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Critical Black Protectionism, Black Lives Matter, and Social Media: Building a Bridge to Social Justice

Kathryn Russell-Brown

University of Florida Levin College of Law, russellbrown@law.ufl.edu

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Critical Black Protectionism, Black Lives Matter, and Social Media: Building a Bridge to Social Justice

KATHERYN RUSSELL-BROWN*

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* Chesterfield Smith Professor of Law & Director, Center for the Study of Race and Race Relations, University of Florida, Levin College of Law, Gainesville, Florida. The Author thanks Audrey McFarlane, Cynthia Lee, Ruth Peterson, and Diedre Houchen for their insightful commentary. A special thanks also to University of Florida law student Robert Portman for his exemplary research assistance.

INTRODUCTION

The O.J. Simpson murder trial exposed America's deep racial divide. In 1994, Simpson, a popular and beloved retired football player, was charged with killing his former wife, Nicole Brown Simpson and her friend Ronald Goldman.¹ The murders were grisly. People across the nation were fascinated by the case. The trial was shown on television and the legal twists and turns were reported on the morning and nightly news. The lawyers, witnesses, and family members of the victims and the defendant became household names. Polls indicated that the country was deeply split along racial lines, with two-thirds of all Whites believing that Simpson was guilty and two-thirds of all African Americans believing that Simpson was not guilty.² Following a four-hour deliberation, the jury returned a verdict of not guilty.³ The aftermath of the acquittal was telling. While most Whites were stunned and angry, most African Americans cheered and celebrated the outcome.⁴ Many Blacks viewed the not-guilty verdict as a kind of racial vindication for decades of cases wherein Whites were not held criminally responsible for violent crimes committed against Blacks.⁵ The long list of cases includes the 1955 murder of Emmett Till,⁶ the 1964

1. *People v. Simpson*, No. BA 097211 (Cal. Super. Ct. L.A. Cnty. 1995).

2. In racial terms, the *Simpson* case was discussed largely as Black versus White. Few articles or surveys about the case examined attitudes held by Latinos, Asian Americans, or other racial groups. See KATHERYN RUSSELL-BROWN, *THE COLOR OF CRIME* 94 (2009) [hereinafter RUSSELL-BROWN, *COLOR OF CRIME*]. This is particularly surprising given that the case took place in Los Angeles, a racially-diverse city, and that the judges in both the criminal and civil cases, Lance Ito and Hiroshi Fujisaki, were Japanese-American. Gale Holland, *Judge Fujisaki Was Able to Keep Trial in Control*, USA TODAY (Feb. 5, 1997), <http://usatoday30.usatoday.com/news/index/nns200.htm>.

3. See, e.g., Timothy Egan, *NOT GUILTY: THE JURY; One Juror Smiled; Then They Knew*, N.Y. TIMES (Oct. 4, 1995), <http://www.nytimes.com/1995/10/04/us/not-guilty-the-jury-one-juror-smiled-then-they-knew.html> (discussing the statement by one juror who explains why the verdict was reached in less than four hours).

4. *Id.*

5. See, e.g., Martin Gottlieb, *NOT GUILTY: THE RACIAL PRISM; Racial Split at the End, as at the Start*, N.Y. TIMES (Oct. 4, 1995), <http://www.nytimes.com/1995/10/04/us/not-guilty-the-racial-prism-racial-split-at-the-end-as-at-the-start.html> (describing the racial split following the end of the O.J. Simpson trial).

6. In 1955, Emmett Till, a fourteen-year-old Chicago youth, visited his relatives in Money, Mississippi. Following a stop at a local grocery store, Till is said to have whistled at the clerk, a White woman (according to other accounts, Till had a stutter that may have been mistaken for whistling). The clerk told her husband and outraged, he and a friend kidnapped Till from his uncle's home, killed him, and threw his body into the Tallahatchie River. The two men, Roy Bryant and J. W. Milam, were charged with murder. The all-White, all-male jury, acquitted the two men. A few months later, in an interview with a magazine, Bryant and Milam admitted to killing Emmett Till. See, e.g., *The Shocking Story of Approved Killing in Mississippi*, AM. EXPERIENCE, http://www.pbs.org/wgbh/amex/till/sfeature/sf_look_confession.html (last visited Oct. 27, 2016).

murders of three civil rights workers, Michael Schwerner, Andrew Goodman, and James Chaney,⁷ and the 1991 beating of Rodney King.⁸

The Simpson case offers a textbook example of how Black protectionism works. Black protectionism describes the Black community's support for and group embrace of targeted members of the community.⁹ This communal protection is triggered when well-known African Americans are placed in the cross hairs of the criminal justice system. Specifically, the Black community pushes back *en masse*, when one of its elite members has been accused of criminal or ethical wrongdoing. The phenomenon of Black protectionism developed as a group survival strategy. It operates to protect the most successful members of the community and thereby buffer and protect the larger Black community.¹⁰ Black protectionism exemplifies what sociologist Michael Dawson labels "linked fate."¹¹ That is, although African

7. See, e.g., *Murder in Mississippi*, AM. EXPERIENCE, <http://www.pbs.org/wgbh/americanexperience/features/general-article/freedomsummer-murder/> (last visited Aug. 16, 2016) (describing the disappearance and murder of Schwerner, Chaney, and Goodman at the hands of the Klu Klux Klan).

8. O.J.: MADE IN AMERICA (ESPN Films 2016). In an interview with a juror in the O.J. Simpson criminal case, she said that the verdict was partially "payback" for the acquittals of the officers in the Rodney King case.

9. For detailed discussions of Black protectionism, see RUSSELL-BROWN, COLOR OF CRIME, *supra* note 2 at 85–93; KATHERYN K. RUSSELL, THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTIONISM, POLICE HARASSMENT AND OTHER MACROAGGRESSIONS 56–65 (1998) [hereinafter RUSSELL-BROWN, RACIAL HOAXES]; KATHERYN RUSSELL-BROWN, PROTECTING OUR OWN: RACE, CRIME AND AFRICAN AMERICANS 39–65 (2006) [hereinafter RUSSELL-BROWN, PROTECTING OUR OWN]; KATHERYN RUSSELL-BROWN, *Black Protectionism as a Civil Rights Strategy*, 53 BUFF. L. REV. 1, 7 (2005) [hereinafter Russell-Brown, *Black Protectionism*].

10. Black protectionism works to shield the most successful members of the Black community who face charges or allegations of wrongdoing. The protection of elite members has been viewed as paramount to group survival. Thus, protectionism is the community's nod to the difficulty African Americans face in surmounting the racial odds and achieving success. See generally Audrey G. McFarlane, *The Significance of Race and Class Through the Paradox of Black Middle-Classness*, 72 LAW & CONTEMPORARY PROBLEMS 163 (2009).

Polls indicated that Donald Trump's candidacy for president tapped into White fears and a desire by some Whites to maintain majority racial status. See, e.g., Nicholas Confessore, *For Whites Sensing Decline, Donald Trump Unleashes Words of Resistance*, N.Y. TIMES (July 13, 2016), http://www.nytimes.com/2016/07/14/us/politics/donald-trump-white-identity.html?_r=0. This Article, however, makes the argument that African Americans practice a particular type of protectionism, with its own structural components and process.

11. MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN AMERICAN POLITICS 77 (1994). The concept of linked fate can be expressed in alternate terms. Geoff Ward uses "microclimates of racial meaning" to describe how racism and racial violence are ensconced (and flourish) within historically identifiable geographical locations. Microclimates identify the locations and spatial variations of anti-Black racial violence. They also allow for an examination of how race impacts the evolution of these spaces over time. Specifically, how an area with a deep history of anti-Black violence may foretell that community's race-based environmental devastation years later (e.g., air pollution, toxic waste, or contaminated water). In some sense,

Americans are a diverse group, they remain connected in their political attitudes and perceptions of society at large. This is because even with the advancement and success of some members of the group, Blacks still face myriad forms of subordination (e.g., economic, social, educational, and political). The concept of linked fate highlights the connection between self-interest and group interest—as individual African Americans go, so go African Americans as a group.

As noted, in Simpson’s case, African Americans were supportive and protective of him. Many believed that there were a number of reasons that he might have been targeted by the justice system, including his race, the fact that his wife was White, or that he was a successful African American. According to these rationales, the charges against Simpson represented an attempt to bring “another Black man down.” Black protectionism was used to pushback against a justice system viewed by many African Americans as racially biased. In this way, O.J. Simpson’s acquittal was a “win” for the African American community in that the verdict shed light on systematic racial injustices.

The practice of Black protectionism is a noteworthy sociological phenomenon. It reflects the low levels of trust and faith that African Americans as a group have in the U.S. justice system. Studies consistently indicate that African Americans are the racial group that has the least trust in law enforcement.¹² An analysis of Black protectionism—how it works and its evolution—offers a window into how African Americans perceive and interact with the criminal justice system. It is an effort by African Americans to intervene against what is widely perceived to be a racially-biased justice system. In this way, Black protectionism has been used as a kind of civil rights strategy¹³—an attempt to interrupt and reject the representation of Black as criminal by the police, by the courts, and by the correctional system. Thus, an understanding of how Black protectionism works, its history and its

the Black community operates as a *macroracial* climate of racial violence. Black protectionism is a response by the Black community to society’s wide net of racial oppression, past and present—a net comprised of numerous microclimates.

See Geoff Ward, *Microclimates of Racial Meaning: Historical Racial Violence and Environmental Impacts*, 2016 WIS. L. REV. 575 (2016).

12. See, e.g., *Law Enforcement and Violence: The Divide Between Black and White Americans*, ASSOCIATED PRESS-NORC CTR. FOR PUB. AFF. RES., <http://www.apnorc.org/projects/Pages/HTML%20Reports/law-enforcement-and-violence-the-divide-between-black-and-White-americans0803-9759.aspx> (last visited Aug. 16, 2016). A 2015 poll found that 50% of Blacks surveyed said they had personally been treated unfairly by the police, compared with 3% of Whites surveyed.

13. See, e.g., RUSSELL-BROWN, *PROTECTING OUR OWN*, *supra* note 9, at 45–65 (describing instances of Black protectionism associated with different Black community members).

evolution, provides an incisive barometer of how the African American community views its overall progress and its status within the U.S. justice system. Americans continue to debate whether race relations are improving or growing more divided.¹⁴ Further, an evaluation of the workings of Black protectionism may shed light on what steps are necessary to reduce or temper its use for maximum community effectiveness. At the same time, this discussion considers the likely socio-racial impact if these steps are not heeded.

Black protectionism has consistently been available in instances where well-known Blacks have been accused of wrongdoing.¹⁵ However, it appears that something new is afoot. In recent years, there have been several cases indicating that Black protectionism is operating under new rules. It is this “something new” that serves as the focal point for this Article. This analysis of how Black protectionism currently works is framed within a discussion of how Black protectionism has operated in the past. As the discussion makes clear, Black protectionism is now applied more critically, cautiously, and more directly with the goal of improving social conditions for African Americans. This new Black protectionism both gives protection to a larger group of Blacks who need the community’s protective cloak *and* denies it to those who have little to offer the community.

This Article provides a detailed, contemporary examination and critique of the practice of Black protectionism. The discussion focuses on how Black protectionism has evolved over the decades, and whether the changes make it a more useful tool for community empowerment than its applications in previous eras. Its latest iteration, herein labeled Critical Black Protectionism, is assessed and evaluated in light of the increasing use of social media. The analysis is concerned with how the application of Black protectionism has been shaped by the widespread use of social media. In particular, it considers how Critical Black Protectionism determines who counts as Black crime victims in need of the community’s voice. This Article is di-

14. Following several incidents in 2016 involving the police killings of unarmed Black men and the killings of police officers, national polls indicated that race relations in the U.S. were at their nadir. For instance, a July 2016 New York Times poll found that 69% of the respondents said that race relations were “generally bad.” Giovanni Russonello, *Race Relations Are at Lowest Point in Obama Presidency, Poll Finds*, N.Y. TIMES (July 13, 2016), <http://www.nytimes.com/2016/07/14/us/most-americans-hold-grim-view-of-race-relations-poll-finds.html>. In marked contrast, at a memorial service held for five slain Dallas officers, President Obama stated that racial groups in the U.S. are “not as divided as we seem.” *Id.*

15. See generally RUSSELL-BROWN, PROTECTING OUR OWN, *supra* note 9 (providing examples of Black protectionism when well-known Blacks have been accused of wrongdoing).

vided into five parts. Part I provides an overview of Black protectionism, its roots and evolution. As well, this Part examines how African Americans have used protectionism. This discussion offers a base for analyzing contemporary iterations of Black protectionism. Part II sets out the step-by-step process of Black protectionism. It details who is eligible for protectionism and the “trigger questions” used to determine whether it is merited in a particular case. Part III assesses and critiques how Black protectionism has been applied in contemporary cases where African Americans have been accused of criminal or ethical wrongdoing. This section begins with a look at the sexual assault allegations against Bill Cosby and the criminal cases involving Ray Rice, Adrian Peterson, Jameis Winston, Chris Brown, and Michael Vick. Following an overview of these contemporary cases, there is an assessment of whether and how Black protectionism was used in these cases, compared with its availability in previous cases. Part IV discusses the Black Lives Matter movement and its push and impact in reshaping and reimagining Black crime victims. It also considers how this reimagining has encouraged a revamping of Black protectionism. This Part also examines the emergence of social media and the role it has played in the refining of Black protectionism. This Part concludes by identifying the shift to a new, updated form of protectionism: Critical Black Protectionism. The discussion addresses how Critical Black Protectionism refines and expands previous applications of Black protectionism. Part V addresses outstanding questions about Critical Black Protectionism, including its future iterations and its ability to impact and alter how the justice system works for African Americans.

I. THE DEVELOPMENT AND EVOLUTION OF BLACK PROTECTIONISM: AN OVERVIEW

Over the past four centuries, anti-Black discrimination has appeared in various forms, legal and extralegal. These include the slave codes, Black laws, Black codes, Jim Crow legislation, lynchings, sundown towns, redlining, “separate but equal” schooling, racial covenants, and racial profiling. Notably, most of these refer to legislation passed by congressional bodies, not racial discrimination carried out behind closed doors. African Americans pushed back against all of these practices, in ways small and large. The grass roots responses included the abolitionist and Civil Rights movements and the myriad attendant legal strategies used to challenge racially discriminatory laws, such as sit-ins, bus boycotts, and voter registration drives.

Blacks as a group responded in various ways to the unrelenting racial assaults. One strategy was the development of race-centered cultural practices and movements.¹⁶ Another, related response has been the adoption of a pro-Black cultural narrative employed by the African American community.¹⁷ This narrative states that Blacks stand on equal footing with Whites, morally, socially, spiritually, and physically—and that the law and society should reflect this reality.¹⁸ These narratives are what could be termed practices of resilience.¹⁹ This term describes the Black community's various approaches to ending racial oppression and pushing back against racial discrimination in various forms—e.g., exile, protests, marches, days of absence. Black protectionism is one type of push back in that the Black community rejects the narrative of Black dysfunction.

Black protectionism is a practice of resilience. It works to utilize Black success as a symbol of group self-worth and racial uplift. Black protectionism does this by questioning the mainstream narrative that Blacks are inferior to Whites. It provides a racial cloak of protection for those Blacks who have managed to achieve notoriety and financial success. Examples of how Black protectionism has been used to help Black athletes illuminates the practice of resilience. It highlights one way that the Black community itself can determine which members are positive representations of the race.

Black athletes have been the primary benefactors of protectionism. The Black community has been especially proud and protective of its athletes. This is in part because Black athletic success gives lie to the myth of White supremacy.²⁰ In this way, for African Americans, sports have provided both a means of relaxation *and* a space for racial

16. Marcus Garvey's "Back to Africa" movement is one example. When Garvey came to the U.S. from Jamaica, in 1915, he was shocked to discover how poorly Blacks fared in the country. He instituted branches of his United Negro Improvement Association ("UNIA") in the U.S. The movement attracted millions of followers around the world. *See generally* COLIN GRANT, *NEGRO WITH A HAT: THE RISE AND FALL OF MARCUS GARVEY* (2008) (explaining Garvey's efforts to improve poor Blacks' lives); C.L.R. JAMES, *A HISTORY OF PAN-AFRICAN REVOLT* (2012) (providing a more general review and analysis of the Pan Africanist Movement).

17. *Id.*

18. *Id.*

19. Jury nullification is another example of a practice of resilience. *See generally* Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 *YALE L.J.* 677 (1995).

20. *See generally* STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* (1981) (discussing and critiquing research done in the 1800s and 1900s that seeks to establish Whites superiority); Dorothy Roberts, *The Politics of Race and Science: Conservative Colorblindness and the Limits of Liberal Critique*, 12 *DU BOIS REV.* 199 (2015) (providing a contemporary critique of race and science scholarship).

resistance. Historically, athletic dominance was one of the few avenues open to Blacks that allowed them to achieve upper-class success and status.

The case of boxer Jack Johnson provides one of the earliest examples of Black protectionism being used to protect a Black athlete. In 1910, Johnson was slated to fight White boxer Jim Jeffries. Jeffries, who was billed as the “Great White Hope,” was handpicked to beat Johnson.²¹ However, Jack Johnson won after a bruising fifteen-round match.²² The victory made Johnson the first ever Black heavyweight boxing champion.²³ After he won, Whites in communities across the country erupted in violence.²⁴ Throughout his career, the Black community stood behind him—siding with Johnson in his fight against Jeffries and supporting him after he served time in prison for violating the Mann Act.²⁵ Many Blacks believed that the government was looking for a way to punish Johnson for his boxing success and his romantic involvements with White women.²⁶

Almost sixty years later, boxing champion Muhammad Ali received an even heartier embrace from the Black community. In 1964, Ali announced that he had become a Muslim and had changed his name from Cassius Clay to Muhammad Ali.²⁷ In 1966, he was informed by the Selective Service that he was eligible to serve in the military.²⁸ Ali, who stated that he was a pacifist and that his religion opposed war, applied for conscientious objector status.²⁹ His New York boxing license was immediately suspended³⁰ and other states fol-

21. See, e.g., UNFORGIVEABLE BLACKNESS: THE RISE AND FALL OF JACK JOHNSON (PBS 2004).

22. *Id.*

23. See, e.g., EDWIN B. HENDERSON, THE NEGRO IN SPORTS 26–30 (1939).

24. See, e.g., ARTHUR ASHE, A HARD ROAD TO GLORY: A HISTORY OF THE AFRICAN AMERICAN ATHLETE, VOL. 1 1619–1918 (1988); *Jack Johnson on Trial: Great Interest*, CHICAGO DEFENDER, May 10, 1913, at 1.

25. See generally THE MANN ACT OF 1910, 18 U.S.C.A. § 2421 (2015). At the time, the Mann Act made it unlawful to transport a woman across state lines for the purpose of prostitution or other unlawful sexual conduct.

26. See, e.g., Billy Lewis, *The Jack Johnson Case*, FREEMAN, Nov. 30, 1912, at 7.

27. See generally MUHAMMAD ALI, THE GREATEST: MY OWN STORY (1975) (chronicling the battles that the heavyweight champion faced in and out of the ring).

28. *Id.*

29. See, e.g., Sean Gregory, *Why Muhammad Ali Matters to Everyone*, TIME (June 4, 2016), <http://time.com/3646214/muhammad-ali-dead-obituary/>. Muhammad Ali famously stated, “Man, I ain’t got no quarrel with them Vietcong.”

30. See, e.g., Marty Lederman, *Muhammad Ali, Conscientious Objection, and the Supreme Court’s Struggle to Understand ‘Jihad’ and ‘Holy War’: The Story of Cassius Clay v. United States*, SCOTUSBLOG (June 8, 2016), <http://www.scotusblog.com/2016/06/muhammad-ali-conscientious-objection-and-the-supreme-courts-struggle-to-understand-jihad-and-holy-war-the-story->

lowed suit. Ali was roundly castigated by the mainstream press as a “coward” and as “un-American” and some refused to call him by his new name.³¹ In 1967, Ali was convicted of draft evasion and sentenced to five years and fined \$10,000.³² Following his unsuccessful appeals, Ali held firm and the Black community’s support remained steadfast.³³ Four years later, the U.S. Supreme Court reversed Ali’s conviction for draft evasion.³⁴ In addition to the above cases, other well-known cases involving Black athletes include Mike Tyson and Kobe Bryant.³⁵

Black protectionism has extended beyond Black athletes to include other well-known and well-heeled African Americans. It has been used to cloak Black actors, entertainers, politicians, and business people. There have been many high-profile cases involving African Americans who received Black protectionism. The list includes former mayor of Washington, D.C., Marion Barry, Supreme Court Justice Clarence Thomas, singer R. Kelly, and Michael Jackson.³⁶ As discussed in more detail in later sections, the evolution of Black protectionism has shifted the group of African Americans who are eligible to receive its protective shield. Given this change, it is not likely

of-cassius-clay-v-united-states/ (“While Ali’s criminal appeal was pending, he decided to sue the New York State Athletic Commission, alleging that it had unconstitutionally suspended his boxing license.”).

31. Gregory, *supra* note 29.

32. Martin Waldron, *Clay Guilty in Draft Case; Gets Five Years in Prison*, N.Y. TIMES (June 20, 1967), <http://www.nytimes.com/learning/general/onthisday/big/0620.html#article>.

33. In his eulogy of Muhammad Ali, Pastor Kevin Cosby made this point by analogy: “You have to bet for the horse while it’s still in the mud. There are a lot of people who bet on Muhammad Ali when he was in the winners’ circle. But the masses bet on him while he was still in the mud . . . I’m not saying that Muhammad Ali is the property of Black people. He is the property of all people. But while he is the property of all people. Let us never forget that he is the product of Black people in their struggle to be free.” Muhammad Ali’s Memorial Service — The New York Times, YOUTUBE (June 10, 2016), <https://www.youtube.com/watch?v=1bYFb97j7Ro>.

34. *Clay v. United States*, 403 U.S. 698, 710 (1971).

35. For a detailed discussion of these cases, see RUSSELL-BROWN, *PROTECTING OUR OWN*, *supra* note 9, at 39–65.

36. *Id.* at 45–47, 56–62. Marion Barry, former mayor of Washington, D.C., was caught on videotape smoking a crack cocaine pipe. He faced a 13-count indictment, which included a perjury charge. He was acquitted on one count of drug possession, convicted of misdemeanor drug possession, and sentenced to six months in prison. Following his nomination to the Supreme Court in 1991, it was reported that then federal District Court judge, Clarence Thomas, had been accused of sexual harassment against law professor Anita Hill. Following the widespread circulation of a video that appeared to show R. Kelly engaged in sexual acts with a minor, he was indicted on child pornography charges; he was acquitted in 2008. In 2005, Michael Jackson faced charges of child molestation and intoxicating a minor. Jackson was acquitted. In each of these cases, surveys indicated that the Black community stood solidly behind Barry, Thomas, Kelly, and Jackson.

that African Americans who received it in the past would receive the same degree of protectionism today.

With the above discussion of Black protectionism in mind, Part II provides a detailed review of its mechanisms. It also identifies the circumstances that trigger African Americans to engage in a protectionist response and examines how this compares with how Whites respond to the same allegations.

II. HOW BLACK PROTECTIONISM OPERATES

Black protectionism works as a two-tier process. The first level determines whether a particular person is eligible to receive protectionism. Eligibility has three requirements:

- [1] There is an allegation of wrongdoing (criminal or ethical);
- [2] The allegation is made by a mainstream agent (a representative of the state or a political spokesperson); and
- [3] The allegation is against someone Black who has a national reputation or credibility as a racial spokesperson.

Once these elements are established, Black Protectionism is available. However, it is the responses to a set of trigger questions that determine the degree and strength of the Black protectionism applied in a particular case. At the second there are two sets of trigger questions, one for Blacks and another for Whites.³⁷ These are the questions raised and considered by members of these two racial groups.³⁸

37. It is noted that the trigger questions are male-centric. One of the undeniable truths about Black protectionism is that it has been almost exclusively available to Black men. See RUSSELL-BROWN, *PROTECTING OUR OWN*, *supra* note 9, at 99–101 (providing a more detailed discussion of the gender dynamic and Black protectionism).

38. While the discussion here is based on the Black versus White dynamic, other racial groups have some version of race-based protectionism. *Id.*; see Table 1.

Table 1
Trigger Questions

<u>Blacks</u>	<u>Whites</u>
1. Did he commit the offense?	1. Did he commit the offense?
2. Even if he did, was he set up?	
3. Would he risk everything he has (e.g., wealth, fame, material possessions) to commit an offense?	
4. Is he the only person who has committed this offense?	
5. Do Whites accused of the same offense receive the same scrutiny and treatment?	
6. Is this accusation part of a government conspiracy to destroy the Black race?	

These trigger questions highlight the analysis Blacks engage in when evaluating accusations of wrongdoing leveled against high-profile group members. This varies greatly from the single-question analysis used by Whites when someone White is accused of wrongdoing. Whites are much less likely to explicitly consider race as the cause of an allegation.³⁹ White skin privilege may operate in a way that encourages Whites to overlook the ways in which race may be a salient factor in evaluating the credibility of criminal charges against African Americans. The marked contrast in the trigger questions is tied to the drastically different experiences—direct and indirect—that Blacks and Whites have with the criminal justice system.⁴⁰ Blacks are much more likely to have had negative experiences with the police, courts, and prisons (or know someone who has),⁴¹ and thus are more likely to question the justice system’s legitimacy.⁴²

39. See generally TOM TYLER, SOCIAL JUSTICE IN A DIVERSE SOCIETY (1997) (describing White people’s perception of race and the criminal justice system).

40. Studies and surveys show a persistent racial gap in perceptions of the criminal justice system. For instance, Whites are two and one-half more times likely to state that the justice system operates fairly, compared with Blacks. *Id.*

41. See generally MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN AN AGE OF COLORBLINDNESS (2010) (for a trenchant analysis of the how wide-scale incarceration is used to manage and establish the racial narrative on crime).

42. In an empirical study of how interactions with the justice system alters perceptions of government, Vesla Weaver and Amy Lerman conclude that contact with the criminal justice system “weakens attachment to the political process and heightens negative perceptions of gov-

In addition to the structural workings of the justice system when evaluating an individual case, Blacks also consider how Whites as a group are likely to view the same case. In particular, the calculus for the appropriateness of Black protectionism includes a comparison of the Black community's perceptions of the case with the White community's perceptions of the case. Further, there is some consideration of how these perceptions may vary based on the race of the alleged offender (or victim).⁴³ Thus, Blacks as a group are using racially-variegated lenses to evaluate the fairness of a particular allegation or charge. This type of racial analysis exemplifies the double-consciousness illuminated by sociologist W.E.B. Du Bois over a century ago.⁴⁴

ernment." Vesla Weaver & Amy Lerman, *Political Consequences of the Carceral State*, 104 AMER. POLIT. SCI. REV. 817, 820 (2010). In other research, they found that African Americans who have been "stopped, arrested, convicted, or incarcerated" are more likely to believe there is racial discrimination against Blacks and are much more pessimistic about racial equality in the United States. Amy Lerman & Vesla Weaver, *A Different Lifeworld? The Impact of Criminal Justice Encounters on Racial Perceptions and Identity* (2010) (unpublished paper presented at American Political Science Association Meeting). Given these findings, it is not a stretch to consider that seeing police violence against members of your community would also result in negative perceptions of the justice system and a decline in civic participation.

In *How the Criminal Justice System Educates Citizens*, Ben Justice and Tracey Meares argue that various aspects of the justice system have a curriculum (overt and tacit) that "teach" us how the justice system works. For groups that have disproportionately high rates of contact with police (e.g., African Americans) the justice system may work as a "site of negative 'civic education.'" Ben Justice & Tracey Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 159, 161 (2014).

43. When African Americans review allegations against and treatment of a high-profile Black, they also consider how the White community perceives the case and whether Whites would respond differently if the alleged offender was White. Thus, this review involves a four-part analysis:

- (1) An assessment of the Black community's response to an allegation against a high profile Black person;
- (2) An assessment of the White community's response to an allegation against a high-profile Black person;
- (3) An assessment of the White community's response to an allegation against a high-profile White person; and
- (4) An assessment of the Black community's response to an allegation against a high-profile White person.

It is noted that not all of these considerations are explicit. Rather, they are part of the Black protectionism analysis that African Americans engage in when high-profile members face criminal or ethical charges.

44. In *The Souls of Black Folk*, published in 1903, W.E.B. Du Bois states:

[T]he Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (1965).

As well, the Black protectionism processing matrix underscores a reality of our criminal justice system—race matters.⁴⁵

The Black community's protectionism takes different forms, but the bottom line is that it manifests itself as a sizable number of Blacks questioning the credibility of the allegation or charge against the high-profile group member. For instance, throughout the O.J. Simpson criminal trial, national surveys revealed that Blacks believed that Simpson was not guilty of the murders.⁴⁶ Black protectionism operates as a bulwark against allegations of criminality and deviance against African Americans.

Another important feature of Black protectionism is that it operates without regard to the consent of the recipient. That is, it may be unsolicited, even unwanted. Black protectionism, while triggered in response to an individual African American's circumstance, works as a protective measure for the Black community. It goes into effect regardless of whether the high-profile Black person desires it, whether the person identifies as Black, whether the person feels connected to the Black community, or whether the person sees himself as a representative of the African American community.⁴⁷

45. Data on the justice system clearly shows that race matters at each stage of the justice system, from arrest to post-sentencing. *See, e.g.*, NAZGOL GHANDNOOSH, *BLACK LIVES MATTER: ELIMINATING RACIAL INEQUITY IN THE CRIMINAL JUSTICE SYSTEM* (2015); *see also* *McCleskey v. Kemp*, 481 U.S. 279 (1987) (illustrating the impact of race on capital sentencing). The case utilized empirical research, which shows that the race of the victim impacts sentencing. The defendant challenged application of the Georgia death penalty as a violation of the Equal Protection Clause (that the death penalty operated in a racially biased manner). The defense offered the results of empirical research, known as the "Baldus Study," to establish that the race of the victim was the most significant variable determining whether an offender would be sentenced to death. The Supreme Court did not dispute the findings, but decided that a capital offender alleging race discrimination has to establish that his particular jury was racially biased against him. *See generally* U.S. DEP'T OF JUSTICE, *INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT* (2016), <https://www.justice.gov/opa/file/883366/download>; U.S. DEP'T OF JUSTICE, *THE FERGUSON REPORT* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. Both reports provide a look at the impact of race on the administration of justice in a particular community and jurisdiction.

46. *See, e.g.*, Janet Elder, *Trial Leaves Public Split on Racial Lines*, N.Y. TIMES (Oct. 2, 1995), <http://www.nytimes.com/1995/10/02/us/trial-leaves-public-split-on-racial-lines.html> (discussing polarization of public opinion along racial lines following the O. J. Simpson trial).

47. *See, e.g.*, Denise C. Morgan, *Jack Johnson: Reluctant Hero of the Black Community*, 32 AKRON L. REV. 529, 530 (1999) (arguing that there are two different types of Black heroes: those who "have simultaneously exposed the fallacy of the American racial hierarchy of White over Black and who have embraced their connection to other Black Americans[.]" such as Martin Luther King and Muhammad Ali, and those who "have difficulty reconciling their sense of individuality with membership in a subordinated community[.]" like Jack Johnson).

Notably, in the Simpson case, it is not clear whether Simpson himself desired or appreciated the Black community's embrace. He is on record as stating that he did not want to be seen as Black:

An analysis of dozens of cases involving race-based protectionism shows that there is a low bar for its application.⁴⁸ Once a charge is leveled against a well-known African American, a consideration of whether Black protectionism is available begins.⁴⁹ As posited in earlier research, Black protectionism may be considered a kind of civil rights strategy.⁵⁰ It is a way to support and shield African Americans who have, against the racial odds, attained mainstream success. This group includes athletes,⁵¹ along with other Black professionals (teachers, preachers, funeral directors, doctors, and business owners), who were in the first tier of Blacks to “make it.”

All told, Blacks as a group have a race-based skepticism towards the combined workings of the criminal justice system, the mainstream media, and the political structure. Based on their lived experiences, African Americans, as a group, are less trusting of the police and less likely to believe that the justice system operates in a racially-fair manner.⁵² This distrust of the criminal justice system co-exists with African American concerns that Blacks are portrayed negatively in the mainstream media. Many African Americans believe that African Americans are unfairly and overwhelmingly portrayed as criminals in the media—encapsulated by the term *criminal blackman*.⁵³ In addition to views about the criminal justice system and the media, African Americans also share a concern that the political establishment operates to keep them marginalized.⁵⁴

I was at a wedding, my [first] wife and a few friends were the only Negroes there and I overheard a lady at the next table say “Look there’s O.J. Simpson and some niggers.” Isn’t that weird? That sort of thing hurts me, even though it’s what I strive for, to be a man first.

RUSSELL-BROWN, *COLOR OF CRIME*, *supra* note 2, at 86.

48. See generally RUSSELL-BROWN, *PROTECTING OUR OWN*, *supra* note 9 (analyzing a series of cases involving potential recipients of Black protectionism in Chapter Three).

49. In some instances, the high-profile African American suggests that the allegations against him are racially motivated—thus, explicitly requesting Black protectionism. *Id.* at 49. For instance, in 2016, when African American congresswoman Corrine Brown was indicted on fraud charges, she stated “I’m not the first black elected official to be persecuted and, sad to say, I won’t be the last.” Matt Dixon, *Brown Says She’s Not the First Black Lawmaker to be ‘Persecuted,’* POLITICO (July 11, 2016, 1:26 PM), <http://www.politico.com/states/florida/story/2016/07/brown-says-not-first-black-lawmaker-persecuted-103686#ixzz4E7p08HVC>.

50. See generally Russell-Brown, *Black Protectionism*, *supra* note 9 (discussing how Black protectionism can be used as a strategy in obtaining equal treatment for African Americans).

51. *Id.* at 10.

52. See generally TYLER, *supra* note 39 (describing African Americans’ general distrust of police).

53. RUSSELL-BROWN, *COLOR OF CRIME*, *supra* note 2, at 14.

54. Maurice Mangum, *Explaining African American Political Trust: Examining Psychological Involvement, Policy Satisfaction, and Reference Groups*, 82 INT’L SOC. SCI. REV. 3 (2012) (analyzing research explaining why African Americans have little trust in the government). *But*

For example, African Americans have been particularly sensitive to the numerous instances of disrespect shown towards Barack Obama, the first African American President of the United States. During his eight-year tenure, the nation's first Black president faced a barrage of allegations and insults, criminal and otherwise. These included allegations that President Obama was one or more of the following: a Muslim,⁵⁵ a Marxist⁵⁶, atheist,⁵⁷ a traitor,⁵⁸ an ISIS sympathizer,⁵⁹ or a Kenyan-born foreigner,⁶⁰ all of which, to those making the claims, made him unworthy of and ineligible to be the President of the United States. As well, President Obama experienced several encounters—verbal⁶¹ and physical⁶²—that indicated disrespect for his leadership.⁶³ There were also strategic political attempts to diminish his leadership. Most notably, his 2016 nominee to

see *Beyond Distrust: How Americans View their Government*, PEW RES. CTR. (Nov. 23, 2015), <http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/> (finding that African Americans have slightly higher levels of trust of the federal government than Whites). See generally SHAYLA NUNNALLY, TRUST IN BLACK AMERICA: RACE, DISCRIMINATION, AND POLITICS (2012) (arguing that the uncertainty, risk, and unfairness of institutionalized racial discrimination has led African Americans to distrust American democracy).

55. See, e.g., Kevin Shipp, *The Real Barack Obama and the Transformation of America*, TEA PARTY TRIB. (Nov. 9, 2014), <http://www.teapartytribune.com/2014/11/09/real-barack-obama-transformation-america/>; Asawin Suebsaeng & Dave Gilson, *Chart: Almost Every Obama Conspiracy Theory Ever*, MOTHER JONES (Nov. 2, 2012), <http://www.motherjones.com/politics/2012/10/chart-obama-conspiracy-theories>.

56. Shipp, *supra* note 55.

57. *Id.*

58. *Id.* Following the June 2016 massacre in Orlando Florida in which a gunman killed forty-nine people, Donald Trump, then the Republican presumptive presidential nominee, stated, “Look, we’re led by a man that is either not tough, not smart, or he’s got something else in mind.” Jenna Johnson, *Donald Trump Seems to Connect President Obama to Orlando Shooting*, WASH. POST (June 13, 2016) <https://www.washingtonpost.com/news/post-politics/wp/2016/06/13/donald-trump-suggests-president-obama-was-involved-with-orlando-shooting/> (emphasis added).

59. See *id.*

60. Suebsaeng & Gibson, *supra* note 55. Prior to his election, and well into his first term, some questioned whether President Obama had been born in the United States. See generally Michael Shear, *Obama Releases Long-Form Birth Certificate*, CAUCUS (Apr. 27, 2011, 9:28 AM), http://thecaucus.blogs.nytimes.com/2011/04/27/obamas-long-form-birth-certificate-released/?_r=0 (discussing Obama’s release of his birth certificate and the controversy surrounding his national origin that was led by Donald Trump, who is now U.S. President).

61. On September 9, 2009, during a health care address that President Obama gave to Congress, House Representative (R-South Carolina) Joe Wilson shouted, “You lie!” *Rep. Wilson Shouts, ‘You Lie’ to Obama During Speech*, CNN (Sept. 10, 2009, 8:27 AM), <http://www.cnn.com/2009/POLITICS/09/09/joe.wilson/index.html>.

62. In 2013, after arriving in Arizona, President Obama greeted the governor, Jan Brewer. The video of the encounter shows her angrily pointing her finger at Obama and challenging him. Carrie Budoff Brown, *Tiff on the Tarmac: Obama Fights Back*, POLITICO (Jan. 12, 2012, 8:35 PM), <http://www.politico.com/story/2012/01/tiff-on-the-tarmac-obama-fights-back-072100>.

63. Examples include the various editorial cartoons likening Obama to a simian. See, e.g., Oliver Burkeman, *New York Post in Racism Row Over Chimpanzee Cartoon*, GUARDIAN (Feb. 18, 2009, 1:58 PM), <https://www.theguardian.com/world/2009/feb/18/new-york-post-cartoon-race>.

the U.S. Supreme Court, Judge Merrick Garland, was denied a Senate hearing.⁶⁴ The message of these various actions was clear: President Obama did not deserve the nation's respect. African Americans, however, pushed back on this portrayal. More than any other racial group, the Black community steadfastly supported President Obama throughout his presidency.⁶⁵ Surveys indicated that Obama had an approval rating over eighty percent among African Americans—the highest of any racial group.⁶⁶ In some ways, President Obama was the recipient of Black protectionism. Though he was not charged with a crime, the numerous claims made against him operated as a kind of criminal allegation. In this way, the Black community's response was to “protect its own” and defend President Obama. It is likely that the strong challenges to President Obama's legitimacy increased the support and protection he received from African Americans.⁶⁷

The treatment of African Americans within the criminal justice system is another factor that influences how African Americans individually and as group members perceive their overall experience and social status. Statistics consistently show that African Americans are disproportionately represented at each stage of the justice system—e.g., arrests, charge decisions, pre-trial detention, and conviction. For instance, Black motorists are more likely to be pulled over by the police than White drivers.⁶⁸ Also, in comparable circumstances, a Black

64. See, e.g., Michael Ramsey, *Why the Senate Doesn't Have to Act on Merrick Garland's Nomination*, ATLANTIC (May 15, 2016), <http://www.theatlantic.com/politics/archive/2016/05/senate-obama-merrick-garland-supreme-court-nominee/482733/>.

65. John Blake, *What Black America Won't Miss About Obama*, CNN (July 1, 2016, 12:31 AM), <http://www.cnn.com/2016/06/30/politics/why-black-america-may-be-relieved-to-see-obama-go/>.

66. See, e.g., *Obama Weekly Job Approval by Demographic Groups*, GALLUP (updated through July 2016), <http://www.gallup.com/poll/121199/obama-weekly-job-approval-demographic-groups.aspx> (showing White support for Obama at thirty-eight percent and Hispanic support at seventy percent).

67. While Blacks have given Obama widespread support, there has also been widespread criticism. See Julie Hirschfeld Davis, *Obama Confronts Growing Expectations*, N.Y. TIMES, (July 21, 2016), <http://www.nytimes.com/2016/07/22/us/politics/obama-police-race.html>. See generally MICHAEL ERIC DYSON, *THE BLACK PRESIDENCY: BARACK OBAMA AND THE POLITICS OF RACE IN AMERICA* (2016) (critiquing Obama's reluctance to discuss, engage, and encourage a detailed discussion of race—with the goal of improving race relations).

68. LYNN LANGTON & MATTHEW DUROSE, U.S. DEP'T OF JUSTICE, *POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS*, 2011, at 1 (2013), <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>. While racial disparity may raise a question about racial discrimination, the two are not the same. However, research studies done on driver behavior have not consistently found that Black drivers are more likely to be law violators than White drivers. See, e.g., *Wilkins v. Maryland State Police*, Civil No. MJG-93-468 (D. Md. 1996) (laying out the terms of the settlement agreement where Maryland agrees to no longer consider race in its drug enforcement practices); Richard Lundman & Robert Kaufman, *Driving While Black: Effects of Race, Ethnicity*,

person is more likely to be arrested than a White person,⁶⁹ more likely to face more serious criminal charges,⁷⁰ more likely to be convicted, and more likely to receive a harsher criminal sentence.⁷¹ The Justice Department estimates that more than twenty-five percent of all Black men will spend some portion of their lives behind bars.⁷² The data on Blacks and lethal police force paint a stark picture of racial disparity.⁷³ Independent data gathered by news organizations show that in 2015 Blacks comprised twenty-seven percent of those killed by police.⁷⁴ Notably, Black men, who are approximately six percent of the U.S. population, made up twenty-five percent of police shootings.⁷⁵ This racial disproportionality sends a clear signal that race matters in the operation of the justice system, specifically that Blacks experience tougher treatment by the police, courts, and the correctional system overall. For African Americans, this climate of racial disparity serves to underscore the need for Black protectionism.

Beyond the criminal justice realm, a host of other racial disparities exist. These include the areas of education, employment, housing, healthcare, and wealth. Black men with a college degree are less likely to receive a job offer than White men with a felony record.⁷⁶ A

and Gender on Citizen Self-Reports of Traffic Stops and Police Actions, 41 *CRIMINOLOGY* 195 (2003) (discussing whether African American, Hispanic, and White men are more or less likely to report police interactions after being pulled over for a traffic violation); see also David Kocieniewski, *Study Suggests Racial Gap in Speeding in New Jersey*, N.Y. TIMES (Mar. 21, 2002), <http://www.nytimes.com/2002/03/21/nyregion/study-suggests-racial-gap-in-speeding-in-new-jersey.html?pagewanted=all>.

69. See THE SENTENCING PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM (2013), <http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf>.

70. *Id.*

71. *Id.*

72. There is debate about whether this figure is closer to 1:3 or 1:4. In 1997, the Justice Department published a study that found that 28.5% of Black men will spend time behind bars during their life time. THOMAS BONCZAR & ALLEN BECK, BUREAU OF JUSTICE STATISTICS, LIFETIME LIKELIHOOD OF GOING TO STATE OR FEDERAL PRISON 3 (1997), <http://bjs.gov/content/pub/pdf/Llgsfp.pdf>. However, in the decade since that report, incarceration rates for Black men have declined. Marc Mauer, director of the Sentencing Project, estimates that the figure may be closer to one in four. Glenn Kessler, *The Stale Statistic that One in Three Black Males 'Born Today' Will End up in Jail*, WASH. POST (June 16, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/06/16/the-stale-statistic-that-one-in-three-black-males-has-a-chance-of-ending-up-in-jail/>.

73. See *991 People Shot Dead by Police in 2015*, WASH. POST (Dec. 2015), <https://www.washingtonpost.com/graphics/national/police-shootings/>.

74. See *id.*

75. See *id.* (showing that in 2015 there were 991 people killed by law enforcement officers and of this number, 248 were Black men).

76. DEVAH PAGER, MARKED: RACE, CRIME AND FINDING WORK IN AN ERA OF MASS INCARCERATION 90–91 (2007).

person with a “Black-sounding” name is fifty percent less likely to receive a job interview than someone with a “White-sounding” name.⁷⁷ To the degree that these political and criminal justice realities affect perceptions of fairness and equality, they support the Black community’s decision to protect and defend high-profile members who face legal trouble. These socio-political justice system factors combine to create a baseline of suspicion when a high-profile African American is accused of wrongdoing. Thus, for decades, Black protectionism has been a predictable reaction when well-known African Americans have been accused of wrongdoing. Black protectionism has its critics.

Critics of the practice have questioned its rationale, arguing that as a knee-jerk reaction, protectionism does not benefit the Black community.⁷⁸ Others have made the case that a more circumspect and limited application of protectionism would yield greater long-term benefits to the Black community.⁷⁹ Despite these criticisms, until recently, the Black community has continued to make protectionism available to select group members. In recent years, however, something has changed. There has been an observable shift in the availability and application of Black protectionism. The rules have been altered, in ways that both broaden and reduce the eligibility pool for protectionism. Part III examines how protectionism has evolved through a look at how it has worked in contemporary cases involving well-known Blacks accused of wrongdoing.

III. CONTEMPORARY CASES⁸⁰

While a handful of earlier scholarship identifies, details, and critiques Black protectionism, over the last decade, there has been no

77. Marianne Bertrand & Sendhil Mullainathan, National Bureau of Economic Research, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination* 11–19 (Nat’l Bureau of Econ. Research, Working Paper No. 9873, 2003), <http://www.nber.org/papers/w9873.pdf> (showing the results from a survey conducted to see if African American names were discriminated against).

78. In a comedy routine, Chris Rock questioned whether Simpson’s acquittal in any way benefited the Black community. Rock said he still has not received his “O.J. prize” in the mail. CHRIS ROCK: BRING THE PAIN (HBO 1996).

79. See generally RUSSELL-BROWN, PROTECTING OUR OWN, *supra* note 9 (discussing the critiques of Black protectionism in Chapter 6).

80. There are two other cases involving allegations of criminal or ethical harm engaged in by high-profile African Americans that deserve note. For different reasons, neither is included in the list of six cases discussed in this section of the Article. The first involves golfer Tiger Woods and the second involves actor Nate Parker.

comprehensive scholarly assessment of its contemporary workings.⁸¹ In fact, Black protectionism as a phenomenon has attracted scant research interest. This is particularly surprising given that it is a relatively widespread phenomenon and one that sheds light on how African Americans as a group interpret, perceive, and react to the U.S. criminal justice system in particular and the legitimacy of the law

In 2009, golfer Tiger Woods and his wife, Elin Nordegren, were involved in an altercation. The incident occurred after his wife learned that Woods had been intimately involved with several other women. It was a huge national story. This incident is intentionally not discussed in this section. First, the Woods's incident did not involve a criminal allegation (although it did raise issues of morality). Second, it appears there is some debate about how Woods, who is biracial (mother from Thailand and father who is African American), is viewed by African Americans today. Interestingly, this case did not have explicit racial overtones, as the others discussed in this section. In fact, the tepid racial response to this incident may be additional support for the argument that the rules of Black protectionism have changed, it is no longer a knee-jerk gift offered to any and all Black celebrities.

In 2016, prior to the release of Nate Parker's much anticipated movie, "The Birth of a Nation," it was widely reported that he had been accused of rape while in college. In 1999, Parker was charged and acquitted of sexually assaulting a fellow student while attending Penn State University. Parker is African American and the woman was White. The woman said that she was drunk and unconscious during the sexual contact and could not give consent. The evidence indicates that she was forced to have sex with another man, Jean McGianni Celestin, who was present and also Parker's roommate (Celestin was convicted of rape at trial). The woman committed suicide in 2012. Brooks Barnes & Cara Buckley, *Criminal Case Trails Director and His Film*, N.Y. TIMES (Aug. 18, 2016), <http://www.nytimes.com/2016/08/18/movies/the-birth-of-a-nation-nate-parkers-heralded-film-is-now-cloaked-in-controversy.html>. This case presents an interesting twist on the typical case of Black protectionism. In this instance, the criminal charges have *already been* heard and *tried* in a court of law. Parker received mixed support from African Americans. Early signs indicated that Parker would receive condemnation, not support from African Americans. *Id.*; see also Maiysha Kai, *An Open Letter to Nate Parker*, ROOT.COM (Aug. 17, 2016), <http://www.theroot.com/articles/culture/2016/08/an-open-letter-to-nate-parker/>; Gillian White, *Nate Parker and the Court of Public Opinion*, ATLANTIC (Aug. 18, 2016), <http://www.theatlantic.com/entertainment/archive/2016/08/nate-parker-faces-the-court-of-public-opinion/496439/>. *But see* Jamal Watson, *Al Sharpton on Nate Parker: Hollywood Trying to 'Smear the Messenger'*, ROOT.COM (Aug. 20, 2016), <http://www.theroot.com/articles/culture/2016/08/rev-al-sharpton-on-nate-parker-hollywood-trying-to-smear-the-messenger/> (arguing that a double standard is being used since Parker was acquitted of rape).

The highly anticipated movie did not do well at the box office. It did not receive any Golden Globe nominations. However, in January 2017, the Directors' Guild of America nominated Parker for the debut director's award.

Some made comparisons between the sexual harassment allegations against Casey Affleck with Nate Parker's case. Affleck, who is White, starred in the critically reviewed movie, "Manchester by the Sea." Affleck was accused of sexual harassment by two former staffers. See, e.g., Brooks Barnes, *The Glare Varies for Two Actors on Hollywood's Awards Trail*, N.Y. TIMES (Jan. 4, 2017), https://www.nytimes.com/2017/01/04/movies/casey-affleck-nate-parker-awards-season.html?_r=0; Amy Zimmerman, *Casey Affleck's Dark Secret: The Disturbing Allegations Against the Oscar Hopeful*, DAILY BEAST (Nov. 23, 2016, 12:00 AM), <http://www.thedailybeast.com/articles/2016/11/22/casey-affleck-s-dark-secret-the-disturbing-allegations-against-the-oscar-hopeful.html>.

81. See generally RUSSELL-BROWN, *COLOR OF CRIME*, *supra* note 2; RUSSELL-BROWN, *PROTECTING OUR OWN*, *supra* note 9. The most recent review of the Black protectionism cases was published in 2009.

in general. The material in the next section seeks to bridge this research gap, beginning with an overview of the sexual assault allegations against Bill Cosby.⁸²

A. “Hey, Hey, Hey:”⁸³ The Cosby Cases

Next to the O.J. Simpson case, the Bill Cosby sexual assault cases are the most well-known recent incidents of an African American celebrity being accused of a crime. However, in stark contrast to the Black community’s outspoken and unabashed protective response to O.J. Simpson, the reaction to Cosby has been mixed at best. Responses have run the gamut, including mockery, scorn, silence, calls for “balance,” victim blaming, and, in some instances, praise.

One remarkable aspect of the Cosby case is that there have been several high profile African Americans who have publicly criticized him.⁸⁴ In fact, the case entered the public consciousness as the result of a comedy routine by another Black comedian. A stand-up routine by Hannibal Buress⁸⁵ opened the door for a new wave of criminal allegations and intense public debate and criticism of Bill Cosby. In his routine, Buress referred to a talk Cosby gave in 2004. Cosby spoke at an NAACP event celebrating the fiftieth anniversary of *Brown v. Board of Education*.⁸⁶ In his comments, Cosby admonished and ridiculed poor Blacks. He stated:

The lower economic people are not holding up their end of this deal . . . These people are not parenting. They are buying things for

82. There have been other cases that raise the issue of Black protectionism. These include Herman Cain (businessman/politician, sexual assault allegations), Michael Jace (actor, convicted of murder), Wendell Pierce (actor, arrested for battery); and Isaiah Washington (actor, fired for using homophobic slurs).

83. This expression is taken from the lead character of the 1970s cartoon, “Fat Albert” (voiced by Bill Cosby). James Hamblin, *The Origin of Fat Albert: How Bill Cosby did Obesity Right*, ATLANTIC (Sept. 27, 2012), <http://www.theatlantic.com/health/archive/2012/09/the-origin-of-fat-albert-how-bill-cosby-did-obesity-right/262817/>.

84. On his Comedy Central show, “The Nightly Show,” comedian-host, Larry Wilmore regularly and fiercely criticized Cosby. As well, at least one Black publication raised the issue directly. EBONY Magazine’s November 2015 issue featured a controversial cover where the Cosby family was shown with shattered glass centered cracked around Bill Cosby’s face. See also Goldie Taylor, *Cliff-Hanger: Can ‘The Cosby Show’ Survive? Should It?*, EBONY (Oct. 15, 2015), <http://www.ebony.com/entertainment-culture/ebony-bill-cosby-cover-story-november-2015-999#axzz4Df3ozipX>.

85. Hannibal Buress, *Hannibal Buress Called Bill Cosby a Rapist During a Stand Up*, YOUTUBE (Oct. 29, 2014), <https://www.youtube.com/watch?v=dzB8dTVAlQI>.

86. 347 U.S. 483 (1954).

their kids—\$500 sneakers for what? And won't spend \$200 for Hooked on Phonics.⁸⁷

Buress's 2014 response to Cosby:

He gets on TV, 'Pull your pants up black people, I was on TV in the '80s! I can talk down to you because I had a successful sitcom!' Yeah, but you raped women, Bill Cosby. So turn the crazy down a couple notches. 'I don't curse onstage!' But you're a rapist.⁸⁸

When some members of the audience expressed disbelief at Buress's claims about the revered comedian, he tells them to "Google 'Bill Cosby and rape.'"⁸⁹ After one of his shows was posted on YouTube, Buress's routine led to intense media interest. More than one journalist noted the irony that it was a male comedian, not the women who accused Cosby of sexual assault, who led to the explosive media attention. There were numerous women willing to testify in court that they had been drugged and assaulted by Cosby. There were not enough, however, to cause public interest or outcry.

In 2005, Andrea Constand filed suit against Cosby for sexual assault.⁹⁰ Constand, a woman's basketball coach at Temple University (Cosby's alma mater), accused him of drugging her with Quaaludes and then sexually assaulting her.⁹¹ In his deposition, Cosby admitted to having drugged women so he could have sex with them.⁹² After Constand filed suit, thirteen other women came forward with similar allegations. Each woman was willing to serve as a witness in the case.

87. Felicia R. Lee, *Cosby Defends His Remarks About Poor Blacks' Values*, N.Y. TIMES (May 22, 2004), http://www.nytimes.com/2004/05/22/arts/cosby-defends-his-remarks-about-poor-blacks-values.html?_r=0.

88. Buress, *supra* note 85. One consequence of being critical of a high-profile African American is that some Blacks will perceive the person as a race traitor; for instance, following Buress's comments, Faizon Love, another Black comedian, referred to Buress as a "house nigga." *Faizon Love Supports Bill Cosby, Calls Hannibal Buress a House N****a*, THEGRIO (Nov. 22, 2014, 6:07 PM) [hereinafter *Faizon Love Supports Bill Cosby*], <http://thegrio.com/2014/11/22/faizon-love-bill-cosby/>.

89. Buress, *supra* note 85.

90. Complaint, *Andrea Constand v. William H. Cosby*, No. 2:05-cv-01099-ER (E.D. Penn. Nov. 21, 2005); Associated Press, *Bill Cosby Drops Lawsuit Against Andrea Constand, Accuser in Criminal Case*, NBC NEWS (July 29, 2016, 12:19 AM), <http://www.nbcnews.com/storyline/bill-cosby-scandal/bill-cosby-drops-lawsuit-against-andrea-constand-accuser-criminal-case-n619316>.

91. Holly Yan et al., *Bill Cosby Admitted He Got Quaaludes to Give to Women*, CNN (July 7, 2015, 11:42 PM), <http://www.cnn.com/2015/07/07/us/bill-cosby-quaaludes-sexual-assault-allegations/>.

92. *Id.*

However, in 2006, Constand's case was settled and the case files were sealed.⁹³

Following the massive publicity Burress' routine received, women began to go public with stories of alleged sexual assault by Cosby. More than fifty women stated publicly that Cosby either raped or attempted to rape them.⁹⁴ When the first wave of women began to tell their stories, there was a mixed public response. Many people viewed the women with suspicion. Some questioned why so many of the women waited decades to come forward,⁹⁵ others did not find the stories of alleged assault credible,⁹⁶ still others concluded that some of the women benefited from a relationship with Cosby, and perhaps now they had an axe to grind because their careers were not successful.⁹⁷ Several of the women addressed these criticisms.⁹⁸

In prior times, it is at this point in Cosby's unfolding story that Black protectionism would have worked to quell and minimize any further discussion of his alleged wrongdoing. As it has in many earlier cases involving sexual assault, Black protectionism would have pushed the media spotlight away from Cosby to focus on the women—e.g., their past sexual histories, prior missteps, careers, economic status, and former relationships. This shift in focus would have effectively worked to shut down any African American dissent and worked to present a united racial front in support of Cosby. This would have been done through the existing media channels, such as Black radio,

93. The case was settled for an undisclosed amount; the settlement also included a provision that prevented Constand from speaking publicly about the case. See Associated Press, *supra* note 90.

94. Amanda Holpuch et al., *The Bill Cosby Sexual Abuse Claims—57 Women and the Dates They Went Public*, GUARDIAN (Dec. 31, 2015, 1:03 PM), www.theguardian.com/world/2015/dec/31/bill-cosby-sexual-abuse-claims-57-women-dates-public-accusations.

95. See, e.g., Christine M. Flowers, *Rape Allegations Against Cosby No Excuse to Suspend Rights of the Accused*, PHILLY.COM (Nov. 20, 2014, 3:01 AM), http://www.philly.com/philly/columnists/christine_flowers/20141120_Rape_allegations_against_Cosby_no_excuse_to_suspend_rights_of_the_accused.html.

96. *Id.*

97. See generally *Why Is the Media Ignoring the Shady Background of Some of the Cosby Accusers?*, MELANOID NATION (Oct. 17, 2015), <http://melanoidnation.org/why-is-the-media-ignoring-the-shady-backgrounds-of-some-of-the-cosby-accusers/> (arguing Bill Cosby's accusers are not credible and do not have prominent careers).

98. Barbara Bowman, *Bill Cosby Raped Me. Why Did it Take 30 Years for People to Believe My Story?*, WASH. POST (Nov. 13, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/11/13/bill-cosby-raped-me-why-did-it-take-30-years-for-people-to-believe-my-story/>; see, e.g., Noreen Malone, *'I'm No Longer Afraid': 35 Women Tell Their Stories About Being Assaulted by Bill Cosby, and the Culture That Wouldn't Listen*, N.Y. MAG. (July 26, 2015), <http://nymag.com/thecut/2015/07/bill-cosbys-accusers-speak-out.html> (noting the interviews women who accused Bill Cosby of sexual assault and who deny that their allegations are false or driven by bitterness about their careers).

Black spokespersons, BET, barbershops, and beauty salons. It is likely that many other well-known Blacks, including racial spokespersons, would have stepped forward to offer unequivocal support for Cosby.⁹⁹

The traditional narrative would have highlighted Cosby's stellar decades-long career, the iconic breakthrough status of "The Cosby Show," as well as the notable philanthropic work of Cosby and his wife Camille, including their donations of millions of dollars to historically Black colleges and universities.¹⁰⁰ The fact that the criminal justice system has been racially biased against Black men would also have been part of the clarion call for Black protectionism for Cosby.

99. A handful of celebrities did come to Cosby's defense or at least sought to contextualize his actions within the larger group of sexual assault cases. For instance, Malcolm-Jamal Warner, who played Theo Huxtable on "The Cosby Show," suggested that the reactions to the Cosby allegations were disproportionate, especially when compared with other entertainers in comparable circumstances. Warner stated, "There is no one that has been calling for Woody [Allen]'s movies to be pulled off the air," Warner said. "Roman Polanski is still celebrated. Stephen Collins' show still comes on. So it's just interesting how it's very unbalanced." *Malcolm-Jamal Warner: 'Cosby' is Villainized, Woody Allen Gets a Pass Because He's White*, THEGRIO (Feb. 3, 2016), <http://thegrio.com/2016/03/04/malcolm-jamal-warner-cosby-gets-yanked-off-the-air-woody-allen-gets-pass-because-hes-white/>. Warner is referencing the fact that in 1992 filmmaker Woody Allen became involved with his then-girlfriend Mia Farrow's adopted daughter, Soon-Yi Previn. Farrow discovered that Allen had nude photos of 21-year-old Previn in his home. On The Red Carpet Staff, *Woody Allen on Marriage to Soon Yi: 'What Was the Scandal?'*, ABC 7, <http://abc7.com/archive/8209443/> (last visited Oct. 25, 2016). In 1977, filmmaker Roman Polanski pled guilty to unlawful sex with a minor (a 13-year-old girl). After serving 42 days behind bars he was released. Upon learning that he faced a longer sentence, Polanski fled the U.S. for Poland, where he remains. Rebecca Keegan, *Samantha Geimer Tells Her Side of the Story*, L.A. TIMES (Sept. 16, 2013), <http://articles.latimes.com/2013/sep/16/entertainment/la-et-jc-geimer-book-20130916>.

Overall, the responses to the Cosby allegations were tepid compared with how previous incidents have triggered widespread Black protectionism. Some celebrities avoided a direct response. In response to a question about the allegations, Phylicia Rashad, who played Clair Huxtable on "The Cosby Show," responded, "This is in litigation now, right? Then I'm not commenting on anything. Let it play out." John Justice, *Here's What Happens When Phylicia Rashad Is Grilled About Bill Cosby's Rape Allegations*, BET (Apr. 11, 2016), <http://www.bet.com/news/celebrities/2016/04/11/phylicia-rashad-bill-cosby-rape-allegations-comments.html>. Keisha Knight-Pulliam, who played Rudy Huxtable on "The Cosby Show," said "Everyone's entitled to their opinion, but we still live in a country where you're innocent until proven guilty. . . I understand everything that's happened, and me being a feminist . . . 'No means no' and I get that. But just so you know, I did work with him for a really long time, I love him dearly still. That isn't the man I know." John Justice, *Don't Come for Mr. Cosby: Keisha Knight Pulliam Claps Back at Amber Rose*, BET (Apr. 1, 2016), <http://www.bet.com/news/celebrities/2016/04/01/keisha-knight-amber-rose-cosby.html>. Some public groups sought to defend Cosby. Project 21, a public policy group of Black conservatives said that Cosby was being treated unfairly and referred to the Cosby accusers as "opportunistic." They argued that the legal process was unfair to Cosby. Tim Devaney, *Black Group Defends Bill Cosby From 'Opportunistic' Women*, THE HILL (July 9, 2015, 3:17 PM), <http://thehill.com/blogs/in-the-know/in-the-know/247399-black-group-defends-bill-cosby-from-opportunistic-women>.

100. Lee A. Daniels, *A Black College Gets Cosby Gift of \$20 million*, N.Y. TIMES (Nov. 8, 1988), <http://www.nytimes.com/1988/11/08/us/a-black-college-gets-cosby-gift-of-20-million.html>.

Black protectionism—what has also been called “Rally-Round-the-Brother”¹⁰¹—would have been in full effect. Burress would likely have been dismissed as not having paid his dues, as not a true representative of the Black community, or worse, demonized as a race traitor, seeking to bring down a famous Black man.¹⁰²

However, the actual reactions to the Cosby allegations reflect a sea of change in the Black community’s assessment of wrongdoing by a high-profile group member. As news of the allegations surfaced, polls showed that African Americans were not uniform in their reaction to the charges.¹⁰³ Bill Cosby was unable to channel the traditionally available lines of racial support. This was partly because his support among African Americans had greatly eroded. As referenced earlier, many Blacks were troubled, offended, and perplexed by his 2004 NAACP comments.¹⁰⁴ Further, the volume of the allegations and the fact that Cosby had been out of public view for years did not bolster his support. A review of the Black community’s response to a series of other cases involving high-profile African Americans accused of criminal wrongdoing, indicates a waning use of traditional Black protectionism. These cases offer some early support for the finding that Black protectionism was beginning to be more judiciously applied.

B. Ray Rice

In 2014, National Football League (“NFL”) player Ray Rice was accused of domestic violence.¹⁰⁵ Rice, who played with the Baltimore Ravens, was seen on a hotel elevator video punching, kicking, and

101. Clarence Page, *Clarence Thomas Feeds Blacks’ Conspiracy Fears*, WASH. POST (Oct. 16, 1991), http://articles.chicagotribune.com/1991-10-16/news/9104030357_1_lynching-for-uppity-blacks-black-males-clarence-thomas.

102. See *Faizon Love Supports Bill Cosby*, *supra* note 88.

103. For instance, a July 2015 YouGov poll shows that thirty-two percent of Blacks had a “favorable” view of Bill Cosby, compared with twenty-one percent for Whites and forty percent for Hispanics. Poll data showed that thirty-seven percent of Blacks had an “unfavorable” view of Cosby, compared with sixty-six percent for Whites and forty-one percent for Hispanics. One-third of Blacks polled stated they “don’t know” whether they had a favorable or unfavorable opinion of Cosby. *Bill Cosby Poll July 8-9, 2015*, YouGov, https://today.yougov.com/publicopinion/archive/?page=9&sort=-publication_date&month=7 (last visited Oct. 25, 2016).

104. See generally MICHAEL ERIC DYSON, *IS BILL COSBY RIGHT: OR HAS THE BLACK MIDDLE CLASS LOST ITS MIND?* (2005) (discussing the class and generational divide in Black America by using Bill Cosby’s speech on poor Black people when he received an NAACP award in the spring of 2004).

105. Louis Bien, *Ray Rice Indicted for Aggravated Assault in Domestic Violence Incident With Fiancée*, SB NATION (Mar. 27, 2014, 4:50 PM), <http://www.sbnation.com/nfl/2014/3/27/5555054/ray-rice-arrest-assault-domestic-violence-fiancee>.

spitting on his fiancée, Janay Palmer.¹⁰⁶ Following the assault, Rice dragged Palmer, who had been knocked unconscious, from the elevator.¹⁰⁷ Rice was charged with aggravated assault.¹⁰⁸ As a result of the incident and prior to the public release of the video, the NFL suspended Rice for two games.¹⁰⁹ Following the release of the video, the Baltimore Ravens ended Rice's contract and the League suspended him indefinitely.¹¹⁰ Rice's case led the NFL to create stricter policies for players involved in domestic violence incidents.¹¹¹

There was widespread public discussion about whether the NFL and the media were too quick to make Rice the public face of domestic assault.¹¹² Some suggested that Rice, who pled no contest to the assault charge and began a diversion program, was subjected to a double standard. Specifically, some argued that the punishment he received, including an indefinite suspension and being cut from the Baltimore Ravens, was too harsh.¹¹³ Further, some speculated that if Rice had been White, he would not have lost his job.¹¹⁴ Many others, however, were critical of Rice's actions (and statements made follow-

106. Hank Gola et al., *Ray Rice Cut by Ravens, Suspended by NFL After Video of Him Punching Then Fiancée in Casino Elevator Emerges*, NY DAILY NEWS (Sept. 9, 2014, 9:02 AM), <http://www.nydailynews.com/sports/football/video-ray-rice-punching-then-fiancee-casino-elevator-emerges-article-1.1931889>.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. The NFL revised its Personal Conduct Policy, applicable to all NFL employees. According to the policy, a first offense for domestic violence will result in a six-game suspension without pay and a second offense will result in a lifetime ban. *Id.*

112. Trent Baker, *Stephen A. Smith on Kurt Busch: Double Standard for White, Black Athletes on Domestic Violence*, BREITBART (Feb. 25, 2015), <http://www.breitbart.com/video/2015/02/23/stephen-a-smith-on-kurt-busch-double-standard-for-white-black-athletes-on-domestic-violence/>.

113. See, e.g., NFL POLL SEPTEMBER 9-10, 2014, YOU GOV (2015), http://cdn.yougov.com/cumulus_uploads/document/dpfpqcdhs/tabs_HP_Ray_Rice_20140910.pdf (showing the statistics of a general survey where participants were asked what was the appropriate punishment for Ray Rice punching his fiancée). Fifty percent of Blacks surveyed "approved" of Rice being cut from the Baltimore Ravens (compared with thirty-three percent who said they did not approve). This compares with sixty-nine percent of Whites who approved of the ban. Forty-six percent of Blacks polled approved of the NFL's indefinite ban (compared with thirty-seven percent who did not approve). This compares with sixty-one percent of Whites who approved of the ban.

114. Kevin B. Blackstone, *White Domestic Abusers Get a Second Chance. Ray Rice Is Black, So He Won't*, GUARDIAN (Dec. 2, 2012), <https://www.theguardian.com/commentisfree/2014/dec/02/domestic-abusers-ray-rice-nfl-employment> (quoting PAGER, *supra* note 76 and showing that Black men who have criminal records are more than two times less likely as their White counterparts to get a second chance at re-employment). See generally Monica Moorehead, *Ray Rice, Racism and Women's Oppression*, WORKERS (Sept. 16, 2014), <http://www.workers.org/2014/09/16/ray-rice-racism-womens-oppression/#.V3LWPK3rvcs> (listing multiple White athletes who have hurt women that were not demonized by the media).

ing the release of the videotape), his wife's decision to stay with him, and argued that he should have been more severely penalized by the NFL.

C. Adrian Peterson

In 2014, Minnesota Vikings football player Adrian Peterson was accused of brutally beating his four-year-old son with a tree switch.¹¹⁵ The injuries were severe.¹¹⁶ Peterson initially attempted to justify his actions by stating that his discipline had not gone overboard.¹¹⁷ However, he later pled no contest to misdemeanor reckless assault.¹¹⁸ Peterson was sentenced to probation, community service, and a fine.¹¹⁹ The NFL initially suspended Peterson for nine weeks.¹²⁰ However, the suspension was later extended to the remainder of the season without pay. The Peterson case, which came on the heels of the Rice incident, sparked discussions of racial bias. However, there did not appear to be a race-based consensus about the case, or anything approaching a Black protectionist response toward Peterson. In fact, some African Americans used the case to discuss and criticize the disproportionate use of corporal punishment in the African American community.¹²¹

D. Jameis Winston

In 2012, Jameis Winston, a star football player at Florida State University ("FSU"), was accused of rape by Erica Kinsman, another

115. Eric Prisbell & Brent Schrottenboer, *Adrian Peterson Avoids Jail Time in Child Abuse Case*, USA TODAY (Nov. 4, 2014, 8:46 PM), <http://www.usatoday.com/story/sports/nfl/vikings/2014/11/04/adrian-peterson-minnesota-vikings-child-abuse-plea-deal-misdemeanor/18466197/>.

116. *Id.*

117. Sam Galanis, *Report: Adrian Peterson Told Cops He Beat 4-Year-Old Son With Tree Branch*, NESN (Sept. 12, 2014), <http://nesn.com/2014/09/adrian-peterson-beat-visibly-injured-4-year-old-son-with-tree-branch/>.

118. Lynn Zinser, *Adrian Peterson Agrees to Plea Deal in Child-Abuse Case*, N.Y. TIMES (Nov. 4, 2014), http://www.nytimes.com/2014/11/05/sports/football/vikings-adrian-peterson-reaches-plea-deal-in-child-abuse-case.html?mtrref=www.google.com&gwh=B9216E3CB978FDE1EE94AB86D99B83C8&gwt=pay&assetType=nyt_now.

119. *Id.*

120. Peter King, *Peterson's Punishment*, SPORTS ILLUSTRATED (Nov. 18, 2014), <http://mmqb.si.com/2014/11/18/adrian-peterson-suspension-appeal-roger-goodell>.

121. See, e.g., Mychel Denzel Smith, *Sparing the Rod Won't Spoil the Racism*, THE NATION (Sept. 19, 2014), <https://www.thenation.com/article/sparing-rod-wont-spoil-racism/>; Khadijah Costley White, *Adrian Peterson Is Not a Racial Symbol*, ATLANTIC (Sept. 15, 2014), <http://www.theatlantic.com/entertainment/archive/2014/09/adrian-peterson-is-not-a-symbol/380199/>.

FSU student.¹²² Winston denied the charges.¹²³ Some months later, following an investigation by the *New York Times*, it was revealed that another female student had previously accused Winston of rape and the University had put forth little effort to examine her claims.¹²⁴ Kinsman's lawsuit against FSU was settled for \$950,000.¹²⁵ Winston, however, was never formally charged with sexual assault.¹²⁶ In fact, he was cleared of sexual misconduct or endangerment in a FSU code of conduct hearing.¹²⁷ Winston went on to win the Heisman trophy in 2013 and was the first pick in the 2014 NFL draft.¹²⁸ There did not appear to be a marked racial divide in public support or scorn for Winston.¹²⁹ A 2014 poll found that Blacks had a more favorable opinion of Winston than Whites. However, the same percentage of Blacks and Whites—nineteen percent—said they had an unfavorable opinion of Winston.¹³⁰ The majority said they were “not sure.”¹³¹ It is possible that Winston might have received a Black protectionist response if he had been formally charged with a crime. It is also possible that some of Winston's public actions, following the rape allegations, eroded what little support he had. One of these actions involves Winston walking out of a grocery store without paying for thirty-two dollars worth of crab legs.¹³² Some months later, a video surfaced

122. Rachel Axon, *Florida State Agrees to Pay Winston Accuser \$950,000 to Settle Suit*, USA TODAY (Jan. 25, 2016, 6:29 PM), <http://www.usatoday.com/story/sports/ncaaf/2016/01/25/florida-state-settles-title-ix-lawsuit-erica-kinsman-jameis-winston/79299304/>.

123. *Id.*

124. Walt Bogdanich, *A Star Player Accused, and a Flawed Rape Investigation*, N.Y. TIMES (Apr. 16, 2014), http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html?_r=0.

125. Axon, *supra* note 122.

126. Tom Spousta, *Jameis Winston Is Cleared in Hearing Over Student's Rape Accusation*, N.Y. TIMES (Dec. 21, 2014), http://www.nytimes.com/2014/12/22/sports/ncaaf/jameis-winston-is-cleared-in-florida-state-hearing.html?_r=0.

127. *Id.*

128. Dan Hanzus, *Jameis Winston Selected by Buccaneers at No. 1*, NFL.COM (May 1, 2015, 3:11 AM), <http://www.nfl.com/news/story/0ap3000000489140/article/jameis-winston-selected-by-buccaneers-at-no-1>.

129. See, e.g., J.P. Scott, *Why I'll Root for Florida State and Jameis Winston*, FANSIDED, <http://fansided.com/2014/12/31/ill-root-florida-state-jameis-winston/> (last visited Oct. 26, 2016); *Florida State's Jameis Winston Has Lost The Support of His Alabama Hometown*, POSTGAME (Sept. 30, 2014), <http://www.thepostgame.com/blog/dish/201409/jameis-winston-has-disgraced-his-hometown>.

130. PUBLIC POLICY POLLING, BUSH LEADS REPUBLICANS, NECK AND NECK WITH CLINTON, (2014), http://www.publicpolicypolling.com/pdf/2014/PPP_Release_FL_611.pdf.

131. *Id.*

132. This incident took place in 2014. Winston stated that when he went to pick up the crab legs from the supermarket, the employee told him he could have them for free. Winston said the employee told him whenever he came into the grocery store, he would not have to pay. He received a civil citation for shoplifting. Will Hobson, *Jameis Winston Has New Explanation for*

showing Winston dancing atop a table singing loudly, using curse words and crude, sexually vulgar language.¹³³

E. Chris Brown (& Rihanna)

In 2009, the singer Chris Brown was accused of beating up his then-girlfriend, Rihanna, a pop singer.¹³⁴ The incident might have languished in the “She said/He said” pile, had there not been a photo of Rihanna after the assault. In fact, prior to the release of police photographs, there was widespread speculation that Rihanna initiated the fight with Brown and was somehow at least partially responsible for the incident.¹³⁵ When the allegations of assault initially surfaced, Brown drew widespread support from African Americans. Some noted that Brown was raised in a household with domestic abuse.¹³⁶ However, early support for Brown largely declined once the photos were widely circulated. In the pictures, Rihanna had bruised, swollen lips and bruises and cuts on her cheeks, forehead, chin, and nose. Following the release of the photos, the prevailing public sentiment was that domestic violence is a serious crime and that Brown should receive a prison sentence for his actions.¹³⁷ Some expressed the view that Brown should be held accountable, but that his sentence should take account of his age and family circumstances. After pleading guilty to felony assault, Brown was sentenced to five years of proba-

Crab Legs Theft That Could Cause Problems for Florida State, WASH. POST (Apr. 22, 2015), <https://www.washingtonpost.com/news/sports/wp/2015/04/22/jameis-winston-has-new-explanation-for-crab-legs-theft-that-could-cause-problems-for-florida-state/>.

133. See, e.g., Bill Hanstock, *Jameis Winston Stood on a Table at FSU and Yelled ‘F—k Her Right in the P—y’*, SB NATION (Sept. 16, 2014, 4:47 PM), <http://www.sbnation.com/lookit/2014/9/16/6252613/jameis-winston-stood-on-a-table-at-fsu-and-yelled-f-k-her-right-in>.

134. George Rush & Nancy Dillon, *Rihanna & Chris Brown Fight Started Over Text Message From Other Woman*, N.Y. DAILY NEWS (Feb. 11, 2009, 8:55 AM), <http://www.nydailynews.com/entertainment/gossip/rihanna-chris-brown-fight-started-text-message-woman-article-1.369542>.

135. *Id.*

136. See Gil Kaufman, *Chris Brown Haunted by Family’s History of Domestic Violence*, MTV (Oct. 10, 2009), <http://www.mtv.com/news/1604730/chris-brown-haunted-by-familys-history-of-domestic-violence/>.

137. But see Daniel Nasaw, *Survey: Half of Boston Teens Blame Rihanna for Chris Brown Beating*, THE GUARDIAN (Mar. 16, 2009), <https://www.theguardian.com/world/deadlineusa/2009/mar/16/rihanna-usa>. (noting the Boston Health Commission surveyed two hundred teenagers in 2009 following allegations of assault against Brown. Survey found that forty-six percent said Rihanna was responsible for the incident (compared with fifty-one percent who said Chris Brown was responsible). Fifty-two percent said that both Brown and Rihanna were responsible. A significant number of males and females surveyed said that Rihanna was destroying Brown’s career).

tion and 1,400 hours of community service.¹³⁸ It is noted that Chris Brown's case was an atypical one given that both the alleged offender and victim were high-profile members of the Black community. The case exposed a gender-based fissure in the application of Black protectionism—who gets it when the offender and victim are Black?¹³⁹

F. Michael Vick

In 2007, NFL quarterback Michael Vick was indicted on federal charges related to dog fighting.¹⁴⁰ Vick's illegal dog fighting business, "Bad Newz Kennels," led to the abuse, starvation, and death of many dogs.¹⁴¹ Vick pled guilty to the felony of sponsoring a dogfighting ring.¹⁴² He was sentenced to twenty-three months in federal prison and fined almost one million dollars in restitution.¹⁴³ Following his guilty plea, Vick received a two-year suspension from the League.¹⁴⁴ He was widely criticized and scorned as a heinous animal abuser. There were also those who argued that Vick was being used as a racial scapegoat.¹⁴⁵ Polls taken at the time showed that there was a significant racial gap in public opinion, with Blacks much more likely to support Vick than Whites, fifty-one percent compared with twelve percent.¹⁴⁶ The fact that Vick's case took place in an earlier period

138. Deneen L. Brown & Ashley Surdin, *Chris Brown Pleads Guilty to Assault*, WASH. POST (June 23, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/22/AR2009062200452.html>.

139. See RUSSELL-BROWN, PROTECTING OUR OWN, *supra* note 9, at 99–01, 125–27.

140. Indictment at 1–2, *United States v. Peace*, Crim. No. 3:07CR (E.D. Va. July 17, 2007), http://aldf.org/downloads/vick_federal_indictment.pdf (noting the charges under 18 U.S.C. § 371, included conspiracy to travel in interstate commerce in aid of unlawful activities and to sponsor a dog in an animal fighting venture).

141. Meleva Steiert, *Does Michael Vick Deserve Forgiveness? Where Do NFL Fans Draw the Line?*, DOGTIME.COM, <http://dogtime.com/trending/28239-michael-vick-deserve-forgiveness-nfl-fans-draw-line> (last visited Oct. 26, 2016).

142. *Id.*

143. *Id.*

144. *Id.*

145. See, e.g., Melissa Harris-Perry, *Michael Vick, Racial History and Animal Rights*, THE NATION (Dec. 30, 2010), <https://www.thenation.com/article/michael-vick-racial-history-and-animal-rights/>; Kathy Rudy, *Michael Vick, Dog Fighting and Race*, DUKE TODAY (Aug. 29, 2007), https://today.duke.edu/2007/08/vick_oped.html (discussing the role that race played in the public prosecution of Michael Vick and the dog fighting scandal); Toure, *What if Michael Vick Were White?*, ESPN MAGAZINE (Aug. 25, 2011), http://espn.go.com/espn/commentary/story/_/id/6894586/imagining-michael-vick-white-quarterback-nfl-espn-magazine.

146. A Pew Research Center Poll taken on Aug. 28, 2007, found that 51% of Blacks thought the coverage of Vick's case was "unfair" compared with 12% of Whites. *Michael Vick Case Draws Large Audience*, PEW RES. CTR (Aug. 28, 2007), <http://www.people-press.org/2007/08/28/michael-vick-case-draws-large-audience/>; see also Majorie Connelly, *Celebrity Seen as Factor Regarding Vick, Poll Finds*, N.Y. TIMES (Aug. 14, 2007), <http://www.nytimes.com/2007/08/14/sports/>

(prior to the explosion in social media) may partly explain the majority support he received from African Americans.

The next section analyzes these six contemporary cases as a group. This focus allows for a consideration of whether and how Black protectionism has evolved. As important, the discussion evaluates what these changes signal regarding who is eligible for Black protectionism and who is not.

G. Analysis and Application of Black Protectionism in Contemporary Cases

The above discussion highlights six of the more recent cases involving a high-profile African American accused of wrongdoing. Each of these cases was ripe for an application of Black protectionism based on how it had been used in prior incidents. Black protectionism, however, was not centrally tied to any of these cases in the same way that it has been in earlier cases. This leads to two key observations about these recent cases.

The first is that in each case, the focus of discussion centered on the fifth trigger question.¹⁴⁷ This question asks, “Do Whites accused of the same offense receive the same scrutiny and treatment?” In each instance, the question was asked whether the same scrutiny and public desire for punishment would have been on display had the person been White. In the contemporary cases, this question seems to have replaced or been used as a stand in for the full embrace of Black protectionism. For instance, the sentiment in the Vick case appeared to be, yes Vick’s actions were wrong, but the amount of public criticism and punishment he received is out of balance with similarly situated Whites.¹⁴⁸

The argument that these cases generated excessive media attention appears well-founded. In each of these incidents, the famous Black person morphed into public enemy number one for their offense. For instance, Bill Cosby has arguably come to symbolize the worst sexual predator in U.S. history. Likewise, the media intensity and reportage in Vick’s case could lead one to conclude that he was

football/14vick.html?_r=0; Lindsay Goldwert, *Michael Vick in Black and White*, CBS News (Aug. 30, 2007), <http://www.cbsnews.com/news/michael-vick-in-black-and-white/>.

147. See *supra* Part III.

148. Note that this approach is in stark contrast to an approach that says that if the answers to the trigger questions are yes, then Black protectionism is in effect. For further discussion, see *infra* Part III.H.

the country's most notorious animal abuser. Additionally, while there have been other incidents involving celebrities and domestic violence, Ray Rice and Chris Brown arguably become the notorious national representatives of celebrities and domestic assault.¹⁴⁹ In fact, it is difficult, if not impossible, to come up with the name of White, well-known celebrities who received the same level of intense scrutiny and public demands that they be held criminally responsible for sexual assault offenses.

The case of actor Johnny Depp allows for a race-based comparison. In 2016, there were allegations that Depp had committed numerous assaults against his wife, Amber Heard. The story received national press.¹⁵⁰ However, public interest and media attention did not rise to the same level as the Rice incident. Perhaps this was because Depp was not starring in a movie or TV show at the time of the accusations. However, this is odd considering that Depp is an internationally-known film star, while Rice, prior to the incident, was relatively unknown outside of football. Further, in both incidents, there was documented evidence of abuse.¹⁵¹ At core, this concern (fifth trigger question) is about the existence of a racial double standard in the media, public reaction,¹⁵² and the punishment meted out in the justice system.

The sexual assault charges against Roger Ailes, the founder and former chairman and CEO of Fox News, offer another example. Ailes who is White, was forced to resign in 2016 after former news anchor Gretchen Carlson filed a complaint alleging sexual assault charges against him.¹⁵³ Within weeks, twenty-five other women reported that Ailes had also sexually harassed them.¹⁵⁴ This story was widely re-

149. See, e.g., Gerrick D. Kennedy, *When Will We Stop Punishing Chris Brown for His Past?*, L.A. TIMES, (Dec. 3, 2015), <http://www.latimes.com/entertainment/music/posts/la-et-ms-daily-show-chris-brown-australia-20151202-story.html>.

150. See, e.g., Samantha Miller, *Johnny Depp & Amber Heard, Inside Their Toxic Marriage*, PEOPLE (June 1, 2016, 6:30 AM), <http://www.people.com/article/amber-heard-new-photos-alleged-abuse-johnny-depp>. Other celebrities as well have been in domestic violence incidents, including Tommy Lee and Ozzy Osbourne.

151. *Id.*

152. One measure of the impact of media coverage is the "Q" rating. This rating determines how popular public figures are viewed by the American public. As well, Forbes lists the "most disliked athletes." In 2010, Michael Vick was included on this list (which included five other Black athletes in the top 10). See, e.g., OUT OF BOUNDS: RACISM AND THE BLACK ATHLETE (LORI LATRICE MARTIN 2014).

153. Complaint, Carlson v. Ailes, No. L-005016-16, (N.J. Super. Ct. Law Div. July, 6 2016).

154. See, e.g., Paul Farhi, Scott Higham, Mael Roig-Franzia, & Krissah Thompson, *The Fall of Roger Ailes: He Made Fox News His 'Locker Room'—And Now Women Are Telling Their Stories*, WASH. POST (July 22, 2016), <https://www.washingtonpost.com/lifestyle/style/the-fall-of->

ported. However, the story did not pique the public's interest to the same degree as the stories involving Bill Cosby, Ray Rice, and Chris Brown. This is particularly concerning given that Ailes faced over two dozen allegations, including one woman who claimed that Ailes subjected her to twenty years of psychological abuse and blackmail.¹⁵⁵ Also, under his leadership, Fox News positioned itself as staunchly promoting family values and reporting the news in a balanced and fair manner. The reactions to the Depp and Ailes cases lend credence to the concern that cases involving allegations against African Americans may face greater public interest and thus greater public scrutiny than cases involving allegations against Whites.

The second observation about these contemporary cases is linked to the first one. That is, the Black community's relatively muted reaction to the six contemporary cases suggests a shift in the use of Black protectionism. None of these six cases resulted in the typical groundswell of Black protectionism. They did not receive a response from the Black community that is comparable to the racialized reactions of previous incidents involving African Americans accused of wrongdoing (e.g., O.J. Simpson, Mike Tyson, or Marion Barry). Based on these recent cases, it appears that the African American community is engaging in a more thoughtful and nuanced analysis than it did in previous cases involving high-profile community members.

The actions of Bill Cosby, Ray Rice, Adrian Peterson, Jameis Winston, Chris Brown, and Michael Vick landed them in the cross hairs of the law and the media. However, their cases were treated differently by the African American community than previous comparable cases. In this group, two of the cases were closest to reflecting a standard use of Black protectionism—Michael Vick and Chris Brown. Notably, these were the two earliest cases. That said, none of the six men was treated as a grand symbol or larger-than-life representation of the Black community. The Black community's response in these cases begs the question: Is there a new paradigm for Black protectionism?

roger-ales-he-made-fox-his-locker-room—and-now-women-are-telling-their-stories/2016/07/22/5eff9024-5014-11e6-aa14-e0c1087f7583_story.html.

155. Gabriel Sherman, *Former Fox News Booker Says She Was Sexually Harassed and 'Psychologically Tortured' by Roger Ailes for More Than 20 Years*, N.Y. MAG. (July 29, 2016), <http://nymag.com/thecut/2016/07/fmr-fox-booker-harassed-by-ales-for-20-years.html>.

H. Critical Black Protectionism as the New Paradigm for Black Protectionism

Critical Black Protectionism is the name given to the new and different approach to utilizing and applying black protectionism. It shares some features and has goals in common with critical race theory.¹⁵⁶ Specifically, Critical Black Protectionism is designed to spotlight racial injustice perpetuated through the court system and to empower the African American community in the fight for racial justice. Critical Black Protectionism both expands and constricts the application of Black protectionism. It makes protectionism available to a larger group of people (alleged offenders *and* victims) and it rejects a blanket protection of all high-profile African Americans. Critical Black Protectionism alters both the operational process for Black protectionism and the trigger questions. Table 2 and Table 3 detail these shifts by comparing standard Black protectionism with Critical Black Protectionism.

Table 2
Eligibility: Comparing Standard Black Protectionism and Critical Black Protectionism

Standard Black Protectionism ¹⁵⁷	Critical Black Protectionism
1. An allegation of wrongdoing	1. An allegation of wrongdoing or victimization
2. By a mainstream agent (state representative or political spokesperson)	2. By or against someone Black
3. Against someone Black who has a national reputation or credibility as a racial spokesperson	3. By a mainstream agent

Table 2 shows that the application of Critical Black Protectionism has a broader reach than standard Black protectionism. Critical Black Protectionism expands the eligibility for protectionism in two ways. One, it allows protectionism to be applied to people who are not high-profile African Americans, such as local community leaders (criteria 2: “by or against someone Black”). Two, it allows African Americans

156. *See generally* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas eds., 1996) (explaining critical race theory and its place in modern society).

157. *See supra* Part II.

who have been victimized by the justice system to receive Black protectionism (criteria 1: “allegation of wrongdoing or victimization”). Examples include Rodney King and Trayvon Martin who are widely perceived to be victims of excessive force (by police or others). This shift in focus also results in a change to the trigger questions, as indicated by Table 3 below:

Table 3¹⁵⁸
Trigger Questions for Critical Black Protectionism

Did he commit the offense?
Even if he did, was he set up?
Would he risk everything he has (wealth, fame, material possessions) to commit an offense?
Is he the only person who has committed this offense?
Do Whites accused of the same offense receive the same scrutiny and treatment?
Is this ¹⁵⁹ accusation part of a government conspiracy to destroy the Black race?
If the person is well known, has he done anything for the Black community (e.g., philanthropy, community service, been outspoken on community issues, expressed pride in being Black)?
Is it in the Black community’s best interest to support this person?

As the additional questions indicate, Critical Black Protectionism requires a more thoughtful and involved analysis than standard Black protectionism. Under this new formulation, community members have to critique the use of protectionism. Notably, in this new scheme, all Blacks can use protectionism and all Blacks may in some instances be eligible for it. They have to assess not only what the allegations signal in terms of the historical tension between Blacks and the justice system, but also to consider the individual person under the public microscope and his/her history with the Black community. The final trigger question asks group members to make a broad assessment of the impact of applying Black protectionism in the particular case. Specifically, they are asked to decide whether applying protectionism in a single case will signal progress or regression for the Black

158. Questions 6 & 7 are additions to the list of Trigger Questions. *See supra* Table 1.

159. Note that Trigger Questions 1-6 are the same as those listed in Table 1. *See supra* Table 1. These six comprise the Trigger questions for “standard” Black protectionism.

community. This question is the most important one, because it acts as a mandate—requiring that the application of Black protectionism provide an overall community benefit.

Critical Black Protectionism reflects a seismic shift in the operation of Black protectionism. A look at the Black community's response to several recent cases involving an allegation against a high-profile African American suggests that a different review process is in place. As detailed above, other factors appear to be included in the evaluation process, including whether the community as a whole will benefit from the exercise of protectionism. More specifically, the new calculation involves determining whether it will be a good use of the community's racial capital to apply Black protectionism in a particular case. Further, the new protectionism expands eligibility to Blacks who have been victims of state violence. The next Part examines this reworking of Black protectionism. It considers the reasons for the changes and how the rise in the Black Lives Matter movement and social media impact the paradigm shift.

IV. THE IMPACT OF THE BLACK LIVES MATTER MOVEMENT AND SOCIAL MEDIA ON BLACK PROTECTIONISM

The Black Lives Matter movement formed in response to the 2012 death of Trayvon Martin in Sanford, Florida.¹⁶⁰ However, the group gained national attention following the 2014 death of Michael Brown in Ferguson, Missouri.¹⁶¹ In the weeks-long protests that followed Brown's killing by a Ferguson police officer, the group of young Black activists emerged as leaders in the call for police accountability.¹⁶² Members of the group appeared across media outlets, including television, cable news interviews, and online videos. They were unabashed in their calls for racial justice.¹⁶³ In its "Who We Are" state-

160. *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about/> (last visited Oct. 24, 2016).

161. Herbert Ruffin, *Black Lives Matter: The Growth of a New Social Justice Movement*, BLACKPAST.ORG, <http://www.blackpast.org/perspectives/black-lives-matter-growth-new-social-justice-movement> (last visited Aug. 23, 2016).

162. The founders are Patrisse Cullors, Opal Tometi, and Alicia Garza. *All #BlackLivesMatter: Learn More About Who We Are, Our Founders, and Our Guiding Principles*, BLACK LIVES MATTER, <http://blacklivesmatter.com/who-we-are/> (last visited Oct. 24, 2016).

163. Some, however, trace the seeds of the group's development to an event that occurred nearly a decade earlier, Hurricane Katrina. Many were stirred to political action in the wake of the inadequate, negligent, and criminal responses to the hurricane, which resulted in thousands of deaths and placed thousands of others—mostly African Americans—in life-threatening cir-

ment, Black Lives Matter states that its focus is on addressing concerns of marginalized communities, particularly communities of color.¹⁶⁴ The group has chapters across the U.S. and countries around the world.¹⁶⁵

Black Lives Matter focuses on the systemic ways that racism and privilege work to both encourage and erase state violence against members of marginalized groups, particularly African Americans.¹⁶⁶ Their efforts show how the application of ostensibly race-neutral laws and policies can serve to both obscure and enforce racially-discriminatory practices by the police. They do this by spotlighting the many cases involving police killings of African Americans. Beyond the Brown case, others that received national attention include Eric Garner, Tamir Rice, Samuel DuBose, Corey Jones, Bettie Jones, Laquan McDonald, Alton Sterling, and Philando Castile.

The actions of the Black Lives Matter movement have altered the traditional cycle of events that take place following an incident of po-

cumstances. See, e.g., Jamelle Bouie, *Black Lives Matter Began When New Orleans' Levees Failed*, MOTHER JONES (Aug. 28, 2015), <http://www.motherjones.com/environment/2015/08/black-lives-matter-katrina>; Katheryn Russell-Brown, *While Visions of Deviance Danced in Their Heads*, in BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA (D. Troutt, ed., 2006).

164. The website states:

#Black Lives Matter is a unique contribution that goes beyond the extrajudicial killings of Black people by police and vigilantes. It goes beyond the narrow nationalism that can be prevalent within Black communities, which merely call on Black people to love Black, live Black and buy Black, keeping straight cis Black men in the front of the movement while our sisters, queer and trans and disabled folk take up roles in the background or not at all. Black Lives Matter affirms the lives of Black queer and trans folks, disabled folks, black-undocumented folks, folks with records, women and all Black lives along the gender spectrum. It centers those that have been marginalized within Black liberation movements.

About the *Black Lives Matter Network*, *supra* note 161.

165. See, e.g., Sewell Chan, *Black Lives Matter Activists Protest Across Britain*, N.Y. TIMES (Aug. 5, 2016), http://www.nytimes.com/2016/08/06/world/europe/black-lives-matter-demonstrations-britain.html?_r=0.

166. See, e.g., ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* (2007) (giving a detailed, incisive discussion of the role of prosecutor); U.S. DEP'T OF JUSTICE, *THE FERGUSON REPORT* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. In its discussion of the relationship between police, courts and the municipality, the Report concludes:

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised in the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.

Id. at 2. See generally NICOLE GONZALEZ VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT* (2016) (uncovering, through a ten-year study, an acute systemic racialized justice process and outcomes in the Cook County court system).

lice violence.¹⁶⁷ Their calls for protest marches and rallies across the country, combined with video posts, tweets, public statements, and media interviews, have elevated the public status of Black victims of police abuse.¹⁶⁸ Black Lives Matter challenges and refutes attempts to criminalize Black crime victims. For instance, they reject focusing on a victim's background to explain (or justify) a police assault. Following these incidents, the media typically presents a portrait of the victim and assesses whether the person is a "good victim" or a "bad victim."¹⁶⁹ Black Lives Matter seeks to re-center the public's focus on the actions of the police and the government—keeping the emphasis on state action, and not on whether the person was a model victim (e.g. whether the person had a clean record or graduated from college). With this background in mind, the next part considers the evolving paradigm of Black protectionism and the impact of Black Lives Matter and social media.

A. The Shift from Standard Black Protectionism to Critical Black Protectionism

Four key factors have converged to result in a new operating model for Black protectionism. The first is the rise of the Black Lives Matter movement. This movement has been seminal to reframing Black protectionism. It uses a historically-based group narrative to situate and discuss the contemporary conditions of Blacks (and others) in U.S. society. The movement and its narrative are squarely focused on people of color who have been victims of state violence. As well, it has clear, identifiable goals, including the end of state violence against marginalized groups, particularly African Americans.

167. See, e.g., KATHERYN RUSSELL-BROWN, *UNDERGROUND CODES: RACE, CRIME AND RELATED MATTERS* (2004) (referring to this as the "Roundabout" or the "Police Brutality Dance." The six steps include (1) an incident of police violence; (2) expressions of outrage by minority community members; (3) state officials label incident as an aberration; (4) Attempts are made to portray the victims as bad or flawed; (5) community protests; and (6) no criminal charges are issued or if charges, no conviction) [hereinafter RUSSELL-BROWN, *UNDERGROUND CODES*].

168. See Devon Carbado, *Blue-on Black Violence: A Provisional Model of Some of the Causes*, 104 *GEO. L.J.* 1479, 1482 (2016). Carbado uses the term "blue-on black violence" not only to describe police assaults on Blacks, but also to place these assaults on the same level of importance as discussions of "Black-on-Black crime." In giving this practice a label, Carbado discusses it as a structural phenomenon not dismissible as the work of "rogue police officers who harbor racial animus against Black people." See also Janine Young Kim, *Racial Emotions and the Feeling of Equality*, 87 *U. COLO. L. REV.* 437, 482 (2016), for discussion of emotional meaning behind "Black Lives Matter." (noting Black Lives Matter is a "contemporary example of racial grief . . . which can be viewed as a protest not only against police violence but also emotional rules that hold that black lives are "fundamentally ungrivable.") (citation omitted).

169. RUSSELL-BROWN, *UNDERGROUND CODES*, *supra* note 167, at 60–62.

This is a goal that African Americans as a group can rally around and one that addresses all group members, not just an elite few. African Americans have expressed strong support for the Black Lives Matter movement. A 2016 survey reported that 41% of Blacks expressed strong support for the group, compared with 14% of Whites and 15% of Hispanics.¹⁷⁰

Second, at the national level there has been a renewed and revised focus on the victims of violence. This shift is most pointedly demonstrated in the responses to the allegations against Bill Cosby. Across race, the criminal claims against Cosby prompted serious consideration and reflection. As explicated in Table 2 and Table 3 above, Blacks now weigh a different set of factors to determine whether to support a fallen high-profile member of the race. In a prior era, Cosby would have been guaranteed Black protectionism.¹⁷¹ The result is that today African Americans are more willing to criticize well-known members and are less likely to offer a knee-jerk defense to an African American in trouble with the law simply because the person is African American. Given this shift, it is very likely that, were O.J. Simpson charged with double murder today, he would not receive much support from the African American community. In fact, it is likely that there would be loud voices within (and outside) the Black community that would be harshly critical of Simpson. This would be the case given the previous allegations of domestic abuse and Simpson's strained relationship with the Black community.

The third factor has been the rapid rise and broad impact of social media. In prior decades, spokespersons for the African American community were almost always Black men involved in civil rights activism. The list includes Jesse Jackson, Al Sharpton, Ben Chavis, John Lewis, Julian Bond, Malcolm X, and Martin Luther King, Jr. The rise of social media has made it easier for those who are not recognized spokespersons and those with non-mainstream views, to weigh in and be heard on race-related matters. The presence of social media may

170. Juliana M. Horowitz & Gretchen Livingston, *How Americans View the Black Lives Matter Movement*, PEW RES. CTR. (July 8, 2016), <http://www.pewresearch.org/fact-tank/2016/07/08/how-americans-view-the-black-lives-matter-movement/>.

171. Cosby was the recipient of Black protectionism when, in 1997, he faced charges that he was the father of a child born outside his marriage. The case involved Autumn Jackson, who along with her boyfriend, attempted to extort money from Cosby to keep the secret. Cosby, who was widely-revered as the epitome of an upstanding family man, admitted that he had been unfaithful to his wife. See, e.g., *Cosby and Wife Resolved His Affair Long Ago, She Says*, CHI. TRIB. (Jan. 28, 1997), http://articles.chicagotribune.com/1997-01-28/news/9701290339_1_ennis-cosby-jose-medina-camille-cosby.

partly explain the increasingly critical approach of Black protectionism. With social media, the voices and varied viewpoints of Black women¹⁷² and young activists in particular, have become more audible.

Today, Facebook, Twitter, Instagram, and other technological applications, make it possible for anyone to write and share an opinion—popular or marginal. Anyone can be a citizen journalist. This also means that anyone can be a target of scorn (or adulation) by the online masses. This new reality has an upside in terms of our ability to “hear” and confront other community voices. Thus, voices that would have been silenced or quelled prior to the rise of social media may now receive an audience comparable to the audience received by mainstream voices. In this way, social media has helped to create a more democratized space for critiquing issues of the day.

For instance, when boxer Mike Tyson was accused of rape in 1992,¹⁷³ the voices for the standard application of Black protectionism (see Table 2) were loud enough to drown out voices that were critical of Tyson. Some commentators attributed this to a historical mix of racism and sexism.¹⁷⁴ As discussed earlier, the responses Tyson received contrast greatly with the public’s response to the sexual assault allegations against Bill Cosby. Social media has allowed dissenting voices—ones that disagree with the standard applications of Black protectionism—to be heard. In particular, social media has enabled victims of crime to speak directly to the public. This has led to a notable shift in public interest in, and understanding of, victims’ experiences. In turn, the shift in focus to victims has made it harder for

172. *Invisible Man, Got the Whole World Watching* (CSPAN television broadcast June 21, 2016), <https://www.c-span.org/video/?411497-1/mychal-smith-discusses-invisible-man-got-whole-world-watching>. In the discussion and in his book, Smith acknowledges the presence and impact of Black women’s voices in social media, including Black Twitter.

173. *In Short: Boxing, Tyson Accused of Rape*, N.Y. TIMES (July 27, 1991), <http://www.nytimes.com/1991/07/27/sports/in-short-boxing-tyson-accused-of-rape.html>.

174. See, e.g., Darci Burell, *Myth, Stereotype, and the Rape of Black Women*, 4 UCLA WOMEN’S L.J. 87–88 (1993) (“Rape is a difficult and complex issue in the African American community. The history of African Americans has inescapably linked racism and sexual assault for both women and men”); Allan Johnson, *Tyson Rape Case Strikes a Nerve Among Blacks*, CHI. TRIB. (Mar. 29, 1992), http://articles.chicagotribune.com/1992-03-29/news/9201280903_1_mike-tyson-rape-trial-miss-black-america-contest-relationship-between-black-men. The piece notes “Tyson had the support of thousands around the country, even after a jury convicted him of raping Desiree Washington.” Referring to the divide between Black men and women in the Tyson rape case, sociologist, Bertice Berry notes: “A lot of what you’re hearing is sexism. We live in a sexist society. In our attempt to be three times ahead of ‘the Man,’ we learn all the things we think are acceptable and necessary to assimilate and make it in this society.” Further, Black women protecting Black men dates back to slavery, “in order to feed our children, in order to advance our race, in order to take care of our own, in order to make sure our husband is not put to death because of something we do. This is tradition.” *Id.*

African Americans to stand stoically by their man.¹⁷⁵ Commenting on the impact of social media on perceptions of crime, Tamara Green, one of the women who alleged she was sexually assaulted by Bill Cosby stated, “In 2015 we have social media. We can’t be disappeared. It’s online and can never go away.”¹⁷⁶

Another important facet of social media is the nature of its content. It is sometimes graphic. For instance, people are able to use cell phones to take and post photographs and stream videos online that would not have previously made their way into newspapers or the mainstream media.¹⁷⁷ The aftermath of the shooting death of motorist Philando Castile, which was streamed live on Facebook, is a notable example.¹⁷⁸ Social media has brought arresting images of police violence to our televisions, cellphones, and laptops. After watching videos showing Eric Garner being choked to death by a New York police officer while saying “I can’t breathe,” Laquan McDonald being shot in the back by Chicago police officers,¹⁷⁹ or Walter Scott being shot in the back by a South Carolina police officer, Bill Cosby, Ray Rice, Mike Tyson, O.J. Simpson, and others may appear to be less worthy of and less in need of Black protectionism.

Fourth, there has been little tangible benefit to practicing Black protectionism as it has been used in earlier periods. There is no clear gain for the Black community in standing behind a high-profile community member accused of wrongdoing. This is particularly true given the low threshold for traditional Black protectionism, which allowed

175. An online discussion by Black sports commentators about Black protectionism offers some interesting and nuanced insights on how it works. The Marshall Faulk Show, *Black Protectionism Part 1*, DAILYMOTION (Dec. 13, 2011), http://www.dailymotion.com/video/xmxyr8_black-protectionism-part-1_sport (referring to Black protectionism, Faulk comments that it may lead to a “sacrificing of our value system to blindly support a person or thing based on our own kindred or race.” Another comments, “sometimes it’s not conscious, it’s reflexive.”).

176. Malone, *supra* note 98.

177. The impact of social media on the Arab Spring is well documented. See, e.g., PHILIP HOWARD & MUZAMMIL HUSSAIN, *DEMOCRACY’S FOURTH WAVE?: DIGITAL MEDIA AND THE ARAB SPRING* (2013) (discussing the impact of social media on the Arab Spring). See generally KATHERYN RUSSELL-BROWN, *Body Cameras, Police Violence and Racial Credibility*, 67 FLA. L. REV. FORUM 207 (2016) (discussing the rising use of cell phone cameras to document and capture police violence).

178. Seven Starks, *Philando Castile Full Video*, YOUTUBE (JULY 7, 2016), [https://www.youtube.com/watch?v\[gDs4n2Vco](https://www.youtube.com/watch?v[gDs4n2Vco) (providing the livestream video taken by Diamond Reynolds, fiancé of Philando Castile).

179. See, e.g., Ben Austen, *Chicago After Laquan McDonald*, N.Y. TIMES (Apr. 20, 2016), <http://www.nytimes.com/2016/04/24/magazine/chicago-after-laquan-mcdonald.html>. In 2017, the Justice Department released a detailed and scathing report on the Chicago Police Department. U.S. DEP’T OF JUST., *INVESTIGATION OF CHICAGO POLICE DEPARTMENT* (2017), <https://www.justice.gov/opa/file/925846/download>.

well-known African Americans, regardless of whether they viewed themselves as Black (e.g., O.J. Simpson), to receive protectionism. However, Black protectionism in a time of Black Lives Matter requires that the community rally around those people who need the community's help and whose help will benefit the entire community. This requirement indirectly imposes a credibility check on the use of Black protectionism.

The issue of the Black community's credibility is an important factor in the reshaping of Black protectionism. The fact that Critical Black Protectionism offers a sparing and discerning use of Black protectionism may imbue it with an additional layer of credibility. In this way, it makes the application of protectionism internally consistent. That is, *within the African American community* it makes sense to protect other community members who need help and deny or refuse to lend the community's name to help members who have done little to support the community or whose actions should not be defended. Further, the Black community's assertions of harm may be easier to acknowledge (and harder to deny) given that the cases in the spotlight typically involve a violent physical assault and in numerous instances are accompanied by video evidence. In order for protectionism to be instrumental in pushing for changes in the criminal justice system, community members have to buy into the practice. The more the practice of protectionism benefits the entire community and not only select members—e.g., a single gender or celebrities only—the more community members will be willing to participate in the protectionism. The more community members participate, the louder the community's voice. By expanding the group eligible for protectionism, Critical Black Protectionism expands the community base of support who are willing to give protectionism.

The Black Lives Matter movement and the rise in social media have led to changes in how Black victims are perceived. It has sought to make Black victims more visible, to establish that they deserve empathy, and that they should receive the Black community's embrace to ensure justice. By focusing on incidents involving serious, often fatal police violence, Black Lives Matter has pushed African Americans and the public at large to question whether everyone deserves justice, or only a select few. Protecting the humanity of all members of society means that the community embrace should be available for the least of them—in particular, for those who are neither well-known nor elite. In this way, Critical Black Protectionism is a broadly embrace-

able form of social protest—a kind of civil rights action that all Blacks can engage in. This revised version of protectionism offers what Patricia Williams describes as a “political mechanism that can confront the *denial* of need.”¹⁸⁰ At its best, Critical Black Protectionism acts as both a call to action and as a national history lesson of race and criminal justice. The next Part identifies two questions that are important to consider as Black protectionism shifts to Critical Black Protectionism.

V. OUTSTANDING QUESTIONS ABOUT CRITICAL BLACK PROTECTIONISM

A look at the contemporary cases of Black protectionism makes it clear that there has been a shift in how protectionism works today. As detailed above, the new iteration of Black protectionism—Critical Black Protectionism—has many positive features. This includes broadening the group of people who get protection. It also includes, making Black protectionism a more thoughtful exercise, not a knee-jerk reaction. These changes have been motivated by new social media platforms. However, there are some remaining questions about the practice of Critical Black Protectionism. Let us consider two issues.

The first question addresses the future of Critical Black Protectionism. Specifically, what is its likely trajectory? Will protectionism ever “end?” Based on how it has worked in the past and how it has evolved most recently, it is likely that Black protectionism will persist in some form. Until the political and social circumstances improve for African Americans as a group, protectionism will be a cultural mainstay. Black protectionism is a voice of dissent and protest against the status quo. A status quo that says that Blackness is something negative, something to be feared and something to be contained. The longevity of protectionism is also tied to another question.

The second and perhaps most important question focuses on the effectiveness of protectionism. That is, now that we have identified the shift in the group eligible for protectionism, what is the *impact* of this new approach to Black protectionism? With the use of standard Black protectionism, the apparent objective was to push back on the

180. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 151–53 (1991). Williams analyzes how the discussion on “needs” versus “rights” has been racialized. *Id.*

claim that a well-known member of the Black community was engaged in wrongdoing (or that a specific Black person was being held to a higher standard than a similarly situated White person). Relatedly, Critical Black Protectionism asks for a critique of how Blacks in the criminal justice system are viewed—particularly Black victims.¹⁸¹ The focus on police violence, led by Black Lives Matter, has expanded the public understanding and concern for Black crime victims. This is an important step forward.

The next step, however, is whether this change in focus will help lead to different criminal justice system outcomes. For instance, in the dozens of cases involving police killings,¹⁸² murder charges are rare,¹⁸³ and there have been no cases in which an officer has been convicted of murder.¹⁸⁴ As well, homicide charges are rare. Even more striking is the fact that in most cases involving police shooting deaths, officers are neither charged with homicide,¹⁸⁵ nor when charged are they con-

181. Russell-Brown, *Black Protectionism*, *supra* note 9, at 58.

182. Two news outlets, the Washington Post and the Guardian, gather data on police shootings. *See generally* THE SENTENCING PROJECT, *supra* note 69 (reporting of a sentencing project to the United Nations Human Rights Committee regarding racial disparities in the criminal justice system). *See also The Counted: People Killed in the US, Recorded by The Guardian – with Your Help*, THE GUARDIAN, <https://www.theguardian.com/us-news/series/counted-us-police-killings>. In 2016, the U.S. Justice Department announced that it would begin collecting official data on police shootings and killings, beginning in 2017. As part of this effort, the Justice Department will implement a National Use of Force Data Collection program (and work with state, local and tribal law enforcement agencies). *Justice Department Outlines Plan to Enable Nationwide Collection of Use of Force Data*, U.S. DEP'T OF JUST. (Oct. 13, 2016), <https://www.justice.gov/opa/pr/justice-department-outlines-plan-enable-nationwide-collection-use-force-data>.

183. Walter Scott's case, however, was different. In this case, Scott was killed by police officer Michael Slager following a routine traffic stop for a broken tail light. The shooting, which took place in Charleston, South Carolina, was captured on video. Slager was charged with first degree murder and was also indicted on federal civil rights charges. Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer Is Charged With Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <https://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>.

184. It is rare for an officer to be convicted of a homicide offense. One of these cases involved New York police officer, Peter Liang. In 2016 he was convicted of criminally negligent homicide in the 2014 shooting death of Akai Gurley, an unarmed Black man. Liang received five years of probation for the crime. Alan Feuer, *Ex-New York Officer Gets 5 Years of Probation in Fatal Brooklyn Shooting*, N.Y. TIMES (Apr. 19, 2016), <http://www.nytimes.com/2016/04/20/nyregion/peter-liang-ex-new-york-police-officer-sentenced-akai-gurley-shooting-death-brooklyn.html>. In some of these cases, the victim's families have won civil suits, including the family of Amadou Diallo (\$3 million wrongful death), the family of Eric Garner (\$5.9 million), and the family of Walter Scott (\$6.5 million). *See generally* Cynthia Lee, *'But I Thought He Had a Gun'-Race and Police Use of Deadly Force*, 2 HASTINGS RACE & POVERTY L.J. 1 (2004), (discussing how use of deadly force by police is perceived and considered justifiable within the justice system).

185. Recent examples include the cases of Michael Brown, Tamir Rice, and Eric Garner.

victed.¹⁸⁶ Thus, one obvious and important measure of whether Critical Black Protectionism is effective is whether police are held accountable for taking Black lives. And, as important, whether there is a reduction in the number of Black lives lost to police violence. As discussed above, Black protectionism developed as a communal necessity—it was the Black community’s protective response to attacks against its most successful members. If Black community members, ones who had “made it” by society’s standards, could be taken down, then the remainder of the community was at great risk for harm, too.

Whether Critical Black Protectionism will be a catalyst for greater accountability¹⁸⁷ and criminal responsibility for police officers (e.g., prison time) remains to be seen. In this way, Critical Black Protectionism is potentially a strategy for effective change in justice outcomes. It is a statement that Black lives matter. The effect of positive changes in how justice is meted out within and across the Black community is potentially profound. A change in how the justice system treats Black victims of police violence may lead the Black community to alter its attitude and perceptions of the criminal justice system, from its views on policing and more broadly, its faith in the law.

CONCLUSION

Over the last decade, the practice of Black protectionism has changed. Today, the Black community is less likely to make it available to well-known African Americans facing legal trouble. Instead, it

186. Examples include the four New York police officers who were charged with murder in the 1999 shooting death of Amadou Diallo, a Guinean immigrant. The officers were acquitted. In 2015, Freddie Gray died after being arrested and transported to the police station by Baltimore, Maryland, officers. As a result of the video and the type of injuries sustained by Gray, six officers were charged with felonies ranging from assault to murder. One of the officers, Caesar Goodson, was charged with second-degree murder. Three others were charged with involuntary manslaughter. None of the four officers was found criminally liable for any crimes in Gray’s death. After three bench trials that resulted in acquittals for three of the officers, the prosecutor dropped the remaining three cases. *Freddie Gray Case Ends with No Convictions of Any Police Officers*, N.Y. TIMES (July 27, 2016), http://www.nytimes.com/interactive/2015/04/30/us/what-happened-freddie-gray-arrested-by-baltimore-police-department-map-timeline.html?_r=0.

187. Numerous police agencies have adopted programs to address concerns regarding implicit bias. In 2016, the U.S. Department of Justice announced that federal agents and prosecutors will participate in training to address unconscious bias. Julia Edwards, *Justice Dept. Mandates ‘Implicit Bias’ Training for Agents, Lawyers*, REUTERS (June 27, 2016), <http://www.reuters.com/article/us-usa-justice-bias-exclusive-idUSKCN0ZD251>; For an interesting argument regarding strategies to address racial bias by law enforcement (explicit and implicit), see Cynthia Lee (2016), *Race, Policing, and Lethal Force: Remediating Shooter Bias With Martial Arts Training*, 79 L. & CONT. PROB. 145 (arguing that police departments should require martial arts training for officers); see also Kathryn Russell-Brown, *Making Implicit Bias Explicit*, in *POLICING THE BLACK MAN* (Angela J. Davis, ed.) (forthcoming 2017).

is readily available for Black victims of crime,¹⁸⁸ particularly in cases involving police assaults. Black protectionism is no longer viewed as an automatic response by the Black community—a racial allegiance required by African Americans to “protect their own.” The rise in social media has enabled alternative and dissenting voices to be heard. These new voices have upended the way that Black protectionism works. Specifically, that using and focusing Black protectionism on high-profile Blacks is ineffective because it ignores the majority of Black crime victims and it does not provide the community with a return benefit.

This new protectionism that has emerged is Critical Black Protectionism. It is a departure from the Black protectionism of old. The value of this new and measured form of Black protectionism is that it hews closest to raising awareness about the failings of the criminal justice system, including racial profiling, selective prosecution, and other race-related issues (e.g., victim blaming). Prior to these recent developments, Black protectionism was stuck in an interminable feedback loop, because the Black community appeared to speak with one voice. That voice protected and defended well-known Black men accused of crime, regardless of the circumstances. However, Critical Black Protectionism requires that the community engage in a more discerning two-part assessment. This includes an assessment of the circumstances of the allegation or charge. Also, if the person is well-known, this assessment includes a look at their connection with the Black community. It also requires an assessment of how and whether a community cloak of protection will benefit African Americans as a whole. This shift in thinking about how Black protectionism is distributed indicates that there has been a near 180-degree shift in who matters for purposes of Black protectionism.

The ascendance of Black Lives Matter combined with the growth and development of social media, has prompted the changes in Black protectionism. In effect, the Black Lives Matter movement may have helped to remove—or at least call into question the prior requirement that the person receiving it was a well-known member of the Black community (*see* Table 2 above) who had been accused of a crime. The new scheme encourages Black protectionism for both alleged offenders and victims of crime. It also alters the trigger questions (*see* Table

188. For instance, both Trayvon Martin and Jordan Davis were killed by private citizens, not police officers. In both instances, the victims (and their families) received Black protectionism.

3) by adding questions that provoke a consideration of whether an exercise of protectionism will embolden the Black community. In summary, the Black Lives Matter movement has focused the community's protective gaze on Black victims of state violence and away from elite individuals. Under this revised structure, Black protectionism is available for all African Americans, not just high-status Blacks.

Overall, the practice of Black protectionism has been used to subvert the dominant narrative. It rejects the long-standing link between Blackness and criminality. It also rejects mainstream society's questioning of African American humanity. As noted throughout this Article, the Black community's use of protectionism is a community resource, one that will work best when used in ways that benefit the community. In this way, Black protectionism can be used to gauge how African Americans perceive their place in society and in particular within the criminal justice system—to determine whether the law is friend or foe. Critical Black Protectionism requires that the community benefit from its racial embrace: “We have to know the difference between Trayvon Martin and Bill Cosby.”¹⁸⁹ Indeed, the recent evolution from standard Black protectionism to Critical Black Protectionism is a hopeful sign of movement in the right direction.

189. Mark Lamont Hill, *The Bill Cosby Scandal & 'Problematic' Black Protectionism*, HUFFINGTON POST (2015), <http://www.ovguide.com/video/the-bill-cosby-scandal-problematic-black-protectionism-4750aca4fe1411e4a71f22000b09867e> (quoting Ebony editor Jamilah Lemieux about the Black community's response to the rape allegations against Bill Cosby).