Commentary

“Hit It and Quit It”:

Responses to Black Girls’ Victimization in School

Sonja C. Tonnesen†

INTRODUCTION ................................................................................................ 2

PART I. SEXUAL HARASSMENT AGAINST BLACK GIRLS AND YOUNG WOMEN IN SCHOOL AND THE UNFULFILLED PROMISE OF TITLE IX AND ZERO TOLERANCE POLICIES ........................................................................................................ 6

A. Sexual Harassment Against Black Girls at School .................................. 6

B. The Inadequacy of Title IX and Schools’ Efforts to End Sexual Harassment against Black Girls and Young Women in K-12 Schools ........................................................................................................ 11

PART II. IMPLICIT BIAS IN SCHOOLS’ INADEQUATE RESPONSES TO THE NEEDS OF BLACK GIRLS AND YOUNG WOMEN WHO HAVE EXPERIENCED SEXUAL HARASSMENT ......................................................... 16

A. Defeminization ....................................................................................... 21

B. Dehumanization .................................................................................... 22

PART III. HOW IMPLICIT BIAS LEADS TO THE FAILURE OF SCHOOLS TO EFFECTIVELY INTERVENE IN THE SEXUAL HARASSMENT OF AFRICAN AMERICAN GIRLS AND YOUNG WOMEN .................................................. 24

PART IV. TITLE IX MUST BE IMPROVED, TAKING INTO ACCOUNT FINDINGS OF IMPLICIT BIAS RESEARCH AND THE LIVED EXPERIENCES OF

† J.D. expected May 2013, U.C. Berkeley, School of Law; B.A. University of Pennsylvania. First, I would like to thank the editors and staff of the Berkeley Journal of Gender, Law & Justice, particularly Olga Tomchin, Erin Everett, Tamila Gresham, Martin Quiñones, Courtney Fraser, Adam Amir, Maggie Peach, and Allison Lauterbach for their attention to detail, thoughtful feedback, and fearless edits to this Note. Of course, any errors are completely my own. I would also like to thank Professor Kathryn Abrams and Professor Victoria C. Plaut, from the University of California, Berkeley, School of Law, for encouraging my work on this topic and infusing the law school classroom with critical conversations on race, gender, class, identity, subordination, and implicit bias. I would also like to express my deepest love and gratitude to my parents Verena and Tom, my sisters Gretchen and Kate, my brother Erik and brother-to-be Andrew, and to my friends, especially Ziwei Hu and Daniel Sanchez, whose endless encouragement at the latest hours of the night and earliest hours of the morning kept me writing, reading, and going. I dedicate this Note to the bright and beautiful girls I met while working in Philadelphia’s public schools, young people who continue to inspire me daily.
INTRODUCTION

The first time I walked through the doors of a public high school in West Philadelphia, I was nineteen years old. A security guard at the school’s entrance greeted me. I was on my way to help teach a class on healthy cooking and urban nutrition. A backpack filled with groceries, cooking supplies, and large kitchen knives was slung over my shoulders. The guard smiled, nodded, and motioned me to walk through the metal detectors, which beeped as I passed. Concerned, I looked over my shoulder, expecting to have my bag searched like at an airport. Instead, the security guard appeared uninterested, focusing his attention on a group of students walking through the door. As one of the young women, probably fifteen or sixteen years old, walked through the metal detectors, her belt buckle tripped the alarm. Beep-beep-beep-beep-beep. The guard asked her to remove the belt and walk through again. She placed it on the conveyor and walked through the second time without incident. The guard handed back the belt to the young woman, and she continued on her way, laughing with friends. Moments later, a young man offered to “help” the girl put her belt back on, making a sexual gesture with his hands; she told him to “shut up” and rolled her eyes. The security guard chuckled at the exchange. In the school for less than thirty seconds, I had already witnessed (1) my White privilege in action and (2) the first of what would be several sexually harassing comments and behaviors aimed at young Black female students throughout the day. The adults who overheard them took few seriously.

African American girls and young women are uniquely susceptible to gendered violence and its effects. In trying to explain Black girls’ experiences

---

1. This Note uses the terms African American and Black interchangeably. I have found that a greater number of people identify with the terms Black and White than African American and European American or Caucasian when discussing race in a personal way. However, Black is a term of art that does not only describe African Americans; it can encompass Black Caribbeans, Africans, Afro-Latinos, people of African descent, and biracial individuals. While this Note focuses on African American girls and young women, being perceived as “black” more broadly implicates the racial biases and stereotypes with which this Note contends.

2. Sexual harassment is one example of gendered violence. The term “gendered violence” is an “umbrella term for any harm that is perpetrated against a person’s will, and that results from power inequalities that are based on gender roles.” Selected Links on Gender Based Violence, HEALTH & HUM. RTS INFO, http://www.hhri.org/thematic/gender_based_violence.html (last visited Oct. 31, 2012). Other writers refer to gendered violence as “gender violence” or “gender-based violence.” See, e.g., U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. A/RES/48/104 (Dec. 20, 1993) (“For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women . . . .”); Jody Miller, Violence Against Urban African American Girls: Challenges for Feminist Advocacy, 24 J. CONTEMP. CRIM. JUST. 148, 158 n.2 (2008) (“I use the term ‘gendered violence’ . . . as
with violence, scholars have pointed to the structural aspects of African American neighborhoods, state and institutional violence aimed at Black people and families, the impact of slavery and a long history of oppression on Black women and girls, the combined effects of patriarchy and racism, and the lack of social and state services in poor, urban communities where many Black families live. This Commentary is much indebted to such research and hopes to build upon existing conversations through the lens of implicit bias.

In a nutshell, implicit bias or “implicit social cognition” is a field that “focuses on mental processes that affect social judgments but operate without conscious awareness or conscious control.” Social cognitive science has shown that race is a “highly salient and chronically accessible” category facilitating “automatic classification of individuals” into racial categories. This Note argues that the failure of school personnel, Title IX, and Zero Tolerance policies to respond effectively to sexual harassment and victimization of African American girls and young women in school is due in part to implicit biases, shorthand for violence against women and girls committed by men and boys. In fact, though, all forms of violence are gendered."


4. See, e.g., MILLER, GETTING PLAYED, supra note 2; Janet Lauritsen & Norman White, Putting Violence in Its Place: The Influence of Race, Ethnicity, Gender, and Place on the Risk for Violence, 1 CRIMINOLOGY & PUBLIC POLICY 37, 48 (2006).


8. See, e.g., id. at 1245–46 (discussing how poverty, heightened social, and family care responsibilities, as well as racially discriminatory practices in housing and employment, burden the lives of many women of color).


10. Id. at 469.
informed by racial stereotypes, myths, and attitudes that Black girls are unworthy of help and/or bring sexual harassment upon themselves by acting sexually and physically aggressive.

Such implicit biases are likely enhanced in the context of under-resourced schools in disadvantaged neighborhoods where overburdened teachers and administrators have wide discretion and little time to make decisions about infractions of school rules. Under stressful circumstances, many under-resourced schools turn to Zero Tolerance policies and the criminal justice system to solve school conflicts, including the problems of sexual harassment and gendered violence. These administrative responses often lead to the criminalization and arrest of students, which are disproportionately targeted at boys of color and, increasingly, against girls of color. In particular, criminalization, expulsion, and suspension of sexual harassers fails to meet the


12. Zero Tolerance policies have been described as “mandatory, uniform punishments that suspend and expel or push out rule-breaking students of all races at now-record rates and students of color at highly disproportionate rates.” See Susan Eaton, Beyond Zero Tolerance: Creating More Inclusive Schools by Improving Neighborhood Conditions, Attacking Racial Bias, and Reducing Inequality, in CHANGING PLACES: HOW COMMUNITIES WILL IMPROVE THE HEALTH OF BOYS OF COLOR 156, 157 (Christopher Edley, Jr. & Jorge Ruiz de Velasco eds., 2010). Such policies “mandate suspension or expulsion of students from school for a wide variety of misbehaviors including possession of alcohol or cigarettes, fighting, dress code violations, and cursing.” Michael D. Sumner et al., Thelton E. Henderson Ctr. for Soc. Justice, SCHOOL-BASED RESTORATIVE JUSTICE AS AN ALTERNATIVE TO ZERO-TOLERANCE POLICIES: LESSONS FROM WEST OAKLAND 2 (2010), available at http://www.law.berkeley.edu/files/thcsj/10-2010_School-based_Restorative_Justice_As_an_Alternative_to_Zero-Tolerance_Policies.pdf.


15. See Meda Chesney-Lind & Michele Eliason, From Invisible to Incorrigible: The demonization of marginalized women and girls, 2 CRIME MEDIA CULTURE 29, 35–36 (2006); see also MARGARET A. ZAHN ET AL., VIOLENCE BY TEENAGE GIRLS: TRENDS AND CONTEXT (2008) (exploring reasons behind the increasing proportion of girls found guilty of criminal offenses and incarcerated in juvenile detention facilities, including a discussion of Zero Tolerance policies).
stated needs of African American girls and young women who experience sexual harassment at alarmingly high rates in primary and secondary schools.

More perversely, school administrators, teachers, and people working for the criminal justice system often misidentify Black girls who physically defend themselves against their harassers as the aggressors, a phenomenon that can be linked to findings on implicit bias that Black girls and women are perceived as more masculine than girls and women of other races. Even when perpetrators of sexual harassment are correctly identified, the criminal justice system reinforces racism by perpetrating violence against youth of color, further isolating and dehumanizing them and denying African American youth authentic legal protection. While suspensions, expulsions, and arrests may quickly remove a perpetrator of sexual harassment from school property, they ultimately deny young Black women and girls the ability to influence school responses and reinforce racist stereotypes of young Black men and boys as criminals.

African American girls and young women deserve better—from their peers, schools, the law, and society. Their experiences deserve a space in political and legal discourse. To date, this group has been under-researched and under-theorized. When scholars do write about Black girls and young women, their schools, and their neighborhoods, they tend to focus on “problem behaviors such as gang participation, drug sales, and violence,” rather than exploring the harms and victimizations they suffer. This Note takes the position that African American girls’ and young women’s experiences with sexual harassment and gendered violence at school can reveal broader lessons for racial, gender, youth, and social justice. Using an intersectional approach that places Black girls at the center of inquiry, this Commentary aims to encourage people of diverse

16. See Miller, Getting Played, supra note 2, at 106–07 (“Once [sexual harassment] conflicts reached this stage [of elevated fighting], young women often got into trouble themselves for doing what they believed was necessary to defend themselves.”). Similar findings appear in the context of battered women who physically defend themselves against abusers. See Leigh Goodmark, When Is a Battered Woman Not a Battered Woman? When She Fights Back, 20 YALE J.L. & FEMINISM 75 (2008).

17. See Chesney-Lind & Eliason, supra note 15, at 29, 42 (“Backlash against women’s progress has taken many forms, but in the criminal justice field, one theme stands out: vilifying any signs of ‘masculinity’ or perhaps more accurately, absence of traditional heterosexual femininity, in women.”).


19. Miller, Getting Played, supra note 2, at 11 (discussing criminologists specifically).

20. Kimberlé Crenshaw’s call for intersectional scholarship can be understood as an acknowledgement that Black women’s experiences of subordination are qualitatively different from Black men’s and White women’s experiences and a belief that centering Black women’s experiences exposes the “multidimensionality” of subordination, which may reveal lessons that extend to other marginalized groups. Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. LEGAL F. 139, 139–40 (1989) [hereinafter Crenshaw, Demarginalizing].
backgrounds to question where, why, and against whom sexual harassment occurs and how we as a society and in our local communities can better meet the specific needs of those affected by gendered violence.

Part I of this Commentary presents research showing that African American girls are uniquely susceptible to school-based sexual harassment, gendered violence, and their effects. It goes on to describe the failure of traditional school discipline policies, criminal justice system interventions, and Title IX to address this problem. Part II argues that the findings of implicit bias research inform one of the root causes of these failures. This Part offers a historical overview of stereotypes and media representations of Black women and girls to explain how implicit bias is produced and sustained. Part III analyzes how implicit bias manifests in school administrators’ application of existing interventions and legal frameworks to respond to sexual harassment against African American girls and young women. Finally, Part IV argues that improving the outcomes for Black girls who experience sexual harassment at school will require reform of Title IX and existing school interventions to acknowledge the reality of implicit bias and girls’ lived experiences.

PART I. SEXUAL HARASSMENT AGAINST BLACK GIRLS AND YOUNG WOMEN IN SCHOOL AND THE UNFULFILLED PROMISE OF TITLE IX AND ZERO TOLERANCE POLICIES

We be up in the hallway, we be like, we see a good looking girl walk past, we be like “Damn!” Be like, “Man, I’m goin over there.” So we like go over there, I’m gonna hit it and quit it. Hit it and quit it, that’s all we be doing for real. I be like, “I dare you to touch her butt.” Like, “Man you go, you go touch her butt.”

African American girls and young women are sexually harassed at school at some of the highest rates and frequently report disproportionately negative effects of such victimization. Traditional school discipline policies, criminal justice system interventions, and Title IX have failed to address this crisis. This section provides an overview of the sexual harassment of Black girls in schools and the inadequacy of Title IX, a law designed to prevent such harassment, in remedying this crisis.

A. Sexual Harassment Against Black Girls at School

Sexual harassment in schools has a disparate impact on Black girls and young women. Their harassment is often more public, more violent, and inflicts longer-term damage than that of their non-black peers. For a variety of possible reasons, Black girls also respond more directly and physically to being sexually harassed. Instead of acknowledging these responses as coping and defense...
mechanisms, school staff and administrators often misperceive Black girls and young women as aggressors and punish them inappropriately.

When I was teaching in Philadelphia, one of my students, Tyisha, told me of the harassment she underwent from peers at school for having a curvy body—she was taunted on a daily basis and called a “slut.” While school was becoming increasingly difficult from this sexual harassment, Tyisha was also facing violence at home from her physically abusive father. Tyisha’s teachers called Child Protective Services under the guise of support and as mandatory reporters, but they also blamed her, saying to her face that she brought on the conflict herself by running away from home so often and acting out with boys. In one particularly horrific incident, a younger boy touched Tyisha’s genitals against her will on the school bus. When she reported the incident, police officers stationed at the school questioned the boy who said that she had assaulted him. In response, the police put Tyisha under arrest for being eighteen years old and sexually assaulting an under-age boy. Although they eventually released her without charges, this event so traumatized Tyisha that she took classes over the summer in order to graduate from high school early. Tyisha’s story is one of thousands in which African American girls are sexually harassed and then uniquely disadvantaged by the prevalence of the criminal justice system in their lives.

In 1993, the American Association of University Women (AAUW) Education Fund commissioned the first-ever survey on school-based sexual harassment with a nationally representative sample of 1,632 public school adolescents. The study found a shockingly high prevalence of sexual harassment in American schools, which lead to an emerging niche of scholars

22. The student’s name has been changed to guard privacy. I share this story with permission from Tyisha, who is now an adult.

23. Professor Nan Stein and her colleagues at Wellesley College Center for Research on Women first surveyed young people on the issue of sexual harassment in 1992, but the respondents came from a non-scientific, random sample of 2,000 surveys received from females between the ages of nine to nineteen. Nan Stein, Sexual Harassment in School: The Public Performance of Gendered Violence 65 HARV. EDU. REV. 145, 151 (1995) [hereinafter Stein, Public Performance]. The participants’ stories and statistics were then published in September 30, 1992 in Seventeen magazine. Id. While this study sampled a much younger population that AAUW’s studies on sexual harassment and the focus was only on females, Stein found very similar percentages of sexual harassment instances based on comparable demographic information. Id. at 152.

24. In the AAUW study, sexual harassment was defined as “unwanted and unwelcome sexual behavior that interferes with your life. Sexual harassment is not behaviors that you like or want (for example kissing, touching, or flirting).” AM. ASS’N OF UNIV. WOMEN EDUC. FUND, HOSTILE HALLWAYS: BULLYING, TEASING, AND SEXUAL HARASSMENT IN SCHOOL 2 (Jodi Lipson ed., 2001) [hereinafter AAUW, HOSTILE HALLWAYS].

25. Id. at viii.

26. Id. at 2; see, e.g., Campbell Leaper & Christia Spears Brown, Perceived Experiences With Sexism Among Adolescent Girls, 79 CHILD DEV. 685, 691–92 (2008) (finding that 90 percent of girls reported being sexually harassed at least once, and a majority of the girls surveyed reported at least four of the six forms of sexual harassment described in the study).
interested in the problem in the 1990s. Nevertheless, the topic of sexual harassment against women in the workforce continued to overshadow research and publicity on sexual harassment against children and adolescents in school and the responsibility of schools to intervene under Title IX of the Education Amendments of 1972 (“Title IX”).

More recently in 2001, the AAUW again commissioned a study of sexual harassment in schools and compared their new findings to those from 1993. In the opinion of the AAUW, the study’s most important finding was that, of the 2,064 eighth to eleventh grade participants, girls remained much more likely than boys to experience sexual harassment—proof that sexual harassment in school is a form of gendered violence that disproportionately affects girls and young women. The AAUW framed this conclusion in a way that suggested gender is not only a—but the—determining factor in who experiences sexual

27. See, e.g., Stein, Public Performance, supra note 23; Monica Sherer, No Longer Just Child’s Play: School Liability under Title IX for Peer Sexual Harassment, 141 U. PENN. L. REV. 2119 (1993); Kelly Corbett et al., Sexual Harassment in High School, 25 YOUTH & SOC. 93 (1993); Valerie Lee et al., The Culture of Sexual Harassment in Secondary Schools, 33 AMER. EDUC. RES. J. 383 (1996); Susan Fineran & Larry Bennett, Gender and Power Issues of Peer Sexual Harassment Among Teenagers, 14 J. INTERPERSONAL VIOLENCE 626 (1999); Jeanne Z. Hand & Laura Sanchez, Badgering or Bantering?: Gender Differences in Experience of, and Reactions to, Sexual Harassment among U.S. High School Students, 14 GENDER & SOC’Y 718 (2000); Sarah K. Murnen & Linda Smolak, The Experience of Sexual Harassment Among Grade-School Students: Early Socialization of Female Subordination?, 43 SEX ROLES 1 (2000); Anthony Pellegrini, Bullying, Victimization, and Sexual Harassment During the Transition to Middle School, 37 EDUC. PSYCH. 151 (2002).

28. See, e.g., William O’Donohue et al., Sexual Harassment: A review of the Literature, 3 AGGRESSION & VIOLENT BEHAV. 111 (discussing the several theoretical models that existed for sexual harassment, including the organizational model but failing to discuss theories of sexual harassment among youth in schools). In part, the topic of workplace sexual harassment may have overshadowed the crisis in schools due to the highly publicized sexual harassment allegations in 1991 of lawyer and law professor Anita Hill against then-U.S. Supreme Court nominee and (now, twelve-year veteran of the Supreme Court) Clarence Thomas from when he was her supervisor at the Equal Employment Opportunity Commission (EEOC). See Marilyn Yarbrough & Crystal Bennett, Cassandra and the “Sistahs”: The Peculiar Treatment of African American Women in the Myth of Women as Liars, 3 J. GENDER, RACE & JUST. 625, 641–47 (2000); Times Topics: Anita Hill, N.Y. TIMES, http://topics.nytimes.com/topics/reference/timestopics/people/h/anita_hill/index.html (last visited Nov. 5, 2012). Hill was called to testify in front of the Senate Judiciary Committee, where several prominent senators attacked her credibility. Id. Justice Thomas denied Hill’s allegations of sexual harassment and famously called the hearings “a high-tech lynching for uppity blacks.” See Excerpts from Anita Hill’s 1991 Hearing (CSPAN 1991), available at http://www.washingtonpost.com/wp-dyn/content/video/2010/10/20/V12010102003221.html.

29. See AAUW, HOSTILE HALLWAYS, supra note 24, at viii. The study surveyed the participants’ demographics, experiences with specific types of sexually harassing acts, own commission of those acts against others, perpetrators and their status within the school (e.g. teacher or peer), as well as the behavioral and academic impacts of sexual harassment on students. Id.

30. Id.

31. Id. at 4. It should be noted that while girls reported being the victim of sexual harassment more often than boys in the 2001 AAUW study, boys also reported statistically significant higher levels of victimization than they had in 1993. Id.
HIT IT AND QUIT IT

In fact, Nan Stein summarized the AAUW study, stating that “[t]his rigorous survey firmly established that there was a universal culture of sexual harassment with no significant racial differences flourishing in America’s secondary schools.”

While the AAUW’s 2001 survey shared critical findings about sexual harassment in schools and the overwhelming effects on girls, a more nuanced read of those results emerged when data were broken down by both gender and race. In contrast to Nan Stein’s reading of the survey, an intersectional analysis of the findings teases out the grim reality that many Black girls and young women face in schools today. For example, Black girls were more likely than Latina or White girls to be sexually harassed in a physical manner—i.e. touched, grabbed, or pinched in a sexual way; to have someone pull at their clothing in a sexual way; and to be forced to kiss someone. Participants reported that physical harassment is twice as upsetting as nonphysical sexual harassment, suggesting that the physical nature of sexual harassment against Black girls has disproportionately negative psychological effects.

Black girls and young women also reported being sexually harassed in the most public and visible spaces. The majority of sexual harassment occurred in the hall and the classroom, and Black girls in particular were more likely than their peers to be harassed on public transportation to and from school and in the cafeteria. Black girls and young women reported feeling self-conscious, embarrassed, afraid, and less confident as a result of being sexually harassed. In addition, Black girls were more likely than White girls to say they would

32. Dominance feminist authors have made similar arguments about gendered violence more broadly: patriarchy is the leading and superseding force behind such violence rather than racial and other forms of inequality, though it does take on different forms related to women’s class positions. See Catharine MacKinnon, Feminism, Marxism, Method, and the State: An Agenda for Theory, 7 Signs 515 (1982); Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 Signs 635 (1983). For a critique of Catharine MacKinnon’s dominance feminism framework, see Angela P. Harris, Race and Essentialism in Feminist Theory, 42 Stan. L. Rev. 581 (1990).


34. AAUW, HOSTILE HALLWAYS, supra note 24, at 24–25; see also MILLER, GETTING PLAYED, supra note 2, at 71 (finding that Black girls reported a disproportionately high experience of being physically invaded or violated in a sexual manner while at school).

35. AAUW, HOSTILE HALLWAYS, supra note 24, at 32.

36. Id. at 27; see also Stein, Bullying, supra note 13, at 788 (discussing the public nature of girls’ sexual victimization in school).

37. AAUW, HOSTILE HALLWAYS, supra note 24, at 29; see also MILLER, GETTING PLAYED, supra note 2, at 69, citing a recent National Crime Victimization Survey that revealed: “Over one-half of youths’ experiences with victimization occur at or on the way to and from school. This includes one-half of all violent victimizations. Moreover, as with other school indicators, school violence is geographically patterned: ‘Schools in urban, poor, disorganized communities experience much more violence and other forms of disorder than do schools in rural or suburban, affluent, organized communities.’”

38. AAUW, HOSTILE HALLWAYS, supra note 24, at 32.
complain to a school employee about another student sexually harassing them.\textsuperscript{39}

Recently, in an ongoing study of the sexual victimization of African American girls, 60 percent of the respondents reported having been sexually assaulted by the age of eighteen.\textsuperscript{40} When understood together, Black girls and young women experience some of the highest levels of sexual harassment at school and have a heightened risk of gendered violence in their communities. The traumatic effects of such visible and targeted violence produce a daunting reality about the racialized aspects of gender-based violence and sexual harassment in schools. Additionally, the lack of institutional support and severity of violence place unique pressure on Black girls and young women to address sexual harassment without adequate help.

For these reasons and more, Black girls tend to cope differently with victimization experienced at school. In the AAUW’s 2001 study, Black girls were the most likely to change their group of friends and perversely, the most likely to get in trouble with authorities as a result of being sexually harassed.\textsuperscript{41} Dr. Jody Miller, Professor at the Rutgers University School of Criminal Justice, also found in her case study of African American girls in St. Louis that experiencing sexual harassment at school had “tangible negative outcomes . . . including harmful effects on school performance, the curtailment of social networks, peer rejection, and negative emotional outcomes.”\textsuperscript{42}

Often misperceiving Black girls’ and young women’s self-defense as aggression, school officials frequently punish victimized Black girls and young women.\textsuperscript{43} Implicit biases that Black girls are more aggressive and thus less deserving of sympathy than girls of other races compound this problem.\textsuperscript{44} Furthermore, research has shown that African American girls are most likely to confront sexual harassment, whereas White girls are more likely to use “internal or indirect responses.”\textsuperscript{45}

Decision makers, policy makers, families, communities, media, scholars, and all of society must acknowledge that violence against Black girls in school is a crisis. African American girls experience sexual harassment and gendered

\begin{thebibliography}{99}
\bibitem{39} Id. at 14–15.
\bibitem{41} AAUW, \textit{HOSTILE HALLWAYS}, supra note 24, at 38.
\bibitem{42} MILLER, \textit{GETTING PLAYED}, supra note 2, at 70. Beyond the context of school-based sexual harassment, other studies have supported the finding that Black women and girls experience some of the most severe and long-term consequences as a result of the many forms of gendered violence they face compared to women and girls of other races. For example, in a 1988 study, Black women who were incest survivors reported “more severe victimization, greater trauma and long-term effects, and more adverse life experiences due to their [childhood] abuse than White women.” See Carolyn M. West, \textit{Mammy, Sapphire, and Jezebel: Historical Images of Black Women and Their Implications for Psychotherapy}, 32 PSYCHOTHERAPY 458, 462 (1995).
\bibitem{43} See MILLER, \textit{GETTING PLAYED}, supra note 2, at 99.
\bibitem{44} See Goodmark, supra note 16, at 99–101.
\bibitem{45} See MILLER, \textit{GETTING PLAYED}, supra note 2, at 111.
\end{thebibliography}
violence at some of the highest rates; a risk that may be heightened by real or perceived LGBTQ status,\textsuperscript{46} disability,\textsuperscript{47} pregnancy,\textsuperscript{48} poverty, lack of school resources, and over-policing in Black communities.\textsuperscript{49} The next Section analyzes the current approaches for solving the crisis of school-based sexual harassment and why they are failing Black girls and young women.

**B. The Inadequacy of Title IX and Schools’ Efforts to End Sexual Harassment against Black Girls and Young Women in K-12 Schools**

Current statutory and case law not only holds schools accountable for the sexual harassment occurring in their halls but also legally requires schools to respond.\textsuperscript{50} Nevertheless, Black girls and young women often are unable to access legal remedies or are ignored or misunderstood by school administrators. In addition, traditional school disciplinary remedies such as Zero Tolerance policies tend to punish Black girls and young women, rather than addressing root causes and holding accountable the people who perpetrate violence against them.

Efforts to end sexual harassment within K-12 schools\textsuperscript{51} first began in the 1970s and paralleled the broader civil rights and feminist movements of the time.\textsuperscript{52} Under the federal civil rights law Title IX of the Education Amendments of 1972, sexual harassment in schools became a form of illegal sex discrimination.\textsuperscript{53} The Office for Civil Rights of the Department of Education,

\textsuperscript{46} See James E. Gruber & Susan Fineran, *Comparing the Impact of Bullying and Sexual Harassment Victimization on the Mental and Physical Health of Adolescents*, 59 SEX ROLES 1, 7–8 (2008).


\textsuperscript{49} See generally MOGUL ET AL., supra note 5 (discussing the intersectional ways queer people experience violence within the “criminal legal system”); LETTIE L. LOCKHART & FRAN S. DANIS, *DOMESTIC VIOLENCE: INTERSECTIONALITY AND CULTURALLY COMPETENT PRACTICE* (2010) (discussing how different social locations and sexual, cultural, ethnic, and physical identities intersect with women’s experiences with interpersonal violence).

\textsuperscript{50} See Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 285 (1998) (interpreting the school’s responsibility to respond to sexual harassment by a teacher against a student once a school district administrator has received actual notice); see also OFFICE FOR CIVIL RIGHTS, U.S. DEP’T EDUC., TITLE IX: REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 9 (2001), available at http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf [hereinafter OFFICE FOR CIVIL RIGHTS, TITLE IX].

\textsuperscript{51} Early activism to end sexual harassment in schools paralleled activism against sexual harassment in the workplace.


\textsuperscript{53} See OFFICE FOR CIVIL RIGHTS, DEP’T OF EDUC., *SEXUAL HARASSMENT: IT’S NOT ACADEMIC* (2008), available at http://www2.ed.gov/about/offices/list/ocr/docs/shrpm.pdf [hereinafter OFFICE FOR CIVIL RIGHTS, SEXUAL HARASSMENT]; see also 20 U.S.C. § 1681 (“Title IX”) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity
which has official capacity to interpret and promulgate regulations giving effect to Title IX, defines sexual harassment as “unwelcome” conduct “that is sexual in nature” and which “denies or limits a student’s ability to participate in or benefit from a school’s education program.”

Title IX did not go into immediate effect upon passage in 1972. Rather, the Department of Health, Education, and Welfare took three years to issue regulations and compliance procedures under the new law. The following regulations, among others, remain in effect today and require compliance by all schools that receive federal educational funding: designate a Title IX coordinator whose contact information is made readily available to all students and staff; create, publish, and make known to all students and staff the existence of a non-discrimination policy and a grievances policy for sex discrimination, including sexual harassment claims; and perform a self-evaluation of your school’s non-discrimination and grievance policies, and make appropriate adjustments.

Title IX holds school districts liable for sexual harassment that amounts to (1) quid pro quo in which an authority figure at the school “conditions an educational decision or benefit” on a student performing sexual acts or (2) a hostile school environment in which a student cannot take advantage of the full opportunities of the educational program because of sex discrimination or sexual receiving Federal financial assistance.

54. OFFICE FOR CIVIL RIGHTS, SEXUAL HARASSMENT, supra note 53; see 20 U.S.C. § 1681 (“Title IX”); 34 C.F.R. § 106.31 (creating a regulatory scheme to give effect to Title IX); see also Stein, Public Performance, supra note 23, at 148, 159. From its inception onward, Title IX has been better known and more highly litigated for requiring gender equity in scholastic sports. See Tamar Lewin, Students Use Law on Discrimination in Sex Abuse Suits, N.Y. TIMES, June 26, 1995, at A1; cf. Katie Thomas, Long Fight for Sports Equity, Even With a Law, N.Y. TIMES, July 28, 2011, at A1 (emphasizing enforcement of Title IX in the context of gender parity in athletics but never mentioning sexual harassment). In a New York Times online search for the terms “Title IX, sexual harassment,” 209 article results appeared. For an online search with the terms, “Title IX, sports,” the site produced 4,360 results.

55. Although President Nixon signed Title IX into law on June 23, 1972, its legal predecessor came in the year 1965 under Executive Order 11246, which “prohibited federal contractors from discriminating ‘on the basis of race, color, religion, or national origin.’” See VALENTIN, supra note 52, at 1. President Johnson later amended that order to include discrimination on the basis of sex. Id. at 2. In 1970, several legislators picked up the order again as a proposed amendment to Title VI of the Civil Rights Act of 1964, which prohibited discrimination against certain protected classes (but not sex) in any program receiving federal financial assistance. Id. However, several prominent African American leaders, all of whom were men, felt that adding sex discrimination to Title VI coverage would weaken its overall protection for people of color. Id. Finally, Representative Edith Green suggested that protection against sex discrimination in education go under a new bill, called Title IX. Id. This new Title IX bill also amended the Equal Pay Act, extending protection against sex discrimination to administrators, professionals, and executives. Id. at 2–3. Notably, Title VII, which protects against discrimination in the employment context, was amended earlier the same year as Title IX’s passage, extending protection against sex and other forms of discrimination to cover “all employees in educational institutions.” Id.

56. See id. at 2.
57. See id. at 2–3.
58. OFFICE FOR CIVIL RIGHTS, TITLE IX, supra note 50, at 5.
harassment. The hostile environment might be shown by one egregious act of sexual harassment or a series of sexually harassing acts that amount to a school environment that is “hostile, intimidating, or offensive and unreasonably interfering with” the victim’s schoolwork. Compliance with Title IX is weak. While the Office for Civil Rights could take away a school’s federal funding for a violation of Title IX and its accompanying regulations, it has never done so. Furthermore, most young people report never receiving hard copy information about their school’s Title IX and sexual harassment grievance policies, even though many students say they believe these policies exist.

Since the passage of Title IX in 1972, the Supreme Court has interpreted schools’ responsibilities and liabilities under Title IX on several occasions. In 1992, the Court decided the first major case, Franklin v. Gwinnet County Public Schools. In Franklin, a female high school student brought a Title IX action seeking damages against her coach/teacher for sexual abuse, sexual harassment, and gender-based harassment. The Court held that a damages remedy is available for violation of Title IX. After Franklin, lawyers became more willing to represent plaintiffs in Title IX suits, and schools across the country received a wake-up call for the legal ramifications of noncompliance with Title IX. However, the ruling left unclear when exactly a school’s action or inaction would make them liable for sexual harassment under Title IX. In 1993, the Supreme Court in Doe v. Petaluma issued another warning to schools: they may be liable for student-to-student sexual harassment that amounts to a hostile school environment.

In June 1998, the Supreme Court issued its first Title IX decision that boosted protection for schools in sexual harassment claims in Gebser v. Lago Vista Independent School District. In this controversial 5–4 decision, the Court held that a school district was not liable for damages where it did not have actual notice of the sexual harassment by a teacher against the student and it did not

59. Id. at 5–6.
60. Id. at 6.
61. MILLER, GETTING PLAYED, supra note 2, at 112.
62. See Thomas, supra note 54.
63. AAUW, HOSTILE HALLWAYS, supra note 24, at 4.
64. See Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60 (1992). Notably, the year prior, Professor Anita Hill shared testimony with the Senate Judiciary Committee on the sexual harassment she suffered working for Justice Clarence Thomas while he was her supervisor at the EEOC. Hill’s testimony paved the way for other women to file complaints of sexual harassment in the workplace and the EEOC saw a 50 percent increase the year following her testimony. See Sexual Harassment 20 Years Later, N.Y. TIMES, Oct. 21, 2011, available at http://www.nytimes.com/2011/10/22/opinion/sexual-harassment-20-years-later.html?_r=0.
65. Franklin, 503 U.S. at 63.
66. Id. at 76.
67. See VALENTIN, supra note 52, at 5.
show deliberate indifference. In that case, the Court found that the school
district lacked actual notice of the teacher engaging in a sexual relationship with
the female student. The Court arrived at this outcome despite finding that the
principal of the girl’s school had received information that the teacher made
“inappropriate comments” to the female student. Furthermore, while the Court
found the school district had failed to comply with Title IX by lacking a sexual
discrimination grievance or formal nondiscrimination policy, it nevertheless
concluded that absence of such a policy did not establish the school’s liability for
sexual harassment without a further showing of actual notice and deliberate
indifference. The Court did note that the federal Office for Civil Rights
charged with enforcing and promulgating regulations under Title IX maintained
authority to issue compliance requirements to schools that were consistent with
the Gerber opinion and further said schools were required to take corrective
action of sexual harassment claims once they received actual notice.

Title IX’s major problem is weak compliance and enforcement. First,
schools become even less likely to invoke Title IX in cases of suspected or
known sexual harassment where there is a strong criminal justice presence and
heavy dependence on Zero Tolerance discipline policies. As already explored,
this is precisely the context in which many under-resourced, majority African
American schools function. For example, reports indicate that schools have
failed dramatically in their legal responsibility under Title IX to investigate
sexual harassment claims independently of the criminal justice system and to
provide remedies with a lower burden of proof than criminal law. Secondly,
concern exists that the most financially struggling schools are more likely to

71. Id. at 292–93.
72. See id. at 277.
73. Id. at 291.
74. Id. at 291–92.
75. Id. at 279.
76. Id. at 290. It is also interesting to note that these Supreme Court decisions came down at the
same time that researchers were undertaking massive surveys to measure the levels of sexual
harassment in American schools, attempting to better understand the problem, the
perpetrators, and the victims. Those surveys included a 1992 survey developed by the
Wellesley College Center for Research on Women and cosponsored by the National
Organization for Women’s Legal Defense and Education Fund, which compiled results from
a nonscientific, random sample of girls ages eight to nineteen that appeared in Seventeen
Magazine. See Stein, Public Performance, supra note 23, at 151; AAUW, HOSTILE
HALLWAYS, supra note 24.
77. See OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER: SEXUAL
(“a criminal investigation into allegations of sexual violence does not relieve the school of its
duty under Title IX to resolve complaints promptly and equitably”) [hereinafter OFFICE FOR
CIVIL RIGHTS, DEAR COLLEAGUE]; see also Stein, Bullying, supra note 13, at 783–84
(telling the story of a school assistant principal who subjected students to sexual harassment
in the name of a Zero Tolerance policy that aimed to prevent girls from flashing boys at a
school dance).
78. See also OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE, supra note 77, at 2 (“A school’s
grievance procedures must use the preponderance of the evidence standard to resolve
complaints of sex discrimination.”).
assign Title IX compliance duties to an already overburdened staff person due to lack of resources. These problems with Title IX suggest a possible disparate impact on African American girls and young women who are most likely to attend heavily policed schools with heightened enforcement of Zero Tolerance rules against Black students.

Instead of relying upon Title IX, schools often resort to their own internal forms of discipline, such as Zero Tolerance policies. Zero Tolerance policies have been described as “mandatory, uniform punishments that suspend and expel or push out rule-breaking students of all races at now-record rates and students of color at highly disproportionate rates.” Such policies “mandate suspension or expulsion of students from school for a wide variety of misbehaviors including possession of alcohol or cigarettes, fighting, dress code violations, and cursing.”

Zero Tolerance policies originated in an unusual climate of responsiveness to school violence following a slew of school shootings, most famously the tragedy at Columbine High School in Littleton, Colorado. Wellesley College Professor Nan Stein discusses how the national attention to these high-profile shootings shifted focus away from violence against girls to more extreme forms of school violence happening at that time. In fact, most of the school shooting tragedies of the 1990s were “perpetrated by White middle-class boys who were upset either about a break-up or rejection by a girl, or who did not meet traditional expectations of masculinity and were thus mercilessly teased and bullied by peers.” While violence as serious as school shootings deserves attention, too much focus on these extreme, but rare, forms of violence has the unintended consequence of inflating uncommon forms of violence to the neglect of the victimization of girls, especially African American girls, who experience school violence and sexual harassment at some of the highest rates.

Furthermore, the media attention to school shootings eclipsed attention to sexual harassment and made it easier for school districts to ignore their duties under Title IX. In other words, many school administrators no longer saw the

80. See OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE, supra note 77.
81. See Eaton, supra note 12, at 157.
82. SUMNER, SILVERMAN & FRAMPTON, supra note 12, at 2.
85. Id. at 41.
need to address the psychological or subtler forms of physical aggression that gendered violence often takes. Rutgers School of Criminal Justice Professor Jody Miller, who conducted focus groups to study gendered violence among African American students in an urban school in St. Louis, shared students’ stories that suggested teachers would only intervene or punish student aggressors if the sexual harassment were physical, not psychological or verbal.  

Stein supports this finding. In her research on school harassment, she found that:

[M]any girls cannot get confirmation of their experiences from school personnel because most of those adults do not name it as “sexual harassment” and do nothing to stop it. . . . [Girls’ stories revealed their] repeated efforts to get adults to see and believe what is happening right before their eyes, and to do something about it. These young women [began] to sound ominously like battered women who are not believed or helped by the authorities and who feel alone and abandoned.

Through a lens of race and gender, Zero Tolerance policies fail to address sexual harassment. Most importantly, such policies have had racial and gendered impacts, with a disproportionate number of students of color—especially African American and Latino boys, and increasingly African American and Latina girls—being suspended and expelled in situations of sexual harassment. Girls become a particularly visible target under this regime because school employees see boys’ sexual advances as playful or even gender-appropriate, while they perceive girls’ physical forms of self-defense, self-protection, and retaliation as aggression worthy of punishment.

In response to sexual harassment aimed at Black girls and young women, traditional school discipline and Zero Tolerance policies have been both ineffective and counterproductive. Furthermore, Title IX has been weakly enforced and overshadowed by school discipline. Part II examines how social psychology and the theory of implicit bias link perceptions of Black girls and young women to schools’ racially disparate and inadequate responses.

**PART II. IMPLICIT BIAS IN SCHOOLS’ INADEQUATE RESPONSES TO THE NEEDS OF BLACK GIRLS AND YOUNG WOMEN WHO HAVE EXPERIENCED SEXUAL HARASSMENT**

“Judgments about aesthetics do not exist apart from judgments about the social, political, and economic order of a society.”

86. See Miller, Getting Played, supra note 2, at 103–10.
87. Stein, Public Performance, supra note 23, at 147.
88. Stein, Bullying, supra note 13, at 792.
89. Stein, Public Performance, supra note 23, at 148.
90. Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender,
Evidence from social psychology and implicit bias research greatly informs the connections between stereotypical portrayals of African American women and girls and the consequences of these depictions for Black girls and young women in today’s society. Furthermore, implicit bias theory illustrates the defeminization and dehumanization of Black girls and young women, laying the groundwork for the condoning of violence against them.

That people live and attend school in racially segregated spaces amplifies the effects of implicit bias, as it leads people to gather significant amounts of information about those of other races and cultures based on secondhand knowledge and stereotypical media depictions. For example, stereotypical depictions of Black women and girls as self-sacrificing Mammies, sexually promiscuous Jezebels, and emasculating Sapphires regularly appear in popular media. This becomes particularly problematic when positive characterizations of Black women are absent in the media and media producers rarely give Black women and girls major roles. The effect of misrepresentation and underrepresentation is that many people have biased perceptions of Black women and girls. Stereotypical representations also affect those within the African American community who may experience reduced self-esteem and self-perceptions. This Section breaks down how implicit bias operates on a psychological and structural level.

As of 2010, most people in the U.S. still lived and attended school in racially segregated neighborhoods. For this reason, many non-Blacks receive the majority of their information about African American girls and women through vicarious experiences like those offered by word-of-mouth stories and the media. Within this context, examining stereotypes of African American women and girls present in the media becomes crucial for identifying the production of prejudice and for understanding the maintenance and condoning of violence against Black girls. As Orbe and Harris stated, “mass media images [both] reflect societal values and ideas about race/ethnicity . . . [and] reinforce or shape widely shared ideals.” This effect results when media producers perpetuate “patterns of (1) invisibility, (2) underrepresentation, (3) stereotypical depictions, and (4) misrepresentations” in the content they create and share.

---

91. See, e.g., Jerry Kang, Trojan Horses of Race, 118 HARV. L. REV. 1489, 1539–40 (2005) [hereinafter Kang, Trojan Horses] (discussing the vicarious experience of “racial meanings” through media communications).
94. ORBE & HARRIS, supra note 93, at 219 (emphasis in original).
95. Id. at 220.
Media images and representations of African American women and girls have historically been used to subordinate them. These images and representations persist in modern political discourse and popular consciousness. Three dominant stereotypes of Black women have been identified as (1) Mammy (also known as “Aunt Jemima”), (2) Jezebel, and (3) Sapphire. Scholars have also identified the stereotype of pickaninnies, which is specifically associated with Black children.

The Mammy stereotype originated in the South during slavery, where Whites enslaved Black women as domestic workers in their homes. Mammy is a stereotype of a dark-complexioned, overweight Black woman with a large bosom and buttocks. She has been depicted as a fiercely loyal domestic servant to White slave owners, often nurturing the master’s White children more than her own Black children. She is constantly self-sacrificing, happy with her station in life, and obedient to her master or employer. The Jezebel stereotype also originated in the South during slavery. The image was born out of “white slave owners’ . . . almost complete control over Black women’s sexuality and reproduction.” Jezebel was portrayed as a “seductive, hypersexual, exploiter of men’s weaknesses.” She is known as the “bad-Black-girl.” The Amos and Andy radio show reinforced the image of another stereotypical Black woman, known as Sapphire. Sapphire was a “hostile, nagging wife.” She was “iron-willed” and “contemptuous of Black men.” Her “primary role was to emasculate Black men with frequent verbal assaults . . . loud, animated, [and] verbose.” Sapphire is the opposite of Mammy. She is “the wise-cracking, balls-crushing, emasculating woman, [and] is usually shown with her hands on her hips and her head thrown back as she lets everyone know she is in charge.” Sapphire is frequently portrayed as “evil, bitchy, stubborn and hateful.”

96. West, supra note 42, at 459; Yarbrough & Bennett, supra note 28, at 636; see also Orbe & Harris, supra note 93, at 220-21.
97. Orbe & Harris, supra note 93, at 222.
98. Yarbrough & Bennett, supra note 28, at 636–37; see Orbe & Harris, supra note 93, at 222.
99. See West, supra note 42, at 459; Yarbrough & Bennett, supra note 28, at 636–37.
100. Yarbrough & Bennett, supra note 28, at 637; see also West, supra note 42, at 459.
101. West, supra note 42, at 459; Yarbrough & Bennett, supra note 28, at 636.
102. West, supra note 42, at 459.
103. Yarbrough & Bennett, supra note 28, at 637.
104. West, supra note 42, at 462.
105. Id.
106. Yarbrough & Bennett, supra note 28, at 636.
107. West, supra note 42, at 461.
108. Id.
109. Id.
110. Yarbrough & Bennett, supra note 28, at 636.
111. Id. at 638.
These stereotypical images of Black women and girls implicate dominant beauty standards. Associate Professor of Psychology at the University of Washington, Carolyn M. West, among others, has described the ways in which greater societal value has been placed on straight blonde hair, blue eyes, a thin physique, and fair skin.113 Black women and girls who attain an image closer to these racist beauty standards are “afforded greater access to education, financial opportunities, and societal resources” and are generally perceived as more feminine and attractive.114

Although related to one another, stereotypes of African American women and girls are distinguishable from stereotypes that have historically subordinated African American men and boys. Many of the media and cultural stereotypes of Black males portray them as criminal, threatening, aggressive, poor, unemployed, physically fit, hypersexual, and skilled at sports, entertainment, and music.115 Angela Harris writes of African American men’s long history of being “‘emasculated’ by white supremacy,” and their cultural response:

African American men have been denied the privileges of hegemonic masculinity, including patriarchal control over women, jobs that permit one to exercise technical mastery and autonomy, and the financial and political power that enables control over others. . . . In response to this denial of access to “full” manhood, African American men have constructed rebellious forms of manhood, such as the inner-city “cool pose” that presumes black superiority and white impotence. Building on and subverting racist stereotypes, working-class and poor black men may aspire to a masculinity that emphasizes physical strength, mental control, and sexual prowess. Or they may aspire to a masculinity of physical grace, personal style, and creative artistry.116

The stereotypes of Black females and Black males affect the political consciousness of both groups but pose particular problems for Black girls in confronting intersectional forms of subordination. Kimberlé Crenshaw, a leading scholar in critical race feminism and a Professor of Law at UCLA, found that “the racial context in which Black women find themselves makes the creation of

112. ORBE & HARRIS, supra note 93, at 221.
114. See West, supra note 42, at 460; Phillip Atiba Goff et al., “Ain’t I a Woman?”: Towards an Intersectional Approach to Person Perception and Group-Based Harms, 59 SEX ROLES 392 (2008) [hereinafter Goff et al., “Ain’t I a Woman?”].
a political consciousness that is oppositional to Black men difficult.” 117 In other words, acknowledging violence against Black women and girls frequently implicates Black men and boys as perpetrators, while Black women who speak out about such violence in the community may be considered traitors to their racial group. 118

This tension between racial allegiance and acknowledging the realities of Black women and girls’ experiences with gendered violence is particularly important when it comes to an analysis of sexual harassment in school and the role that stereotypes may play when school administrators are tasked with responding to violence targeted at Black girls. In a society that no longer permits slavery or laws that facially discriminate on the basis of race, 119 many would like to believe that the negative representations of Black women in media have become a historical relic, a problem that no longer affects society.

Instead, research rooted in the fields of sociology, social psychology, and critical race feminism confirms the persistence of implicit bias against African Americans and the real-life effects of such bias. For example, while overt racial animosity is almost non-existent in the media, implicit bias and skewed imagery of Black women and girls remain. 120 In particular, research on television over the past fifty years has shown that it reflects negative and historically derived representations of African American girls and young women by both inclusion and exclusion. 121

The imagery and historical stereotypes of African American girls have real-life implications as they alter the way our minds perceive Black girls and young women. Implicit bias research has empirically measured the effects of such stereotypes, including biased perceptions and decision-making aimed at Black women and girls. This science provides insight into the root causes of school administrators’ inadequate responses to the sexual harassment of African American girls.

Implicit bias theory helps describe the structural and psychological mechanisms by which violence against African American girls is condoned and ignored. Common perceptions of Black girls and young women include that they are more masculine than women of other races and less worthy or in need of help as other victims—themes which are reflected in the Mammy, Sapphire, and

117. Crenshaw, Demarginalizing, supra note 20, at 162.
118. See Goodmark, supra note 16, at 98 (“[African American women] who have reported violence by African American men to state actors have been criticized for racial disloyalty and accused of perpetuating and reinforcing negative stereotypes of African American men as violent”).
120. See generally Max Weisbuch et al., The Subtle Transmission of Race Bias via Televised Nonverbal Behavior 326 SCIENCE 1711 (2009) (finding that nonverbal racial bias portrayed on television, even when too subtle to be reported by viewers, influenced viewers’ racial associations and attitudes).
121. Graves, supra note 93, at 708.
Jezebel caricatures discussed earlier. Unfortunately, no empirical implicit bias studies have explicitly centered on Black girls and young women, though inferences can be drawn from studies of Black adults. One way researchers have studied these biases is by showing images of Black women and men to participants in psychology experiments and tracking their responses. The findings support the notion that biases that Black girls and young women are somehow inferior to people of other races and that they are more masculine directly influence the ways in which decision makers in school respond to their sexual victimization and harassment.

A. Defeminization

The masculinization and defeminization of African American women and girls is one form of implicit bias that contributes to social approval of violence against them. When a woman or girl is perceived as masculine, she is also more likely to be seen as strong, aggressive, and less feminine. These traits are typically associated with gender-conforming men and, consequently, such implicit bias may cause a school administrator or teacher to perceive sexually victimized Black girls as capable of handling the harassment themselves (like men) and less in need of protection. In extreme cases, these girls are even misperceived as the primary aggressors against boys.122

Through the lens of implicit bias and social psychology, UCLA Psychology Professor Phillip Atiba Goff and his colleagues scrutinized the White female beauty norms against which Black women are frequently compared and judged.123 In the study, 292 predominantly White undergraduate students in the Northeast were asked to categorize pictures and videos of Black and White men and women and rate them on the basis of three dependent variables: race/racial stereotypicality, gender/femininity/masculinity, and attractiveness/desirability.124

The study’s goal was to understand the relationship between implicit bias and intersectional identity as experienced by Black women. The study found that: (1) participants made the highest number of gender categorization errors for Black women; (2) “Blackness” and “maleness” were highly associated for both Black males and Black females, and (3) the more masculine a woman was rated, the more likely she was to be perceived as unattractive, which thus correlated with participants on average rating Black women (who were rated as more masculine overall) as less attractive than White women.125

122. See Miller, Getting Played, supra note 2, at 99.
123. See Caldwell, supra note 90, at 394–95; Chris Rock’s Good Hair: Sit Back and Relax (HBO Films 2009); Morrison, supra note 113, at 53–66.
124. Goff et al., “Ain’t I a Woman?”, supra note 114, at 395–97 (2008). Although the researchers did not presume that femininity and masculinity were negatively correlated, such was the result; thus, femininity and masculinity were treated thereafter along a linear paradigm. Similarly, Whiteness and Blackness were negatively correlated. Id. at 396.
125. Id. at 392. The masculinization or defeminization of African American women and girls is
The participants’ perception of Black women as more masculine than White women is a form of implicit bias that has serious consequences for the treatment of Black female victims in real life. For example, study participants have rated a hypothetical date rape as more acceptable with a Black female victim.126 Among the many negative images of rape survivors, one is that the victims become less attractive following victimization or deserved to be raped because of their sexually provocative or aggressive appearance, traits associated with masculinity.127 Since Black and dark-skinned women are implicitly perceived as more promiscuous and more masculine than lighter skinned women,128 these effects compound for Black rape survivors.129 For example, rapes of Black women lead to far fewer convictions than rapes of White women.130 This finding suggests that society does not take seriously the sexual victimization of Black women and girls, implicating depictions of Black women and girls as unworthy of protection.

Similarly, while the confidants of White women who discussed being abused were usually supportive and responsive, the confidants of Black women were more likely to be “unsupportive or nonresponsive.”131 In sum, these findings confirm stereotypes that Black victims, and particularly Black women, are unimportant victims of sexual, gender-based violence.

B. Dehumanization

The stereotypes explored in the previous sections have been used to justify gender-based violence against African American women and girls and devalue them as victims deserving of empathy. In another study, Goff described a related social psychological phenomenon in which people more frequently associate Black people with being animal-like or nonhuman, reducing their worth as human beings deserving of physical and legal protection. Whether or not they are aware, these biases likely operate when administrators and decision makers must determine the type of intervention or help to offer Black girls and young women who experience gendered violence at school.

not a new phenomenon. As relayed in the introduction to Goff’s research, Sojourner Truth famously challenged these stereotypes and biases as early as the mid-1800s. While speaking to an audience in Silver Lake, Indiana, in October 1858 on “the importance of abolishing slavery,” men in the audience rumored that Truth was a “man in disguise,” because to them her African features were unattractive and did not seem feminine. The men in the audience demanded that Truth bare her breasts to a group of White women to prove her womanhood. Instead, Truth bore her breasts to the entire audience—White men and White women included—and said they, not she, should be shamed by her nudity, because it represented the inability of White men to acknowledge “a Black woman as a full human being.” See id. at 393.

126. West, supra note 42, at 462.
127. Id.
128. Recall the stereotypes of Jezebel and Sapphire.
129. West, supra note 42, at 461–62.
130. Id. at 462.
131. Id. at 463.
Goff set out to study how historical representations depicting Black people as apelike might affect decision makers in the criminal justice context. The research suggests that despite the near disappearance of imagery explicitly portraying African Americans as apes, the mental association remains. Although participants claimed to be unfamiliar with such depictions, they still demonstrated an implicit association between the two concepts.

Most notably, the researchers demonstrated how the Black-ape association carries real-life implications for decision makers. They primed participants with images of either apes or felines and then asked them to watch a video of “a group of police officers beating a suspect whom the participants were led to believe was Black or White.” Those participants primed with ape imagery were more likely to condone the beating of a Black suspect than a White one. In their final study, the researchers coded newspaper articles on death-eligible criminal cases for “ape-relevant” language and found that after “controlling for the total number of articles, defendant socioeconomic status, victim socioeconomic status, aggravating circumstances, mitigating circumstances, and crime severity, Black defendants who were put to death were more likely to have apelike representations in the press.”

Goff’s dehumanization research demonstrated how implicit association of African Americans with apes “alter[ed] visual perception . . . [and] increase[d] endorsement of violence against Black suspects.” The replication of Goff’s laboratory studies in real life for Black male defendants has terrifying implications for the impact media portrayals might have on Black women and girls and their likelihood of experiencing gendered and racial victimization as a product of related biases. In other words, if the media portrays Black women as unworthy victims, it is likely that these lopsided depictions produce behavioral consequences. For example, Goff’s findings imply that dehumanizing, racialized perceptions that Black youth share characteristics with animals may lead...
administrators to justify unnecessary levels of criminal and disciplinary treatment.

PART III. HOW IMPLICIT BIAS LEADS TO THE FAILURE OF SCHOOLS TO EFFECTIVELY INTERVENE IN THE SEXUAL HARASSMENT OF AFRICAN AMERICAN GIRLS AND YOUNG WOMEN

Interviewer: Are there teachers usually around [when sexual harassment occurs]?

Katie: Sometimes. But they don’t pay no attention. [Security guards] don’t pay no attention [and students] don’t pay no attention either.

Interviewer: So it’s usually the girl that has to speak up for herself?

Katie: Yeah. 139

Implicit bias research documents the reality of racial prejudice in contemporary U.S. society. When school administrators and teachers respond—or fail to respond—to the sexual harassment and victimization of Black girls at school, implicit bias is inevitably at play through the misperception that Black girls and young women are less worthy of protection because mass media and historical depictions have portrayed them in defeminizing and dehumanizing ways. This Section argues that Congress and those responsible for enforcing Title IX, the civil rights law meant to protect children from sexual harassment at school, must acknowledge and act on the reality of implicit bias against African American girls and young women.

As the law now stands, Title IX does not address the disparate effects experienced by Black girls after being sexually harassed at school and certainly cannot prevent implicit bias from causing misperceptions and poor judgments about students’ needs. While youth are more likely today to say that their schools have formal anti-discrimination and sexual harassment grievance policies as required by Title IX, 140 those policies do not help Black girls on a systemic level. Title IX does not prevent sexual harassment in schools 141 or effectively remedy the sexual harassment experienced by African American girls. 142 Teachers rarely invoke Title IX grievance procedures because they often fail to label sexually harassing behavior by its proper name, especially due to implicit biases that Black girls are unworthy or blameworthy. 143 Instead, teachers often see sexual harassment between youth as horseplay, teasing, or bullying, but they do not

139. MILLER, GETTING PLAYED, supra note 2, at 104.
140. AAUW, HOSTILE HALLWAYS, supra note 24, at 4.
141. See generally id.
142. See generally MILLER, GETTING PLAYED, supra note 2, at 67.
143. See, e.g., MILLER, GETTING PLAYED, supra note 2, at 71–72 (where teenaged boys describe acts of sexual harassment as “harmless play”).
understand the gendered and racial implications. Finally, current judicial interpretation of Title IX does not allow private plaintiffs to bring disparate impact cases where inadequate responses to the victimization of Black girls cannot be proved to result from intentional racial or gender discrimination.  

As noted earlier, most African American girls live in racially segregated, urban neighborhoods with concentrated poverty. Many also attend majority-African American schools with “limited resources and difficulties in attracting and retaining the most talented educators.” The experiences of African American girls and young women who attend under-resourced schools have been noticeably absent in the discussion on sexual harassment and school-based violence.

In one school that was multi-racial and multi-ethnic, Vassar College Professor Joy Lei learned through a series of interviews that the students’ and teachers’ descriptions of many Black girls at the school reflected the stereotypes of African American women that have saturated American media and culture since slavery. They described the Black girls at the school as “being ‘large and loud,’ . . . aggressive and having a lot of ‘attitude.’” One girl, who self-described herself as quiet, well-groomed, and a good student, felt that the school overlooked her and her friends. She said that school administrators and teachers focused on the Black girls that are “negative, loud-talking, pregnant” and saw girls like herself as nonrepresentative of Black girls as a whole.

In part due to the perceptions of Black girls as aggressive and loud, Zero Tolerance policies and punitive school responses have disproportionately targeted many of them when they have defended themselves or retaliated against their abusers after being sexually harassed. Miller’s interviews with African American girls in high school support this conclusion. Recall that the AAUW survey found that Black girls are more likely to confront harassing behavior than any other racial/gender group.

The implicit biases and perceptions of Black girls and young women— informs by historical misrepresentations; inclusion and exclusion within media; legal, social, and economic disenfranchisement of Black women; and the reality of so many girls living in impoverished and under-resourced places—fuel and

145. See Anderson & Plaut, supra note 92, at 2.
146. MILLER, GETTING PLAYED, supra note 2, at 67; see Anderson & Plaut, supra note 92, at 25.
148. Id. at 162. These characteristics parallel those assigned to the caricatures of Sapphire and Jezebel.
149. Id. at 167.
150. Id.
151. See generally id.; Stein, Bullying, supra note 13, at 792.
152. See MILLER, GETTING PLAYED, supra note 2, at 88–89, 93–103, 106–07.
153. See id. at 111.
encourage inappropriate responses to school-based sexual victimization perpetrated against Black girls.

PART IV. TITLE IX MUST BE IMPROVED, TAKING INTO ACCOUNT FINDINGS OF IMPLICIT BIAS RESEARCH AND THE LIVED EXPERIENCES OF BLACK GIRLS

Implicit biases influence administrators’ and teachers’ responses to the victimization and sexual harassment of Black girls and young women at school. The enormity of this crisis should not stop activists from intervening at the broadest and most basic levels; it might be overcome only through troubleshooting new solutions to systemic problems. Findings from implicit bias research inform both the problem of schools’ failed responses to gendered violence against Black girls but also should inform future legal and non-legal solutions.

Although schools are technically liable under Title IX for sex discrimination, including sexual harassment of students, the threat of lawsuits is insufficient to prevent the harassment of African American girls or any student for that matter.154 Litigation as a tool for vindication is uniquely problematic for Black girls, whose victimization is less likely to be perceived as authentic or worthy of safeguarding, as the implicit bias studies on dehumanization and masculinization of Black females demonstrated.155 Further, as Miller has noted, “legal liabilities applied through the use or threat of lawsuits are ‘largely reactive, piecemeal, individualized responses . . . . They take place after the fact and only provide a remedy for an individual victim after the harm has been done.’”156

In addition to the implicit bias studies on the portrayal of African Americans in the media157 and the behavioral effects these have in a racially segregated society, many African American girls face the added barrier of attending under-resourced schools and living in unsafe, low-income neighborhoods.158 Many schools with majority Black populations located in distressed, urban communities lack a significant tax basis to fund school programs, struggle to maintain a critical mass of full-time quality staff, and have more “primary security concerns” like “gang violence and weapons violations.”159 Moreover, the parents and guardians of African American girls who live in distressed neighborhoods often lack the financial and educational resources to litigate the sexual victimization of their daughters at school.160

154. See id. at 112.
155. See generally Goff et al., “Ain’t I a Woman?”, supra note 114; Goff et al., Not Yet Human, supra note 133, at 292.
156. MILLER, GETTING PLAYED, supra note 2, at 112.
157. See, e.g., Weisbuch et al., supra note 120.
158. MILLER, GETTING PLAYED, supra note 2, at 67, 191–92.
159. Id. at 112.
160. Id.
Currently, under the Title IX regime, a school has fulfilled its responsibility to intervene in a substantiated sexual harassment claim by suspending the offending boy (or girl).\footnote{See Stein, Bullying, supra note 13, at 148, 156.} As already explained, Black youth are the disproportionate targets of such Zero Tolerance policies. Such policies further criminalize Black youth by treating Black boys and young men as criminals and perpetuating the school-to-prison pipeline.

If Title IX is truly to protect African American girls at school and prevent their further victimization, suspension and expulsion should not be the first resort. In order to know the best remedies, it is best to ask Black girls who have suffered from sexual harassment themselves about their needs and desires. The scholars who attempted to understand those needs have overwhelmingly found that young African American girls want to talk about sexual harassment at school in a safe, open conversational format, which is a tool of restorative justice.\footnote{Stein, Public Performance, supra note 23, at 160–61.} Further, many of the girls Miller interviewed felt betrayed that boys who sexually harassed girls simply got sent home and punished, rather than treating the source of the conflict. Their voices confirm the inadequacy of interventions such as suspension and similar Zero Tolerance policies.\footnote{See Stein, Bullying, supra note 13, at 788; Miller, Getting Played, supra note 2, at 13–14, 67.} Title IX requires schools to not merely stop but also prevent sexual harassment. If schools are not yet fulfilling that promise for Black girls, we need to keep them accountable. Implicit bias research helps explain many of the problems African Americans girls face in confronting their sexual victimization at school and their difficulty in securing adequate remedies, but it does not excuse school officials from their legal responsibilities.

Thus, in order to improve the compliance requirements of schools under Title IX, the Office for Civil Rights (OCR), charged with setting regulations under Title IX, should incorporate implicit bias findings into its requirement of schools. Possible shifts in compliance might include: revamping health curriculums to challenge physical, emotional, and cultural stereotypes that condone violence against African American girls; increasing training requirements for school administrators, teachers, and staff in order to receive federal funding for education; creating alternative discipline options based on restorative justice that seek not to kick out the perpetrator but instead to restore the trust of African American girls in their schools and facilitate healing for all parties. Finally, I suggest that OCR create more incentives for schools to comply with Title IX’s requirements to prevent and intervene in the victimization of students.

African American girls—their voices, their experiences, and their victimization—matter. Schools will not be safe for any child until they are safe for them.
CONCLUSION

Sexual harassment does not suddenly begin at the age of eighteen. Most school-aged youth report that they have been sexually harassed, with highest severity and frequency reported by girls, especially African American girls.\(^{164}\) Studies disagree upon the sources and causes of the racial disparities of gendered violence. Many researchers point to structural racism and income inequality as the root causes of the disproportionately high victimization of African American girls.\(^{165}\) Other scholars blame the media, in which negative and demeaning stereotypes of African American girls have existed since slavery and where African American girls continue to be portrayed as highly sexualized,\(^{166}\) victimized, masculinized,\(^{167}\) and dehumanized.\(^{168}\) Many scholars also connect contemporary gendered violence against African American girls not only with these demeaning stereotypes but also with the long history of white supremacy that has been historically encoded into American law.\(^{169}\)

This Commentary focuses on the lived experiences of Black girls and their victimization at school for a number of reasons. School is a place where children spend a large portion of their waking hours. Additionally, the law has traditionally been able to intervene to protect young people at school to a greater extent than in private locations like the home. While African American girls experience sexual harassment frequently on the street, at home, and in their communities, schools often act as a training ground for young boys to test which girls are most vulnerable to being sexually demeaned and attacked.\(^{170}\) Due to their age, children are at a unique disadvantage in resisting sexual harassment and conceptualizing their victimization. Due to their intersecting identities as racialized and gendered people, Black girls are uniquely vulnerable to gender violence and its potential effects. Finally, African American girls and their experiences are under-researched, under-theorized, and under-valued in academia. Further research must not be race- and class-blind when confronting the problem of school-based sexual harassment against children.

School authorities have failed to adequately and effectively intervene

---

164. See AAUW, HOSTILE HALLWAYS, supra note 24, at 24–25.
165. See generally MILLER, GETTING PLAYED, supra note 2, at 104.
166. See generally West, supra note 42.
167. See, e.g., Goff et al., “Ain’t I a Woman?”, supra note 114.
168. See, e.g., Goff et al., Nor Yet Human, supra note 133, at 292; Rosalyn J. Watts, Race Consciousness and the Health of African Americans, 8 ONLINE J. ISSUES NURSING 4 (2003).
170. Stein, Public Performance, supra note 23, at 148, 159 (“These stories illustrate injustices of considerable magnitude and suggest that schools may be training grounds for the insidious cycle of domestic violence. Girls are taught that they are on their own, that the adults and others around them will not believe or help them; in essence, they are trained to accept the battering or assault; Children rehearse being social spectators in their school lives.”).
against sexual harassment and gendered violence aimed at Black girls and young women in school. A significant body of social psychological research exists on implicit bias that helps to explain such failures. When the media portrays Black girls as carbon copies of historical stereotypes, as masculine youth who can handle themselves in sexually violent situations, as undeserving of society’s sympathy, or as altogether invisible, this influx of images and misrepresentations builds up racial and gendered biases that manifest as prejudice against African American girls and women. If school officials and teachers see Black girls and young women as “racial others” or see them through a lens of racialized and gendered myths, if schools do not see them as deserving of sympathy or assistance, or if schools do not see them at all, then Title IX’s provisions to prevent and remedy sexual discrimination and sexual harassment at school will have also failed.