriet Tubman.

In an 1886 interview, Harriet Tubman observed, "There was one of two things I had a right to: liberty, or death. If I could not have one, I would have the other. [. . .] I should fight for my liberty as long as my strength lasted."⁴¹ And today, over 130 years later, Susan Burton carries the torch with the same fire and unyielding power as that legendary architect of the Underground Railroad who paved the way for the one Ms. Burton is forging.

41. SARAH BRADFORD, *HARRIET TUBMAN: THE MOSES OF HER PEOPLE* 41 (1886).

UNHOLY UNION: ST. LOUIS PROSECUTORS AND POLICE UNIONIZE TO MAINTAIN RACIST STATE POWER

Whitney Bennis*

INTRODUCTION

In late December 2018, St. Louis County prosecutors voted to unionize and join the St. Louis Police Officer Association (“SLPOA”), the infamous St. Louis City police union that represents many of the city’s white police officers.¹ This vote came on the heels of former St. Louis County Prosecuting Attorney Bob McCulloch — whose almost three-decade tenure in the position is most defined by his failure to win an indictment of Darren Wilson, the officer who shot and killed Michael Brown — losing re-election and being replaced by Prosecuting Attorney Wesley Bell after a robust and highly successful grassroots campaign aimed at McCulloch’s defeat.² Bell ran on a platform of police accountability and bail reform.³

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1. See Charles Jaco, *Indictments Suggest St. Louis Police are Violent, Racist and Unconstitutional*, ST. LOUIS AM. (Dec. 3, 2018), http://www.stlamerican.com/news/columnists/charles_jaco/indictments-suggest-st-louis-police-are-violent-racist-and-unconstitutional/article_f9f21462-f724-11e8-8783-c3533eb3163d.html. Colloquially, SLPOA is known as the white officers’ union and Ethical Society of Police (ESOP) the Black officers’ union. SLPOA is the recognized bargaining unit representative for the department. ESOP has been active historically only with the St. Louis Metropolitan Police Department, but it expanded to the St. Louis County Police Department in 2018. See *About Us*, ETHICAL SOCIETY OF POLICE, <https://esopstl.org/about-us> (last visited June 3, 2019).
2. See Matt Ferner, *How Activists Ousted St. Louis County’s Notorious Top Prosecutor Bob McCulloch*, HUFFINGTON POST (Aug. 13, 2018), https://www.huffpost.com/entry/st-louis-county-missouri-prosecutor-bob-mcculloch-defeat_n_5b6e0c96e4b0530743c9f032.
3. See *Issues: End Mass Incarceration & Reform Cash Bail*, VOTE WESLEY BELL, <https://www.votewesleybell.com/end-mass-incarceration-and-restore-communities> (last visited Apr. 22, 2019); see also *Issues: Engage the Community to Build Trust Through Transparency*, VOTE WESLEY BELL, <https://www.votewesleybell.com/engage-the-community-to-rebuild-trust-1> (last visited Apr. 22, 2019).

Before he had even been sworn into office, St. Louis County assistant prosecutors voted in a secret ballot to join the ranks of the SLPOA.⁴

This article seeks to share some of the local and historical context that helps us understand the political and racial underpinnings of this move, which we might see as a formalized continuation of the kind of relationship people in the St. Louis region have come to expect, and worked to reject, through popular election. Further, this piece seeks to disrupt binary thinking about unions as being either bad or good, and urges a more nuanced power analysis of ways in which unionization can be used to further justice, moving towards liberation and fairness, but can also be used to concentrate power and perpetuate the economy of anti-black racial capitalism.

First, this article will detail how St. Louis prosecutors joining the SLPOA represents racist backlash to popular support for change. Then, it will explain how such a union furthers an unjust collusion between theoretically distinct arms of the criminal punishment system. With this moment and meaning in mind, the article will zoom out to locate this event within a broader framework of racial capitalism, explaining how bolstering the criminal punishment system in St. Louis contributes to a socio-economic system rooted in the exploitation and neglect of the region's black and brown residents.

Second, this article will examine the role of unions in this process: first reviewing a brief history of unionization — and the ways in which it has been used to challenge *and* perpetuate racial capitalism — then analyzing the role of police (and prosecutors) unions in bolstering the racial capitalist state, before returning to St. Louis to understand the local historical and present intersections of unions, police and prosecutors, and the movement for racial justice.

I. UNIONIZATION OF ST. LOUIS POLICE AND PROSECUTORS IS ABOUT RACISM.

On August 9, 2014, Ferguson Police Officer Darren Wilson murdered 18-year-old Michael Brown. In the wake of Michael Brown's murder, Ferguson and the St. Louis metropolitan region became the focus of national attention when grassroots activists and organizers rose up, protesting the killing of yet another young Black person at the hands of police, and the continued widespread oppression of those Black communities by city and county police departments, prosecutors, and courts. They said, "no more." They drew attention to the ruthless use of poor Black people and communities as personal piggy banks for municipalities, while at the same time being regarded as inherently criminal and disposable, fit to be hunted down and shot, or left to languish in the local debtors' prison.

The city of Ferguson is within St. Louis County, and thus prosecution authority was within the jurisdiction of then St. Louis County Prosecuting

4. See David Hunn, *St. Louis County Prosecutors Vote to Unionize*, ST. LOUIS POST-DISPATCH (Dec. 18, 2019), https://www.stltoday.com/news/local/crime-and-courts/st-louis-county-prosecutors-vote-to-unionize/article_e8422a8f-0fbb-584c-96b6-ff4391b6c6b0.html.

Attorney Bob McCulloch.⁵ In November 2014, Bob McCulloch announced that his office would not bring charges against Darren Wilson. In the wake of this announcement, grassroots organizers and strategists like Kayla Reed, who had been in the streets for months protesting the injustice of Michael Brown's murder, came to, as Reed described in her piece in *The St. Louis American*, "a unanimous, nearly unspoken agreement — Bob McCulloch must be removed from office, no matter the sacrifice or effort it would take."⁶

What followed was four years of a multi-pronged approach to achieve McCulloch's defeat and other goals. This approach included continued direct action and protest in the streets, creation and growth of organizations, and "campaigns around issues of justice that have shifted the public narrative and changed thousands of hearts and minds."⁷ Those campaigns include: #WokeVoterSTL, a campaign led by the grassroots organization Action St. Louis committed to year-round political education on key races and ballot initiatives that impact the Black community, working to elect Kimberly Gardner as the circuit attorney in St. Louis City, fighting against voter photo ID laws in 2016 and Proposition P in 2017, and running an independent campaign for Tishaura Jones for Mayor of St. Louis City.⁸

At the outset of the August 2018 election for Prosecuting Attorney, Bob McCulloch was by far the prohibitive favorite: a nearly thirty-year incumbent, starting with over \$200,000 in his campaign chest and the endorsements of many regional unions, including the SLPOA.⁹ However, organizers like Kayla Reed had built capacity and had a strategy, which they executed with energy, solidarity, and precision.¹⁰ They activated and mobilized thousands of voters, and that effort, combined with Wesley Bell's well-run campaign, achieved what many thought impossible. In the end, Wesley Bell won election over Bob McCullough by 14%, due in part to a major grassroots organizing campaign, (#ByeBob),¹¹ in what was seen

5. See *St. Louis County Municipalities*, STLOUISCO.COM, <https://www.stlouisco.com/Your-Government/Municipalities> (last visited June 9, 2019).

6. See Kayla Reed, *Kayla Reed on the Unseen Work of Ousting Robert #ByeBob McCulloch*, ST. LOUIS AM. (Dec. 18, 2018), http://www.stlamerican.com/news/political_eye/kayla-reed-on-the-unseen-work-of-ousting-robert-byebob/article_f8ef6524-a0fd-11e8-baf0-4f4b68704ee1.html.

7. *Id.*

8. *See id.*

9. See Aída Chávez & Ryan Grim, *Carpenters, Steamfitters, and Other Trade Unions Coalesced Around Notorious Ferguson Prosecutor. Why?*, THE INTERCEPT (Aug. 9, 2018, 12:34 PM), <https://theintercept.com/2018/08/09/bob-mcculloch-union-backing-bob-mcculloch-ferguson/>; see also *Endorsements*, ROBERT P. MCCULLOCH FOR PROSECUTOR, <http://bobmccullochstl.com/endorsements/> (last visited June 9, 2019).

10. I highly recommend reading Kayla Reed's piece on what the organizing strategy was behind the incredibly successful #ByeBob campaign and the coalition of people and organizations that made it possible. See Reed, *supra* note 6.

11. See Alice Sperti, *Five Years After Ferguson, St. Louis County's New Prosecutor Confronts a Racist Criminal Justice System*, THE INTERCEPT (Jan. 24, 2019, 1:58 PM), <https://theintercept.com/2019/01/24/wesley-bell-st-louis-prosecutor-ferguson/>. Important organizing players in this effort were Action St. Louis, Missouri Faith Voices, Color of Change, Organizations for Black Struggle (OBS), MomsDemand, Coalition

as a clear public referendum for change from the “arrest and incarcerate” philosophy of public safety¹² and a call for reform.

In response to this election, on December 19, 2018, St. Louis County assistant prosecutors made the unprecedented move to join the SLPOA.¹³ This choice raises serious questions: why would prosecutors unionize at all?¹⁴ Why at this moment?¹⁵ And, why choose the SLPOA, a police

Against Police Crimes and Repression (CAPCR), ACLU Missouri, and Missouri Organizing and Voter Engagement Collaborative (MOVE).

12. See CLOSE THE WORKHOUSE CAMPAIGN, CLOSE THE WORKHOUSE: A PLAN TO CLOSE THE WORKHOUSE & PROMOTE A NEW VISION FOR ST. LOUIS 27(2018), <https://static1.squarespace.com/static/5ada6072372b96dbb234ee99/t/5b9a794f2b6a288509f95e2e/1536850265821/A+Plan+to+Close+the+Workhouse+-+Final+09122018.pdf> (describing the “arrest and incarcerate” philosophy of public safety).
13. See Akela Lacy, *Before Criminal Justice Reformer Is Even Sworn In, St. Louis Prosecutors Have Joined a Police Union*, THE INTERCEPT (Dec. 20, 2018, 3:42 PM), <https://theintercept.com/2018/12/20/wesley-bell-st-louis-prosecutor-police-union/>; see also Tony Messenger, *St. Louis County Prosecutors Seek to Join Police Union Before Wesley Bell Takes Over*, ST. LOUIS POST-DISPATCH (Dec. 16, 2018), https://www.stltoday.com/news/local/columns/tony-messenger/messenger-st-louis-county-prosecutors-seek-to-join-police-union/article_f489d57d-a6a2-5a95-a4c2-44dab7d73767.html (“There [were] 60 attorneys and investigators eligible to vote, among them investigator Joe Steiger, the former president of the police association when he was a detective in the St. Louis Metropolitan Police Department.”).
14. It is far less common for prosecutors’ offices than for police departments to unionize. The Los Angeles County Deputy DAs have been unionized since 2010. *About the ADDA, ASS’N DEPUTY DISTRICT ATT’YS FOR L.A. COUNTY*, <https://www.laadda.com/about-us/> (last visited June 9, 2019). The Los Angeles County Deputy DAs’s president also argued against a bill in California to bring in an outside prosecutor in cases of police shootings. Radley Balko, *Prosecutors’ Union Inadvertently Demonstrates Why Local Prosecutors Shouldn’t Investigate Police Shootings*, WASH. POST (June 23, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/06/23/prosecutors-union-inadvertently-demonstrates-why-local-prosecutors-shouldnt-investigate-police-shootings/?utm_term=.76080308e456. Other examples of prosecutors unionizing include the Clark County Prosecutors Association, Klamath County District Attorney’s Association in Oregon, and the Polk County Deputy District Attorneys Sub Local 173 - 2 American Federation of State County and Municipal Employees. See CLARK COUNTY BOARD OF COUNTY COMMISSIONERS, AGREEMENT BETWEEN THE COUNTY OF CLARK AND THE CLARK COUNTY PROSECUTORS ASSOCIATION (2017), <https://www.clarkcountynv.gov/human-resources/services/Documents/Clark%20County%20Prosecutors%20Assoc.%202017.pdf>; KLAMATH COUNTY, COLLECTIVE BARGAINING AGREEMENT BETWEEN KLAMATH DISTRICT ATTORNEYS’ ASSOCIATION AND KLAMATH COUNTY (2015), <http://www.klamathcounty.org/DocumentCenter/View/695/Deputy-District-Attorneys-Association?bidId=> POLK COUNTY BOARD OF COMMISSIONERS, COLLECTIVE BARGAINING AGREEMENT BETWEEN POLK COUNTY, OREGON AND POLK COUNTY DEPUTY DISTRICT ATTORNEYS (2017), https://www.oregonafscme.org/docs/contracts/Polk_County_Deputy_District_Attorneys_L173_2.pdf. The Deputy District Attorney Association in Riverside County, California “acts . . . as the bargaining unit on behalf of non-management Deputy District Attorney, County Counsel attorney, and other county-employed attorneys with the County of Riverside.” See *Welcome*, RIVERSIDE COUNTY DEPUTY DISTRICT ATTORNEY ASSOCIATION, <http://rcddaa.org/> (last visited June 9, 2019). The Washington State Council of City and County Employees has negotiated labor contracts for prosecutors in that state. See CITY OF SEATTLE, AGREEMENT BY AND BETWEEN THE CITY OF SEATTLE AND THE WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES (2015), <http://www.seattle.gov/personnel/resources/pubs/L21-PA.pdf>. But there exists no record of prosecutors unionizing with a police union for representation in contractual bargaining. That said, in 2018, District Attorneys in New

union? Why not organize with firefighters, or carpenters, or the sprinkler fitters union?

The SLPOA is not just any police union. The SLPOA is a notoriously racist,¹⁶ violent,¹⁷ and murderous organization, from their representatives to the membership. As local journalist and activist Charles Jaco writes, “the St. Louis Police Officers Association (SLPOA) is a ‘labor union’ in the same way the Ku Klux Klan is a ‘fraternal organization.’ The description is technically correct as far as it goes. But it doesn’t go nearly far enough.”¹⁸ SLPOA has encouraged the targeting of protestors and those that support police accountability, “once tweeting an article listing 46 St. Louis-area businesses that signed a letter protesting the acquittal of cop Jason Stockley in the murder of Anthony Lamar Smith.¹⁹ The tweet, later deleted, read: ‘For what it’s worth . . . a list of STL businesses that hate cops and sympathize with vandals, brought to you by a tabloid birdcage liner that hates cops and sympathizes with vandals.’”²⁰ One of SLPOA’s representatives, and former Missouri State legislator, Jeff Roohda, wrote a

Mexico voted to join the Communication Workers of America union, which also represents deputy sheriffs and other public and private sector employees in New Mexico. *Third Judicial District Attorneys Vote for Union Representation*, LAS CRUCES SUN NEWS (Feb. 22, 2018), <https://www.lcsun-news.com/story/news/local/2018/02/22/third-judicial-district-attorneys-vote-union-representation/365476002/>. The Illinois Police Association, which is a lobbying group for police officers in the state, opens its membership to “duly authorized prosecutors and their assistants during their term of office.” See ILLINOIS POLICE ASSOCIATION, <https://www.ipacops.org/> (last visited June 9, 2019). Similarly, the Maryland Chief of Police Association’s membership also includes prosecutors and is also involved in lobbying for police issues. See *Membership*, MARYLAND CHIEFS OF POLICE ASSOCIATION, <https://www.marylandchiefs.org/membership-information> (last visited June 9, 2019). However, neither of these entities represents prosecutors in contractual negotiations.

15. One interpretation is that assistant prosecutors and investigators were concerned that the new boss would come in, clean house, and replace them with his own people. Bell did fire three prosecutors, the first of whom was assistant prosecutor Kathi Alizadeh who was in charge of presenting evidence and overseeing the case against Darren Wilson to the grand jury. See Owen Daugherty, *Prosecutor in Michael Brown Shooting Case Fired*, THE HILL (Jan. 2, 2019), <https://thehill.com/homenews/state-watch/423574-prosecutor-who-provided-evidence-to-grand-jury-that-didnt-indict-officer>.
16. See Jaco, *supra* note 1; see also Charles Jaco, *Staff Prosecutors Joining Police Union Sends Wesley Bell a Message*, ST. LOUIS AM. (Dec. 19, 2018), http://www.stlamerican.com/news/columnists/charles_jaco/staff-prosecutors-joining-police-union-sends-wesley-bell-a-message/article_f7cef224-03a7-11e9-874a-4b02da70a715.html.
17. See Julia Jacobs, *St. Louis Police Officers Charged With Beating Undercover Detective at 2017 Protest*, N.Y. TIMES (Nov. 29, 2018), <https://www.nytimes.com/2018/11/29/us/st-louis-police-indicted-protest.html>.
18. See Jaco, *Staff Prosecutors*, *supra* note 1. (“Like most cop unions, the St. Louis Police Officers Association is not affiliated with the AFL-CIO, but instead belongs to the 103-year old Fraternal Order of Police, the country’s largest police bargaining unit. Interestingly, the FOP has always refused to call itself a union and has always referred to itself as a ‘fraternal organization,’ a choice dating from the early 20th century, when cops were used to break unions.”).
19. See *id.*
20. See *id.*

book he's titled, "Ferghistan: The War on the Police," and has committed to direct some of the proceeds from book sales to Darren Wilson.²¹

Even if the St. Louis county assistant prosecutors were determined to unionize with police, they had other options. The city of St. Louis has two police unions: the majority white SLPOA and the Ethical Society of Police (ESOP), "a group of majority Black police officers founded to address race-based discrimination in the community and within the county police department."²² Sergeant Heather Taylor, President of ESOP, called the move by assistant prosecutors "unheard of,"²³ adding, "[w]hen it's all said and done, it's about race."²⁴ "We can sugarcoat it all we want. They've been under Bob McCulloch for almost 30 years, and they've never come together to unionize. Suddenly, when Wesley Bell wins, the people voted him in over McCulloch. . .and suddenly they want to become a union."²⁵

Prosecutors' concerns about the difference between Bell and McCulloch are clear. Take a quick look at the social media accounts of the SLPOA and St. Louis County Police Association (SLCPA) and you will see post after post deriding Kim Gardner and Wesley Bell, the area's two top prosecutors elected on platforms of accountability and reform, using phrases like "#kimshady" and "Wesley 'Buster' Bell: The Union Buster."²⁶ The accounts consistently push a narrative that these two new Black prosecutors are handing out get out of jail free cards, are the enemies of cops, and are responsible for violence.²⁷ As Taylor concludes, "the issues that are prevalent in St. Louis County that are race-based, the issues that Wesley Bell ran on — change and ending cash bail and reform in the criminal justice system — from a prosecutor's standpoint are very different, vastly different from what McCulloch was about."²⁸

A. Unionization of St. Louis police and prosecutors furthers an unjust collusion between theoretically distinct arms of the criminal punishment system.

St. Louis prosecutors unionizing with the SLPOA is a move that frustrates a public referendum on prosecutorial impotence in cases of police wrongdoing. Prosecutors paying dues to, and being represented by, a police union further degrades the possibility of the department effectively

21. See Kate Briquetlet, 'Ferghanistan' Author: I'm Giving the Profits to Darren Wilson, DAILY BEAST (Aug. 12, 2015, 1:13 AM), <https://www.thedailybeast.com/ferghanistan-author-im-giving-the-profits-to-darren-wilson?ref=scroll>.

22. See Lacy, *supra* note 13.

23. *Id.*

24. *Id.*

25. *Id.*

26. See, e.g., St. Louis Police Officers Association (@stlouispolice.officersassociation), FACEBOOK (Feb. 26, 2019), <https://www.facebook.com/stlouispolice.officersassociation/posts/wesley-buster-bell-the-union-busterplease-email-buster-bell-at-wesleybellpastlou/947068078831995/>; see also SLPOA (@SLPOA), TWITTER (Mar. 6, 2019, 10:19 AM), <https://twitter.com/SLPOA/status/1103344300652457984>.

27. SLPOA (@SLPOA), TWITTER, <https://twitter.com/SLPOA?lang=en> (last visited June 9, 2019).

28. See Lacy, *supra* note 13.

holding officers accountable (and, theoretically, the possibility of prosecutors holding police accountable for wrongdoing).

Police are endowed with special powers to make arrests and use force, including deadly force.²⁹ Prosecutors are given power to charge, investigate, and try cases against people accused of crimes.³⁰ The execution of each of these powers is given broad discretion. Even when acting as separate entities, the police and prosecutors have the ability to effect great harm to those who come into contact with them, or those indirectly affected by them.

St. Louis County prosecutors, in electing SLPOA as their union, have chosen to pay dues and be represented by the same union that fights to protect the jobs of police officers after they murder Black people. The same union that will fight increased oversight and disciplinary policies and checks. These same prosecutors are responsible for investigating and bringing charges against those same police officers. That conflict of interest further shifts allegiances and feelings of duty inward, away from the community on behalf of which these public servants are supposed to execute these powers.³¹ In the same way that it would be inappropriate for judges to unionize with the police, or the prosecutors, or correctional of-

29. The police officer's duty broadly is to protect life and property within a jurisdiction and enforce laws and ordinances. Drawing from a job posting from a St. Louis City, duties include: patrolling a district or assigned area; investigating offenses and any suspicious conditions, makes arrests, recovers property, transports prisoners to appropriate facilities, and prepares proper reports; testifying in court as required; enforcing traffic and parking regulations, incidents, issuing tickets to traffic violators, and collects bond monies. See *Applying To: Police Officer (Trainee)*, CITY OF ST. LOUIS, MO (Nov. 3, 2014), <https://www.stlouis-mo.gov/jobs/job-detail.cfm?job=1671&detail=1>.

30. The office of the prosecutor is responsible for prosecutions within its jurisdiction. Prosecutors direct investigations, advise police on matters of law, enter charges and prosecute those charges, and also dismiss or decline to prosecute. The duty of the prosecutor is to seek justice, not to merely convict. See ABA Standards for Criminal Justice: The Function of the Prosecutor (4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crim_just_standards_pfunc_blk/. The duties of the SL County prosecutor's office, which is governed by Chapter 56 of the Missouri Code, are to "ensure[] that the laws of the State are enforced within St. Louis County, prosecute[] violators of the law, and act[] as legal counsel to the Board of Supervisors." See *Law and Public Safety*, STLOUISCO.COM, <https://www.stlouisco.com/Law-and-Public-Safety> (last visited June 9, 2019); MO. REV. STAT. c. 56 (1982), <http://revisor.mo.gov/main/ViewChapter.aspx?chapter=56> (Please note that the St. Louis County website mistakenly states that the St. Louis County Prosecuting Attorney is governed by Chapter 331 of the Missouri Code rather than the correct law, Chapter 56). The County Attorney ensures that the laws of the State are enforced within St. Louis County, prosecutes violators of the law, and acts as legal counsel to the Board of Supervisors.

31. "Conflict of interest" is a term of art and discourse within legal doctrine. This section draws on that discourse in spirit, but not in doctrinal legal argumentation. Rather, this section seeks to make salient the relevant conflict of interest through an analysis of power. Importantly, even absent unionization, the role of prosecutors in investigating and prosecuting police should represent a legal conflict of interest. See Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447 (May 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2654463.

ficers, there is an inherent conflict of interest in further aligning the interests of these entities.³²

This is not an abstract fear. As those living and working in Ferguson, St. Louis, and surrounding areas can attest, police and prosecutors were already too enmeshed. When a public servant, whether prosecutor or police officer, acted in abusive or unlawful ways,³³ they were rarely held accountable.³⁴ Even before unionizing, prosecutors demonstrated the lack of political will, character, and ability to serve their roles with respect to

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32. See Lacy, *supra* note 13 (“There is nothing wrong with them becoming a union. That’s a great thing,” [Heather] Taylor said. “But you want to unionize with police officers. . . . It smells rotten. You’re expecting prosecutors as it is to turn a blind eye when they’re prosecuting cops. And that is difficult, as we know — we see the stories all around the country — the issues with even presenting cases against cops and winning those cases. So what is going to happen when a case has been presented, and St. Louis County has to prosecute one of their own?”); see also Tony Messenger, *Pro-Union Lawsuit Could Invalidate Election that Tied St. Louis County Prosecutors to City Cops*, ST. LOUIS POST-DISPATCH (Jan. 24, 2019) https://www.stltoday.com/news/local/columns/tony-messenger/messenger-pro-union-lawsuit-could-invalidate-election-that-tied-st/article_d07a9023-a32a-59fa-bed7-e22eb5f2e903.html; Debra Cassens Weiss, *Conflict Questions Raised About Prosecutors’ Vote to Join Police Union*, ABA JOURNAL (Dec. 21, 2018, 11:28 AM), <http://www.abajournal.com/news/article/conflict-questions-raised-about-st.-louis-county-prosecutors-vote-to-join-police-union>; American Civil Liberties Union of Missouri, *Statement on Prosecutors’ Decision to Join St. Louis Police Officers Association*, ACLU OF MISSOURI (Dec. 18, 2018, 10:15 AM), <https://www.aclu-mo.org/en/news/statement-prosecutors-decision-join-st-louis-police-officers-association>; see also Lacy, *supra* note 13 (describing ACLU of Missouri’s opposition to the prosecutors’ move, citing “serious ethical conflicts” and an “abdication of the responsibility” of prosecuting attorneys who choose to “place themselves under direct governing authority of the police union.”).
33. There is a discourse within the abolitionist movement that suggests “police brutality” is simply a part of “policing”; that police commit many acts of violence to black and brown communities within the scope of their employment, and that even those acts referred to as “brutality” are rarely deemed illegal or criminal by the criminal punishment system or internal accountability mechanisms. While there are those that step egregiously outside of the container of normalized police violence, we should incorporate both functions into our notions of policing.
34. Police across the United States are shielded from public accountability for their abusive acts. According to a USA Today investigative report in collaboration with Invisible Institute, “at least 85,000 law enforcement officers across the USA have been investigated or disciplined for misconduct over the past decade, an investigation by USA TODAY Network found. Officers have beaten members of the public, planted evidence and used their badges to harass women. They have lied, stolen, dealt drugs, driven drunk and abused their spouses. Despite their role as public servants, the men and women who swear an oath to keep communities safe can generally avoid public scrutiny for their misdeeds. The records of their misconduct are filed away, rarely seen by anyone outside their departments. Police unions and their political allies have worked to put special protections in place ensuring some records are shielded from public view, or even destroyed.” See John Kelly & Mark Nichols, *We Found 85,000 Cops Who’ve Been Investigated for Misconduct. Now You Can Read Their Records*, USA TODAY (May 23, 2019, 7:33 AM), https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/?fbclid=IwAR2s1RgJDxMcoKo_iniqYdtOpRS D6hAe_VmK3zEtz1FSMloafjF9NXds8PE.

pursuing accountability for police officer wrongdoing.³⁵ This is demonstrated, in St. Louis as well as communities across the country, by the lack of indictments and handling of cases of police use of force and murder, the tendency of prosecutors to cave into police backlash, and in their own statements dripping with bias.³⁶

Tying together the interests of these entities destroys checks between their functions.³⁷ Miriam Krinsky, founder and executive director of Fair and Just Prosecution, a national nonprofit that advises prosecutors on best practices and advocates for criminal justice reform, was “disappointed” and “deeply troubled” by the St. Louis County prosecutors’ move.³⁸ Krinsky stated that, “[t]here are some inherent conflicts that inevitably arise between prosecutors and law enforcement officers.”³⁹ This is particularly true in instances of police use of force and officer killings of citizens, in which the relationship between prosecutors and police leads to a highly suspect process and set of outcomes.⁴⁰

As explained above, this union or collusion between police and prosecutors is not surprising because it has been ongoing in many ways for many years. Police and prosecutors have, perhaps since the creation of local police, colluded to enforce and perpetuate anti-blackness for profit and power. There is also a rich history of unionization being used as an instrument to legally protect white structural power and perpetuate anti-blackness.⁴¹ But the consolidation of these instruments of powers in such a striking way calls us to examine the malfeasance and abuse that is likely to flow from the normalization and formalization of this partnership. Further, this consolidation calls us to more deeply reevaluate any role at all for these systems. The prosecutors’ decision to organize explicitly with SLPOA, and the commitment of prosecutors and police to operate on each other’s behalf, removes some of the theoretical safeguards of their separation. It also leads us to face the reality that these entities have never been separate.

35. See Jaeah Lee, *Ferguson Cop Darren Wilson Is Just the Latest to Go Unprosecuted for a Fatal Shooting*, MOTHER JONES (Nov. 25, 2014), <https://www.motherjones.com/politics/2014/11/darren-wilson-grand-jury-decision-ferguson-police-prosecutions/>.

36. See Radley Balko, *Prosecutors’ Union Inadvertently Demonstrates Why Local Prosecutors Shouldn’t Investigate Police Shootings*, WASH. POST (Jun. 23, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/06/23/prosecutors-union-inadvertently-demonstrates-why-local-prosecutors-shouldnt-investigate-police-shootings/?utm_term=.40175ebce5c2 (L.A. prosecutors union came out in opposition to legislation requiring special prosecutors in cases of police shootings).

37. Prosecutors are meant to use reasonable discretion to decline to prosecute or pursue cases where there is not probable cause, or where the prosecution of which would not further serve justice. And that means saying no to pursuing charges that police sometimes want prosecutors to pursue. Furthermore, in instances of police misconduct or criminal activity, it is the prosecutor’s responsibility to serve justice by directing a comprehensive investigation, and bringing appropriate charges.

38. See Messenger, *supra* note 2.

39. See *id.*

40. See Kelly & Nichols, *supra* note 34.

41. As will be further discussed below.

B. Bolstering the criminal punishment system supports a system of racial capitalism.

The criminal punishment system in the United States is a mechanism of social control of, and extraction from, colonized, racialized communities. Efforts to further concentrate power and resources, and more deeply interlock in solidarity its component parts, contribute to violence, incarceration, and systematized plunder of communities of color. Thus, St. Louis prosecutors organizing with the SLPOA is a move that should be understood as deepening the hold of racial capitalism within the region, and specifically within its poor Black communities.

Racial capitalism is a way of understanding our social economic past and present.⁴² It comes from Cedric Robinson's challenge to . . .

"the Marxist idea that capitalism was a revolutionary negation of feudalism. Instead it emerged within the feudal order and flowered in the cultural soil of a Western civilization already thoroughly infused with racialism. Capitalism and racism, in other words, did not break from the old order but rather evolved from it to produce a modern world system of 'racial capitalism' dependent on slavery, violence, imperialism, and genocide."⁴³

In the present, the concept of racial capitalism helps us describe and understand the systematized targeting of Black people for surveillance, warehousing, forced labor, and looting by municipal and state entities of the police, the prosecutors, and the courts that we see in cities like Ferguson, of which there are many, and counties like St. Louis County. The systematic murder of Black people by the state is one mechanism of state terrorism, akin to other occupied spaces, that maintains racial capitalism. In the United States, police shoot and kill over 1,000 people each year according to an analysis by Philip Stinson, an associate professor of criminal justice at Bowling Green State University in Ohio.⁴⁴ Few of these killings lead to arrest, and even fewer to conviction.⁴⁵ In St. Louis County between 2004 and 2014, there were 14 fatal officer-involved shootings committed by St. Louis County officers alone.⁴⁶ That does not include

42. There is an entire discourse on racial capitalism, its roots, meaning, limits, and its applicability as a theory. See, e.g., Walter Johnson & Robin D.G. Kelley, *Race Capitalism Justice*, BOS. REV., Forum 1 (Winter 2017).

43. See *id.*

44. See Lee, *supra* note 35; see also Ray Sanchez, *Charging the Police: By the Numbers*, CNN (Sept. 23, 2016), <https://www.cnn.com/2016/09/23/us/police-involved-shooting-charges/index.html> (Estimate is based on figures released by the Justice Department and the Centers for Disease Control and Prevention). The Guardian has an impressive database of police killings in 2015 and 2016; See *The Counter*, THE GUARDIAN, <https://www.theguardian.com/us-news/series/counted-us-police-killings> (last visited June 9, 2019). It includes information about where the killing happened, demographic information, cause of death, and the status of the case.

45. See Jamiles Lartey, *US Police Killings Undercounted by Half, Study Using Guardian Data Finds*, GUARDIAN (Oct. 11, 2017), <https://www.theguardian.com/us-news/2017/oct/11/police-killings-counted-harvard-study>.

46. See Lee, *supra* note 35 (quoting police data collected by David Klinger, a criminologist at the University of Missouri-St. Louis).

fatal shootings by Ferguson police or by officers from various other law enforcement agencies within the County. From the beginning of Bob McCulloch's tenure in 1991 to 2014, there were only five grand jury investigations of officer-involved fatalities, none of which led to an indictment.⁴⁷

Racial capitalism also helps us understand the tethered cities of the St. Louis Region, like the predominantly white and middle to upper middle-class communities of Ladue and Kirkwood, whose existence was built on the dual projects of neglect and exploitation of Black communities.⁴⁸ In the St. Louis region, and in the United States generally, we have a police state existing right alongside a functioning bureaucratic state. As Chris Hayes lays out in his book *A Colony in a Nation*, within our towns and cities, we are maintaining occupied territories, colonies, that sit right alongside the Nation.⁴⁹ In the Nation there are rights, laws, and justice, while in the Colony there is only order. The Colony is maintained under a police state to respond to the interests, needs, and fears of the Nation. The foundation of the Nation, and its creation the Colony, is white fear. This fear is driven by the white commission of, and continued desire for, conquest, imperialism, or, as Ta-Nahesi Coates puts it, plunder.⁵⁰ Importantly, this maintenance of the two realities, two states, two castes, the Nation and the Colony, cannot happen by sheer force of the police alone. They are supported by the political system and its leaders, who themselves are benefited and buoyed whenever they make policy choices that make them appear "tough on crime." They are also supported by nongovernment entities, corporations, and individual actors that benefit from, and invest in, the legitimization of the status quo.

This was a truth that the Black people of the region already understood in the wake of Michael Brown's murder, a truth that folks in the rest of the country were watching unfold only as a dramatic flare up of unrest. This event was the culmination of decades of systemic oppression, rooted in the very structure of these local municipalities, how they came to exist, and how they function now.

First, there is the political and administrative structure: the St. Louis metropolitan area is made up of more than a dozen counties in eastern Missouri and southwestern Illinois, and at the core are St. Louis City and St. Louis County, which consist of a tangled web of 90 municipalities. Most of the nearly 50 municipalities in North County are majority-Black and struggling to make ends meet.⁵¹ Many have their own police force, mayor, city council, and municipal court. Incentivized by their own budget goals and shortfalls, they encourage local police to increase the number of citations in order to drive up revenue. Municipal courts are

47. *Id.*

48. See JACKIE WANG, *CARCERAL CAPITALISM* 141, 182-87, 187-92 (2018) (discussing the racial dimensions of the capitalist state's mechanisms for the looting of poor people, and *how* policing turns the city into an extension of the carceral state); see also Whitney Bennis & Blake Strode, *Debtors' Prison in 21st-Century America*, *ATLANTIC* (Feb. 23, 2016), <https://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/>.

49. See CHRIS HAYES, *A COLONY IN A NATION* (2017).

50. See TA-NEHESI COATES, *BETWEEN THE WORLD AND ME* 81-82 (2015).

51. Bennis & Strode, *supra* note 48.

the mechanism for collection.⁵² And so the relationship between the administrative structure and local Black citizens is primarily one of extraction.

But the story is deeper, as the original creation of these many municipalities is rooted in the desire to create racially exclusive white communities that could hoard resources and keep Black fellow citizens from enjoying funded public services, like maintained roads, good schools, and parks. As Blake Strode, Executive Director of ArchCity Defenders, and I detailed in our article about the origins and functions of the region's 21st-Century debtors' prisons,

“[t]he municipal landscape of St. Louis County, like so many others in this country, was designed and implemented with the purpose of keeping black people out of certain neighborhoods and making life exceedingly difficult for those who made their way in. The region today is a reflection of that original intent.”⁵³

During the Great Migration, when formerly enslaved people and their descendants moved North from the Deep South seeking employment opportunity and refuge from the oppression of Jim Crow and white supremacist terrorism, St. Louis became a popular destination.⁵⁴ Responding to what was dubbed the “Negro Invasion,” local government officials went about creating segregationist policy mandating that Blacks and whites live on separate, designated blocks, becoming the first city in the country to pass such a measure by popular ballot.⁵⁵ When *Buchanan v. Warley* effectively nullified this law, white communities and city officials used other tools, from zoning laws to restrictive covenants, redlining, and eventually white flight, to accomplish the same aims.⁵⁶ The process included, and continues to include, the constant over-policing and surveillance of Black communities and Black people, inside and outside of these municipalities.⁵⁷

Racial capitalism and the maintenance of the Colony through policing also helps us understand the political rhetorical reality that derides public spending but has an ever ballooning “public safety” budget. In the

52. *Id.*; see also *Mayor: Write More Tickets*, KSDK (Apr. 24, 2014), <https://www.ksdk.com/article/news/local/mayor-write-more-tickets/282158895>.

53. Bennis & Strode, *supra* note 48.

54. *Id.*

55. *Id.*; Richard Rothstein, *The Making of Ferguson*, ECON. POL'Y INST. (Oct. 15, 2014), <https://www.epi.org/publication/making-ferguson/#racial-zoning>.

56. See Bennis & Strode, *supra* note 48; *Buchanan v. Warley*, 245 U.S. 60 (1917).

57. See Bennis & Strode, *supra* note 48 (“While the modern proliferation of debtors’ prisons is an affliction primarily plaguing poor, black municipalities, some parts of St. Louis County that remain almost entirely white continue to resemble the old model of racial exclusion. The City of Ladue is an infamous example of racial targeting in the region. One of the wealthiest cities in the entire country, Ladue is less than 1 percent black. Yet, in 2014 a black driver was 18.5 times more likely to be pulled over than a white driver. Following a stop, a black driver was 2.4 times more likely to be searched and 2.7 times more likely to be arrested.”) (citing ARCH CITY DEFENDERS, IT’S NOT JUST FERGUSON: MISSOURI SUPREME COURT SHOULD CONSOLIDATE THE MUNICIPAL COURT SYSTEM (2015), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/Its-Not-Just-Ferguson-Consolidate-the-Municipal-Courts.pdf>).

1970s, “[b]oth in prison, where the philosophy of rehabilitation gave way to one of punishment, and on the street, where arrest was the response to more and more behaviors, policy has become more punitive.”⁵⁸ Guards and cops were not passive recipients of these changes but active agents who played a part in the rightward shift in the 1970s, a period when the politics of “law and order” began to replace concern for civil rights, and where funding was being diverted from other public services towards the criminal punishment system.⁵⁹

St. Louis exemplifies a reality present in many cities across the United States, and at the same time stands as a particularly stark example of these prevalent trends. In looking at the city budget,⁶⁰ it is clear that the overwhelming investment of public funds has gone into the “arrest and incarcerate model.” In the city of 308,626 residents, the City has a General Fund budget, which totals \$517.5M derived tax revenue, grants, and contracts. Of that General Fund, “Public Safety” receives \$290.8M. That pays for a Police Department employee for every 169 people in the city of St. Louis, and one in five city employees is a sworn police officer. This is in contrast to “Human Services,” which was allocated \$1.5M and employs 51 people tasked with serving all of the city’s most vulnerable residents.⁶¹ The passing of Proposition P in late 2017 extends this imbalance further, with approximately \$13 million out of an additional \$19 million in tax revenue slated to go to SLMPD.⁶²

Police and prosecutors are key institutions of the state that maintain and enforce the social economic order of racial capitalism, with the specific task of controlling and extracting of people, resources, and labor from Black communities. That political economic project has been well funded and protected. It is in this context that we must examine the unionization of the St. Louis County assistant prosecutors and the St. Louis Police Officers Association.

58. Rebecca Hill, “*The Common Enemy Is the Boss and the Inmate*”: *Police and Prison Guard Unions in New York in the 1970s-1980s*, 8 *LABOR: STUDIES IN WORKING CLASS HISTORY OF THE AMERICAS* 65, 67-68 (2011) (citing DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001)).

59. *Id.*

60. This section is based on research and analysis done by Z Gorley, Communications Director at ArchCity Defenders. See also *Executive Summary FY2019 Annual Operating Plan*, CITY OF ST. LOUIS, MO: OFFICIAL WEBSITE, <https://www.stlouis-mo.gov/government/departments/budget/documents/upload/FY19-AOP-Executive-Summary-as-adopted.pdf>.

61. See *id.*

62. See Rachel Lippmann, *St. Louis Voters Approve Half-Cent Sales Tax Hike Funding Police and Firefighter Raises*, ST. LOUIS PUBLIC RADIO (Nov. 7, 2017), <https://news.stlpublicradio.org/post/st-louis-voters-approve-half-cent-sales-tax-hike-funding-police-and-firefighter-raises>; see also Ryan J. Reilly, *In St. Louis, the politics of police reform are tougher than ever*, ST. LOUIS AM. (Sept. 12, 2017), http://www.stlamerican.com/news/local_news/in-st-louis-the-politics-of-police-reform-are-tougher/article_33eea176-97ef-11e7-91ea-db9d61847031.html.

II. UNIONIZATION CAN BE, AND HAS BEEN, USED TO CHALLENGE AND PERPETUATE RACIAL CAPITALISM.

Within the United States, unions have played a prominent role in the struggle for economic justice and workers' rights. However, unions, like any institution, structure, or process, are not immune to the contexts in which they sit. In the context of United States racial capitalism, unions have at times represented and strengthened racist economic, political, and state structures, and at times, challenged the racist economic and state order.

This section will review a brief history of unions, first looking at their past and present contributions to challenging racial capitalism, and then highlighting union participation in and perpetuation of racial capitalism. Next, it will examine the role of police unions within this historical framework. Finally, this section will return to St. Louis, to examine the intersection of unions, politics, and current movements for racial justice.

A. *Organized labor has a history of fighting for workers and racial justice.*

Unions are the joining together of people who have a common interest or purpose. Labor unions are associations of people formed for the purpose of advancing their members' interests with respect to wages, benefits, and working conditions. In the United States, unionization gives access to particular rights and protections through the federal and state legal apparatus. In 1935, President Franklin D. Roosevelt signed the National Labor Relations Act (NLRA), which, following from decades of small victories, guaranteed the right to join a union and to strike, and provided a legal framework for collective bargaining.⁶³

Following the passage of the NLRA, organizing efforts took root across the country,⁶⁴ and have served as an important countervailing check on the exploitative power of employers. Labor unions serve as a tool for aggregation and building of power; when workers join together and move with collective action, they increase the costs of acting against the unit or any individual within it. Unions help limit individual risk and spread the costs of bargaining and representation across more people. They also give workers access to skilled, dedicated representation, and can connect them with a wider movement for economic justice. By building power through organizing, the labor and workers' rights movement has effectively lobbied for the eight-hour work day, minimum standards around wages, workplace safety laws, the repeal of child labor, overtime pay, and the weekend.⁶⁵ The increased recognition and strength of unions and organized workers has contributed to better working conditions for workers across the country, both unionized and not.

63. Dan Kaufman, *A Labor Day Reflection on Unions, Race, and Division*, NEW YORKER (Sept. 3, 2018), <https://www.newyorker.com/news/daily-comment/a-labor-day-reflection-on-race-and-unions>.

64. *Id.*

65. See Josh Bivens et al., *How today's unions help working people*, ECON. POL'Y INST. (Aug. 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

There is a tradition within unions of solidarity and cross-racial organizing for economic and racial justice. When the American Federation of Labor (“AFL”) and the Congress of Industrial Organizations (“CIO”) merged in 1955, hundreds of thousands of Black trade unionists became part of an integrated labor movement. A. Philip Randolph, founder of the Brotherhood of Sleeping Car Porters, the first successful Black trade union, and the Negro American Labor Council, became its first vice president.

Randolph and other Black union workers helped fund and initiate the 1963 March on Washington for Jobs and Freedom.⁶⁶ Their work focused on linking the labor movement with the demands for racial equality of the civil rights movement. Dr. King understood the interconnectedness, and tension, between the movements. Jobs were one of the keys to freedom, and unions were and are an important mechanism for good jobs. In April 1968, on the day before Dr. King was assassinated, he was speaking in support of the strike of Black sanitation workers — AFSCME members — who had traveled to Memphis to hear him speak.⁶⁷

Today, we see the power of organized labor in the teachers strikes across the country. Collective action power is being used to not only increase teacher wages — which have not even kept pace with inflation in the past decade, and in some states have even decreased — but also to improve public education and student outcomes. In 2018 and 2019, teachers have gone on strike calling for smaller classroom sizes, more school nurses and guidance counselors, legal support for immigrant students, charter school oversight, and rejection of school closures in low income majority-minority neighborhoods.⁶⁸

Powerful worker collective action also occurs outside the traditional union model. Domestic worker coalitions and worker centers have made huge gains in building movement power, shifting public consciousness, and securing policy victories. These gains improve in tangible ways the lives of domestic workers (and their families), a group primarily composed of women of color, many of them immigrants. One result of these efforts is the 2014 Massachusetts Domestic Workers’ Bill of Rights, which “is the most expansive codification of rights for this long-overlooked part of the labor force ever to be enacted.”⁶⁹

66. *Randolph, A. Philip*, STANFORD: THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE, <https://kinginstitute.stanford.edu/encyclopedia/randolph-philip> (last visited June 3, 2019).

67. *Memphis Sanitation Workers’ Strike*, STANFORD: THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE, <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike> (last visited June 3, 2019).

68. See, e.g., Madeline Will, *How Teacher Strikes are Changing*, EDUCATION WEEK (Mar. 5, 2019), <https://www.edweek.org/ew/articles/2019/03/06/how-teacher-strikes-are-changing.html>; see also Alexia Fernández Campbell, *Thousands of Oakland teachers just went on strike. They want more than a pay raise*, VOX (Feb. 21, 2019), <https://www.vox.com/2019/2/21/18233377/oakland-teachers-strike-2019>.

69. Natalicia Tracy, Tim Sieber & Susan ScD Moir, *INVISIBLE NO MORE: Domestic workers organizing in Massachusetts and beyond*, LABOR STUDIES FACULTY PUBLICATION SERIES 2 (Oct. 2014), https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1000&context=laborstudies_faculty_pubs.

Union membership also contributes to the accumulation of wealth for workers, particularly workers of color, and to shrinking of the racial wealth gap. From 2010 to 2016, nonwhite families who were also union members had a median wealth that was almost five times — 485.1 percent — as large as the median wealth of nonunion nonwhite families.⁷⁰ Unionizing can mean material differences for Black families, not just with respect to wages, but also with respect to health care access, retirement, and job security.⁷¹

However, unionization rates have declined steeply across all racial and ethnic groups, including Black workers over the past four decades.⁷² Black workers are still more likely than any other race or ethnicity to be unionized: in 2017, 12.6 percent of Black workers and 10.7 percent of the entire workforce were represented by unions.⁷³ However these numbers are down from 31.7 percent and 23.3 percent, respectively, in 1983.⁷⁴ This workforce-wide decline in unionization “has occurred alongside, and contributed to, an increase in overall wage inequality, as well as the widening Black-white wage gap.”⁷⁵

Of course, the solidarity struggle for racial and economic justice work remains a work-in-progress. Unions are not inherently anti-racist or a bastion of racial justice, and have in other ways, past and present contributed to the terrorizing for Black and Brown communities and the exclusion of Black and Brown workers. As Richard Trumka, President of the AFL-CIO, acknowledged at his address to the Missouri AFL-CIO Convention on Sept. 15, 2014, in the aftermath of Michael Brown’s murder: “Racism is part of our inheritance as Americans. Every city, every state and every region of this country has its own deep history with racism. And so does the labor movement.”⁷⁶

70. See Christian E. Weller and David Madland, *Union Membership Narrows the Racial Wealth Gap for Families of Color*, CTR. AM. PROGRESS (Sept. 4, 2018), <https://www.americanprogress.org/issues/economy/reports/2018/09/04/454781/union-membership-narrows-racial-wealth-gap-families-color/>.

71. See Cherrie Bucknor, *Black Workers, Unions, and Inequality*, CTR. ECON. & POL’Y RES., <http://cepr.net/publications/reports/black-workers-unions-and-inequality>, (“Black union workers are also 17.4 percentage points more likely than non-union Blacks to have employer-provided health insurance, and 18.3 percentage points more likely to have an employer-sponsored retirement plan.”).

72. See Natalie Spievack, *Can labor unions help close the black-white wage gap?*, URB. INST. (Feb. 2, 2019), <https://www.urban.org/urban-wire/can-labor-unions-help-close-black-white-wage-gap> (“In 1983, 31.7 percent of black workers and 23.3 percent of the entire workforce were unionized. In 2017, those numbers had fallen to 12.6 percent and 10.7 percent, respectively (largely because of global competition, deindustrialization, and the passage of right-to-work laws in several states).”).

73. See *id.*

74. *Id.*

75. See Bucknor, *supra* note 71.

76. See Richard L. Trumka, *Trumka: Our brother killed our sister’s son*, AFL-CIO (Sept. 15, 2014), <https://aflcio.org/speeches/trumka-our-brother-killed-our-sisters-son> (“Now, some people might ask me why our labor movement should be involved in all that has happened since the tragic death of Michael Brown in Ferguson. And I want to answer that question directly. How can we not be involved? Union members’ lives have been profoundly damaged in ways that cannot be fixed. Lesley McSpadden, Michael Brown’s mother who works in a grocery store, is our sister, an

B. *Organized labor has a history of fighting for racist economic systems.*

The history of racism in the labor movement is one as old as the labor movement itself. On July 13, 1863 a mob of union Irish dockworkers started a multiday riot in New York City in reaction to a new law that subjected every man within a certain age range to the draft unless they could pay the fee to be exempted. But, more fundamentally, workers were rioting in response to the Emancipation Proclamation. They feared that currently free Black northerners, exempt from the draft because they had not been considered citizens, as well as currently and recently freed Black people migrating from the south, would take the jobs of white men. "From the time of Lincoln's election in 1860, the Democratic Party had warned New York's Irish and German residents to prepare for the emancipation of slaves and the resultant labor competition when southern blacks would supposedly flee north."⁷⁷ To these New Yorkers, the Emancipation Proclamation was confirmation of their worst fears.⁷⁸ The new federal draft law was simply fuel to the fire. At the end of the carnage, eleven Black men had been lynched, more than 100 people had been killed, and an orphanage for Black children had been burned down.⁷⁹

As Leslie Harris writes of the actions and motivations of the rioters in her book *In the Shadow of Slavery: African Americans in New York City, 1626-1863*:

"With these actions white workers enacted their desires to eradicate the working-class black male presence from the city. The Longshoreman's Association, a white labor union, patrolled the piers during the riots, insisting that 'the colored people must and shall be driven to other parts of industry.' But 'other parts of industry,' such as cartmen and hack drivers, not to mention skilled artisans, also sought to exclude black workers. The riots gave all these workers license to physically remove blacks not only from worksites, but also from neighborhoods and leisure spaces."⁸⁰

AFL-CIO union member and Darren Wilson, the officer who killed Michael Brown, is a union member too and he is our brother. Our brother killed our sister's son and we do not have to wait for the judgment of prosecutors or courts to tell us how terrible this is.").

77. See LESLIE M. HARRIS, *IN THE SHADOW OF SLAVERY: AFRICAN AMERICANS IN NEW YORK CITY 1626-1863* 279-88 (2003).

78. *Id.* ("In the month preceding the July 1863 lottery, in a pattern similar to the 1834 anti-abolition riots, antiwar newspaper editors published inflammatory attacks on the draft law aimed at inciting the white working class. They criticized the federal government's intrusion into local affairs on behalf of the 'nigger war.'").

79. *Id.* (noting that the two hundred and thirty-three children who lived there escaped); see also Kaufman, *supra* note 63.

80. Even labor historians have been a part of the entrenchment of racial politics in the labor and union movement. In Herbert Hill's essay *The Problem of Race in American Labor History*, he details how labor historians of the early and mid 1900s either ignored Black workers and other workers of color all together or, if mentioned, cited them as a problem for white labor unions. Hill explains that Selig Perlman, a prominent labor historian from that period and representative of the perspective of many of his peers, "wrote that 'the most important single factor in the history of American labor' was its success in excluding what he called 'Mongolian labor' from the work force and in securing the adoption of the Chinese Exclusion Act of 1882, the

Those benefiting most from racial capitalism understood unions as a tool – one that undoubtedly could be used to upset the racist economic order and build solidarity and power within the working class, but also one that could be used to maintain a racist economic hierarchy. They stoked the fires of racial hatred, conquest, and fear. And yet, it is not the case that powerful capitalists and conservative politicians were simply tricking working-class whites into hurting themselves by remaining committed to white supremacy over building power with workers of color. White workers have at many times organized on their own initiative to maintain the racial capitalist system that, while harmful to themselves as well, still extends a property interest in whiteness that has value in the real world, including access to better paying and more secure jobs, less competition for desirable property, access to public services, and more.⁸¹ These dynamics have manifested in a number of configurations since the Civil War.

Until after the turn of the 20th century, craft unions, unions restricted to workers possessing a particular skill, restricted Black workers from their ranks.⁸² Lucrative vocations like plumbing, carpentry, and plastering were often only open to white people. Management shrewdly exploited that practice by using Black workers to break strikes.⁸³

In the 1930's the formation of industrial labor groups, where all workers within an industry are organized within the same union regardless of skill, began to erode some of the racial barriers, and demonstrate a pathway to more worker power in organizing across race. For example, the CIO welcomed Black workers.⁸⁴

However, racial capitalism was also built into the very structure of the aforementioned NLRA. Although the NLRA provided important protections for unionizing, not all workers were granted those rights. Importantly, agricultural workers and domestic service workers were explicitly excluded.⁸⁵ This exemption had clear racial implications at the time of passage (which survive today), as an overwhelming share of the laborers in these lines of work, past and present, are people of color.⁸⁶

first explicitly racist immigration law in American history." See Herbert Hill, *The Problem of Race in American Labor History*, 24 *REVIEWS AM. HIST.* 189 (1996).

81. See Cheryl Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707, 1780 n. 301 (1993).

82. See Kenneth B. Noble, *The Black Ascent In Union Politics*, *N. Y. TIMES* (Jan. 8, 1989), <https://www.nytimes.com/1989/01/08/weekinreview/the-nation-the-black-ascent-in-union-politics.html>.

83. *Id.*

84. *Id.* ("If only, some say, as a step toward ending their role as strikebreakers. . .").

85. See 29 U.S.C. § 152(3) (explaining that the term "employee" does not include independent contractors, agricultural or domestic workers, employees hired by a parent or spouse, managers, and workers already covered by the Railway Labor Act).

86. Despite this exclusion, there are stunning examples of workers organizing anyway and winning huge gains. Latinx and Filipinx agricultural workers in California formed the United Farm Workers in late 1950 and engaged in massive collective action. The UFW is still active and doing incredible work today. See, e.g., *UFW History*, UNITED FARM WORKERS, <https://ufw.org/research/history/ufw-history/> (last visited June 3, 2019).

Racial capitalism has also continued to animate the anti-union, or “right-to-work,” movement.⁸⁷ In the 1940’s, Vance Muse, a conservative, white supremacist, and anti-Semite activist from Texas, started the “right-to-work” movement with the purpose of disrupting the power of unions to foster “race-mixing,” and thus further build worker power.⁸⁸ The movement enjoyed significant success. “[B]y 1947 eleven states, most of them in the South, had passed right-to-work laws, either through their legislatures or by amending their constitutions.”⁸⁹ That same year, on the federal level, the Taft-Hartley Act was passed, enshrining a state’s right to enact a “right-to-work” law. Muse’s efforts have had staying power. Currently, there are twenty-seven right-to-work states.⁹⁰

While unionization and worker organizing can be critical mechanisms to seek more justice and less inequality, they are also tools that have been leveraged for racism, sexism, xenophobia, and entrenchment of inequality. Police unions have often been used to further this latter set of aims.

C. Police unionization has been used to build power for the racial capitalist state.

There are many unionized police departments, though prosecutors’ unions are significantly less common.⁹¹ Like unions in other contexts, unionizing police and unionizing prosecutors increases their power.⁹² Specifically, it increases their abilities to lobby for policies that expand their budgets, their discretion, job security, and impunity, and to shape and perpetuate the criminal punishment narrative. Police unions build power through unionization and then leverage that power to support candidates and measures that further invest public resources into the carceral mechanisms of the police and prisons, as well as working staunchly against any efforts to limit police discretion, provide civilian oversight, or make

87. See Kaufman, *supra* note 63 (defining “right-to-work laws” as those that “allow workers in a unionized workplace to opt out of paying union dues, thus eroding the union’s financial standing and its bargaining power”; “Muse’s campaign was soon taken over by corporate labor antagonists, including Fred Koch, the Kansas oil magnate and father of Charles and David Koch. There are now twenty-seven right-to-work states.”).

88. See Michael Pierce, *Vance Muse and the Racist Origins of Right-to-Work*, AM. CONST. SOC’Y: ACSBLOG, (Feb. 22, 2018), https://www.acslaw.org/expertforum/vance-muse-and-the-racist-origins-of-right-to-work/#_edn1 (“Vance Muse of the Christian American Association, a larger-than-life Texan whose own grandson described him as ‘a white supremacist, an anti-Semite, and a Communist-baiter, a man who beat on labor unions not on behalf of working people, as he said, but because he was paid to do so.’”); see also Kaufman, *supra* note 63.

89. See Kaufman, *supra* note 63.

90. *Right-To-Work Resources*, NAT’L CONFERENCE STATE LEGISLATURES, <http://www.ncsl.org/research/labor-and-employment/right-to-work-laws-and-bills.aspx> (last visited June 3, 2019).

91. See *supra* note 14 (describing the author’s research findings on prosecutors’ unions).

92. Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 756 (2017), <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3828&context=facpubs> (“In large departments, the individuals holding these full-time paid positions control a multimillion-dollar budget amassed from union dues. This gives them enormous power to influence public policy because they can donate a portion of these funds to politicians viewed as friendly to their interests.”).

meaningful changes to discipline policies. This is in addition to the power to influence further investment and protection of the Police Chief and administration, who also use these mechanisms to further legitimize their function, and to deride efforts to curb police violence and lack of accountability.

Over the past few decades, political support from those politicians within both Republican and Democratic parties that bill themselves as “tough on crime” has meant that while other public unions are vilified and have their budgets slashed, police unions are excepted from these measures. For example, during New York City’s near bankruptcy in 1975, unionized municipal workers were blamed for their “ironclad” control of New York City’s budget, while police and prison guards were largely accepted.⁹³ In fact, police and prison guard unions emerged from the fiscal crisis more powerful than ever.⁹⁴ As Rebecca Hill writes in *The Common Enemy is the Boss and the Inmate: Police and Prison Guard Unions in New York in the 1970s-1980s*, “both entities continued to gain power and clout, successfully using union dollars to lobby for increased dollars, harsher penalties, criminalization of more behaviors, increased police autonomy on the streets, and increased security measures within prisons.”⁹⁵

Missouri provides an example of the disparate treatment of police and prison guard unions from other public unions in the continuing assault on public-sector unions and their political power. In June 2018, as one of his final acts before resigning amid scandal, Gov. Eric Greitens signed into law HB 1413 a “paycheck protection” law.⁹⁶ “The measure would limit the power of public-sector unions by allowing workers to decline to allow the union to spend part of its dues for political purposes. It also requires regular recertification elections, as well as raises the bar on what is necessary for those elections to succeed.”⁹⁷ “Specifically, all unionized government employees — other than first-responders and law enforcement officers — would have to opt in to have unions withdraw dues from their paychecks.”⁹⁸

That exception is important, and illustrates the hypocrisy of those touting the bill. The rhetoric being used to support this legislation, and legislation like it, focuses on worker liberty, free speech, and right to contract. But the carve outs for law enforcement cut against these principles. Do policy makers’ concerns for workers and worker liberty not extend to police and first responders? Or, as is plainly the case, do they want to preserve the political power and funding of a group and institution that

93. See Hill, *supra* note 58.

94. *Id.*

95. *Id.*

96. See Kurt Erickson, *In two Friday decisions, Missouri judges block anti-union laws pushed by Republicans, Greitens*, ST. LOUIS POST-DISPATCH (Mar. 8, 2019), https://www.stltoday.com/news/local/govt-and-politics/in-two-friday-decisions-missouri-judges-block-anti-union-laws/article_cc7bf250-2fb1-51af-812e-b892c36bf4a5.html; see also Alice Speri, *Five Years After Ferguson, St. Louis County’s New Prosecutor Confronts A Racist Criminal Justice System*, INTERCEPT (Jan 24, 2019), <https://theintercept.com/2019/01/24/wesley-bell-st-louis-prosecutor-ferguson/>.

97. See Erickson, *supra* note 96.

98. See *id.*

overwhelmingly supports candidates that commit to further investment in the arrest and incarcerate model?

Though this specific legislation was recently curtailed,⁹⁹ conservatives want these laws to block progressive power, as unions tend to support Democratic candidates and campaigns.¹⁰⁰ They also want to undermine worker power. Any unions that are not imbued with state power are being targeted. Police and correctional officer unions are enjoying carve outs and vocal support from the conservative right. That protection, despite other anti-union and “pro worker” rhetoric, is coming in a moment when those public actors in the criminal punishment system are facing powerful calls for reform from the broader community as a result of successful community organizing.

D. The intersection of labor, politics, and racial justice movement in St. Louis.

In the St. Louis region, there is a gap between the politics of union-worker issues and racial equity issues. Those representing labor have not always been supportive of the efforts and aims of those organizing for racial justice, despite support from racial justice movement for workers. That history is deeply rooted.

In the early 1900s, more than 100 manufacturing plants opened in and around East St. Louis, catalyzing the city’s growth by about 9 percent in a decade.¹⁰¹ Among those moving to the region were Black people migrating from Southern states with the hope of landing work and a safer place to settle.¹⁰² Their arrival excited factory owners at the prospect of cheap labor and angered white laborers.¹⁰³ On May 23, 1917, a leader of the Central Trades and Labor Union wrote to its delegates: “The immigration of the Southern Negro into our city for the past eight months has reached the point where drastic action must be taken if we intend to work and live peaceably in this community.”¹⁰⁴ Union members were called on to demand that the city government “take some action to retard this growing menace and also devise a way to get rid of a certain portion of those who are already here.”¹⁰⁵

99. See MO. CONST. art. I, § 29 (1945) (citing *Indep. Nat. Educ. Ass’n v. Indep. Sch. Dist.*, 223 S.W.3d 131 (Mo. 2007) (“Section applies to public employees as well as private sector employees.”)).

100. See *Labor*, OPENSECRETS, <https://www.opensecrets.org/industries/indus.php?ind=P> (last visited June 3, 2019) (“Total labor sector campaign contributions topped peaked during the 2016 election cycle, when groups and individuals poured more than \$217 million into races nationwide. Almost 90 percent of those contributions went to Democrats, which is consistent with at least two decades of labor contribution trends.”).

101. See Doug Moore, *100 years later, East St. Louis stops to remember the riots that made indelible mark on city*, ST. LOUIS POST-DISPATCH (June 28, 2017), https://www.stltoday.com/news/local/crime-and-courts/years-later-east-st-louis-stops-to-remember-the-riots/article_7972666b-6508-5f76-a582-aa52d4bef8ba.html.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

Five days after this letter, white union workers, leaving an evening city council meeting, took to the streets and began harassing and assaulting Black people on sight.¹⁰⁶ While no one was killed in this event, five weeks later, after weeks of heightened tensions, white men in a Ford shot into the homes of Black families at night on July 1, 1917.¹⁰⁷ After this, Black men from the neighborhood took up arms and gathered to guard the street. Later that night, they shot into a Ford coming down the street with two white men who turned out to be police officers in plain clothes.¹⁰⁸ The next morning, after a meeting at the Labor Temple where white workers were encouraged to go home and get their guns, “thousands of blacks were driven out of their homes, beaten, burned and shot.”¹⁰⁹ The total number of casualties are unknown, though historians say the official count of 48 people is vastly underestimated, and that the real numbers could be as high as 250 people murdered, many structures and homes burned and thousands left homeless.¹¹⁰ The massacre in East St. Louis just over 100 years ago continues to impact the city today.¹¹¹ Throughout the region, the intersections and boundaries drawn around race, class, union status, and the government apparatus remain a tangled web.

In the aftermath of Michael Brown’s murder, protestors in the streets called for justice for Black Lives, and those protestors were met by counterprotesters. Each side had representatives from local labor factions, and the breakdown of solidarity was clear. As Kayla Reed noticed, those union protestors on the side of Black Lives Matter movement were “were typically young and affiliated with ‘Fight for \$15’. . . but trade unionists. . . often stood with the counterprotesters.”¹¹²

That’s why Reed and other organizers were not surprised that essentially every union, with the exception of SEIU Missouri State Council, endorsed McCulloch over Bell for Prosecuting Attorney. Local unions, especially trade unions like the Sprinkler Fitters Local 268, who gave \$1,000 to McCulloch’s campaign, cited McCulloch’s record on being pro-union, a reliable presence at rallies, and a strong incumbent. When asked

106. *Id.*

107. See Tim O’Neil, *Look Back 250 • Race hatred, workforce tensions explode in East St. Louis in 1917*, ST. LOUIS POST-DISPATCH (Sept. 21, 2014), https://www.stltoday.com/news/local/illinois/look-back-race-hatred-workforce-tensions-explode-in-east-st/article_9bfa1b5d-c627-5dc7-b1da-6d58993f3ecb.html.

108. *Id.*

109. *Id.*

110. See Moore, *supra* note 101 (“St. Clair County authorities eventually charged more than 140 people, most of them white and including police officers and East St. Louis Mayor Fred Mollman, who did little to stop the carnage. Indictments against the officers were ‘lost’, and the charge against the mayor was dropped.”).

111. See Mary Delach Leonard, *100 years later: Group is placing historical markers at sites of 1917 East St. Louis race riot*, ST. LOUIS PUB. RADIO (June 5, 2017), <https://news.stlpublicradio.org/post/100-years-later-group-placing-historical-markers-sites-1917-east-st-louis-race-riot#stream/0>.

112. Aída Chávez & Ryan Grim, *Carpenters, Steamfitters, And Other Trade Unions Coalesced Around Notorious Ferguson Prosecutor. Why?*, INTERCEPT (Aug. 9, 2018, 12:34 PM), <https://theintercept.com/2018/08/09/bob-mcculloch-union-backing-bob-mcculloch-ferguson/>.

about their support of McCulloch, and whether McCulloch ran his office in a racist way, Mike Mahler, President of Sprinkler Fitters Local 268, said he did not.¹¹³ Mahler opined that the unfairness in the system was that it was stacked against all poor people, not just Black people.¹¹⁴ “The next guy’s going to find out that it’s nice to have all these idealistic ideas, sometimes it’s not easy to accomplish. I think Bob was a very fair person.”¹¹⁵

The August 7th election was also important because of a popular referendum on the ballot, Proposition A,¹¹⁶ which would have significantly damaged unions in the state by making fair share requirements illegal in union shops.¹¹⁷ Unions worked hard to defeat adoption of this “right to work law.” Criminal justice reform advocates pushing for Bob McCulloch’s removal and Bell’s election also supported the efforts to defeat the “right to work law” by including literature urging voters to vote “no” on Proposition A in their canvassing.¹¹⁸

Both the criminal justice advocates and the unions appear to have made an impact at the polls. Bell was elected St. Louis County Prosecutor, beating McCulloch by about 14 percentage points.¹¹⁹ Proposition A was defeated in a landslide, opposed by 73 percent of voters, with two thirds of those votes coming from St. Louis County. As was reported in *The Intercept* after the election, “the results suggest that most progressives who voted for Bell also sided with the unions in solidarity. The unions, meanwhile, voted for their own interests on the right-to-work law, but voted against the criminal justice reform movement.”¹²⁰

Again, none of this is news to folks on the ground, given the complicated relationship between the Black community and unions, a relationship that can come with benefits and protection for Black workers and families who are able to pierce unions’ often insular and segregated ranks, despite the general inequality and a history of unions aligning with the kind of “law and order rhetoric” and practice that they came to expect from public officials like McCulloch.¹²¹

113. *Id.*

114. *Id.*

115. *Id.*

116. *2018 Ballot Measures*, MO. SEC’Y STATE’S OFF., <https://www.sos.mo.gov/elections/petitions/2018BallotMeasures> (last visited June 3, 2019).

117. Fair share fees are administrative fees collected from non-union workers paychecks in unions shops to help offset the costs of bargaining, and compensate for the benefits non-union workers gain from having the union bargain for contractual terms on their behalf. Last year, in *Janus v. AFSCME*, the Supreme Court ruled that non-union workers do not need to pay fair share fees because requiring them to do so would violate their First Amendment rights, overturning over 40 years of precedent and dealing a punishing blow to public unions nationwide. See Alana Semuels, *Is This the End of Public-Sector Unions in America?*, *Atlantic* (June 27, 2018), <https://www.theatlantic.com/politics/archive/2018/06/janus-afscme-public-sector-unions/563879/>.

118. See Chávez & Grim, *supra* note 112.

119. See Astead W. Herndon, *Wesley Bell, Ferguson Councilman, Unseats St. Louis County Prosecutor*, *N.Y. TIMES* (Aug. 8, 2018), <https://www.nytimes.com/2018/08/08/us/politics/wesley-bell-st-louis-election-result.html>.

120. See Chávez & Grim, *supra* note 112.

121. See *id.*

Organizers like Reed can understand that in the era of Trumpism, Walkerism, and harsh anti-unionism, unions are grasping for the bedfellows like McCulloch with whom they know and feel comfortable. However, Reed thinks they are missing a crucial opportunity to build power and make change across community: “They’re not recognizing the force of grassroots power and what that could do for their workers,” she said. “It’s almost like a self-inflicted wound they’re giving themselves.”¹²²

CONCLUSION

St. Louis County deserves to have a public administration that is well functioning, accountable, and fair. It deserves public services that promote human dignity and wellbeing, that are aimed at reducing harm and inequality, and increasing justice. It deserves a system that deals with harm in a fair, measured way, rooted in the community’s values, history, and needs. It deserves a public system that holds its public servants to a higher standard, not a lower one, or extends de facto impunity. If it is to have a police force and a prosecutor’s office, those offices should be accountable to the community they serve. The St. Louis County assistant prosecutors unionizing with the SLPOA moves St. Louis County further away from all of those goals. It is a closing of ranks, a commitment to alliance and allegiance to each other rather than to the public.

Unions have the power to fight or perpetuate racial injustice, and there is a long, mixed history of those efforts. Unions have fought to exclude and oppress. They have also provided Black people and other people of color with important benefits and mechanisms for organizing for economic and racial justice. There might be some situations where it is difficult to know whether unionization, or union action, is serving or curtailing the racial justice movement. St. Louis County assistant prosecutors unionizing with the SLPOA is power-building in response to some of the most powerful racial justice movement organizing of our time. It involves one of the most salient contemporary incidents of racial injustice, the killing of Michael Brown, and involves two institutions directly implicated in that injustice. This is not of those “difficult to know” situations.

This new union does raise explicit questions about the continued existence of prosecutors and police, whether unionized or not. The roles of police and prosecutors, as currently structured, serve to further the exploitation, looting, and killing of Black and brown people in Missouri cities and counties. This unionization will only further contribute to these entities’ power building. This novel public union has been forged to shield its members from calls for change and reform from the very people to which these public servants are meant to answer. It should be seen as the deepening collusion of dangerous power that it is, because, in some ways, this union is not new at all. It is the squeezing of already clasped hands that do not want to be pulled apart. But the hands are clasped

122. *See id.*

around the necks of poor communities of color in St. Louis County, and they must be pried away.¹²³

123. How or what should we do next to get their hands off our necks? This article is not focused on what should come next, as organizers and those most connected to what's happening in St. Louis and the region are best situated to understand the needs and goals of the community, and are already hard at work. However, the following ideas follow from the analysis in this article, and could be interrogated as possible goals and strategies. Most immediately (1) Do not allow assistant prosecutors to remain a part of SLPOA. They are only amplifying their power to act in concert, to influence politicians, to increase their budgets, and to use those dollars to fund additional lobbying to support the arrest and incarcerate model. Possible legal avenues for this challenge could draw on conflict of interest doctrine, separation of powers doctrine, and more broadly administrative law and anti-trust law. Specifically, one could argue that the legality of unionization should include a power analysis, and under that theory, that a union of police and prosecutors should be illegal because police and prosecutors unionizing concentrates too much power. *See, e.g.,* Stephen Rushin, *Police Union Contracts*, 66 *DUKE L. J.* 1191 (2017). One could also raise procedural challenges that SLPOA is a not proper bargaining unit, or that the election did not meet requirements. Wesley Bell has already argued that he will not recognize the union, because the Circuit Court's recent decision casts doubt on the legality of the prosecutors vote given it was not overseen by a public mediator. In service of broader abolitionist aims, additional goals should include (2a) decreasing the funding going to these entities by diverting funding towards social services, or paying people directly and ultimately (2b) divesting completely from these flawed and failing public entities.

WHY THE CONGRESSIONAL BLACK CAUCUS MUST REJECT PRIVATE PRISON MONEY

*Demarquin Johnson**

INTRODUCTION

“We need to declare the era of mass incarceration and oppressive prison sentences over. The time for comprehensive criminal justice reform is now.”

Karen Bass, Chairwoman of the Congressional Black Caucus¹

The fact that the United States incarcerates more people than any other country in the world at a rate higher than any other country in the world is so well-known that it requires no citation. Within the system of mass incarceration, Black people are disproportionately imprisoned at a rate more than five times the rate of whites.² The racial disparity is linked to myriad policy decisions, including strategic under- and over-policing in Black neighborhoods, excessive mandatory minimums for crimes intentionally linked to Black people, and political rhetoric used to denigrate Black culture. In the United States Congress, the 55 legislators of the Congressional Black Caucus (CBC) work to “ensure that African Americans and other marginalized communities in the United States have the opportunity to achieve the American Dream.”³ This commitment extends to ending mass incarceration through the Caucus’ support of “banning private prisons.”⁴ Because private prisons benefit from high rates of imprisonment, leaders in the CBC should reject campaign donations from these for-profit incarceration facilities.

The argument is straightforward: The CBC should not accept political contributions from private prisons because private prisons are opposed to meaningful reform. These for-profit entities use campaign donations to advance their interests, including building mutually beneficial relation-

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1. Karen Bass, *Los Angeles Wave: It's time to end the era of mass incarceration*, REPRESENTATIVE KAREN BASS (July 30, 2015), <https://bass.house.gov/editorial/los-angeles-wave-it's-time-end-era-mass-incarceration>.
2. *See Criminal Justice Fact Sheet*, NAACP (2019), <https://www.naacp.org/criminal-justice-fact-sheet/>.
3. *See About*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/about/>.
4. *See Agenda*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/about/agenda.htm>.

ships in Congress to the detriment of Black people. CBC members should reject this money to send a clear message against private prisons.

PRIVATE PRISONS IN THE STATUS QUO

The current condition of the American penal system is abhorrent. Those who are incarcerated often experience involuntary isolation, unhealthy living conditions, and substance abuse while in prisons that are overcrowded, underfunded, and lacking in adequate resources.⁵ In East Mississippi Correctional Facility, a for-profit prison run by Management and Training Corporation, employees testified about dangerous conditions, confused lines of oversight, and difficulty in attracting and retaining qualified staff.⁶ These problems greatly reduce the safety and rehabilitative resources available to inmates during their incarceration and complicate their lives after incarceration. Upon release, formerly incarcerated people must live with the trauma of imprisonment and face legalized discrimination affecting their ability to pursue education, gain employment, secure housing, and vote.⁷ These factors contribute to America's extreme recidivism rate of 76.6% (within five years of release).⁸

Despite social harms, for-profit prisons financially benefit from the unacceptable carceral status quo. Private incarceration centers, like all businesses, only make money when there is a demand for their products and services. 27 states and the federal government incarcerate over 100,000 people across private prison facilities.⁹ GEO Group and CoreCivic (formerly Corrections Corporation of America) are the largest operators of private prisons. In 2015, the two businesses claimed \$2.6 billion of the \$5 billion industry.¹⁰

Private prisons have an economic incentive to increase the number of incarcerated people and decrease the wages and training of employees. State and federal governments award contracts to private prisons in order to manage an exceedingly high population of incarcerated people and keep costs low. Many of these contracts "include occupancy requirements mandating that [state and local] governments keep the facilities between 80 and 100 percent full."¹¹ Governments are easily able to fulfill this provision when simultaneously over-broad and narrowly-tailored criminal

5. See Veronica Wicks, *The Impact of Incarceration and Societal Reintegration on Mental Health*, CSUSB ELECTRONIC THESES, PROJECTS, AND DISSERTATIONS, <https://scholarworks.lib.csusb.edu/508>.

6. See Timothy Williams, *Inside a Private Prison: Blood, Suicide and Poorly Paid Guards*, N.Y. TIMES (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/us/mississippi-private-prison-abuse.html>.

7. See generally THE SENTENCING PROJECT, <https://www.sentencingproject.org/issues/collateral-consequences/>, (last visited April 20, 2019).

8. See MATTHEW R. DUROSE, ET AL., BUREAU OF JUST. STAT., NCJ 244205, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 - UPDATE (2014).

9. See *Private Prisons in the United States*, THE SENTENCING PROJECT (Aug. 2, 2018), <https://www.sentencingproject.org/publications/private-prisons-united-states/>.

10. See Lauren-Brooke Eisen, *Private prisons are poised for a comeback under Trump. Here's how to reform them.*, VOX (Jan. 13, 2017), <https://www.vox.com/the-big-idea/2017/1/13/14258350/private-prisons-reform-trump-incarceration>.

11. *Id.*

laws are used to mete out harsh punishments to millions of people, often times in the form of long prison sentences. For-profit prisons maintain a competitive edge over government-run prisons by keeping their expenses low. At East Mississippi, prison guards earn less than the \$12 per hour that their publicly-employed counterparts earn and receive less than half the training time state prisons guards receive.¹² As noted above, prisons and their occupants are worse off when employees are unqualified and unprepared, regardless of the prison's profit margin.

Powerful Wall Street investors also profit from an expansive private prison industry. JPMorgan Chase & Co. (JPMorgan), Wells Fargo, BlackRock, and more than 30 other investors each own in excess of one million shares in GEO Group and CoreCivic.¹³ Dozens of banks help finance private prison debt and invest in their future. The two major for-profit prison companies have more than \$2 billion in debt and would likely not be able to continue without the complicity of JPMorgan, Wells Fargo, and BlackRock.¹⁴ The debt arrangements, like loans, allow GEO Group and CoreCivic to maintain real estate investment trust (REIT) status, which is how they avoid paying over \$113 million in taxes.¹⁵ Additionally, the large Wall Street financiers invest heavily in these companies. At the beginning of 2018, JP Morgan, Wells Fargo, and BlackRock held more than 28 million GEO Group and CoreCivic shares valued collectively at \$653,258,000.¹⁶ The intertwined financial partnerships between investors and private prisons expand the amount of support the private prison industry receives, enabling more destruction and depredation. As a result, JPMorgan, Wells Fargo, BlackRock, and others who profit from the success of private prisons stand to lose significantly from prison reform. It is undocumented the extent to which investors actively lobby in favor of private prisons, but the financial motive is clear.

Notwithstanding recent public statements to the contrary, private prisons oppose substantive changes to the prison industry. In 2018, GEO Group, CoreCivic, and Management and Training Corporation applauded the passage of the FIRST STEP Act, a law aimed at reducing recidivism.¹⁷ This is likely because "[t]he law does not appear to be a major threat to the industry, and in fact, the for-profit prison industry will certainly be able to profit from it."¹⁸ Provisions in the legislation will likely result in shifts of revenue from privately-owned prison facilities to "halfway houses" owned by the same companies. For-profit prisons respond differently when their revenue is truly at risk. In 2016, the Obama administration announced reductions in the use of private prisons as the

12. See *Private Prisons in the United States*, *supra* note 9.

13. See *The Million Shares Club & Prison Lenders*, ENLACE (2018), <http://www.enlaceintl.org/million-shares-club>.

14. See *Bankrolling Oppression*, CTR. POPULAR DEMOCRACY 12 (2018), <https://populardemocracy.org/sites/default/files/20180427%20CBOH%20Digital.pdf>

15. See *id.* at 19.

16. See *id.* at 15.

17. See Karl Evers-Hillstrom, *For-profit prisons strongly approve of bipartisan criminal justice reform bill*, OPENSECRETS (Dec. 20, 2018), <https://www.opensecrets.org/news/2018/12/for-profit-prisons-approve-of-bipartisan-criminal-justice-reform/>.

18. *Id.*

federal inmate population was declining.¹⁹ Since the change would dramatically impact their bottom line, CoreCivic and Management and Training Corporation publicly condemned the decision despite the positive social reality of lower incarceration rates.²⁰

PRIVATE PRISON PAC MONEY

Private prisons' decision to donate campaign contributions is simultaneously unsurprising and exceptional. Money plays a substantial role in American democracy. Nearly \$6.5 billion was spent on federal elections in 2016.²¹ The national political apparatus incentivizes corporations to maintain political action committees (PACs) to donate to campaigns. Business PACs comprised more than 75% of the top 20 contributors to candidates in the 2016 election cycle.²² It is unsurprising that private prisons are taking a well-worn path to advantageous policies by organizing PACs and donating money to political campaigns. Conversely, government-owned prisons do not try to influence elections or candidates in this way. The law does not permit PACs to dole out hundreds of thousands of dollars on behalf of state and federal public incarceration facilities. Thus, private prisons are exceptional in their ability to impact the politics of mass incarceration through campaign donations.

PAC contributions are used to affect policy outcomes and/or build relationships.²³ A citizen donates money to a political campaign to help their preferred candidate win and enact policies the citizen favors. Similarly, a business PAC donates money to a campaign to help their preferred candidate win and enact policies the business favors. According to the Center for Responsive Politics, "Individuals and interest groups will give campaign contributions to politicians in the best position to deliver what they're looking for."²⁴ Although the research is inconclusive on the causal link between campaign donations and legislative policy votes, the motivation behind giving contributions is evident. Even if PAC contributions do not immediately result in the adoption of advantageous policies, campaign contributions allow a relationship to develop between the elected official and the private business. In recognition of the slow legislative process, donations from PACs help facilitate long-standing bonds.

19. See Sally Yates, *Phasing Out Our Use of Private Prisons*, U.S. DEP'T JUST. (Aug. 18, 2016), <https://www.justice.gov/archives/opa/blog/phasing-out-our-use-private-prisons>.

20. See *id.*

21. See Niv M. Sultan, *Election 2016: Trump's free media helped keep cost down, but fewer donors provided more of the cash*, OPENSECRETS (Apr. 13, 2017), <https://www.opensecrets.org/news/2017/04/election-2016-trump-fewer-donors-provided-more-of-the-cash/>.

22. See Center for Responsive Politics, *Top PACs*, OPENSECRETS (Nov. 27, 2017), <https://www.opensecrets.org/pacs/toppacs.php?cycle=2016&filter=P&Type=C&pac=B>.

23. See Jake J. Smith, *When Corporations Donate to Candidates, Are They Buying Influence?*, KELLOGG INSIGHT (Sep. 5, 2017), <https://insight.kellogg.northwestern.edu/article/do-corporate-campaign-contributions-buy-influence>.

24. Center for Responsive Politics, *The top 10 things every voter should know about money-in-politics 1*, OPENSECRETS, <https://www.opensecrets.org/resources/dollarocracy/index.php>.

“For those repeat donors, giving is a way of life and a cost of doing business. It’s how you win friends and influence people in Washington.”²⁵

To disassociate themselves from individuals and groups, politicians reject campaign contributions even when the law does not require it. There are countless examples of candidates returning money in order to express a particular position against policies and/or to break political ties. During the 2016 presidential primary, three Republican candidates returned contributions from the president of a white supremacist organization that was cited by the murderer in the Charleston church shooting that took place in 2015.²⁶ Similarly, several Democrats refunded donations from Harvey Weinstein after allegations of sexual abuse came to light.²⁷ Companies, like Enron in 2001, have also seen their funds returned by politicians.²⁸ Candidates are permitted to refuse campaign contributions whenever they like, and often do so to dismiss specific policies and distance themselves from people and companies.

CBC’S WORDS AND DEEDS

Members of the CBC should reject all donations from private prison PACs. The CBC platform emphasizes “Fighting the New Jim Crow.”²⁹ However, its members accept donations from private prisons, who benefit from mass incarceration. In the 2016 election cycle, PACs affiliated with GEO Group, CivicCorp, and Management and Training Corporation donated \$547,646 directly to candidates, including about 13% of the CBC membership.³⁰ There is an obvious hypocrisy in accepting donations from private prisons and advocating to abolish private prisons. CBC members must ensure congruence between their words and deeds.

Like the CBC, a majority of Americans support reforming the current state of imprisonment. The Caucus has historically detailed “sentencing reform” and “increasing rehabilitation” in its criminal justice agenda.³¹ Citizens express similar views. In a 2016 survey, 51% of respondents across the country stated there are too many people in prison, while only 27% said there were the right amount or not enough people in prison.³² A 2018 poll revealed that approximately 85% of voters agree “the main goal of our criminal justice system should be rehabilitating people to become

25. *Id.* at 6.

26. *See id.*

27. *See* Andrew Mayersohn, *Why some campaign contributions get returned*, OPENSECRETS (Oct. 10, 2017), <https://www.opensecrets.org/news/2017/10/returned-contributions/>.

28. *See id.*

29. *See Issues*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/issues/issue/?IssueID=14891>.

30. *See Management and Training Corporation*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/orgs/recips.php?id=D000027364&cycle=2016>; *GEO Group*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/pacs/pacgot.php?cycle=2016&cmte=C00382150>; *CivicCorp*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/orgs/recips.php?id=D000021940&cycle=2016>.

31. Cong. Black Caucus, *Year in Review 6* (2015), https://cbc.house.gov/uploadedfiles/2015_cbc_year_in_reviewfinal.pdf.

32. Morning Consult, *National Tracking Poll 2* (2016), https://cdn3.vox-cdn.com/uploads/chorus_asset/file/7052001/160812_topline_Vox_v1_AP.0.pdf.

productive, law-abiding citizens.”³³ This view is shared across the political spectrum for Republicans (79%), Independents (83%), and Democrats (92%).³⁴

Congressional Black Caucus leaders should prioritize people over money to robustly transform the criminal legal system from a tool of white supremacy to a fairer and equity-based resource. Severing the ties between private prison PACs and CBC members on Capitol Hill can lead to severing the ties between mass incarceration and Black communities across the country.

33. Robert Blizzard, Public Opinion Strategies, *National Poll Results* 1 (2018), <https://www.politico.com/f/?id=00000161-2ccc-da2c-a963-efff82be0001>.

34. *See id.*

MY CITY

*Teriq "Lil Riq"**

I GREW UP IN THE 'BURG¹
WHERE AIN'T NOBODY GET HEARD
WHERE THE COPS WAS TRYING TO KILL US
AND DRILL US—
NO TIME WAS SERVED.

* Lil Riq is an artist who wrote this poem while incarcerated at age 15.

1. Lil Riq is from Harrisburg, Pennsylvania.

CAPITALISM AND CALIFORNIA'S URGENT NEED TO REFORM THE PRISON VOLUNTEER PROGRAM

*Delrishia White**

INTRODUCTION

In the summer of 2018, 459,123 acres burned in the largest fire in California's history, and almost 2,000 incarcerated men, women, and minors helped extinguish it. The fires in Mendocino and Lake Counties were the largest in the state's history, creating roughly \$267 million dollars in damages. It's no wonder why the state turned to prison labor to reduce the financial impact it would incur—an exploitive solution that needs to be interrogated and severely reformed.

My position on California's egregious practice is not only rooted in my personal and professional commitment to human rights but also in my disappointment as a native of the golden state, and repulsion of a system that robbed me of my mother and father and cradled all but one of my *six* brothers from youth through adulthood. This piece is grounded in the Black, queer, feminist activist Charlene A. Carruthers's articulation of capitalism: "an economic system in which the means of production, access to goods, and the value of goods are controlled by private individuals and corporations."¹

For this system of capitalism to work, there must be people that exist on both sides of the system: beneficiaries and marginalized people. America's judicial system is far from color-blind and unfortunately, the easily-dubbed *progressive* California is quite *regressive* when it comes to the law as well. Bummer. In this country, Black people are especially vulnerable to being oppressed in this system. According to the Public Policy Initiative of California, at the end of 2016, Black men accounted for 29% of the incarcerated population—a grim disparity considering that the same make up only 6% of the state's adult population.² It is capitalism that creates a structure predicated on the mindset that prisoners are *worth less* and therefore *owe more* to society. Yet, it is this country's anti-Black history that sets the backdrop through which this exploitation of Black bodies and revocation of Black liberties is made tolerable. This proposition justi-

* M.Ed., Harvard Graduate School of Education.

1. CHARLENE A. CARRUTHERS, UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS x (2018).

2. See *Corrections: California's Future*, PUB. POL'Y INST. CA 3 (Jan. 2019), <https://www.ppic.org/wp-content/uploads/californias-future-corrections-january-2019.pdf>.

fies, for many, an incarcerated person—including youth—sacrificing their life for society for less than \$2 an hour to fight California’s most threatening fires, according to the California Department of Corrections and Rehabilitation (CDCR).³

In addition to race, capitalism influences how a person is valued in America. The level of education one acquires, the amount of money one has earned, and a person’s association to big named brands, through employment or otherwise, all influence a person’s social status. We see this in the tiered college system with bachelor, master, and terminal degrees. We see this in our credit system; the more access to a line of credit coupled with the lowest need to access it makes one financially attractive to gatekeepers of economic opportunity. In every facet of life in America, this trend is palpable. The more one has, the higher one’s social rank. Incarcerated people, who are often drawn from the bottom of the social hierarchy, experience dehumanization, which deprives them, among other things, of quality education, quality healthcare, and agency.

THE GOLDEN STATE BENEFICIARY

California saved between \$90 and \$100 million dollars in one recent year by endangering human life.⁴ In this case, human life that is undervalued due to the “criminality” with which it is associated by way of culture, policies, and media propaganda. While professional firefighters are paid an average of \$49,080 per year in the United States,⁵ an incarcerated firefighter makes less than \$20 a day working the same hours while their bodies are subjected to an equal level of risk and trauma. These firefighters are forced back to their prison quarters, likely with limited access to low- or no-quality healthcare.⁶ Incarcerated firefighters “are more than four times as likely, per capita, to incur object-induced injuries, such as cuts, bruises, dislocations and fractures, compared with professional firefighters working on the same fires.”⁷ According to the CDCR, “[t]he primary mission of the Conservation Camp Program [CCP] is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters.”⁸ It is not in the state’s interest to provide healthcare, job training, or

3. See CDCR’s *Conservation Camp Program Frequently Asked Questions (FAQ)*, CA DEP’T CORRECTIONS & REHABILITATION, https://www.cdcr.ca.gov/Conservation_Camps/docs/FAQ-Fire-Camps.pdf.

4. See *Hundreds of the Firefighters Battling Sonoma Fires—Inmates*, KQED NEWS (Oct. 13, 2017), <https://www.kqed.org/news/11623289/hundreds-of-the-firefighters-battling-sonoma-fires-inmates>.

5. See *Occupational Outlook Handbook*, BUREAU LAB. STATISTICS (Apr. 12, 2019), <https://www.bls.gov/ooh/Protective-Service/Firefighters.htm>.

6. See generally Andrew P. Wilfer, et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 AM. J. PUB. HEALTH 666 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/>.

7. Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show*, TIME (Nov. 17, 2018), <http://time.com/5457637/inmate-firefighters-injuries-death/>.

8. *Conservation (Fire) Camps*, CA DEP’T CORRECTIONS & REHABILITATION, https://www.cdcr.ca.gov/conservation_camps/ (last visited Apr. 26, 2019).

workforce development for a person in the carceral system. And for a Black person whose family has been intergenerationally deprived of wealth and education, resisting the status quo is even more cumbersome. The CCP program exclusively benefits the system—a system that restricts the freedom of incarcerated Black people. It is only within a capitalist structure that people can convince themselves that the incarcerated firefighter’s life is worth less than that of the free-world firefighter, when both risk paying the ultimate price—their lives.

IMPACT ON INCARCERATED INDIVIDUALS

CCP advocates argue that “prison volunteers” *choose* to participate and in fact, *benefit* from participating. The reality is, incarcerated individuals are highly vulnerable, and this choice has serious constraints. The criminal legal system is designed to sever familial relationships outside of prison, leaving those on the inside even more defenseless than they otherwise would be. And, contrary to popular belief, most cannot care for themselves to purchase hygiene products, food, and even healthcare items like glasses on the prison black market—in response to the lackluster healthcare services offered to them. For many, this is not a choice. This is an opportunity to pay for their own commissary that would allow them to better care for themselves on the inside. Proponents argue that inmates give back to society through firefighting. Frankly, incarcerated people will spend the rest of their lives being punished, regardless of whether or not they are incarcerated. Roughly 46,000 formerly-incarcerated people remain on parole,⁹ and about 223,000 remain disenfranchised.¹⁰ For those who have experienced incarceration, the market, like so much of American life, remains distinctly *unfree*. Couple this reality with court-sanctioned restitution, housing instability, and of course, *race*—the future is bleak for incarcerated firefighters in California. These firefighters were sentenced to incarceration, and they are doing their time. They don’t owe society their volunteerism.

AN ALTERNATIVE PROGRAM

Utilizing incarcerated individuals to aid in fighting fires is not inherently wrong. As the program exists today, incarcerated firefighters earn two days off of their sentence per day of service fighting fire. People classified as violent offenders earn one day off per day of service. Incarcerated people earn \$2 per day with an additional \$1 per hour when fighting an active fire. If California continues to utilize prison labor to ameliorate the increasingly devastating fires that burn within its borders,¹¹ policy

9. See Justin Goss & Joseph Hayes, *California’s Changing Parole Population*, PUB. POL’Y INST. CA (Feb. 2018) <https://www.ppic.org/publication/californias-changing-parole-population/>.

10. See *Number of People by State Who Cannot Vote Due to a Felony Conviction*, PROS & CONS (Oct. 2017), <https://felonvoting.procon.org/view.resource.php?resourceID=000287>.

11. “More than 1,000 wildfires have been sparked in a *one-week period* in July — that’s more than three times the average 250 or 300 that begin each week at this point in the season, according to the California Department of Forestry and Fire Protection,

makers must also ensure equal pay and quality healthcare for those laborers. Additionally, inmates need robust options to rely on for employment and career opportunities once they are released from prison.

In a recent study on reincarceration, researchers found that Black men were more likely to return to prison than both their white men counterparts and their Black women counterparts.¹² It is not difficult to see why: racism pervades the housing, healthcare, and employment systems with which newly-released Black men interact, which increases the likelihood of a return to prison. Creating viable opportunities that translate into a productive life after incarceration is one way to curb this epidemic. Assuming that the criminal legal system was designed to engender more public safety, we must also assume that the success of formerly incarcerated folks is a collective responsibility that we all share.

CONCLUSION

There is no redemption song for people with felony convictions—especially if they’re Black. This country’s anti-Black rhetoric has led to the overincarceration of already deeply disenfranchised members of American society. This system of punishment discounts the values of Black lives by haphazardly preparing inmate firefighters to engage in dangerous activity with little compensation. These volunteers won’t be remembered as the heroes that risked their lives combatting California’s largest fire with the firefighters alongside them. Instead, they’ll be reduced to “criminals” of little worth with disposable lives. Incarcerated people are just that, incarcerated. . . but they are still people. California should not rely on prison labor to quell wildfires until all humans, including the Black bodies that make up the prison labor force are freed from institutionalization, can make an unconstrained choice, and are equally compensated. Period.

or Cal Fire.” Jennifer Calfas, *California’s Wildfires are Spreading Faster and Burning More This Year. Experts Say It ‘Can Only Get Worse,’* TIME (July 31, 2018), <http://time.com/5353986/california-wildfire-2018-season/> (emphasis added).

12. See Katie Ropes Berry, et al., *The Intersectional Effects of Race and Gender on Time to Reincarceration*, JUST. Q. 11 (2018).

“YOU CAN KILL THE REVOLUTIONARY, BUT YOU CAN’T KILL THE REVOLUTION”: A REFLECTION ON DEPUTY CHAIRMAN FRED HAMPTON’S LIFE AND LEGACY 50 YEARS AFTER HIS ASSASSINATION

*Jakobi Williams**

Deputy Chairman Fred Hampton of the Illinois Chapter of the Black Panther Party (ILBPP) is the most important political figure in the twentieth century that most people today have yet to learn about. Hampton believed that racism is a derivative of capitalism and that America could never live up to its democratic ideals and principles under capitalism. So, he advocated for democratic socialism¹ to unite America’s poor, underserved, and undervalued masses under a dynamic rubric of class solidarity that transcended racial/ethnic differences. Deputy Chairman Fred Hampton was murdered by the state before his ideas and advocacy could bear meaningful fruit.

I was personally drawn to Hampton precisely because of his passion to uplift the poor and his organizing skill in mobilizing both black and white people that historically have been portrayed stereotypically as polar opposites along racial and political lines. When I was a graduate student at the University of California, Los Angeles (UCLA), David Hilliard was shopping the Huey P. Newton Papers and Archive. I was hired to excavate the files to help discern if in fact it was the definitive collection. Most of the material focused exclusively on Oakland and some parts of the east coast but very little on Chicago. UCLA lost the bid for the archive to Stanford where it is housed today, but I have since dedicated my academic scholarship to documenting the history, life and legacy of Fred Hampton and the ILBPP.

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1. *What is Democratic Socialism?*, DEMOCRATIC SOCIALIST AM., <https://www.dsusa.org/about-us/what-is-democratic-socialism/> (Last Accessed: May 3, 2019) (“Democratic socialists believe that both the economy and society should be run democratically—to meet public needs, not to make profits for a few. To achieve a more just society, many structures of our government and economy must be radically transformed through greater economic and social democracy so that ordinary Americans can participate in the many decisions that affect our lives.”).

Fred Hampton was assassinated in his sleep nearly 50 years ago on December 4, 1969, and Mark Clark, his comrade from Peoria, Illinois, was also killed.² He was a civil rights and human rights activist who identified as a revolutionary. Born in Chicago on August 30, 1948, Fred Hampton was the youngest of three children. His parents Francis and Iberia Hampton, migrated from Haynesville, Louisiana in the 1930s and settled in a predominately black enclave in Argo, Illinois, just outside Chicago, where they both secured employment at the Corn Products Refining Company. At Corn Products, the Hamptons worked alongside John Carthan whose daughter was Mamie Till. When Fred Hampton was just a toddler, his mother Iberia used to babysit Mamie's young son Emmett. In the early 1950s, the Hamptons moved to Blue Island, Illinois before settling in Maywood Illinois in 1958, and Mamie Till moved to the south side of Chicago. Fourteen-year-old Emmett Till was lynched in Money Mississippi in August 1955.³ Historians generally believe that Till's murder was the catalyst for the classic phase of the Civil Rights Movement. Much of black America was mobilized for action—including a young Fred Hampton. The consensus among historians is that Till's murder was the catalyst for the Dr. King led Civil Rights movement and much of black America was mobilized for action including a young Fred Hampton.

Hampton attended Irving Elementary School where he served as captain of the Patrol Boys.⁴ Later he attended integrated Proviso East High School where he was elected to the Interracial Cross Section Committee and as President of the Junior Achievement Program. He exposed and led campaigns against racist conditions at the school as well as the unfair treatment of black students and athletes. Don Williams, president of the West Suburban Division of the National Association for the Advancement of Colored People (NAACP), recruited Hampton to serve as President of the local NAACP Youth Council in 1967. Williams contends that Hampton's activism at Proviso East High School was instrumental in increasing the number of African-American teachers on the high school staff from five to sixteen. In 1966, Hampton enrolled in Crane Junior College (now Malcolm X College) as he wanted to be an attorney. He led and won campaigns to address concerns surrounding segregation of public swimming pools and recreation facilities in the community and the implementation of African-American history in the classroom at his former high school.

In the 1960s, Chicago was the most racially residentially segregated city in America with a long and recent history of racial tensions and violence. Most notably, Fred Hampton was inspired by his participation in

2. See *Hampton v. Hanrahan*, 600 F.2d 600, 605 (7th Cir. 1979); see generally, JAKOBI WILLIAMS, FROM THE BULLET TO THE BALLOT: THE ILLINOIS CHAPTER OF THE BLACK PANTHER PARTY AND RACIAL COALITION POLITICS IN CHICAGO (2013) (Detailing the assassinations of Fred Hampton and Mark Clark); see also, JEFF HAAS, THE ASSASSINATION OF FRED HAMPTON: HOW THE FBI MURDERED A BLACK PANTHER (2009).

3. See generally, TIMOTHY TYSON, THE BLOOD OF EMMETT TILL (2017).

4. "Patrol Boys" were the students who helped school crossing guards stop traffic so that students could cross streets on their way to and from school.

the Dr. King-led Chicago Freedom Movement beginning in 1966 to address open housing and segregation in the city. During a march in Marquette Park on August 5, 1966, about 700 white angry Chicagoans attacked the demonstrators by throwing bricks, rocks, and bottles. One of these objects struck King in the head. After the march, King told reporters that this particular Chicago demonstration was the first time that he actually feared for his life during the Civil Rights movement. "I've been in many demonstrations all across the South" King told reporters, "but I can say that I have never seen, even in Mississippi and Alabama, mobs as hostile and as hate-filled as I'm seeing in Chicago."⁵ Thus, Hampton organized various groups to compel the city of Maywood, another Chicago suburb, to build a swimming pool, since African Americans were barred from the whites-only pool in nearby Melrose Park. Hampton led five hundred angry integrated young people on a nonviolent march in Maywood to protest the segregation of the swimming pool on the grounds that public resources were being denied to the black community. Hampton and his young cohort approached Maywood's trustees and business leaders for assistance. The owner of Portes Drugs in Melrose Park offered around \$25,000 to build the pool. The pool was eventually completed in 1970, and the facility was named the Fred Hampton Aquatic Center and serves as a staple of the village of Maywood today.

Civil rights issues nationally and in the city of Chicago were also at the center of Hampton's activism. Under Hampton's leadership, the NAACP Youth Branch intensified organizing around civil rights issues, such as support for civil rights workers in the South, the development of local recreational facilities, equal opportunities in education and employment, and open housing. Hampton also established linkages with several key civil rights leaders. For example, he assisted Rev. Jesse Jackson and comedian/political activist Dick Gregory with various organizing campaigns and boycotts. Stokely Carmichael (later known as Kwame Ture), one of the leaders of the civil rights group the Student Nonviolent Coordinating Committee (SNCC), was invited to Maywood by Hampton to speak to the NAACP Youth Branch and to advise him on ongoing organizing operations. For a middle-class youth that lived in a suburb of Chicago, Hampton was very involved in the civil right movement to address the devastating realities of poor and underserved black folks on the south and west sides of Chicago.

An impressive orator himself, Hampton was chosen in 1967 to be one of the main speakers at an NAACP function. As a young activist he shared the stage with Richard G. Hatcher, the mayor of Gary, Indiana, and one of the first two African-American mayors elected in a major American city. At this meeting, several youth attendees recounted that Hampton told them that he and future Congressman Bobby Rush were in the early stages of opening a chapter of the Black Panther Party (BPP) in Chicago and he hoped that some of his NAACP peers would also join him

5. See *Dr. King Is Felled by Rock*, CHI. TRIB. (Aug. 6, 1966), <https://chicagotribune.news-papers.com/image/196143699/>; see generally, BERYL SATTER, FAMILY PROPERTIES: RACE, REAL ESTATE AND THE EXPLOITATION OF BLACK URBAN AMERICA (2009) (Describing the history of racial segregation in Chicago).

as a member of the Panthers. Several of Hampton's peers would go on to join the BPP. In November 1968, Bobby Rush, then a student at the University of Illinois at Chicago and a member of the local SNCC chapter and Fred Hampton founded the Illinois Chapter of the Black Panther Party (ILBPP). Rush was named Deputy Minister of Defense and Hampton was named Deputy Chairman because of his oratorical skills and grassroots organizing background. Almost all of Hampton's most famous quotes, "You can kill a revolutionary, but you can't kill revolution" for example, were plagiarized from Dr. King speeches and sermons but adapted for the fiery young audience in which Hampton targeted.⁶ Heavily influenced by both Dr. King and Malcolm X, Deputy Chairman Fred Hampton advocated for a democratic political system that valued human rights and a socialist economic system.

Hampton and the ILBPP set up numerous community service programs that it called "survival programs" throughout poor communities in Chicago and the state of Illinois. The Panthers' survival programs (community service programs that the Party hoped would ensure Black people's survival pending revolution) were designed to eliminate the profit motive from the daily human necessities that people need to survive. All of their programs provided free services and the Panthers advanced their program's self-determination resources as pragmatic and realistic. In Chicago, the most popular survival programs, free breakfast for children and free medical research health clinics, served hundreds of residents daily. The ILBPP offered a number of additional free services, including busing to prisons, day-care centers, clothing banks, and ambulance services. It also pressured landlords to ensure that furnaces and boilers were repaired and working properly during winter months. Despite Chicago's long dilemma of racial segregation, Hampton and the Panthers shared their self-determination programs with other poor and oppressed communities across Chicago.

Hampton, with the help of genius leaders like Panther Field Marshall Bob Lee and other ILBPP members, used the Party's community service programs to establish the original Rainbow Coalition—racial coalitions with other communities throughout Chicago. Confederate flag wearing Appalachian and southern white migrants in Uptown (Young Patriots), Puerto Ricans in Lincoln Park (Young Lords), and middle-class white ethnics in Logan Square (Rising Up Angry) aligned with the ILBPP to form the original Rainbow Coalition in 1968. Hampton served as *de facto* leader of the alliance, and all the groups adopted the ILBPP's community service programs. Together the coalition served more than two thousand residents daily from 1968 to 1974. In 1969, the Panthers held a press conference in Chicago to commemorate the one-year commemoration of Dr. King's assassination and to introduce the original Rainbow Coalition to the world. At this press conference, members of the Panther, Patriots,

6. See *MURDER OF FRED HAMPTON* (The Film Group 1971) (In the film, Hampton uses the quoted phrase while speaking at a rally outside of the federal courthouse in downtown Chicago, where the Conspiracy Eight Trial was held. Bobby Seale, who was one of the defendants, was gagged and chained to his chair during the trial by order of Judge Julius Hoffman.).

Lords, and Angry announced to the world that the group would no longer allow the capitalist forces of the state to divide them along racial lines. The Rainbow Coalition advocated solidarity among poor and oppressed people who were determined to eradicate capitalism and its divisive forces that pitted poor folks against one another.⁷

Due to Cold War politics, the existence of the original Rainbow Coalition, Hampton's revolutionary ideology, and the socialist agenda of the coalition, Hampton was targeted for assassination by the Federal Bureau of Investigation (FBI) via its infamous counterintelligence program (COINTELPRO) and by the Chicago Mayor Richard J. Daley's Democratic Machine. According to United Press International (UPI) reports, the FBI targeted the Black Panther Party – which it dubbed “the greatest threat to the internal security of the nation” – more than any other leftist organization during the period because the BPP's anti-capitalist survival programs were being adopted across race and class lines throughout the United States.⁸ According to sealed secret Chicago police records, the Red Squad files, Hampton was dubbed as being a greater threat than Dr. King and Malcolm X because of the original Rainbow Coalition. Fred Hampton eclipsed one of Dr. King's accomplishments by forging coalitions with a segment of society (Confederate flag wearing southern whites) that was antithetical to the civil rights movement.

Moreover, one of the FBI's COINTELPRO missions was to prevent the rise of an African-American messiah who they believed would lead an African-American revolt. As a result of the Rainbow Coalition led by Hampton, both the FBI and the Daley administration were threatened by the racial coalition and believed that it may be the first stage of an actual revolution in American. Their fear was warranted as the BPP, like Dr. King and Malcolm X, wanted a revolution to replace the capitalist economy with a socialist economy as they all advocated that America could never live up to its ideals as a democracy under a capitalist economy. Their goal was to put humanity before capital, human health and well-being before wealth, and human sustenance and survival before profit and the economic bottom line. Hampton's leadership of the Rainbow Coalition epitomized racial and class solidarity among the poor and this message would travel across the US and across the world. Like Dr. King and Malcolm X before him, Hampton believed that racism and capitalism in America was intertwined. To solve the dilemma of racism American had to divorce from capitalism. Simultaneously, America was losing hearts and minds and the Cold War, while losing a hot war in Vietnam.

7. Linn Ehrlich, *Chicago Rainbow Coalition* (Apr. 4, 1969), NEW YORK PUBLIC LIBRARY. <https://artsandculture.google.com/asset/chicago-rainbow-coalition/7QG9KGqiTk4LFw>.

8. See *Black Panthers Greatest Threat to US Security*, DESERT SUN (July 16, 1969), <https://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=DS19690716.2.89&e=-----en--20--1--txt-txIN-----1>. UPI was founded in 1958, and served as an international news agency whose newswires, photos, news film, and audio services provided news material to thousands of newspapers, magazines, radio and television stations for much of the 20th century.

All of the aforementioned made Hampton a target for elimination by both the state and the city of Chicago.

Hampton was assassinated via the joint effort of the FBI and the Cook County State's Attorney's Office at 4:00 a.m. on December 4, 1969 as he lay asleep (he was drugged by an FBI informant) in his bed.⁹ This aim of this join effort was to end the movement by terminating its leadership. Consequently, Hampton's death had the opposite effect, galvanizing the movement. The Rainbow Coalition transformed from a community grassroots organization on the margins of Chicago's political arena to a chief player in the city's politics. The group successfully orchestrated a campaign to vote out of office the Cook County state's attorney Edward Hanrahan, who was directly responsible for Hampton's murder and its cover-up. For the first time in over fifty years, the activists organized voters to vote Republican to oust the mayoral Democratic Machine heir apparent Hanrahan. Hanrahan's defeat subsequently ended his political career and established racial coalition politics as a viable political challenger to the Democratic machine.

As a result of the exposure of a cover-up of Hampton's political assassination, the Hampton family sued the FBI, Cook County, and the city of Chicago. Subsequently, the case took thirteen years before the Hampton's won a semblance of justice. In 1983, the U.S. Supreme Court forced the FBI, Cook County, and the city of Chicago to settle the case thus admitted guilt—that together the three government units assassinated 21-year-old Fred Hampton in his sleep because they opposed his political beliefs—and provided the Hampton family and other plaintiffs with a \$1.85 million settlement.

Fred Hampton was one of the foremost revolutionary figures of the twentieth century. In both life and death, he inspired a generation of activists across lines of race and class to create change in their communities. His influence and legacy can be found in the numerous free breakfast programs, free clinics, legal aid offices, and countless other community service initiatives that are now common programs on American society. Moreover, Hampton revolutionized politics in Chicago and American that led to Chicago first African American Mayor and American's first African American President. Hampton's legacy can be located in the 1983 election of Chicago's first African-American mayor, Harold Washington, who ran on a Rainbow Coalition platform and whose campaign and cabinet featured original Rainbow Coalition members. Rev. Jesse Jackson's Rainbow PUSH Coalition was established in 1983 after Washington's victory as a direct appropriation of the original Rainbow Coalition. And in 1983, future US President Barack Obama began his career as an outgrowth of the political consulting and community organizing surrounding Washington's election. Thus, it is not by accident that the first African American President comes from Chicago and was elected primarily due to racial coalition politics—the legacy of Hampton and the original Rainbow Coalition. Fred Hampton and the original Rainbow Coalition did not intend to put an African American in city hall or the White House.

9. See Williams, *supra* note 2.

Subsequently, their democratic socialist agenda was nevertheless adapted for political campaigns that resulted in the election of Chicago's first black Mayor and America's first black President.

Furthermore, Hampton's legacy is found in both the numerous organizations that make up the #BlackLivesMatter network and the state's continued legacy of repression and terror.¹⁰ In 2017, the FBI's counterterrorism division issued a 10-page report, entitled "Black Identity Extremists Likely Motivated to Target Law Enforcement Officers."¹¹ The report essentially targets #BlackLivesMatter activists and those who agitate against police brutality, inequality in criminal justice, and lack of inclusion as enemies of the state. The FBI's contemporary program, which is encapsulated in the designation *Black Identity Extremist*, mirrors both COINTELPRO and the Racial Matters Squad. These programs were used to target Fred Hampton and others, and repressed all activists and groups of the period that challenged state-sanctioned terrorism. Now more than ever before, it is the time to utilize Hampton's influence in our protracted struggle against the forces of white supremacy that hold our nation hostage.

Deputy Chairman Fred Hampton and the original Rainbow Coalition provide a necessary model to counter Trumpism today. If Hampton could unite folks across racial differences, the Confederate flag wearing Young Patriots for example in the 1960s, then we as activists definitely can eclipse Hampton's success in our current context—an era of extreme political/racial polarization. It was Hampton's connection to advocacy that created change in our nation, and it is the continuing nuances of the mobilized poor fused with advocacy that will connect the extremes of our time's polar opposites to establish a conduit of understanding, communication, and respect.

10. Most of the groups that make up the Black Lives Matter network such as the Chicago based Black Youth Project 100, Assata's Daughters, and We Charge Genocide, study organizers including Fred Hampton to adopt strategies for coalition building and targeting institutional racism.

11. See Hatewatch Staff, *FBI 'Black Identity Extremists' report stirs controversy*, S. POVERTY L. CTR., (Oct. 25, 2017), <https://www.splcenter.org/hatewatch/2017/10/25/fbi-black-identity-extremists-report-stirs-controversy> ("In the FBI's report, BIE is described as a conglomeration of black nationalists, black supremacists, and black separatists, among other disaffiliated racist individuals who are anti-police, anti-white, and/or seeking to rectify perceived social injustices against blacks. The FBI essentially merged these various black hate groups under one umbrella, giving it a new name, in the hopes of classifying these groups as an organized extremist movement.").

PARDON ME PLEASE: CYNTOIA BROWN AND THE JUSTICE SYSTEM'S CONTEMPT FOR THE RIGHTS OF BLACK PEOPLE

*Danielle Wingfield-Smith**

The outcry that precipitated Cyntoia Brown's pending release on August 7, 2019 is a resonating reverberation of the voices of counter-resistance, which continue to echo in the halls of American injustice. From the social media platforms for social justice to the chambers of the Supreme Court, the pleas for pardon are nothing new. Pardon me for driving, pardon me for walking home from the store, pardon me for walking in the street with friends, pardon me for playing with toys—all while Black.¹ While you're at it, excuse me for wanting the right to equal education. As a matter of fact, excuse me for breathing.

Sixteen-year-old Cyntoia Brown, a victim of child trafficking, was tried as an adult and sentenced to life in prison for the murder of a man who bought her for sex. She was to spend 51 years in prison before becoming eligible for parole.² Despite the fact that Cyntoia lost 15 years of her life in prison, in January 2019 Black America celebrated the announcement that the outgoing governor of Tennessee, Bill Haslam, granted her

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1. See Josh Hafner, *Police killings of black men in the U.S. and what happened to the officers*, USA TODAY (Mar. 30, 2018), <https://www.usatoday.com/story/news/nation-now/2018/03/29/police-killings-black-men-us-and-what-happened-officers/469467002/>. High profile police brutality cases where officers killed Black men and boys, precluding them from pardon, are numerous and has garnered national attention and prompted protests around the country. An officer shot and killed Philando Castile in Falcon Heights, Minnesota on July 6, 2016 after being pulled over for a broken tail light; an officer shot and killed Walter Scott in North Charleston, South Carolina on April 4, 2015 after being pulled over for a broken tail light; an officer shot and killed 12-year-old Tamir Rice in Cleveland, Ohio on November 22, 2014 outside of a recreational center for having a toy gun. See also *State v. Zimmerman*, No. 12-CF-A (Fla. Cir. Ct. July 13, 2013); George Yancy, *Walking While Black in the 'White Gaze'*; N.Y. TIMES (Sept. 1, 2013), <https://opinionator.blogs.nytimes.com/2013/09/01/walking-while-black-in-the-white-gaze/> ("As black, Trayvon was already known and rendered invisible. His childhood and humanity were already criminalized as part of a white racist narrative about black male bodies. Trayvon needed no introduction: 'Look, the black; the criminal!'""). In this high-profile case a 17-year-old boy, Trayvon Martin, was shot and killed after walking home from a convenience store prompting a national conversation about the history of race and the law, stand your ground laws, and what it is like to be Black and male in America.
2. See *State v. Brown*, No. M200700427CCAR3CD, 2009 WL 1038275 (Tenn. Crim. App. Apr. 20, 2009).

clemency under public pressure on the basis of what he called a “tragic” case.³ Though a true cause for celebration, her case begs the question: why has the life and liberty of Black people, including the lives of Black youth, continuously been so grievously devalued by the justice system? Is it possible that the system sees the lives of Black people as more valuable when they are housed within privatized penal systems than as productive members of society?

The “resistance” of the masses pleads for social justice reforms regarding climate change and deliverance from oligarchy,⁴ while still unwittingly keeping covenant with the American way. The American way is a capitalistic system that places one social group under another for the purpose of securing the prosperity of a select few.⁵ The justice system serves the capitalist nature of society in a number of ways, but primarily by feeding the profits of the prison industrial complex. This system benefits by funneling billions in tax dollars into its coffers under the guise of keeping America safe.⁶ As with slavery, the housing of Black people by the means of unjust sentencing is truly egregious and abhorrent. That being true, Black people like Cyntoia still find themselves enmeshed within the fabric of a society that is purposefully designed to enslave the bodies and even the *Souls of Black Folk*.⁷ Micro-factions, amid global systems of oppression, proliferate and continue to manifest in innumerable forms in an effort to resist the humanity of Black people and fuel the hopes of dreams of the majority. But, as seen in the case of Cyntoia, the counter-

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3. See Samantha Schmidt, *Cyntoia Brown, sentenced to life for murder as teen, is granted clemency*, WASH. POST (Jan. 7, 2019), https://www.washingtonpost.com/local/social-issues/cyntoia-brown-a-16-year-old-sentenced-to-life-for-murder-granted-clemency/2019/01/07/8f4ac71e-12a2-11e9-803c-4ef28312c8b9_story.html?noredirect=on.
 4. Protests, one of the many forms of resistance, are taking place all over the country over to climate change and other social justice issues. See *Prison Strike 2018*, INCARCERATED WORKERS ORGANIZING COMMITTEE, <https://incarceratedworkers.org/campaigns/prison-strike-2018> (last visited May 3, 2019); *People of Color Are on the Front Lines of the Climate Crisis*, GREEN AM., <https://www.greenamerica.org/climate-justice-all/people-color-are-front-lines-climate-crisis> (last visited May 3, 2019).
 5. See MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA* (2015) (arguing “how and why racism and capitalism continue, predicting that freedom for Black Americans cannot be achieved in a capitalistic society and offers a way forward”).
 6. Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, PRISON POLY INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html> (reporting mass incarceration costs state and federal governments and American families \$182 billion annually, which is \$100 billion more than reported by the Bureau of Justice Statistics). See also *Corrections Spending per Capita*, HAMILTON PROJECT (Oct. 21, 2016), http://www.hamiltonproject.org/charts/corrections_spending_per_capita; *Mass Incarceration Costs \$182 Billion Every Year, Without Adding Much to Public Safety*, EQUAL JUST. INITIATIVE (Feb. 6, 2017), <https://eji.org/news/mass-incarceration-costs-182-billion-annually>.
 7. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 12 (1903), <https://www.gutenberg.org/files/408/408-h/408-h.htm> (“To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships. He felt the weight of his ignorance, —not simply of letters, but of life, of business, of the humanities; the accumulated sloth and shirking and awkwardness of decades and centuries shackled his hands and feet.”).

resistance for social justice, composed of activists, lawyers, politicians and the voices of on-the-ground leaders, is still alive and well.

As the voices of the counter-resistance are amplified with the help of social media, I assert that now may be a good time to take a retrospective look at the hard fought battles of the past. In light of cases like Cyntoia's, society is at risk of focusing on pseudo-impactful events, which appear as evidence of real social change. Therefore, it is critical that leaders in today's social justice movements come to understand strategies revealed in the historical record surrounding social justice issues that relate to Blacks. The 1954 *Brown v. Board of Education*⁸ decision to integrate schools serves as an example of a victory that ultimately changed the landscape of a divided nation. The fight was for equal access to education. It was a hard-fought win that came not only from the jurisprudence of civil rights attorneys, but also from marching in the streets, preaching in pulpits, the calling persistently for morality from allies, and lawyers serving as courtroom warriors who summoned genius strategies that would topple unjust decrees. Still, the machine would not turn. The Virginia Way, a white supremacist regime cloaked in congeniality, would take the lead in Massive Resistance, refusing to integrate schools; thus, opposing the court's ruling. "Shut 'em down," I imagine was the call of the day, as controlling powers chose to shut the public schools of Prince Edward County down rather than allow little Black children to sit in the same classrooms as little White children. Alternately, they opened private schools using taxpayer dollars so that White children could continue to learn. It was not until the U.S. Supreme Court outlawed privatized education through tuition grants five years after its closing that the County reopened schools and Black children would be afforded the equal protection of the law, which was supposedly guaranteed them by the Fourteenth Amendment.⁹

Virginia lawyers like Oliver W. Hill, Samuel W. Tucker, and Henry L. Marsh, III fought from Richmond, Virginia, the former capital of the Confederacy, against what became known as "Massive Resistance."¹⁰ Massive Resistance, which was the pushback against laws that demanded equal treatment of Black students and led by Senator Harry F. Byrd, emanated from the legislative branch of government. The goal of the Byrd

8. 347 U.S. 483 (1954).

9. Long after the *Brown* decision, the debate persists regarding the right to education, the federal role in education, inequitable school funding, and the resegregation of schools. The question remains whether the massive resistance to the *Brown* decision has subsequently worsened the state of inequality in education and if a more radical solution could have averted such unintended consequences. Some scholars argue that children are not growing up in a society much different from the one in existence pre-*Brown*. See William L. Taylor, *Brown, Equal Protection, and the Isolation of the Poor*, 95 *YALE L.J.* 1700 (1986); Gary Orfield & Chungmei Lee, "*Brown*" at 50: *King's Dream or "Plessy's" Nightmare*, THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY 1–54 (2004), <https://files.eric.ed.gov/fulltext/ED489168.pdf>.

10. For discussions of *massive resistance*, see MATTHEW D. LASSITER & ANDREW B. LEWIS, *THE MODERATES DILEMMA: MASSIVE RESISTANCE TO SCHOOL DESEGREGATION IN VIRGINIA* (1998); BRIAN J. DAUGHERITY, *KEEP ON KEEPING ON: THE NAACP AND THE IMPLEMENTATION OF *Brown v. Board of Education* in Virginia* (2016).

Political Machine was to enact new laws and policies to subvert the power of the judiciary.¹¹

It took every player in the narrative—brave students, lawyers, locally elected officials, and other activists—to become “leaders,” persons who helped to drive the movement’s efforts and mandate social change. This counter-resistance was led largely from civil rights lawyers and politicians of the 1960s. There was a shift in political power in 1977 at the election of Henry L. Marsh, the first Black mayor of Virginia’s State capital, and with him came the first Black majority city council. Marsh was elected to the Senate of Virginia in 1991. As in the case of desegregation, the rise of Black people in power did not occur by happenstance, but rather the through strategic efforts. This type of sustained and increasingly radical organizing is important to understand because, like the efforts to massively resist the *Brown* ruling, there is still great opposition to Black progress.

That being said, pardon me if I take a moment to congratulate all of the Black women who won seats in Congress in the 2018 electoral cycle,¹² yielding the largest Black female congressional membership in the history of the country.¹³ Also, pardon me if I celebrate the fact that Black movie directors are taking control of the Black narrative with blockbuster films, which broke records in 2018.¹⁴ Please excuse me for highlighting the fact

11. *See Id.*

12. *See Women of Color in Elective Office 2018*, CTR. AM. WOMEN & POL. (2018), <https://cawp.rutgers.edu/women-color-elective-office-2018> (last visited May 3, 2019) (“Of the 110 women serving in the 115th U.S. Congress, 39, or 35.5%, are women of color; in addition, a Black woman, a Latina, an Asian Pacific Islander, and a Caribbean American woman serve as Delegates to the House from Washington, DC, Puerto Rico, American Samoa, and the Virgin Islands, respectively. Women of color constitute 7.3% of the total 535 members of Congress.”). *See also* P.R. Lockhart, *Black women turned electoral power into political power in 2018*, VOX (Nov. 9, 2018), <https://www.vox.com/identities/2018/11/9/18079046/black-women-candidates-history-midterm-elections> (“For the first time in U.S. history, more than 20 black women will serve in Congress.”).

13. The emergence of Black people in elite positions signals that a political transformation has occurred since the struggle for Black political power in the 1960s. For those like Henry L. Marsh, the first Black mayor of Richmond, Virginia and Maynard Jackson, the first Black mayor of Atlanta, the rise to political power was not easy. *See* KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION 15* (2016) (discussing this history of Black elected officials and arguing that “[t]he most significant transformation in all of the Black life over the last fifty years has been the emergence of a Black elite, bolstered by the Black political class. . .”). *See also* MANNING MARABLE, *BLACK LEADERSHIP* (1998). On the other hand, the ascent of a Black political class brings into question whether this class is complicit in furthering the same capitalist system that has historically enslaved Black people from the cotton fields to the penitentiary. *See, e.g.*, CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* (2000). However, each of these newly-elected congresswomen has the unprecedented opportunity to use their position to stand against oppressive capitalism.

14. *See* Sarah Whitten, *Record number of black directors among 2018’s top films, earning \$1.6 billion at the box office*, CNBC (Jan. 4, 2019), <https://www.cnbc.com/2019/01/04/record-number-of-black-directors-among-2018s-top-films.html> (describing the success of Hollywood’s small coterie of Black filmmakers in 2018).

that the number of Black lawyers in the U.S. continues to rise.¹⁵ Last but not least, congratulations to Cyntoia whose clemency is a result of the political pressure of movement leaders, social media activists, clergy, entertainers, and others. In her individual case, there was an encompassing plan in place. Now that we know that we have what it takes to pull off 60s-like wins, despite the unfairness of the American judicial system, let's aim higher. There must be broader reaching plans to change the landscape of America, but there is no need to recreate the wheel. In the 60s, legal advocates played a leading role among strategists committed to dismantling systemic injustice. I believe this must be the case today.

Those who are making the plea for Black equality, including lawyers and up-and-coming politicians, activists, and others can benefit not only from a court-centered narrative of legal history, but also from biographical examinations of civil rights lawyers of the past to better understand patterns of resistance and counter-resistance. The strategic navigation of laws and policies is imperative in the current political climate; now is just the right time to come together in thoughtful contemplation of victories won. All of America knows that Cyntoia Brown's imprisonment is the mere reflection of greater economic, social, and legal challenges that still face Black people even until this very hour.

It is my understanding that Cyntoia will be joining the community outreach efforts of a notable Christian congregation upon her release. Who knows, maybe she will be a lawyer one day. Whether she does or not, let's appreciate how her life's story has reminded us that there remains work to be done, and that it is ok to look back as we prepare to move forward.

15. *New ABA data reveals rise in number of U.S. lawyers, 15 percent increase since 2008*, AM. BAR ASS'N (May 11, 2018), https://www.americanbar.org/news/abanews/aba-news-archives/2018/05/new_aba_data_reveals/.

