

## Feminist Sexual Ethics Project

### Victim Race and Rape

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That a rape victim happens to be African American should have no effect on the prosecution, conviction, and sentencing of her attacker, but it does. An individual's race should have no impact on her willingness to report a sexual assault, her acceptance of certain myths and stereotypes about rape, or her credibility and culpability, yet it seems to. While many studies have demonstrated a bias against African Americans as defendants in cases of rape and other violent crimes, a smaller, but still significant number, have sought to examine those junctures in the criminal justice system where victims are disadvantaged because they are black. Often at work within a complicated mix of factors, including defendant race, juror race, and the relationship between victim and defendant, victim race nevertheless affects outcomes at several critical phases in a rape prosecution.

The story of the disparate treatment of African American rape victims must begin with slavery. While the connection is not necessarily clear cut, slavery and its legacy of bigotry and sexual violence likely play key roles in the continuing discrimination against black rape victims. In the antebellum South, the rape of enslaved black women—by enslaved men or by white men—was commonplace, but it was not a crime. The law simply gave human property no protection from sexual assault; even free black women had little recourse, as the inability of black people to testify in court or to serve on juries would have made successful prosecutions of their assailants impossible. Some of the same stereotypes that justified slavery in the first place—that black people required the civilizing influence of subjugation to tame their sexual appetites—were pressed into the service of rationalizing these rapes: because the rape laws of that time denied protection to all unchaste women, black women, according to the stereotypes employed by their white masters, could simply never fall within the law's ambit. The rape of enslaved women also had a powerful economic justification: a child inherited the legal status of its mother, not its father—rape thus became a tool for increasing the labor force. After the Civil War rape laws became race neutral, yet prosecutors, judges, and juries were slow to punish the assailants of black women. Outside the courtroom, the rape of African American women became a tool for inspiring terror and ensuring continued subordination in the Reconstruction South. Only slowly did prosecutions for the rape of African American women become common, yet inequality persisted: until the Supreme Court struck down the use of the death penalty as punishment for rape, defendants convicted of raping a white woman received the penalty far oftener than those convicted of raping an African American.

This history plays out in rape prosecutions today: a number of studies have shown that the experience of an African American rape victim varies in critical ways from that of her white counterpart. First, she is less likely to disclose the rape—to family, to rape crisis centers, to clergy—and significantly less likely to report it to the police. Here, centuries of neglect by the legal authorities appear to play a direct role in cutting off rape prosecutions before they can begin. The unwillingness to report may be compounded by the fact that African American women accept certain rape myths—such as the notion that victims deserve some blame for what happens to them, or that you cannot force sex upon a woman—at rates higher than white women.

When the African American victim does report, the prosecutor is less likely to file charges than if a similarly situated white woman made a similar report. In cases of stranger rape, where the perceived seriousness of the crime causes prosecutors to ignore certain victim characteristics—such as risk taking or questionable moral character—that in closer cases would discourage them from charging rather than risk losing the case, victim race is still reason to pause.

When the victim does report, and the prosecutor does charge, what does the jury think of the African American accuser? Here again, her race matters in myriad ways. One study of mock jurors indicates that with little information about the crime, people are more likely to believe that the assailant of a white woman is guilty than they believe in the guilt of a black woman's assailant, suggesting that individuals enter the jury room with significant biases. The same study indicates that when the evidence is neutral or indeterminate (like the evidence in most rape trials, since the close cases are those that proceed beyond plea bargaining to trial), jurors are more likely to view that evidence as favorable to the prosecution when the victim is white than when she is black. In terms of victim credibility, another study of actual jurors suggests that decisionmakers are simply less likely to believe in a defendant's guilt when his accuser is black. Another study indicates that "date rape" is perceived as less serious when the victim is black: mock jurors were less likely to believe that a crime had occurred or that the assailant should be held responsible.

When the jury does find the assailant of an African American woman guilty of rape, her race continues to play a role in the proceedings. A study of actual trial outcomes indicates that, in combination with defendant race, victim race affects the seriousness of the defendant's charge and the severity, location, and length of his sentence. Where a black man was convicted of raping a white woman, he was more likely to be charged with a felony, more likely to receive a jail term, more likely to serve his time in a state penitentiary than in a local facility, and received a longer sentence on average than defendants in cases with a different defendant-victim racial dyad.

With occasional dissent, studies that have sought to determine the impact of victim race on rape cases have found significant effects across the spectrum of legal decisions that occur within any prosecution, though the effects often exist in relation to other racial factors. Most striking are the studies suggesting that African American women have internalized historical racism, as well as rape myths, in ways that affect their status as potential and actual victims of rape. Surprisingly, few of the authors made explicit reference to the history of discrimination against African American women, or discussed their results as the potential legacy of that discrimination. Yet the connection seems inescapable, and further study could illuminate the specific ways in which slavery, the violent aftermath of the Civil War, and persistent societal discrimination against African Americans contribute to the range of inequalities that African American women face as victims of rape.

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