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TOWARD A BLACK LESBIAN JURISPRUDENCE

THERESA RAFFAELE JEFFERSON*

I. INTRODUCTION

Black lesbians are everywhere and nowhere all at once. Throughout history we have been made invisible. This invisibility serves as a constant reminder that our culture, and indeed our very lives are considered at best illegitimate. At the same time, our identity as Black lesbians has been made hyper-visible when we have tried to remain in the wings. In these instances hyper-visibility becomes a means of punishment—a penalty for not understanding or refusing to abide by societal mandates. The experiences of Black lesbians in law and society

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1 The racial designation Black, as opposed to African American, will be used throughout this Note. The term Black is more inclusive—not all Black people in this country are American, therefore the term African American only refers to those Black people who are, or who choose to identify as, citizens, which effectively erases the experiences of a number of people of color of African descent.

Further, the word Black will be capitalized wherever I employ it since it refers to a culture and racial designation rather than merely a color. Catherine MacKinnon writes that Black refers to, “a heritage, an experience, a cultural and personal identity, the meaning of which becomes specifically stigmatic and/or glorious and/or ordinary under specific social conditions. It is... no less specifically meaningful or definitive than, any linguistic, tribal, or religious ethnicity, all of which are conventionally recognized by capitalization.” Catherine A. MacKinnon, Feminism, Marxism, Method, and the State: An Agenda for Theory, in The Signs Reader: Women, Gender & Scholarship 227, 228 (Elizabeth Abel & Emily K. Abel eds., 1983).

2 The use of pronouns in scholarship by marginalized people often raises difficult questions. Kimberlé Crenshaw, on the use of pronouns in texts authored by Black scholars, writes:

One of the conventions of dominant scholarship is the use of “they” or “them” to denote Blacks as a subject group. Implicit in such references is a silent “we” which carries the appearance of objectivity but actually presumes a dominant group perspective. This creates a dilemma for some Black scholars who must either risk self-exclusion by referring to our own cultural group as “they” or adopt a seemingly unscholarly approach to the subject by assuming a “we” identity.


When referring to Black women and Black lesbians, the pronouns “us,” “we,” and “our” as opposed to “they,” “them” or “their” will be utilized whenever applicable.

3 For the purposes of this Note, only the history and experiences of Black lesbians in the United States will be analyzed.

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illustrate this seeming invisibility/hyper-visibility paradox. Yet the tools of invisibility and hyper-visibility serve the same purpose—the legitimation of dominant cultural control. Invisibility and hyper-visibility complement each other. They act in concert, as a dual cultural strategy of distortion, suppression, and punishment. A consistent Black lesbian jurisprudence has emerged whereby Black lesbians and our rights are erased at the intersection of our race, gender, and sexual orientation.\(^4\) This Note is an attempt to explore the lives of Black lesbians, to uncover law and society’s desire for us to remain seen or unseen depending on the context, and to provide a starting point for others to conduct future research.\(^5\)

Black lesbians are in a moment of collective self-recognition.\(^6\) A number of Black lesbian organizations have formed, Black lesbian literature is written with increasing frequency, and researchers are collecting archival materials focused on the lives and experiences of Black lesbians.\(^7\) Together these factors aid in combating our invisibility,


\[^5\text{Sources on Black lesbian culture, literature and political analysis have been included wherever possible.}\]

\[^6\text{See infra notes 65–118 and accompanying text.}\]

and prompting our visibility through the process of naming our shared reality.

Various theoretical frameworks have been used to analyze the subordination of classes of people based on their sexual orientation, race, gender, and outsider status. These theories provide valuable insight into the societal and legal status of Black lesbians as well. Part II of this Note will discuss how these concepts and frameworks can be used to analyze Black lesbian jurisprudence. Part III documents the varied narratives of Black lesbians, with the goal of bringing our experiences to the forefront. Part IV will present evidence of a specific Black lesbian jurisprudence by analyzing two cases involving Black lesbians.

II. Theoretical Frameworks

Non-essentialism, Lesbian Legal Theory, Queer Theory, Marginality, Intersectionality, Critical Race Theory, and Black Feminism will be discussed in order to analyze the history and experiences of Black lesbians and the related invisibility/hyper-visibility paradigm in American jurisprudence. These concepts are analytical tools which will inform the subsequent case analysis.

A. Non-Essentialism

The concept of essentialism refers to the issues raised by false universalisms, identity splitting, the assumption of natural principles, and a form of reductionism. False universalisms refer to “overgeneralizations or unstated reference points [that] implicitly attribute to all members of a group the characteristics of individuals who are dominant in that group.” The implied attribution to all lesbians of the
traits of those who are White or middle class is an example of a false universalism. 11

Angela Harris describes the voice of essentialism as "the voice that claims to speak for all." 12 She adds, "The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: 'racism + sexism = straight black women's experience,' or 'racism + sexism + homophobia = black lesbian experience.' 13 In my analysis of the experiences of Black lesbians, I will primarily use the intersecting socially constructed categories of race, gender, and sexual orientation to draw conclusions about our lives and legal treatment. It is important to state that there is no monolithic "Black community" nor are there monolithic lesbian or Black lesbian communities. 14 The goal of this analysis is not to make a claim to one Black lesbian experience; rather the aim is to emphasize a culture developed around a shared political situation—suppression through invisibility and hyper-visibility.

Similar to the problems created by false universalisms are those related to the splitting of identities. 15 When a person's identity is split, "each [of the] possible source[s] of [their] identity [are treated] as separate and independent factors, hence 'splitting' identities and failing to account for the interrelationships between multiple parts." 16 In analyzing the lives of Black lesbians, treating some of the various sources of our identities—e.g. our race, gender, and sexual orientation—as separate and distinct factors, would effectively erase the interrelationships between these aspects. 17 Therefore, anyone researching Black lesbians would commit an essentialist error by treating these various constructs as anything other than inextricably linked. 18 Various reasons have been cited for the persistence of essentialism: it is "intellectually convenient, and to a certain extent cognitively ingrained. Essentialism also carries with it important emotional and political pay-

11 See generally id.
12 Id. at 875.
13 Id.
14 See BARTLETT, supra note 9, at 875; Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 588–89 (1990).
15 See BARTLETT, supra note 9, at 871.
16 Id.
18 See Harris, supra note 14, at 588–89.
offs. Finally, essentialism often appears . . . as the only alternative to chaos, mindless pluralism . . . , and the end of the feminist movement."19

B. Intersectionality

Intersectionality is a theoretical framework that recognizes the importance of identity politics while attempting to move beyond its limitations.20 Traditional identity-based politics focus exclusively on certain members of groups.21 For example, a recurring critique of feminist discourse is that it has concentrated mainly on the experiences of White middle-class women.22 A feminist discourse that moves beyond traditional identity-based politics recognizes the unique experiences of a variety of women including women of color,23 queer24 women, disabled women, and working-class women. Identity based politics are useful in that they bring marginalized people together, facilitate coali-

19 Id. at 589.
21 See Minow, supra note 20, at 94–36.
22 See Spelman, supra note 4, at 3, 116; Harris, supra note 14, at 588.
23 I use the terms women of color and people of color instead of minorities because people of color are not in fact a minority in terms of the world population. See Cohabbee River Collective, supra note 4, at 4; Angela Y. Davis, Keynote Address: Third National Conference on Women of Color and the Law, 43 STAN. L. REV. 1175, 1177 (1991). On the use of the term minority, Angela Davis notes: "There is a reason why this term 'minority' has been thrust upon us and it has nothing to do with our numerical presence in the U.S. population. Implications of inferiority adhere to the term 'minority'—the very language we ourselves use contradicts our efforts to move forward." Davis, supra at 1177. I also employ the more inclusive term marginalized since it refers to anyone who experiences systemic oppression in our society, including women, queers, and people of color.
24 The term queer as opposed to homosexual will be used throughout this Note since the term homosexual has an "unshakable association with the pathologising discourses of medicine." See Annamarie Jagose, Queer Theory: An Introduction 72 (1996). In addition, the term queer has been reclaimed. See id. at 104. Reclaiming words that were once used to demean, engenders pride. See id. Finally, the popular linguistic alternative to homosexual, the term gay, is assumed to refer exclusively to men. See Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 LAW & SEXUALITY: A REVIEW OF LESBIAN & GAY LEGAL ISSUES 134 n.2 (1991). Many lesbian, gay, bisexual, and transgendered people refer to themselves as queer as opposed to gay, because it is more inclusive of our entire community. "[Q]ueer," is a political category permitting both the recognition of differences and intersectionalities and expansion to a continuum of subversive people." Darren Rosenblum, Queer Intersectionality and the Failure of Recent Lesbian and Gay "Victories," 4 LAW & SEXUALITY: A REVIEW OF LESBIAN AND GAY LEGAL ISSUES 83, 87–88 (1994).
tion building, and engender pride in belonging to a certain group. However, identity politics become problematic when they fail to take into account differences between group members and instead essentialize these experiences.  

Scholars have successfully utilized intersectionality to discuss various stereotypes surrounding Black women. Here, I will use the framework of intersectionality to discuss the intersections of race, gender, and sexual orientation in the lives of Black lesbians. While the intersection of these constructs has been both a site of Black lesbian erasure and hyper-visibility, the intersection can also be a site of commonality, community and self-realization.

The history and experiences of Black lesbians cannot be understood through a discussion of the categories of race, gender, and sexual orientation as independent strands of analysis. Likewise, an incomplete account of Black lesbian culture and experiences would be derived through a mere combination of these constructs. Indeed, additive analysis has been criticized as a site of erasure. Kimberlé Crenshaw makes the following observation about intersectionality with regard to the legal treatment and analysis of Black women’s experiences:

Unable to grasp the importance of Black women’s intersectional experiences, not only courts, but feminist and civil rights thinkers as well have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks. Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experiences of either group or as too different, in which case Black

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25 See Crenshaw, Mapping the Margins, supra note 17, at 376–77.
26 For a more in depth discussion of intersectionality and stereotypes surrounding Black women, see Critical Race Feminism: A Reader (Adrien Katherine Wing ed., 1997); Critical Race Theory: The Cutting Edge (Richard Delgado ed., 1995); Critical Race Theory: The Key Writings That Formed the Movement, supra note 17.
28 See Spelman, supra note 4, at 115–32; Harris, supra note 14, at 588–89.
29 See Spelman, supra note 4, at 115–32; Harris, supra note 14, at 588–89.
30 See Spelman, supra note 4, at 115; Crenshaw, Mapping the Margins, supra note 17, at 357; Harris, supra note 14, at 586.
women’s Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.\textsuperscript{31}

Intersectionality is qualitatively different from any type of additive analysis since it recognizes that people actually exist at certain converging points on the socially constructed maps of race, gender, and sexual orientation.\textsuperscript{32} Black lesbians are a particular group of people with multi-identities in this sense.\textsuperscript{33} The Black lesbian narratives discussed in Part III illustrate the further marginalization we experience in the larger lesbian and queer, Black, and feminist communities.\textsuperscript{34}

C. Lesbian Legal Theory

A central tenet in Lesbian Legal Theory has been the role of invisibility.\textsuperscript{35} Generally, all lesbians have been rendered invisible since the notion that a woman could love another woman has been “culturally unintelligible.”\textsuperscript{36} Further, lesbians are thought not to exist since their political interests have been rendered secondary next to the groups with whom they naturally seek allegiance—gay men and heterosexual women.\textsuperscript{37}

“The development of a ‘lesbian jurisprudence’ is an effort to explore alternatives that not only remove the stigma of homosexuality, but free lesbian relationships from the need for legal tools and labels that would impose heterosexual meanings on those relationships.”\textsuperscript{38}

Similar to early feminist inquiries into “whether women, as women, stood in such a unique relation to law that jurisprudential theories then extant were inadequate to account for the specificity of women’s legal position,” lesbian legal theorists have expressed the utility of a


\textsuperscript{32} See id; Harris, supra note 14, at 588–89.

\textsuperscript{33} Indeed, everyone exists at some converging point on the socially constructed maps of race, gender, and sexual orientation. \textit{See id}. Therefore we all possess multi-identities. However, some identities have been made more culturally important than others. This has occurred to the extent that it has become the norm for some identities not to be considered identities at all. The prevailing notion is that only “different” people have an identity.

\textsuperscript{34} See infra notes 65–118 and accompanying text.

\textsuperscript{35} See Mary Eaton, \textit{At the Intersection of Gender and Sexual Orientation: Toward Lesbian Jurisprudence}, 3 S. CAL. REV. L. & WOMEN’S STUD. 183, 217 (1994).

\textsuperscript{36} \textit{Id}.

\textsuperscript{37} \textit{See id}.

\textsuperscript{38} BARTLETT, \textit{supra} note 9, at 471.
jurisprudence of and for lesbians. The term queer itself, originally used to harass and condemn, now "conveys an unequivocally subversive relationship with hegemony. Its historically negative meaning calls into question the accuracy of the categories themselves by complicating the signs of positive and negative identification."

Michel Foucault notes that when the queer body was subjected to the medical and jurisprudential gaze it was labeled perverse. But that very label also made possible a "reverse" discourse whereby queer people began to speak for themselves. Foucault explains further:

[We see homosexuals] taking such discourses literally, and thereby turning them about; we see responses arising in the form of defiance: "All right, we are what you say we are—by nature, disease, or perversion, as you like. Well, if that's what we are, let's be it, and if you want to know what we are, we can tell you ourselves better than you can." . . . It is the strategic turnabout of one and the "same" will to truth.

Perhaps the jurisprudential gaze on Black lesbians, similar to that experienced by queer people generally, will provide additional impetus

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39 Eaton, supra note 35, at 183–84.
40 Id. at 194.
41 Janet Halley notes that: "The public identity 'homosexual' at any one moment ... is vastly underinclusive of self-identified gay men and lesbians. It is therefore, an even less accurate indicator of individuals who entertain homoerotic desires or have had homosexual experiences without labeling themselves gay or lesbian." Janet E. Halley, The Politics of the Closet: Legal Articulation of Sexual Orientation Identity, in AFTER IDENTIFICATION supra note 20, at 24, 25. Likewise, "[s]imultaneous counterforces are at work to ensure that the public identity 'homosexual' is overinclusive, encompassing individuals who do not (or do not very often) feel or act on homoerotic desires and who do not denominate themselves as gay or lesbian." Id.
43 Rosenblum, supra note 24, at 87.
44 See DAVID M. HALPERIN, SAINT FOUCALT: TOWARDS A GAY HAGIOGRAPHY 57 (citing MICHEL FOUCALT, THE HISTORY OF SEXUALITY: VOLUME I: AN INTRODUCTION 101 (1978)).
45 See id. at 57–58.
46 Id. at 58–59 (citing David J. Parent, "Power and Sex" in MICHEL FOUCALT, POLITICS, PHILOSOPHY, CULTURE 114–15 (1988)). Consider the following quote in this context:
for the further development of a collective Black lesbian self-consciousness.\textsuperscript{47} This Note is an attempt to develop the emerging "reverse" discourse by Black lesbians.

\section*{E. Marginality and Outlaw Culture}

Monica Evans uses the term "outlaw" to describe how marginalized people construct themselves "in a radical and positive alternative to oppression and exclusion."\textsuperscript{48} Author and cultural critic, bell hooks, comments that marginalized people have more authority speaking about their subculture since they travel between two worlds—their own and dominant culture.\textsuperscript{49} Marginalized people derive their authority by being at the margins \textit{and} at the center.\textsuperscript{50} By using an oppositional voice, Black lesbians as marginalized people can subvert the norm and create a new set of truths about our lives and experiences.\textsuperscript{51} These truths are qualitatively different in a number of ways from those of Black heterosexual women and other lesbians.\textsuperscript{52}

\section*{F. Critical Race Theory}

Critical Race Theorists believe that race is constructed within society through "a social process of meaning attribution in which law has played a central role."\textsuperscript{53} The law constructs rigid categories and identities which perpetuate subordination.\textsuperscript{54} These categories tend to be bipolar: Black or White, homosexual or heterosexual, woman or

\begin{itemize}
\item Queer Nationals are torn between affirming a new identity—"I am queer"—and rejecting restrictive identities "I reject your categories"; between rejecting assimilation—"I don't need your approval, just get out of my face"—and wanting to be recognized by mainstream society—"we queers are gonna get in your face."
\end{itemize}


\textsuperscript{50} See id. at 341.

\textsuperscript{51} See Evans, supra note 48, at 503 (citing Lucie E. White, \textit{Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.}, 38 BUFF. L. REV. 1, 45 (1990)).

\textsuperscript{52} See infra notes 65-118 and accompanying text.

\textsuperscript{53} \textit{Critical Race Theory: the Key Writings that Formed the Movement}, supra note 17, at 354.

man. The categories are also imbued with certain meanings, creating a social hierarchy of superiors and inferiors. This belief contrasts sharply with the predominant view of the law as color-blind and neutral. The "social process of meaning attribution" also applies to the constructs of gender, class, and sexual orientation. Critical Race Theorists have been instrumental in uncovering the active role courts and legislatures play in reflecting ideas about race.

Richard Delgado describes the major themes of Critical Race Theory as follows:

1. an insistence on "naming our own reality";
2. the belief that knowledge and ideas are powerful;
3. a readiness to question basic premises of moderate/incremental civil rights law;
4. the borrowing of insights from social science on race and racism;
5. critical examination of the myths and stories powerful groups use to justify racial subordination;
6. a more contextualized treatment of doctrine;
7. criticism of liberal legalisms;
8. an interest in structural determinism—the ways in which legal tools and thought-structures can impede law reform.

**G. Black Feminism**

While Black men have been traditionally stereotyped as sexual aggressors, Black women have been predominately classified as oversexed. This phenomenon is most often attributed to the institution

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55 See Colker, supra note 54, at 9, 16.
58 Critical Race Theory: The Key Writings that Formed the Movement, supra note 17, at 354.
59 See, e.g., Critical Race Feminism: A Reader, supra note 26; Critical Race Theory: The Cutting Edge, supra note 26; Critical Race Theory: The Key Writings that Formed the Movement, supra note 17.
of slavery in the United States, whereby Black men and women were imbued with certain derogatory characteristics in order to justify their general mistreatment. The most gruesome of abuses included the mutilation and torture of both genders and the rape of Black women. The construction of Black women as oversexed has deemed them essentially unrapeable, since they always seek sexual pleasure and always want sex. Part IV will examine the somewhat different construction of Black lesbian sexuality. Before doing so it is important to first discuss some of the common themes central to the lives of Black lesbians.

III. BECOMING VISIBLE ON OUR OWN TERMS: THE NARRATIVES

Through the process of rediscovering our history as Black lesbians, we take part in the "insurrection of subjugated knowledges." History becomes a means of both discovering past events and forming ourselves into a community. It is also useful to look at the history of Black lesbian struggle and remember that our predecessors fought similar battles against invisibility and hyper-visibility that are important to our lives and struggles today. In recognizing similarities between the past and present we become that much more aware of the common tactics of oppression. Therefore, history is helpful in defining the apparatus that has rendered Black lesbians invisible or hyper-visible at any one moment. By recovering the past experiences of Black lesbians, we take part in the creation of our history and further our progress in the process of collective self-recognition. This section is not an ex-

62 See Stetson, supra note 61, at 72–74.
64 See Lawrence, supra note 61, at 1357–58.
65 This framework mirrors those created by Jerome Culp and Robert Chang. See Robert Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 CAL. L. REV. 1243, 1245 (1993); Jerome Culp, Toward a Black Legal Scholarship: Race and Original Understandings, 1991 DUKE L.J. 39, 40 (1991). Culp and Chang discuss an "African-American Moment" and "Asian-American Moment" respectively. See Chang, supra at 1245; Culp, supra at 40. Chang includes both "personal narratives of individuals" and "stories of entire communities, which texture the factual history with life and emotional depth" in his definition of a narrative account. Chang, supra, at 1286 n.216. This Note is an initial step in documenting a Black lesbian moment.
67 Tamsin Wilton comments on lesbian history generally: It enables the rewriting of individual lesbian stories against their continual erasure from the historical record. It constructs a plurality of lived lesbianism and, hence, enriches lesbian possibility when set against the narrow and demonished discursive
haustive history, rather snapshots of different historical moments are provided in an attempt to document the voices and experiences of a number of Black lesbians because

[a]s Black women, as Lesbians and feminists there is no guarantee that our lives will ever be looked at with the kind of respect given to certain people from other races, sexes, or classes. There is similarly no guarantee that we or our movement will survive long enough to become safely historical. We must document ourselves now.\textsuperscript{68}

\textbf{A. Rising Voices}

The existence of an emerging Black lesbian self-consciousness\textsuperscript{69} has prompted writing, analysis, and commentary by and about Black lesbians. J.R. Roberts, who has done extensive work researching, compiling, and updating a Black lesbian bibliography comments,

Today a Black lesbian history and culture is becoming visible. Black and Third World lesbians and gays have established numerous organizations and publications on a local and national level. Black lesbian literature and political analysis is being written, published, and criticized; more writings are in print or in progress. Black lesbian musicians are being recorded and are performing in public concerts. Lost works and lost lesbians are being newly discovered by researchers. Some of this work dates to the late nineteenth century. Already there are indications that Black lesbians have long been visible to one another and have formed among themselves informal social and support networks. This has usually been invisible to white society and to the Black community and

structureations of lesbianism deployed by and in the interests of, the heteropatriarchy. It supports and reinforces the deconstruction of lesbian identity without denying the achievements of individual women who have lived well as lesbians. It identifies the mechanisms whereby lesbian existence has been suppressed, exposing that suppression (and, with it, the entire narrative process of history) as contingent and partial. It enables lesbians to construct, self-consciously, an oppositional set of historical narratives and to establish archival strategies to resist the continued denial and obliteration of lesbian existence.

\textsc{Tamsin Wilton, Lesbian Studies: Setting An Agenda} 65 (1995).

\textsuperscript{68} \textit{Roberts, supra} note 7, at 91 (citing Barbara Smith & Beverly Smith, \textit{Conditions}, Autumn 1979).

\textsuperscript{69} See \textit{Cohambee River Collective, supra} note 4, at 4–5.
sometimes even to Black lesbians themselves. The history of Black lesbian social and political networks is in much need of research and recognition.70

Efforts such as these serve to highlight and combat both Black lesbian invisibility among ourselves, and the silencing which occurs within dominant culture and the larger Black, feminist, and queer communities.71 Catherine McKinley, co-editor of Afrekete: An Anthology of Black Lesbian Writing, reflects on some of the consequences of Black lesbian invisibility:

I was burning with a nascent and fiery sense of myself as a Black woman, able to express for the first time a resistance to the condition in which I found myself—one that previously seemed, intractable, inarticulable. I could not acknowledge my growing sexual passion for women. Blinded to aspects of myself by a weighty preoccupation with race, it would take several years before I would come out.72

Despite continuous efforts, our forced invisibility within communities of color remains pervasive. The double standard, prevalent in many Black communities, in the way Black queer men and women are treated can be attributed to a combination of classism, homophobia, and sexism. bell hooks writes,

Black male homosexuals were often known, were talked about, were seen positively, and played important roles in

70 Roberts, supra note 7, at xii.
71 Very few studies have been undertaken regarding the combined impacts of homophobia, racism, and sexism on Black lesbians. However, a 1994 study published in The American Journal of Psychiatry found that "black homosexually active individuals experience relatively high levels of depressive distress." Susan D. Cochran & Vickie M. Mays, Depressive Distress Among Homosexually Active African American Men and Women, 151 Am. J. Psychiatry 524, 528 (1994). The study also indicated that there were higher levels of depressive distress among the Black homosexually active women and men surveyed than would be expected based on their sexual orientation, gender or ethnicity alone. See id. at 527. Women subjects exhibited higher levels of depressive distress than men, and the same levels of distress as HIV-infected men. See id. at 526, 528. The authors speculated that these high levels of depressive distress may have been a "function of the interactive nature of stigmatization for being homosexual, for being a racial/ethnic minority, and, in the case of women, for being female." Id. at 528. Finally, they theorize that homosexually active Blacks might be exposed to a larger number of "negative life events" than their White homosexually active peers, but conclude that further research is necessary to clarify this issue. See id.

72 Catherine E. McKinley, Introduction to Afrekete: An Anthology of Black Lesbian Writing, supra note 7, at xi, xii.
community life, whereas lesbians were talked about solely in negative terms, and the women identified as lesbians were usually married. Often, acceptance of male homosexuality was mediated by material privilege—that is to say that homosexual men with money were part of the materially privileged ruling black group and were accorded the regard and respect given that group. They were influential people in the community. This was not the case with any women.73

Jewelle Gomez, on silencing within Black communities, comments,

[O]ne of the challenges we face in trying to raise the issue of lesbian and gay identity within the Black community is to try and get our people to understand that they can indeed oppress someone after having spent a life of being oppressed. That's a very hard transition to make, but it's one we have to make if we want our whole community to be liberated.74

B. Black Lesbian History: A Brief Overview

1. The Nineteenth Century

Research on Black lesbians in the nineteenth century is scarce and often speculative. However, scholars have uncovered some Black lesbian history from this time period. Of particular significance is the explication of an erotic friendship between two Black women during the mid-nineteenth century. Karen Hansen, explored the “selfconsciously sexual relationship” between Addie Brown and Rebecca Primus, a free-born domestic worker and school teacher respectively.75 Their relationship is documented in their correspondence before, 73 BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 121 (1989). 74 Jewelle L. Gomez & Barbara Smith, Taking the Home Out of Homophobia: Black Lesbian Health, in PIECE OF MY HEART: A LESBIAN OF COLOUR ANTHOLOGY 41 (Makeda Silvera ed., 1991). 75 Karen V. Hansen, “No Kisses Is Like Youres”: An Erotic Friendship Between Two African-American Women During the Mid-Nineteenth Century, in LESBIAN SUBJECTS: A FEMINIST STUDIES READER 178, 178, 183 (Marcia Vicinus ed. 1996). Hansen writes: The significance of Addie and Rebecca’s correspondence is thus twofold. One, it is the only collection of writing by Black women who were not related, not abolitionists, and not famous that documents an intimate relationship. Two, it differs from the white women’s correspondence [from this period] in many ways, most importantly, in that it documents an explicitly erotic—as distinct from romantic—friendship. Id. at 184. Hansen discusses, among other things, the Black community’s recognition of Addie and Rebecca’s relationship:
during, and after the Civil War. Research has also brought to light women like Mary Fields, a non-traditional type, and former slave, who dressed in men’s clothing and smoked cigars. The woman-identified relationships of Edmonia Lewis, a sculptor, and Alice Dunbar Nelson, a writer and editor, are being further explored.

2. The Early Twentieth Century

The entertainment industry of the early twentieth century offered Black lesbians a public heterosexual persona, with a steady income, while maintaining the secret of their sexuality. Ma Rainey provides a well known exception to this dynamic—she was open about her relationships with other women. In addition, bisexuality, considered chic at the time, created space for Black women performers to be open about their attraction to other women.

There is also evidence that during this time, specifically the 1920s in Harlem, Black lesbians involved in butch/femme relationships married each other in large wedding ceremonies. The couples obtained marriage licenses from the New York City Marriage Bureau, by masculinizing a first name or having a gay man apply for the license as a surrogate. In fact, the marriages were often common knowledge among heterosexuals in Harlem.

They understood Addie and Rebecca’s relationship as analogous to a heterosexual partnership, an honorable commitment based on mutual attachment. As long as this commitment did not completely usurp relationships with men, the community did accept Addie and Rebecca falling in love, prioritizing their friendship, and becoming sisters. However, the community and culture did not endorse their consideration of a life-long partnership that excluded men.

Id. at 198.

76 See id.
78 See id. at 2–3.
80 See id. at 326. In fact, in 1925 Ma Rainey was arrested for hosting a lesbian orgy at her home. See Neil Miller, Out of the Past: Gay and Lesbian History from 1869 to the Present 150 (1995).
81 See Miller, supra note 80, at 150.
83 See id.
84 See id.
3. The Harlem Renaissance, 1920–1935

Although much of Black lesbian history has not been documented, a fair amount is known about the period of time referred to as the Harlem Renaissance. After World War I, whole Black communities moved from the South to northern cities in search of better economic and social futures. Historian Eric Garber points to the Great Migration as a critical time in the history of Black lesbians and gay men. Until this time, the majority of the Black population in the United States was concentrated primarily in the Southern states.

Because a number of Black musicians, writers, and artists were concentrated in New York, Harlem became the hub of Black jazz, fine arts, and literature during this time. Despite the economic hardship, racism, and homophobia Black queer people experienced, they built a unique subculture in Harlem. A hallmark of this subculture was private parties; the most common means of socializing for Black lesbians. “Rent parties,” where admission was charged in order to pay the landlord the next day, were particularly popular.

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85 See Miller, supra note 80, at 148; Garber, supra note 79, at 319.
86 See Garber, supra note 79, at 319.
87 See id.
88 See id.
89 See id. at 320–21.
90 See id. at 321.
91 Garber, supra note 79, at 321. For many Black lesbians, initial exposure to rent parties or knowledge about the history of the parties was through the words of writer and poet Audre Lorde. See McKinley, supra note 7, at xiv. In Zami: A New Spelling of My Name, Lorde captures the essence of Black lesbian gatherings in the 1950s. Lorde’s description of a rent party provides some context for what similar gatherings in the 1920s and 1930s may have been like.

Femmes wore their hair in tightly curled pageboy bobs, or piled high on their heads in sculptured bunches of curls, or in feather cuts framing their faces. That sweetly clean fragrance of beauty-parlor that hung over all Black women’s gatherings in the fifties was present also, adding its identifiable smell of hot comb and hair pomade to the other aromas in the room.

Butches wore their hair cut shorter, in a D.A. shaped to a point in the back, or a short pageboy, or sometimes in a tightly curled poodle that predated the natural afro. But this was a rarity, and I can only remember one other Black woman at that party besides me whose hair was not straightened, and she was an acquaintance of ours from the Lower East Side named Ida.

On a table behind the built-in bar stood opened bottles of gin, bourbon, scotch, soda and other various mixers. The bar itself was covered with little delicacies of all descriptions; chips and dips and little crackers and squares of bread laced with the usual dabs of egg-salad and sardine paste. There was also a platter of delicious fried chicken wings, and a pan of potato-and-egg salad dressed with vinegar. Bowls of
Also significant during the Harlem Renaissance were “buffet flats”—private apartments that could be rented by the evening. Buffet flats originally accommodated Black migrants who could not receive service in White-owned hotels. By the 1920s buffet flats were known as a place where gambling, prostitution, and illegal alcohol consumption were commonplace. All sorts of sexual activity, including sex between those of the same gender, occurred in buffet flats.

Some Black lesbians and gay men also frequented Harlem’s speak-easies, yet they were forced to remain closeted because of the more public nature of the bars. There were other institutions that were more oriented toward Black lesbians and gay men, and therefore, served a larger clientele. Most notable was Harry Hansberry’s Clam House, which featured, Gladys Bentley, a Black lesbian singer and pianist, who performed in a white tuxedo and top hat. Thousands

olives and pickles surrounded the main dishes, with trays of red crab apples and little sweet onions on toothpicks.

But the centerpiece of the whole table was a huge platter of succulent and thinly sliced roast beef, set into an underpan of cracked ice. Upon the beige platter, each slice of rare meat had been lovingly laid out and individually folded up into a vulval pattern, with a tiny dab of mayonnaise at the crucial apex. The pink-brown folded meat around the pale yellow dot formed suggestive sculptures that made a great hit with all the women present, and Pet, at whose house the party was being given and whose idea the meat sculptures were, smilingly acknowledged the many compliments on her platter with a long-necked graceful nod of her elegant dancer’s head.

The room’s particular mix of heat-smells and music gives way in my mind to the high-cheeked, dark young woman with the silky voice and appraising eyes (something about her mouth reminded me of Ann, the nurse I’d worked with when I first left home).

Perching on the ledge of the low bench where I was sitting, Kitty absently wiped specks of lipstick from each corner of her mouth with the downward flick of her delicate forefinger.

“Audre . . . that’s a nice name. What’s it short for?”

My damp arm hairs bristled in the Ruth Brown music, and the heat. I could not stand anybody messing around with my name, not even with nicknames.

“Nothing. It’s just Audre. What’s Kitty short for?”

“Afrekete,” she said snapping her fingers in time to the rhythm of it and giving a long laugh.

Audre Lorde, *Zami: A New Spelling of My Name* 241–42 (1982). Zami is a Carriacou name for “women who work together as friends and lovers.” *Id.* at 255.

92 Garber, *supra* note 79, at 322.
93 See *id.*
94 See *id.*
95 See *Miller, supra* note 80, at 149–50; Garber, *supra* note 79, at 322–23.
96 See Garber, *supra* note 79, at 323.
97 See *id.* at 324.
98 See *id.*
also attended the Harlem balls, where there were no restrictions on what one chose to wear or who one chose as a dance partner.\textsuperscript{99} For example, it would not be uncommon to see Black women in "tuxedos and box-black suits."\textsuperscript{100} The balls were essentially public in nature—the events were pre-registered with the police, and many of the attendees were straight spectators and socialites.\textsuperscript{101} Despite the various public areas Black lesbians could meet and socialize at in Harlem, there was an absence of a community organized around their shared identity or oppression.\textsuperscript{102} "Still, Harlem of the 1920s offered those inclined toward their own sex an arena for experimentation; it gave blues and jazz singers and intellectuals a world in which their sexuality—and their art—could express itself and find recognition."\textsuperscript{103}

3. The Recent Past: A Brief Chronology

Since there is no work that chronicles Black lesbian history,\textsuperscript{104} the following chronology is included to provide some sense of important recent events. In 1974, the Cohambee River Collective began meeting.\textsuperscript{105} In 1975, the American Psychological Association reversed its long standing negative stance on lesbians and gay men.\textsuperscript{106} Black lesbian psychologist E. Kitch Childs is among those credited for the change.\textsuperscript{107} In 1976, Salsa Soul Sisters, now African Ancestral Lesbians United for Societal Change, was formed.\textsuperscript{108} In 1979, the First National Third World Lesbian and Gay Conference was held in Washington, D.C.\textsuperscript{109} In 1980, the Black lesbian group Gentle Waves formed.\textsuperscript{110} In 1988, the Black Gay and Lesbian Leadership Forum was formed.\textsuperscript{111} In 1991, Sherry Harris became the first openly Black lesbian elected to office in the

\begin{footnotes}
\item[99] See id.
\item[100] MILLER, supra note 80, at 157 (citing LANGHSTON HUGHES, THE BIG SEA (1940)).
\item[101] See Garber, supra note 79, at 325.
\item[102] See MILLER, supra note 80, at 156.
\item[103] Id.
\item[104] See Cecilie Surasky, Black Lesbian and Feminist, PROVIDENCE J. BULL., Apr. 11, 1996, at G1. Barbara Smith is currently working on a comprehensive history of Black queer people. See id.
\item[106] See id.
\item[107] See id.
\item[108] See id.
\item[109] See id.
\item[110] See Lesbian Herstory Project, supra note 105.
\item[111] See id.
United States—she was elected to the Seattle City Council.112 Audre Lorde, a well published poet, mother, and activist, died of breast cancer in 1992.113 In 1994, Deborah Batts, a Black lesbian law professor, became the first openly queer federal judge.114

4. Literature by and about Black Lesbians

Because we function with integrity, refuse to be closeted, and address lesbian and gay oppression as a political issue, our lives and work are made invisible.115

The words of participants in the Second National Black Writers’ Conference illustrate an insistence on public visibility for Black queer people. As such, Black lesbian literature plays a vital role in our emerging self-consciousness. The literature, written primarily by Black lesbians, provides a forum for discussion and self-realization. Literature has also been useful since it has been a place where Black lesbian culture has made a large presence.116 The cultural happening of Black lesbians has been predominantly a literary one.117

In 1974, Ann Allen Shockley, published Loving Her, the “first explicit and openly sympathetic Black lesbian novel by a Black woman writer.”118 Loving Her, is considered a landmark in Black lesbian literature.119

IV. CASE ANALYSIS

The legal vocabulary of invisibility and hyper-visibility demonstrates a specific Black lesbian jurisprudence. The way that the legal system has treated claims by or about Black lesbians is itself part of our experience as Black lesbians and evidence of this specific jurispru-

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112 See id.
113 See Audre Lorde, The Cancer Journals (1980); Lesbian Herstory Project, supra note 105.
116 See Roberts, supra note 7, at 29–44.
117 For an overview of Black lesbian literature see, Ann Allen Shockley, The Black Lesbian in American Literature: An Overview, CONDITIONS, Autumn 1979, at 133. See also Roberts, supra note 7, at 29.
118 Id. at 35.
119 See id.
dence. \textsuperscript{120} Jane Doe v. Daily News \textsuperscript{121} illustrates the unique invisibility and hyper-visibility of Black lesbians through our particular social and legal construction. After her attack and rape, Doe was slandered by a local newspaper columnist, and then denied vindication of her rights in court, purely by virtue of her identity as a Black lesbian. \textsuperscript{122} Debra’s case further illustrates the invisibility of Black lesbians within feminist organizing. For Debra, the sole Black lesbian among the Framingham Eight, the construction of Black lesbianism problematized the traditional defense used in the cases of battered women.

A. The Judicial System: Jane Doe v. Daily News

The New York Supreme Court case Jane Doe v. Daily News, \textsuperscript{123} illustrates the extent to which the law facilitates the disappearance and hyper-awareness of the Black lesbian body. \textsuperscript{124} On April 26, 1994, a woman was attacked and raped in Prospect Park in Brooklyn, New York. \textsuperscript{125} Two days after her attack, Mike McAlary, a well-known columnist for the Daily News, published a series of articles about the victim. \textsuperscript{126} McAlary identified the woman as a Black lesbian and accused her of staging the rape to advance the cause of the women’s and queer anti-violence movements. \textsuperscript{127} McAlary referred to the victim as a liar with

\textsuperscript{120} Kimberlé Crenshaw makes a similar point concerning Black women, our experiences, and jurisprudence generally. She writes: "the way courts interpret claims by Black women is itself part of Black women’s experience and, consequently, a cursory review of cases involving Black female plaintiffs is quite revealing." See Crenshaw, Demarginalizing the Intersection, supra note 31, at 141.

\textsuperscript{121} 660 N.Y.S.2d 604 (App. Div. 1997).


\textsuperscript{124} See Schanberg, Tangled Webs, supra note 122, at A25.

\textsuperscript{125} See Goldstein, supra note 122, at 1; Schanberg, Fighting Her Accusers, supra note 122, at A37.


Doe and rally organizers emphatically denied one of McAlary’s main charges—that Doe was scheduled to address a rally protesting anti-lesbian crime. Doe knew about the rally, which had been advertised in her neighborhood for weeks, and countered: “I discussed with the police . . . the advisability of having someone read a statement for me at the rally emphasizing the need for
an “active imagination.”127 He made sure to mention that the victim “was kind of vocal about being a lesbian.”128 McAlary claimed that he obtained his information about the woman from a leak in the New York Police Department which was under the direction of Commissioner William Bratton at the time.129 McAlary continued to make accusations as to the woman’s story even after police lab reports confirmed the presence of semen in and on her body and clothing.130 In fact, McAlary asserted the police reports were erroneous.131 He wrote that “[a]t best . . . the substance was saliva, male or female.”132 The woman, who remains anonymous, sued McAlary and the Daily News for defamation and intentional infliction of mental distress.133

The procedural history of the case is telling in regard to a specific Black lesbian jurisprudence. Originally, the defendant’s attorneys fought to release the plaintiff’s name.134 After this request was denied, the plaintiff’s claims of libel were addressed by another judge on the Manhattan Superior Court.135 Judge Ramos, who presided over the case, redacted his original decision, concerning the plaintiff’s motion to add a defendant, after public outcry.136 The original decision made reference to the plaintiff as a Black lesbian and classified her as a public figure for the purposes of the case.137 As a public figure, McAlary’s actions were subject to a less strict standard of review.138 In order for the plaintiff to succeed, she had to show that the defendants acted

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127 Schanberg, Tangled Webs, supra note 122, at A25.
128 Rotello, Second Attack, supra at A48 (omission in original).
129 See id.
130 See Schanberg, Fighting Her Accusers, supra note 122, at A37.
132 Schanberg, Fighting Her Accusers, supra note 122, at A37.
134 See Update, 212 N.Y. L.J. 1, 1 (1994).
137 See Goldstein, supra note 122, at 1.
with knowledge of falsity or reckless disregard for the truth. The court found that the plaintiff failed to meet this burden.

Two points in Doe are important to consider with respect to Black lesbian jurisprudence. First, Doe’s identity as a Black lesbian became the primary means by which the court condemned her. Although Doe tried to remove her presence by remaining anonymous, the court manipulated her identity in order to make her lesbian presence known, and a pivotal factor in the decision making process. Judge Ramos used Doe’s identity to recreate her as a public figure. Second, not only did the evidence of Doe’s rape disappear entirely from McAlary’s articles, but he was released from any liability by both his employer and the court.

1. Hyper-Visibility

Doe’s identity became a site of erasure—erasure of her person, her credibility, and her rights. Consider McAlary’s columns: he described Doe as “kind of vocal about being a lesbian,” and continued, “It’s an outrageous story, really. The woman who is black and 27 years old, describes herself as a social activist. All we really know about her is that she has an active imagination.”

Similarly, the court manipulated Doe’s identity and transformed her into a virtual icon of Black lesbianism. In this manner, Judge Ramos was able to make Doe’s person invisible, while her status as a Black lesbian remained hyper-visible. Through Doe’s invisibility as a person and hyper-visible status as a Black lesbian, she ironically became the otherwise oxymoronic—an anonymous public figure.

Both McAlary and Judge Ramos succeeded in hyper-sexualizing Doe in a manner consistent with the construction of Black women as essentially unrapeable. However, Doe’s identity as a Black lesbian

139 See id.
141 See Goldstein, supra note 122, at 1.
142 See id.
143 See id.
144 See Doe v. Daily News, 660 N.Y.S.2d at 613; Schanberg, Fighting Her Accusers, supra note 122, at A37.
145 Rotello, Second Attack, supra note 126, at A48.
146 Schanberg, Tangled Webs, supra note 122, at A25.
148 See id.
149 See Lawrence, supra note 61, at 1357–58.
problematized the otherwise pervasive stereotype of the wanton Black woman—Doe is a Black woman therefore she wanted to be raped, but she is also a lesbian and is therefore asexual. In this problematized moment the construction of Black lesbianism becomes clear. Doe’s identity as a Black lesbian becomes hyper-visible and hyper-sexualized. She becomes the quintessential Black lesbian aberration.

Hyper-sexualization becomes a means of marginalization and oppression qualitatively different from the type experienced by Black heterosexual women or White lesbians. All lesbians are constructed as deviant, and all Black women are constructed as wanton or unchaste. However, White lesbian sexuality is repressed, while Black lesbian sexuality is put on display. For White lesbians, desexualization is a means of denigration while hyper-sexualization marginalizes Black lesbians. Further, the deviant character in the construction of the Black lesbian, as a lesbian, is lacking in the construction of the Black heterosexual woman.

Ramos and McAlary’s deliberate word choice emphasizes their hyper-sexualization of Doe. Judge Ramos referenced Doe’s “desire to seek publicity about her own victimization,” commented that she “project[ed] herself into the public debate,” “went beyond the private sphere and injected [herself into] the public forum,” and “[i]n essence . . . chose to cross over from being a private to a public figure.” In addition to commenting that Doe was “kind of vocal about being a lesbian,” and calling her a liar, the evidence of the rape completely disappeared from

150 See Ruth Colker, The Example of Lesbians: A Posthumous Reply to Professor Mary Jo Frug, HARV. L. REV. 1084, 1087 (1992) (discussing the exclusion of lesbians from the category “female” and the forced invisibility of lesbian sexual activity) [hereinafter Colker, The Example of Lesbians]; Lawrence, supra note 61, at 1357–58.

151 See Colker, The Example of Lesbians, supra note 150, at 1087; Lawrence, supra note 61, at 1357–58; Stetson, supra note 61, at 74.

152 See Lawrence, supra note 61, at 1357–58; Smith, supra note 42, at 277–78.

153 See Colker, The Example of Lesbians, supra note 150, at 1087. While there are examples of the hyper-sexualization of White lesbians, for instance the “don’t ask don’t tell” line of cases, the difference between the hyper-sexualizing of White lesbians and Black lesbians may be one of degree. Further, lesbianism is the pivotal issue in the “don’t ask don’t tell” cases as opposed to the displaced issue it appears as in Black lesbian jurisprudence. Finally, it seems there are more examples of asexualizing of White lesbians than of Black lesbians. This Note serves as an initial inquiry into whether hyper-sexualization is a repressive tool reserved primarily for Black lesbians. As in other contexts involving Black lesbians and lesbians generally, this area is in need of much more attention, work, and theorizing.

154 See id.

155 See Smith, supra note 42, at 277–78.

McAlary's columns. 157 McAlary labeled police reports, which intimated that the semen found was physical evidence of the rape, erroneous. 158 McAlary also evoked images of oral sex, and left readers with no doubt as to the possible gender of the mythical other sexual actor when he wrote, "[a]t best the substance was saliva, male or female." 159

The court's characterization of Doe as a public figure represents the culmination of the forced invisibility of her personhood and the simultaneous hyper-visibility (and hyper-sexualization) of her identity as a Black lesbian. 160 Judge Ramos marshalled various pieces of evidence to justify his conclusion that Doe was a public figure. 161 He made certain aspects of Doe's identity hyper-visible and acted as if he was compelled to reach the conclusion that Doe was a public figure based on Doe's own statements and the affidavits of her counsel. 162 Judge Ramos manipulated the facts so that Doe lost control even over the presentation of herself. 163 The court's revised opinion reasoned that Doe should be treated as a public figure "by virtue of her self-admitted social activism on behalf of women's anti-violence activities." 164 Therefore, Doe was made a public figure solely on the basis of her identity as an out Black lesbian. 165 Lesbian activism became the basis for requiring a higher standard of proof. 166 Judge Ramos quoted Doe's pleadings to emphasize that she had "previously worked for a gay and lesbian organization," and continued:

Furthermore, in briefs and motion papers both counsel, particularly plaintiff's identified her repeatedly as a 26 year old, African-American, Yale educated lesbian who has engaged in some degree of social activism and has worked for a gay and lesbian organization. In essence, their characterizations have created a public persona. 167

157 See Rotello, Second Attack, supra note 126, at A48.
158 See Levitt, supra note 131, at A36; Schanberg, Tangled Webs, supra note 122, at A25. "Semen need not be present to establish rape; in fact it is not present in a majority of rape cases either because the rapist did not ejaculate or was otherwise dysfunctional. But when it is found, it is viewed as strong corroboration." Schanberg, Tangled Webs, supra note 122, at A25.
160 Schanberg, Fighting Her Accusers, supra note 122, at A37.
162 See id.
163 See id.
164 Id.
166 See id.
167 Id.
Judge Ramos could, therefore, characterize his actions as seemingly neutral, and turn to an exhaustive discussion of First Amendment doctrine in the remaining pages of the opinion. As a public figure, Doe's burden became extremely onerous, she had to prove that McAlary acted with actual malice by recklessly ignoring the truth in writing the columns. The court held that Doe failed to meet this burden. The intersection of Doe's race, gender, and sexual orientation thus became a point of erasure of her rights and a mechanism prompting the hyper-visibility of her identity as a Black lesbian.

2. Sanctioned Abuse

In reporting crimes and mistreatment, Black lesbians are sent a clear message by the legal system—remain silent or suffer the consequences. Therefore, violence directed at Black lesbians remains largely unmeasured and unaddressed. The actions of both the court and McAlary went unchecked. One New York columnist summarized the Doe decision, “If you’re a rape victim and a dyke, shut up about the dyke part. Or be prepared to be raped again.” Where the state refrains from intervention, a clear message is sent to those in need of protection.

Violence is at the root of even subtle legal action—laws are enforced on bodies. Black lesbians are acutely aware of the punishment for not obeying the established social code. Through everyday legal action, pain is inscribed on the Black lesbian body. The effects are far

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168 See id.
169 See id.
171 See Rotello, Second Attack, supra note 126, at A48.
172 The term violence is used broadly.
173 For statistics and analysis regarding violence against queer people, see generally GARY DAVID COMSTOCK, VIOLENCE AGAINST LESBIANS AND GAY MEN (1991).
174 While McAlary and the court ignored their responsibilities Doe questioned her own actions. She mentioned that:
[a]fter the rape she criticized cops for “picking up black men at random who didn’t look anything like the fairly specific description I had given them. Was I too assertive?” she asked in her statement. “Was I wrong to question the obvious racism of cops to whom all black men look like rapists?”
Rotello, Second Attack, supra note 126, at A48.
175 Id.
177 Robert Cover discussed the deep involvement of the legal system in the field of pain and death. See id.
reaching. When we see others suffer, we avoid disobeying. Legal violence becomes an effective remembrance tool. Eventually, our thought processes are no longer even conscious.

B. Debra

In Massachusetts, eight women were sent to the state prison in Framingham for killing their abusive partners. In February of 1992, the Framingham Eight, as they became known, began a campaign to recognize the battered woman's syndrome as evidence supporting self-defense in criminal trials. The battered woman's syndrome, "is considered a sub-category of post-traumatic stress disorder, and consists of a 'collection of thoughts, feelings, and actions that logically follow a frightening experience that one expects could be repeated.'"

Governor Weld refused to pardon them at the outset, and the women petitioned for the commutation of their prison sentences. Therefore, the women had to plead their cases to both the Advisory Board of Pardons and the Governor's Council. Two of the Framing-

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178 Debra will be identified by her first name only. Professor Phyllis Goldfarb, an attorney involved in the Framingham Eight clemency project, made the decision not to disclose the identities of the women. She writes:

I believe that it is for the women to choose the various settings in which they will reveal once again the details of their personal relationships with violent partners. Seven of the eight petitioners have been released to the community and are trying to reestablish their lives and identities as something beyond having once killed a batterer and having been convicted and incarcerated for doing so. I wish to respect the difficulties of this endeavor as well as the women's collective desire to let their stories serve as an educational function by leaving to them the complexities of the choices about when and where to disclose their identities in conjunction with aspects of their stories.

Phyllis Goldfarb, Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence, 64 Geo. Wash. L. Rev. 582, 621 n.231 (1996). I agree with Professor Goldfarb's reasoning and therefore will respect Debra's right to choose when and where to reveal her identity and experiences.

179 See id. at 621–22; Linda Borg, The Framingham 8 Film Documents Lives of Women Who Changed Abuse Laws, Patriot Ledger (Quincy, Mass.), May 9, 1994, at 11. Despite Debra's involvement in an abusive lesbian relationship, Borg characterized the Framingham 8 as women who "killed the men that abused them." Borg, supra, at 11.

180 See Goldfarb, supra note 178, at 587 n.19.

181 Bartlett, supra note 9, at 555 (citing Lenore E. A. Walker, Battered Women Syndrome and Self-Defense, 6 Notre Dame J.L. Ethics & Pub. Pol'y 321, 327 (1992)).

182 See Goldfarb, supra note 178, at 586–87.

183 See Borg, supra note 179, at 11. The Governor's Council held fact-finding hearings on the same issues covered at the Advisory Board hearings. See Goldfarb, supra note 178, at 587 n.19.

Those granted commutation remain a part of the criminal justice system for the remainder of their lives. See Elaine Thompson, Starting Life Over as a Free Woman—Moore Focuses on Her
ham Eight received commutations. However, the Governor’s Advi-
sory Board of Pardons refused to recommend that Debra’s sentence
be commuted. The majority of the Board stated that there was evi-
dence of battering, but concluded that Debra and her lover were
involved in a mutual battering relationship. The Board refused to
recognize Debra’s behavior as symptomatic of battered woman’s syn-
drome. In fact, they went as far as to say that Debra’s documented
injuries were “very minor.” Debra was tortured by her lover, beaten
regularly, and prohibited from leaving the house or maintaining
friendships. She was convicted of manslaughter for killing her abu-
sive partner and received a nine to fourteen year prison sentence.
Debra experienced symptoms common to battered lesbians, she com-
mented: “I was ashamed to tell anybody a woman did that to me.”

One Board member, Ruth Ann Jones, dissented from the Advisory
Board’s opinion. In her dissent, she referred to the testimony of
several expert witnesses who agreed that Debra was battered. She
commented: “In reviewing this case, it is very easy to dismiss it as a fight
between two women which ended tragically; to see it as a battle between
two equals. However, the reality is that batterers are not always men,
and not always heterosexual.”

“[Debra] said the prosecutor at her trial made her sexuality an
issue, focusing on where she slept with her lover. ‘I just felt like I was
on trial for being a lesbian,’ she said.” An alternate read suggests

and therefore must receive permission for any number of activities including leaving the state or
changing jobs. See id.

184 See Goldfarb, supra note 178, at 587.
185 See id. at 624.
20, 1994 at 30; Christine Guilfoy, Commutation Bid Rejected, Telegram & Gazette, (Worcester,
187 See ‘Framingham Eight’ OK’d for Parole, Patriot Ledger (Quincy, Mass.), Oct.
20, 1994, at 6; Guilfoy, Commutation Bid Rejected, supra note 186, at A1.
188 Guilfoy, Commutation Bid Rejected, supra note 186, at A1.
189 See Christine Guilfoy, Commutation Request Argued, Telegram & Gazette (Worcester,
190 See ‘Framingham Eight’ Inmate Wins Parole; Release is Expected Soon, Boston Globe, Oct.
20, 1994, at 30; Toni Locy, Commutation Backed for 2 Who Say They Were Battered, Boston Globe,
191 Guilfoy, Commutation Request Argued, supra note 189, at B1.
192 See Guilfoy, Commutation Bid Rejected, supra note 186, at A1.
193 See id.
194 Id.
195 Locy, supra note 190, at 1.
Debra was on trial for being a Black lesbian. If indeed the sole bias Debra faced concerned her lesbianism, her sexuality would most likely have been repressed as opposed displayed. But the court and the Board of Pardons wanted to know about Debra's sex life. Her status as a Black lesbian was made hyper-visible. The fact that she slept with women was significant enough to mention at trial. Debra's identity as a Black lesbian problematized the battered woman's syndrome defense. Her case shows how invisibility and hyper-visibility works within the context of intimate violence. Due to the intersection of her race, gender, and sexual orientation, Debra failed to fit the archetype of the battered woman.

VI. CONCLUSION

The implications of the subordination of Black lesbians are profound. Identifying the cultural tools of invisibility and hyper-visibility is an initial step in developing a strategy of resistance. This Note serves as part of the process of defining the apparatus that has made Black lesbians both invisible and hyper-visible. There is power in merely naming the dynamic.

There is also an intense power in marginality. If we are in a moment of newly emerging self-consciousness, we need to work toward improving visibility amongst ourselves and as a community on our own terms. We need to further explore what it is about the normative needs of our society that enables others to determine when we are present and when we are not, when we are invisible and when we are hyper-visible. We need to develop strategies that will afford us personal control over the uses of our identity. Finally, we need to further examine our particular social construction as Black lesbians, and continue to uncover the history and experiences of Black lesbians who came before us.

196 See id.
197 There are a number of projects that can be undertaken to increase the visibility and improve the lives of Black lesbians. J.R. Roberts offers the following list of ideas for additional Black lesbian research:

[C]reate written and oral histories of Black lesbian groups; preserve the records and papers of Black lesbian groups; create Black and Third World lesbian libraries and archives; add to the already existing lesbian, gay and women's archive collections; methodical searches of Black women's papers in Black archives and manuscript collections for relevant lesbian documents in the form of letters, diaries, and unpublished writings; create oral histories of older Black lesbians; research Black gay women's clubs and mini-societies existing in large U.S. cities; write your life
story; write and preserve individual personal papers: letters, diaries, journals, unpublished writings; document Black lesbian life with photographs and drawings; collect articles and news clippings by and about Black lesbians from the Black, gay, lesbian, and feminist press; research the lives and works of Black lesbian writers, activists, musicians; research earlier Black lesbian/gay subcultures, i.e., in Harlem and Detroit ca. 1920s–30s; collect Black lesbian poetry, both published and unpublished; keep biographical files on individual Black lesbian musicians, poets, artists, activists, writers, etc.; research the roles and contributions of Black lesbians to various social change movements: civil rights, Black power movement, lesbian and gay liberation, Black feminist movement, white women’s movement, Black Africa causes, anti-war and peace movements, Black gay liberation, Third World Lesbian and gay liberation, the 1950s–60s homophile movement, and possibly such earlier movements as the anti-lynching movement; collect and publish Black blues lyrics containing lesbian images or content; search out materials on Black lesbianism in Africa; search through Black slave narratives and records for lesbian-related information; research the lives of Black women who may have been woman-identified: Harriet Tubman, Angelina Weld Grimké, Alice Dunbar-Nelson, Mary Fields, Bessie Smith, Gladys Fergusson, Edmonia Lewis, Lorraine Hansberry; investigate, study, and write about Black lesbian and white lesbian relationships and bonding; write your experiences in poetry and fiction; trace the appearance and treatment of lesbianism in the Black press and in specific periodicals such as Jet.

Roberts, supra note 7, at 91–92.