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ABSTRACT: This Article identifies and analyzes the structural forces that permit and ignore racialized sexual harassment in housing. Although scholarship on sexual harassment in housing is sparse, the existing research and resulting body of law generally advances a narrative focused on the female tenants' economic vulnerability and violation of the sanctity of her home. The narrative advanced in scholarship and advocacy, along with the resulting jurisprudence, presents an archetype of a deviant male landlord abusing his authority to take advantage of women sexually who, because of their economic circumstances, have no alternatives. This Article terms it the "dirty old man" narrative. Drawing attention to the racialized sexual harassment that lies beneath the stock story for many African American female tenants, this Article dismantles that narrative. The purpose of the scholarship is two-fold. The first is to expose, for the first time, the undercurrent of racialized sexual victimization that is absent from the "dirty old man" narrative. To do that, this project methodically examines court filings in sexual harassment cases brought by the Attorney General under the federal Fair Housing Act and analyzes the entire body of federal and state court opinions assessing residential sexual harassment claims. The second objective is to identify the structural factors—cultural acceptance of the "Black Jezebel" myth, legal rights, access, and generational economic and racial hierarchies—that operate together to perpetuate racialized sexual harassment in rental housing, an analysis that draws on social science research, along with critical race, critical feminist, and intersectionality theories. This Article contends that those structural forces are the same factors that have operated to permit and hide the sexual subjugation of Black women in the private sphere throughout history—during slavery, as

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domestic workers, and in the present-day failure to prosecute sexual assault against Black women. Ultimately, it argues that the prevailing "dirty old man" narrative risks silencing both the individual stories of racialized sexual harassment at home and the larger conversation about the structural forces permitting and ignoring the abuse.

INTRODUCTION

Sexual harassment in rental housing is a pervasive problem in the United States, especially for the most vulnerable women in our society. For Black

women experiencing a distinct form of racialized sexual harassment[1] in their homes, the abuse is part of an historical and structural acceptance of the sexual subjugation of Black women in the domestic sphere. Unfortunately, the legal structure of the anti-discrimination laws used to redress residential sexual harassment[2] provides insignificant opportunity to address complex intersectionality or fight the structural forces that perpetuate the abuse of women, particularly Black women.[3]

In response to the law's limitations, scholars and advocates have developed a standard narrative to describe residential sexual harassment. The stock story, which I call the "dirty old man" narrative,[4] depicts an aberrant bad actor male landlord abusing his authority to take advantage sexually of women who, because of economic circumstances, have no alternatives. Both the perpetrator and the victim in the "dirty old man" narrative are one-dimensional. As a "dirty old man," the perpetrator in a residential sexual harassment case is generally described as a man acting outside of the standards of society and the law. Because the term "dirty old man" is often employed as a means of encouraging, explaining or excusing behavior that is outside of cultural norms,[5] the use of the

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1. I define "racialized sexual harassment" as a particular subset of sexual harassment where racial animus is a component of the harassment itself. Although women of color may experience sexual harassment differently than White women, or may be disproportionately vulnerable to sexual harassment, the focus of this Article is on a particular kind of sexual harassment where racial animus is embedded in the sexual harassment.

2. There are various legal avenues for seeking redress for sexual harassment in rental housing. *See infra* Section III.A. This Article focuses on civil rights challenges under federal and state fair housing and civil rights laws, where claims are bounded by categories of protected classes (i.e. race, color, sex, religion, disability, familial status). An in-depth discussion of the possibilities for tort or contract actions, for example, is beyond the scope of this paper.

3. *See, e.g.*, Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479 (1994) (analyzing judicial reaction to the complex subject under Title VII law); Bradley Allan Areheart, *Intersectionality and Identity: Revisiting a Wrinkle in Title VII*, 17 GEO. MASON U. C.R. L.J. 199, 234-35 (2006); Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias*, 50 WM. & MARY L. REV. 1439, 1440 (2009); Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre-)history*, 95 B.U. L. REV. 713, 714 n.6 (2015) (citing Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 LAW & SOC'Y REV. 991, 992 (2011)) (cataloguing scholars who have found that "'complex discrimination' claimants fare even worse than other employment discrimination plaintiffs, facing both structural and ideological barriers to recognition and redress"); *cf.* Darren Lenard Hutchinson, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 301-02 (2001) (recognizing, in the constitutional law context, that "courts have failed to recognize that the cumulative effect of multiple forms of discrimination may create a unique type of victimization that differs in kind from the sum of individual acts of discrimination").

4. I invoke the expression "dirty old man" in this context based on specific allegations in *United States v. Wygul*. Complaint at ¶ 11(c), United States v. Wygul, No. 2:14-cv-02880 (W.D. Tenn. Nov. 10, 2014) (alleging that defendant told complainant "[i]f you ever have the urge to do a dirty old man, please let me know").

5. *See, e.g.*, Lewis Katz, *Tribute to Professor Leon Gabinet*, 65 CASE W. RES. L. REV. 14, 15 (2014) (fondly referring to Gabinet as "a great teacher, scholar, song-and-dance man, and the law school's dirty old man"); Ceci Connolly, *Clinton Joins Party in a Spirited Retreat*, WASH. POST, Feb. 11, 1998, at A17 (quoting Representative John Dingell referring to Kenneth Starr as a "dirty old man" in reference to the investigation of President William Clinton); #dirtyoldman, TWITTER (Sept. 22, 2015), https://twitter.com/search?q=%23dirtyoldman (including hundreds of hits, referencing everyone from the author of the tweet to Rob Lowe to Joe Biden to Donald Trump). The cultural tropes or standard

terminology to name the standard narrative explaining residential sexual harassment risks trivializing the crime of sexual harassment. I purposefully use the expression with that understanding. This Article argues that the prevailing narrative (the "dirty old man" narrative) focuses on the aberrant bad actor and excludes both racialized sexual harassment and the structural forces that perpetuate it. I chose the expression not because I adopt it as a construct, but because it represents why the narrative is problematic.[6] Like the perpetrator in the standard narrative, the victim of sexual harassment in the "dirty old man" narrative is similarly one-dimensional—an economically vulnerable woman subject to violation of the sanctity of her home.[7]

This Article challenges the assumptions underlying the "dirty old man" narrative by (1) detailing evidence of the existence of racialized sexual harassment in the home; (2) exposing the nearly wholesale exclusion of that evidence from scholarship, advocacy, and judicial narratives; and (3) identifying the structural forces underlying racialized sexual harassment in housing.[8] Ultimately, this Article argues that the prevailing "dirty old man" narrative is problematic both because it silences particular victims of residential sexual harassment and because it ignores the structural forces of power that have operated throughout American history to perpetuate the sexual subjugation of Black women in the home. More specifically, it identifies four structural forces that have acted together to empower (primarily White) men and disempower Black women that are obscured by the "dirty old man" narrative: cultural acceptance of the Black "Jezebel" myth; legal rights supporting the power imbalance and ignoring its implication; unfettered access to Black females and their families; and generational economic and racial hierarchies.

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stories of "dirty old men" are not, however, always so innocent. *See, e.g.*, Andrea L. Fischer, *Florida's Community Notification of Sex Offenders on the Internet: The Disregard of Constitutional Protections for Sex Offenders*, 45 CLEV. ST. L. REV. 505, 510 (1997) (recognizing that the stereotype of a child molester is that of a "dirty old man").

6. For that reason, I put the expression in quotation marks throughout the piece.

7. *See, e.g.*, Michelle Adams, *Knowing Your Place: Theorizing Sexual Harassment at Home*, 40 ARIZ. L. REV. 17, 38 (1998) (arguing that the jurisprudence of the Fair Housing Act, adapted from Title VII jurisprudence, has been unable to fully appreciate or assess the injury associated with sexual harassment in a woman's home and noting that the experience of poverty is a key factor in being vulnerable to sexual harassment in housing). For a more complete review of the scholarly literature, see discussion *infra* Part III.

8. This Article focuses specifically on Black women's experiences of racialized sexual harassment in housing. Although other women of color experience kinds of sexual harassment or are impacted by sexual harassment in ways that are excluded from the standard narrative, I focus this piece on Black women because of the particularly powerful role race has played for Black women in American history. Other scholars have done similar analyses on the omission of voice in particular legal narratives. For example, Llezlie Green Coleman explores the omission of Latina voices from the narrative of worker exploitation in *Exploited at the Intersection: A Critical Race Feminist Analysis of Undocumented Latina Workers and the Role of the Private Attorney General*, 22 VA. J. SOC. POL'Y & L. 397 (2015). It would be an interesting and important project to expose and assess the ways that non-Black women of color experience sexual harassment in housing.

In *United States v. Hurt*, for example, the government brought suit against the property manager and owner of mobile home parks in West Memphis, Arkansas.[9] The complaint, asserting discrimination based on sex in violation of the federal Fair Housing Act,[10] alleged that Mr. Hurt "subjected female tenants and prospective tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment."[11] In *Hurt*, the government's case theory[12] focused on the intersection of poverty and sexual harassment and invoked the "dirty old man" narrative. Cross-examination of Mr. Hurt established his knowledge of the tenants' poverty and susceptibility to homelessness[13] and the closing argument drew explicitly on themes of poverty, vulnerability, and the defendant's abuse of his position of power. The attorney for the United States explained:

> What was Bob Hurt's pattern, ladies and gentlemen? It was very consistent. First, he had a pattern of abusing his power to choose vulnerable women. He picked his victims carefully. Who did he pick? He picked women who were struggling with money. He picked women who were living alone. . . . He picked women who he knew were not likely to complain and he picked women who people were not likely to believe. . . .[14]

Although the women in *Hurt* were vulnerable because of their limited finances, a searching look behind the "dirty old man" narrative reveals testimonial evidence of racialized sexual harassment. In fact, one woman testified that, when Mr. Hurt touched her and asked for sex in exchange for the rental of one of his trailers, he told her that she "had nice titties" and that he

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9. Complaint and Request for Jury Trial, United States v. Hurt, No. 3:09-cv-00031-BSM (E.D. Ark. Mar. 13, 2009). From February 2008 to June 2014, I was a trial attorney at the United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, the Section that brought suit against Mr. and Mrs. Hurt. I was not a named attorney on the case.

10. 42 U.S.C. §§ 3601-3619 (2006).

11. Complaint and Request for Jury Trial, *supra* note 9, at ¶ 12.

12. Case theory is a concept that is regularly taught in clinical teaching. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 122 (2007) ("Arriving at a theory of the case is the principal educational task of most clinical courses."). Binny Miller defines case theory as "a snapshot, a framework, the essence of the story or what the case is about." She continues, "It is not the whole story that a video camera filming the event would tell, but rather the coherent meaning that the elements create." Binny Miller, *Teaching Case Theory*, 9 CLINICAL L. REV. 293, 298 (2002). Drawing from Miller's approach to teaching case theory, in this Article, I use "case theory" synonymously with narrative and story. *See id.* at 297-98 (describing her case theory teaching method as "storyline" and noting that "[n]arrative is perhaps the best word for case theory").

13. Transcript of Jury Trial, Vol. 2 at 311, *Hurt*, No. 3:09-cv-00031-BSM (E.D. Ark. Nov. 17, 2010) ("Q. And you didn't charge a deposit because you knew that many of the tenants wouldn't be able it pay it off if you did? A. That's correct. Q. Because you knew many of the tenants were poor? A. That's correct. Q. You knew many of the tenants were living right on the edge of being homeless, didn't you? A. That is correct. Q. You also knew that they were living in a dangerous neighborhood? A. That is correct.").

14. Transcript of Jury Trial, Vol. 4 at 553-54, *Hurt*, No. 3:09-cv-00031-BSM (E.D. Ark. Nov. 19, 2010).

heard that "black girls had good pussy."[15] Another manager of mobile homes in the area testified that the defendant told him that if tenants don't pay, he could "take one of those black girls to the back and they can show you a thing or two for the rent."[16]

As evidenced by the testimonial evidence in *Hurt*, the vulnerability attendant to poverty is not the only lens through which to view sexual harassment in housing. For a subset of the victims of residential sexual harassment, race and racism surface in their allegations. This Article uncovers those stories and explores the impact of their omission from the stock story. Part I introduces the reader to residential sexual harassment and shares the current statistics regarding the prevalence of sexual harassment in housing. Mining court filings brought by the United States Attorney General alleging residential sexual harassment, Part II exposes evidence of racialized sexual harassment in housing and connects both the existence of the harassment and its omission from the larger case narrative to the cultural acceptance of the myth of the Black "Jezebel." Part III probes the prevailing "dirty old man" narrative in both scholarship and case law and theorizes about its development, charting the complete body of federal and state case law on residential sexual harassment—a total of one hundred and two opinions[17]—to assess whether and how the "dirty old man" narrative has affected the judicial narrative. Part IV explores why the prevailing "dirty old man" narrative is problematic, identifying specific structural forces—legal rights, access, and generational economic and racial hierarchies—that are in tension with the concept of the "dirty old man." The Article concludes with a synthesis of the argument and brief suggestions for where we may go from here to reconstruct the narrative in a manner that meaningfully accounts for race.

By adopting the "dirty old man" narrative, scholars and advocates acquiesce to the law's actual and perceived limitations. Adoption of the standard narrative ignores the structural factors operating to perpetuate the sexual harassment of Black women in rental housing. It disregards the way that those factors have operated throughout American history to institutionalize the disempowerment of Black women, especially in the domestic sphere. Unless and until scholars and advocates integrate race into their case theory, challenging individual and institutional racism set within and alongside sexism, civil rights jurisprudence will stagnate at its current understanding. It will do no more than recognize residential sexual harassment as an aberration disconnected from structural racism (and sexism) embedded in America's past and present. By naming and challenging the "dirty old man" narrative, this

15. Transcript of Jury Trial, Vol. 3 at 478, *Hurt*, No. 3:09-cv-00031-BSM (E.D. Ark. Nov. 18, 2010).

16. Transcript of Jury Trial, Vol. 2, *supra* note 13, at 154.

17. This data is current as of October 1, 2015. *See infra* Section III.B & Appendix A.

Article issues a call to scholars and advocates to reconstruct the narrative to integrate race into sexual harassment claims to push the boundaries of those anti-discrimination laws.[18]

I. SETTING THE STAGE: RESIDENTIAL SEXUAL HARASSMENT

Although the field of sexual harassment in housing is largely under-researched and under-theorized,[19] there are enough data to establish that poor and vulnerable women fall prey to sexual harassment in housing at alarming rates.[20] Yet, knowledge about the existence and prevalence of sexual harassment in housing is still lacking. Further, the data that exists fails to isolate statistics on the basis of race. Because context is critical to understanding the problem of racialized sexual harassment in housing, this Part defines residential sexual harassment and identifies the limited data set exploring the problem.

A. Defining the Problem

Women are vulnerable to sexual harassment in housing, especially rental housing, at every stage in the transaction, from accessing housing to repairs to eviction. Sexual harassment can occur at any point in a rental transaction, where it interferes with the terms, conditions or privileges of the housing or makes the housing unavailable.[21] Regina Cahan identified five different categories into which sexual harassment in housing usually falls: (1) abusive remarks, (2) unsolicited sexual behavior, (3) solicitation of sexual behavior by promise or award, (4) coercion of sexual activity by threat or punishment, and (5) punishment upon rejection of sexual overtures.[22] In other words, sexual harassment may occur at the beginning (application for housing), middle (terms and conditions of housing), or end (eviction from housing) of the rental relationship. It may be in the form of a threat (i.e. "Perform this sexual act or I will evict you"), or a reward (i.e. "I will charge you $50 less per month if you have sex with me"). It may involve, for example, unwanted sexual touching,

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18. This Article focuses on naming and critiquing the standard narrative. It is just the beginning of a discussion on reconstructing the narrative. More empirical work must be done to assess the phases of litigation where race falls out of the narrative, i.e. investigation, pleading, introduction of evidence, or judicial narrative. Possible litigation strategies—including pleading multiple claims of discrimination or accounting for racism in seeking damages, for example—should also be fully analyzed.

19. *See* Maggie E. Reed, Linda L. Collinsworth & Louise F. Fitzgerald, *There's No Place Like Home: Sexual Harassment of Low Income Women in Housing*, 11 PSYCHOL., PUB. POL'Y & L. 439, 439 (2005) ("Although sexual harassment in the workplace has received considerable attention, harassment in rental housing is a virtually unresearched phenomenon, despite informal data that it is widespread.").

20. *See id.*; *see also infra* notes 23-28 and accompanying text.

21. *See* 42 U.S.C. § 3604 (2012).

22. Regina Cahan, Comment, *Home is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 WIS. L. REV. 1061, 1064-65.

intimidating sexual advances, or withholding of repairs absent a sexual encounter.

B. The Prevalence of Sexual Harassment in Housing and Lack of Data on Its Intersection with Race

There is limited data about sexual harassment in rental housing.[23] In 1987, Regina Cahan first drew attention to the problem of sexual harassment in housing and provided preliminary data on its prevalence.[24] Cahan surveyed 150 fair housing centers across the country to "determine the number of sexual harassment complaints received and to analyze specific characteristics of the complaints" for each year from 1980 to 1985 and in total prior to 1980.[25] Of the eighty-seven centers that responded to Cahan's survey with usable information,[26] sixty-five percent (fifty-seven centers) reported receiving complaints of sexual harassment in housing, reporting a total of 288 incidents of sexual harassment in housing.[27] Applying the reporting rate used by the Merit Systems Protection Board (MSPB) for sexual harassment in the workplace (two to four percent), Cahan speculated that 6,818 to 15,000 cases of sexual harassment in housing may have occurred during the period she surveyed.[28] Although Cahan solicited quantitative and qualitative data, she did not report any data specific to the race of the victims or perpetrators.

Since 1987, other scholars and advocates have weighed in, crafting similar surveys and breaking down the legal and practical barriers to successful sexual harassment suits under the Fair Housing Act.[29] In 2005, the National Law

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23. Residential sexual harassment is, like other forms of sexual assault, underreported, making the gathering and analysis of data difficult. Cahan, *supra* note 22, at 1067 (identifying factors that deter women from reporting sexual harassment in housing); Aric K. Short, *Slaves for Rent: Sexual Harassment in Housing as Involuntary Servitude*, 86 NEB. L. REV. 838, 848 n.57 (2008) (positing that a lack of education on housing rights, combined with fear of retaliation or blacklisting, likely limited the accuracy of Cahan's count); *see also* Theresa Keeley, *Landlord Sexual Assault and Rape of Tenants: Survey Findings and Advocacy Approaches*, 40 CLEARINGHOUSE REV. 441, 442 (2006) (citing data that sexual assaults and rapes are underreported crimes).

24. Cahan, *supra* note 22, at 1061.

25. *Id.* at 1066.

26. Ninety-six centers responded to the survey, which is a sixty-four percent response rate. The data from five agencies was excluded because they did not distinguish sexual harassment from sex discrimination and the data from an additional four centers was excluded because those centers responded by providing referrals to other agencies. *Id.* at 1066.

27. *Id.*

28. *Id.* at 1069 (citing U.S. MERIT SYS. PROTECTION BD., SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE: IS IT A PROBLEM? 71 (1981)).

29. *See Housing and Sexual Violence: Overview of National Survey*, NAT'L SEXUAL VIOLENCE RESOURCE CTR. (Jan. 2010), http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Reports_Housing-and-sexual-violence-overview-of-national-survey.pdf; *National Survey of Advocates on Sexual Violence, Housing & Violence Against Women Act*, NAT'L SEXUAL VIOLENCE RESOURCE CTR. (2011), http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Reports_National-survey-of-advocates-on-sexual-violence-housing-and-VAWA.pdf; Adams, *supra* note 7, at 19-20; Beverly Balos, *A Man's Home is His Castle: How the Law Shelters Domestic Violence and Sexual Harassment*, 23 ST. LOUIS U.

Center on Homelessness and Poverty surveyed rape crisis centers to identify patterns regarding sexual assault and rape in housing, receiving 112 surveys from advocates in twenty-nine states.[30] In interpreting the results of that survey, Theresa Keeley found that advocates reported a total of 161 reported sexual assaults or rapes by landlords, property owners, or property managers.[31] Fifty-eight percent of the rape crisis centers that responded to the survey reported that at least one client reported sexual assault or rape by a landlord, property owner, or manager.[32] The National Law Center on Homelessness and Poverty study asked no questions specifically related to race.

Data maintained by the United States Department of Housing and Urban Development (HUD) and advocacy organizations on sex discrimination and sexual assault in housing provides further insight for understanding the prevalence of residential sexual harassment. HUD, for example, reports that in Fiscal Year 2013, it received 8,368 complaints of housing discrimination.[33] Twenty-eight percent of the complaints (2,337) alleged race discrimination.[34] Twelve percent of the complaints (985) alleged discrimination on the basis of sex, which is the primary means of alleging sexual harassment, and eleven percent (928) alleged retaliation as the basis of the complaint.[35] This data is relevant because sexual harassment allegations brought pursuant to the Fair Housing Act generally arise under one or both of those theories.[36] Although the report explicitly acknowledges that "complaints may contain multiple bases,"[37] it is impossible to tell from the report whether a complainant alleged sex discrimination *and* race discrimination. Therefore, there is no way to assess the relationship between race and sexual harassment.

Data gathered from advocacy organizations similarly provide context for a conversation about sexual harassment in housing. In 2009, the National Sexual Violence Resource Center distributed an online survey to advocates to gather

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PUB. L. REV. 77, 79-80 (2004); Nicole A. Forkenbrock Lindemyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW & INEQ. 351, 363-68 (2000); Keeley, *supra* note 23; William Litt et al., *Recent Developments: Sexual Harassment Hits Home*, 2 UCLA WOMEN'S L.J. 227, 231-44 (1992); Reed et al., *supra* note 19, at 439 n.1; Robert G. Schwemm & Rigel C. Oliveri, *A New Look at Sexual Harassment Under the Fair Housing Act: The Forgotten Role of § 3604(c)*, 2002 WIS. L. REV. 771, 774-86; Short, *supra* note 23, at 848 n.57; Deborah Zalesne, *The Intersection of Socioeconomic Class and Gender in Hostile Housing Environment Claims Under Title VIII: Who Is The Reasonable Person?*, 38 B.C. L. REV. 861 (1997).

30. Keeley, *supra* note 23, at 443.

31. *Id.* If one applied the MSBP reporting percentage applied in Cahan's study (two to four percent), it would suggest that 4,025 to 8,050 tenants were victims of sexual assault or rape at the hands of their landlords, property managers, or property owners.

32. *Id.*

33. *Annual Report on Fair Housing, FY 2012-2013*, U.S. DEP'T HOUS. & URB. DEV. 18 (Nov. 7, 2014), http://portal.hud.gov/hudportal/documents/huddoc?id=2012-13annreport.pdf.

34. *Id.* at 19.

35. *Id.*

36. *See infra* Part III.

37. *Annual Report on Fair Housing, FY 2012-2013*, *supra* note 33, at 19 n.1.

data on the intersection between sexual violence, housing, and homelessness.[38] After receiving responses from 239 respondents from thirty-three states and one U.S. territory, the organizations identified qualitative themes regarding tenants' risk of sexual harassment and assault in their homes. For the purposes of this Article, the most important themes identified are the landlords' lack of response in making residences physically safe and secure, a lack of awareness and sensitivity about sexual violence among property owners and landlords, and sexual exploitation of tenants by landlords.[39] A follow up survey, the National Survey of Advocates on Sexual Violence, Housing & Violence Against Women Act, was designed to focus primarily on sexual violence of those in public and subsidized housing.[40] Although the survey did not exclusively relate to landlord sexual harassment, its findings are instructive. When asking advocates what forms of sexual violence victims or their children have faced while living in public or Section 8 housing, for example, nearly half of the advocates reported hearing claims of sexual harassment.[41]

While all of the data identified herein are instructive, there is no national study or statistic that breaks down sexual harassment by race. In that way, each of the data operates under the assumption that there is a standard victim of sexual harassment in housing. There is no data that explicitly focuses on racialized sexual harassment and no useful information breaking down the different experiences of women facing residential sexual harassment on the basis of race.[42]

II. EXPOSING RACIALIZED SEXUAL HARASSMENT AT HOME AND GROUNDING IT IN AMERICA'S HISTORICAL RACIAL MYTH OF THE BLACK "JEZEBEL"

The premise of this Article is that the Black woman's experience of residential sexual harassment is missing from the prevailing "dirty old man" narrative, and that such an omission is problematic because it perpetuates the

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38. *Housing and Sexual Violence: Overview of National Survey*, *supra* note 29, at 1. The survey was undertaken in partnership with the Victim Rights Law Center, the National Sexual Assault Coalition Resource Sharing Project, the Louisiana Foundation Against Sexual Assault, the University of New Hampshire, and Pennsylvania Community Legal Services. *See id.*

39. *Id.* at 3.

40. *National Survey of Advocates on Sexual Violence, Housing & Violence Against Women Act*, *supra* note 29, at 1. The follow up survey was undertaken in partnership with the National Alliance to End Sexual Violence, the Victims Rights Law Center, and the National Organization of Sisters of Color Ending Sexual Assault. *Id.*

41. *Id.* at 5.

42. The data sets suffer from additional limitations. The HUD data, for example, is both over-inclusive and under-inclusive. It is over-inclusive because not all sex discrimination is sexual harassment and not all challenges under Sections 804(b) and 818 allege sexual harassment. It is under-inclusive because it accounts only for formal complaints filed with HUD and its affiliates. Cahan's survey and the National Law Center on Homelessness and Poverty survey are under-inclusive in that they limit the respondent pool to those individuals accessing services from fair housing organizations or rape crisis centers, respectively.

silence of Black women experiencing sexual subjugation in the private sphere and constrains a larger conversation about the structural forces that perpetuate such abuse. This Part uncovers testimonial evidence of racialized sexual harassment that individual Black women experienced in housing. It then connects the existence of racialized sexual harassment in housing, and the omission of that evidence from the primary legal narrative of the case, to the legacy of slavery, specifically the cultural acceptance of the Black woman as sexually lascivious (the "Jezebel" myth).

A. Methodology and Data

Mining public docket filings from sexual harassment cases brought by the Attorney General of the United States under the federal Fair Housing Act, this Part exposes testimonial evidence of racialized sexual harassment. Although sexual harassment claims brought by the Attorney General represent only a subset of relevant cases, courts have recognized the Attorney General "as the guardian of public interests under the Fair Housing Act."[43] With that in mind, and recognizing the Attorney General's unique position to seek redress for a group of persons or based on a pattern or practice of discrimination,[44] the cases brought by the United States offer insight into the role of race in residential sexual harassment claims.[45] They also provide a springboard for analysis of the invocation of the "dirty old man" narrative by scholars and advocates and set the stage for review of the jurisprudence that has developed in response to residential sexual harassment claims, all of which are investigated more fully in later Parts.

The Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section is the arm of the administration primarily responsible for enforcing the federal Fair Housing Act.[46] On its website, the Housing and Civil

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43. United States v. Katz, No. 10 Civ. 3335, 2011 WL 2175787, at *6 (S.D.N.Y. June 2, 2011).

44. 42 U.S.C. § 3614(a) (2012). The Attorney General has authority to bring suit under the Fair Housing Act when she "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by [the Fair Housing Act], or that any group of persons has been denied any of the rights granted by [the Fair Housing Act] and such denial raises an issue of general public importance." *Id.* She may also bring suit in certain circumstances based on a complaint filed with the United States Department of Housing and Urban Development. 42 U.S.C. § 3612(o).

45. This is not the first time that cases brought by the Attorney General via the Housing and Civil Enforcement Section have been used to analyze the state of residential sexual harassment and the related jurisprudence. *See* Reed et al., *supra* note 19, at 439 n.1 (analyzing data drawn from sexual harassment cases filed by the Housing and Civil Enforcement Section of the Civil Rights Division of the United States Department of Justice); Short, *supra* note 23, at 839-41 (relying on the trial transcript of United States v. Veal, 365 F. Supp. 2d 1034 (W.D. Mo. 2004) (No. 02-0720-CR-W-DW), a case brought by the Housing and Civil Enforcement Section of the Civil Rights Division, Department of Justice).

46. *See Housing and Civil Enforcement Overview*, U.S. DEP'T JUSTICE, http://www.justice.gov/crt/housing-and-civil-enforcement-section-overview (last visited June 26, 2015). The Department of Housing and Urban Development (HUD) also has enforcement authority. *See* 42 U.S.C. § 3608 (2012). From 2008 to 2014, I was a Trial Attorney in the Housing and Civil Enforcement

Enforcement Section maintains a list of its current and former cases, sorted by protected class.[47] To analyze the universe of relevant cases, I looked at the cases listed on that site maintained under the heading "Discrimination Based Upon Sex." For those cases involving sexual harassment in housing, I accessed docket entries publicly-available on PACER and/or Bloomberg Law related to those cases. I pulled and reviewed docket entries likely to include testimony from women experiencing sexual harassment in housing (i.e. Exhibits, Affidavits, Deposition testimony, Trial testimony, etc.).[48] I also reviewed filings establishing the lawyer's narrative about the case (*i.e.* Complaint, Motion for Summary Judgment, Trial Brief, opening and closing statements, etc.) for the next Section, which evidence a near complete omission of race, even in cases where the testimony suggested racialized sexual harassment. To ensure I was considering the entire relevant universe, I also did searches on Westlaw and Bloomberg Law to identify any other cases brought by the Attorney General asserting residential housing discrimination, then I followed the same procedure to identify relevant cases and narratives.[49]

It is helpful to begin with the statistics. According to information publicly available, the Attorney General has filed forty-two cases alleging sex discrimination on the basis of sexual harassment in violation of the Fair Housing Act.[50] Of the thirty-eight complaints that broke down the claims into specific sections of the Fair Housing Act, twenty-nine pled a violation of

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Section of the Civil Rights Division. I litigated cases under the federal Fair Housing Act, including sexual harassment cases.

47. *See Housing and Civil Enforcement Section Cases*, U.S. DEP'T JUSTICE, http://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1 (last visited June 26, 2015).

48. I concentrated specifically on direct quotations from women experiencing racialized sexual harassment, rather than allegations filtered through the lawyer. As a White woman who writes about the loss of the Black woman's voice in discrimination cases, I am particularly attentive to the risk of inappropriately speaking for Black women. As a former civil rights lawyer who litigated some of the cases cited herein, this Article is meant to highlight the importance of remaining client-centered in legal representation. For a discussion on the history and development of the client-centered representation model, see Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006). There is a reality of White men and women litigating discrimination cases on behalf of people of color, as I have done throughout much of my career. While I take issue with the historical and structural forces that have created that disparity, this Article attempts to remind all lawyers, and most specifically White lawyers, to listen to their clients' stories and goals and not ignore the impact of race, even in the face of a standard stock story that excludes race.

49. The results of this project are current through July 1, 2015. Although the number of publicly-available filings online is limited, both by date and in scope, documents provided sufficient information to support the claims made in this paper. A complete review of all filings in residential sexual harassment cases would shed enormous light on the problems identified herein. In a future project, I envision collecting a larger universe of relevant filings through Freedom of Information Act requests and courts' paper files to undertake a more thorough quantitative and qualitative analysis. Even that project, however, will fail to capture stories of racialized sexual harassment that drop out of the narrative before court papers are ever filed. Analyzing that possibility, along with its resultant impacts, is the subject of yet another future project.

50. This count includes a small number of cases, listed on the Department of Justice's website, in which the Attorney General did not file her own litigation, but weighed in on the case in some capacity. It may not capture every case where the United States filed an amicus brief or otherwise intervened in the case. *See Housing and Civil Enforcement Section Cases*, *supra* note 47.

Section 3604(a);[51] thirty-seven pled a violation of Section 3604(b);[52] thirty-one pled a violation of 3604(c);[53] and thirty-five alleged a violation of Section 3617.[54] Thirty-two complaints alleged discrimination based only on sex.[55] Other complaints asserted claims for discrimination on the basis of sex, along with familial status, race, disability, color, and/or national origin.[56] Five of the sexual harassment complaints brought by the Attorney General asserted both sex discrimination and race discrimination.[57] Nothing in any of those five complaints, however, explicitly alleges facts suggesting an intersection of sexism and racism.[58]

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51. Section 3604(a) makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a) (2012).

52. Section 3604(b) makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b) (2012).

53. Section 3604(c) makes it unlawful to

> make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. § 3604(c) (2012).

54. Section 3617 makes it unlawful to

> coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of [the Fair Housing Act].

42 U.S.C. § 3617 (2012).

55. I did not consider any of the seventeen complaints where the allegation of discrimination on the basis of sex did not include allegations of sexual harassment. *See Housing and Civil Enforcement Section Cases*, *supra* note 47.

56. For the most part, where complaints alleged more than one basis of discrimination, the facts giving rise to the allegations were separate and distinct from one another.

57. Second Amended Complaint, United States v. Harris, No. 4:09-cv-01859 (E. D. Mo. Oct. 11, 2011); Complaint, United States v. Willis, No. 3:11-cv-200 (E.D. Va. Mar. 30, 2011); Complaint for Monetary, Declaratory and Injunctive Relief, and Demand for Trial by Jury, United States v. Morgan, No. 4:07-cv-125 (S.D. Ga. Aug. 27, 2008); First Amended Complaint, United States v. Wingo, No. 8:01-cv-00504 (C.D. Cal. Dec. 3, 2001); Complaint, United States v. Krueger, No. 98-cv-0886 (E.D. Wis. Sept. 8, 1998.

58. Second Amended Complaint, United States v. Harris, No. 4:09-cv-01859 (E. D. Mo. Oct. 11, 2011); Complaint, United States v. Willis, No. 3:11-cv-200 (E.D. Va. Mar. 30, 2011); Complaint for Monetary, Declaratory and Injunctive Relief, and Demand for Trial by Jury, United States v. Morgan, No. 4:07-cv-125 (S.D. Ga. Aug. 27, 2008); First Amended Complaint, United States v. Wingo, No. 8:01-cv-00504 (C.D. Cal. Dec. 3, 2001); Complaint, United States v. Krueger, No. 98-cv-0886 (E.D. Wis. Sept. 8, 1998. *But see* Complaint at ¶ 10, United States v. Madrid, No. 1:04-cv-00683 (D.N.M. June 17, 2004) (Attorney General alleged both sex discrimination and disability discrimination, alleging that "[d]efendants have subjected tenants with mental disabilities to the following discriminatory conduct: (a) unwelcome sexual and/or physical harassment").

B. Evidence of Racialized Sexual Harassment

Race is generally absent from the prevailing narrative of residential sexual harassment and the jurisprudence that has developed.[59] Such is the case for the majority of residential sexual harassment cases brought by the Attorney General. With the exception of the handful of cases set forth below, there is almost complete exclusion of race from sexual harassment complaints and the legal narrative surrounding them. Where race is part of the complaint or legal narrative, there is little to suggest that the race of the victims or perpetrators changed the nature of the sexual harassment alleged. For example, in *United States v. Bathrick*, the government described its Fair Housing pattern or practice case theory: "Over the years, Bathrick has repeatedly rented to women desperate to find housing, and then, fully aware of their limited housing options, demanded sexual favors from them or otherwise sexually harassed them. This predatory conduct has harmed each of his victims."[60] Unlike the majority of the residential sexual harassment complaints filed by the Attorney General, court filings in *Bathrick* do provide racial identifiers for the defendant (White) and the twelve alleged victims (six were Black).[61] After the initial racial identification, however, the publicly-available docket is void of information or allegations related to race. The resulting implication is that the sexual harassment experienced by each woman was generally uniform; race played no role in the women's experience of sexual harassment.[62]

While the legal narrative advanced omits a discussion of race, a searching inquiry into case filings surfaces testimonial evidence of racialized sexual harassment. *Hawecker v. Sorenson*, a class action and pattern or practice case alleging sexual harassment in residential rental units, for example, exposes evidence of racialized sexual harassment. At least four women in *Hawecker* testified in depositions that the defendant invoked racial stereotypes in connection with his sexual harassment and/or sexual assault.[63] One female tenant asserted that the defendant, before putting his mouth on her breast, told her he wanted to suck her breasts, which he described as "big and black."[64] And when she asked why he sexually assaulted her, he told her "I like your black titties and I want you to have sex with me and then I won't evict you . . . ."[65]

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59. *See infra* Section III.A.

60. United States' Statement of the Case at 2, United States v. Bathrick, No. 0:04-cv-00940 (D. Minn. May 7, 2007).

61. *Id.* at 3-6.

62. *Id.*

63. Plaintiffs' Motion for Class Certification, Exhibit 9, at 6-7, Hawecker v. Sorenson, No. 1:10-cv-00085 (E.D. Cal. Jan. 15, 2010), ECF No. 22-9; *id.* at Exhibit 7, at 7, ECF No. 22-7; *id.* at Exhibit 8, at 7 & 14, ECF No. 22-8; *id.* at Exhibit 10, at 8, ECF No. 22-10.

64. *Id.* at Exhibit 7, , at 7.

65. *Id.* at 24.

Two other Black women and one Hispanic woman testified to similar statements, all in connection with sexual harassment.[66]

Female loan applicants made similar claims in *United States v. First National Bank of Pontotoc*, a case alleging that a bank manager's sexual harassment of female applicants constituted sex discrimination in violation of the Equal Credit Opportunity Act and the Fair Housing Act.[67] At least twenty-seven victims in Pontotoc identified as African American, many of whom averred racially-charged sexual harassment.[68] For example, one woman declared that the loan officer called her a "sexy little black thing," told her she had a "big black vagina" and "soft black ass and breasts."[69] One declarant asserted that the loan officer told her he liked to look at black women's breasts[70] and another asserted that he called her legs "good and brown."[71]

In *United States v. Mitchell*, one former tenant testified in deposition that, "[The defendant] will tell you that in a minute. He love black pussy but he don't like black girls. He just likes to have sex with them."[72] That witness further testified that Mr. Mitchell used his key to enter her apartment uninvited on a number of occasions, offered her money for sex, and fondled himself in front of her.[73]

In *United States v. Gumbaytay,* sworn declarations attached as exhibits to a court-filed motion revealed several Black women's assertions that their race was significant to the sexual harassment they experienced at the hands of their property manager. Several women declared that the defendant, often while offering a quid pro quo sexual exchange, expressed his sympathy with Black women.[74] And one declarant recalled the defendant saying that "I love my

66. Female tenants testified that, in connection with sexual harassment, Sorenson evoked racialized language about their body parts, calling one woman a "big, beautiful black women with big breasts" and telling another "I bet you have big, round, brown nipples." *Id.* at Exhibit 5, at 7, ECF No. 22-5; *id.* at Exhibit 8, at 19.

67. Complaint, United States v. First Nat'l Bank of Pontotoc, 3:06-cv-00061 (N.D. Miss. Apr. 27, 2006); Second Amended Complaint, *First Nat'l Bank of Pontotoc*, No. 3:06-cv-00061 (N.D. Miss. July 7, 2007).

68. Joint Stipulation Regarding Distribution of Settlement Fund at Affidavit Nos. 2-9, 11-24, 26-30, *First Nat'l Bank of Pontotoc*, No. 3:06-cv-00061 (N.D. Miss. Sept. 19, 2008). The negotiated consent decree provided a settlement fund for unidentified aggrieved women, in addition to providing specific monetary damages for fifteen identified women. Although the public record does not provide information about the race or allegations of the original fifteen women, the testimonial evidence in Pontotoc is drawn from the request for disbursement of the settlement fund for an additional twenty-nine identified women. Of the twenty-nine, twenty-seven identified as African American. *Id.*

69. *Id.* at Affidavit No. 2 ¶¶ 4, 10, ECF No. 84-2.

70. *Id.* at Affidavit No. 6 ¶ 12 ECF No. 84-6.

71. *Id.* at Affidavit No. 15 ¶ 4 ECF No. 84-15.

72. Notice of Filing of Deposition Transcript of Kimberly Stubblefield at 30, United States v. Mitchell, No. 1:07-cv-00150 (S.D. Ohio Aug. 18, 2008).

73. *Id.* at 32, 36, 39-40.

74. Plaintiff United States' Memorandum of Law in Opposition to Defendant Gumbaytay's Motion to Dismiss for Lack of Evidence at Exhibit 4 ¶ 3, United States v. Bahr, No. 2:08-cv-00573 (M.D. Ala. Oct. 29, 2010); *id.* at Exhibit 5 ¶¶ 4-5; *id.* at Exhibit 9 ¶ 8.

black sisters" and telling her that he liked Black "sisters with big butts" and "liked to have sex with them from the back," propping them up with pillows.[75]

The defendant in *United States v. Hurt*, discussed in the Introduction, provides further evidence of racialized sexual harassment in housing. The defendant landlord reported to one sexual harassment victim that he heard that "black girls had good pussy"[76] and encouraged another property manager in the area to take advantage sexually of Black tenants, who can "show you a thing or two for the rent."[77]

Although this Part is primarily limited to cases brought by the Attorney General of the United States, it is impossible, at this point, to ignore *Chomicki v. Wittekind*, a case assessing a claim of residential sexual harassment under Wisconsin's fair housing law.[78] Two years after Ms. Chomicki began her month-to-month tenancy in 1981, the defendant made explicit sexual advances toward the plaintiff and threatened to raise her rent or evict her if she refused his advances. When she failed to comply, he engaged in increasingly intimidating harassment. First, he gave her notice to vacate. Then, he cursed her when she sought to fight against an eviction. Finally, he "roamed through her apartment building at all hours of the night accompanied by his guard dog."[79] Although the publicly-available court documents in *Chomicki* are silent as to race, a contemporaneous article in the *Milwaukee Journal* revealed that Ms. Chomicki was a "black mother of two young children" and, in making sexual demands, the defendant allegedly told her, "All black women like it."[80]

C. Cultural Acceptance of the "Black Jezebel" Myth Provides Justification for Sexual Assault and Disregards the Resultant Suffering

The evidence of racialized sexual harassment in the cases set out above are buried in exhibits attached to filings. They are found fleetingly in deposition testimony or drawn from declarations submitted only after the case has been resolved. Like the legal narrative in *Hurt*, discussed in the Introduction, race is absent from the publicly-stated legal narratives advanced in *Hawecker*, *Pontotoc*, *Mitchell*, and *Gumbaytay*. In *Hawecker*, the class action complaint asserted sex discrimination and alleged that the "defendant has engaged in an extraordinary pattern and practice of sexual harassment, targeting and

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75. *Id.* at Exhibit 7 ¶¶ 11, 12. Although Mr. Gumbaytay's race is not explicitly acknowledged in the court documents, it appears from context that he also identified as Black.

76. Transcript of Jury Trial, Vol. 3, *supra* note 15, at 478.

77. Transcript of Jury Trial, Vol. 2, supra note 13, at 154.

78. Chomicki v. Wittekind, 128 Wis. 2d 188 (Ct. App. 1985).

79. *Id.* at 192. The use of a dog as an historic symbol of racial intimidation cannot be ignored. I will return to *Chomicki* later in the Article. *See infra* Conclusion.

80. *Suit Cites Sexual Harassment*, MILWAUKEE J., Jul. 24, 1985, at 10B, https://news.google.com/newspapers?id=n2MaAAAAIBAJ&sjid=_ioEAAAAIBAJ&pg=3908%2C125542 (last visited June 24, 2015).

exploiting female tenants and prospective tenants who are economically vulnerable."[81] The related United States' complaint in *United States v. Sorenson* asserted sex discrimination and detailed the kinds of sexual harassment its investigation revealed.[82] Neither complaint, however, directly or indirectly mentioned race.[83] Race is similarly absent from the narratives advanced in *Pontotoc*[84] and *Mitchell*.[85] In *Gumbaytay*, the government alleged that the sexual harassment took the form of offering to exchange rent for sexual favors,[86] offering to pay for sex,[87] and threatening not to do household repairs.[88] The harassment involved graphic verbal sexual advances,[89] incessant phone calls,[90] and unwanted sexual touching.[91] Based on those allegations, the complaint alleged a pattern or practice of discrimination on the basis of sex.[92] And yet neither the complaint nor other court filings establishing the government's narrative explicitly mentioned race. Rather than focus the case on the racialized sexual harassment, the government advanced a "dirty old man" narrative, with a singular focus on the relationship between poverty and sexual harassment.[93]

The stories of African American women subjected to sexual harassment in the home have gone unnoticed both because the action itself is undertaken in

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81. Class Action Complaint for Monetary, Declaratory and Injunctive Relief at 6, Hawecker v. Sorenson, No. 1:10-cv-00085 (E.D. Cal. Jan. 15, 2010).

82. Complaint and Demand for Jury Trial, United States v. Sorenson, No. 1:11-00164 (E.D. Cal. Mar. 25, 2011).

83. Class Action Complaint for Monetary, Declaratory and Injunctive Relief, *Hawecker*, *supra* note 81; Complaint and Demand for Jury Trial, *Sorenson*, *supra* note 82.

84. Second Amended Complaint, *supra* note 67; Consent Decree, United States v. First Nat'l Bank of Pontotoc, No. 3:06-cv-00061 (N.D. Miss. Nov. 7, 2007).

85. First Amended Complaint, United States v. Mitchell, 1:07-cv-00150 (S.D. Ohio Nov. 02, 2007); Joint Motion to Approve and Enter Consent Decree, *Mitchell*, 1:07-cv-00150 (S.D. Ohio Sept. 4, 2008).

86. Plaintiff United States' Memorandum of Law in Opposition to Defendant Gumbaytay's Motion to Dismiss for Lack of Evidence, *supra* note 74, at Exhibit 7 ¶ 8-9.

87. *Id.* at ¶ 9.

88. *Id.* at Exhibit 9 ¶ 5.

89. *Id.* at Exhibit 5 ¶ 5; Exhibit 1 ¶ 14.

90. *Id.* at Exhibit 1 ¶ 12.

91. *Id.* at Exhibit 2 ¶ 7.

92. Complaint and Request for Jury Trial, United States v. Bahr, No. 2:08-cv-00573 (M.D. Ala. Apr. 29, 2010).

93. It is important to recognize, however, that the Attorney General has different goals and responsibilities than a private lawyer representing a private plaintiff. Cases brought by the Attorney General under the Fair Housing Act and other statutes are brought on behalf of the United States, not individual plaintiffs. While the statute permits recovery for persons aggrieved by the defendant's discriminatory conduct, *see* 42 U.S.C. § 3614(d)(1)(B) (2012), the aggrieved persons are not, unless they intervene, parties to the action or represented by counsel in the action. *See* United States v. Gumbaytay, 276 F.R.D. 671, 674 (M.D. Ala. 2011). Understanding that relationship must underscore analysis and critique of the government's actions and choices, where there are different ethical rules governing their relationship to aggrieved persons than would exist in a traditional attorney-client relationship. Further, the majority of cases cited herein brought by the Attorney General are "pattern or practice" cases brought pursuant to 42 U.S.C. § 3614. Legal strategy may, of course, be constrained when one must construct a coherent case theory from disparate experiences.

the private sphere[94] and because cultural stereotypes and tropes have made the Black victim invisible. While the hidden nature of the transaction and action operate similarly for all women experiencing sexual harassment in housing, the national cultural myth of the sexually insatiable Black woman makes African American women more vulnerable to residential sexual harassment and then silences their resistance by providing "justification" for the abuse.

Since the days of slavery, African American women have been confronted with the myth that Black women are promiscuous and hyper-sexual, often referred to as the Jezebel myth.[95] Born of the tension between Victorian notions of chastity and weakness and the commoditization of enslaved Black women, the Jezebel myth "created space for white moral superiority by justifying the brutality of Southern white men"[96] and operated to disavow that Black women could ever be victims "in this arrangement."[97] The institutional acceptance of the Jezebel myth leads to dual outcomes: excusing the sexual abuse of Black women and silencing resistance.[98]

The institution of slavery depended on the justification of the sexual harassment of, sexual abuse of, and forced sexual reproduction by enslaved Black women.[99] By 1660, laws defined a child's status as free or slave according to his or her mother's status.[100] In other words, a child born to a slave was a slave. When, in 1807, the transatlantic slave trade was abolished,[101] birth of a child by a slave woman became the cheapest and easiest way to reinforce a slaveholder's workforce. Slave owners subjected enslaved women to forced,

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94. *See* Balos, *supra* note 29, at 87 ("Historically, social, political, and legal institutions have supported male control of women through violence. One of the most powerful societal values that has reinforced the vulnerability of women to domestic violence has been the concept of the private, domestic sphere.").

95. *See* MELISSA HARRIS-PERRY, SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA 53-69 (2011); Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 570; Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 11-12 (1993). Black women, of course, are not the only women subjected to cultural myths that increase their vulnerability to harassment or subjugation. *Cf.* Coleman, *supra* note 8, at 404 ("In addition to the typical understanding of their vulnerability, however, Latina immigrant workers may also experience subjugation based upon cultural narratives that inform their experiences both at home and at work.").

96. HARRIS-PERRY, *supra* note 95, at 55.

97. *Id.* at 56. *Cf.* Brenda V. Smith, *Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody*, 59 UCLA L. REV. 1690, 1700, 1722 (2012) (recognizing multiple cultural myths and ideas about gender and race that impact social views about sexual assault, including that Black women are viewed as "loose and immoral" and that all men, including young boys, are assumed to "always desire sex, regardless of circumstances").

98. HARRIS-PERRY, *supra* note 95, at 56; *see also* Kimberle Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CAL. L. REV. 1467, 1468 (1992) (noting that "race cannot be separated from gender in Black women's lives" because "[r]ace in many ways both shapes and [sic] kinds of gender subordination Black women experience and limits the opportunities to successfully challenge it").

99. *See* Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, *in* DIRECTIONS IN SEXUAL HARASSMENT LAW 457, 464 (Catherine A. MacKinnon & Reva B. Siegel eds., 2004) (deeming slavery as "widespread, institutionalized, state-sanctioned sexual harassment implemented in perhaps its most corrupt form").

100. Wilma King, *Childhood*, *in* BLACK WOMEN IN AMERICA 203 (Darlene Clark Hine ed., 2d ed. 2005).

101. Deborah Gray White, *Motherhood*, *in* BLACK WOMEN IN AMERICA, *supra* note 100, at 399.

coerced, or encouraged coupling to create more children and maintain or increase his slave property.[102] The Jezebel myth provided his moral justification.

It is the national cultural acceptance of the Jezebel myth that has perpetuated the willful ignorance of the sexual abuse of Black women across generations. The Black women's testimony in *Hawecker*, *Pontotoc*, *Mitchell*, and *Hurt* is clear evidence that the Jezebel myth is alive and well in the perpetrators' justification for the sexual harassment of Black women. In *Hawecker*, *Pontotoc*, and *Mitchell* the vulgar descriptions of and interest in the very "Blackness" of the women's bodies is drawn directly from the myth of a hyper-sexual Black woman. Even in cases of intra-racial discrimination like *Gumbaytay*, the Jezebel myth is evident in the sexually harassing conduct.[103] Further, the evidence in *Hurt* and *Chomicki* establish that the defendant found justification in his actions because he believed that Black women "like it."

And yet, race was absent from the legal narrative employed to prosecute each of these actions. The omission of the racialized sexual harassment from the overarching narrative does nothing to dispel the Jezebel myth. In fact, it risks perpetuating the invisibility of a particular victim of sexual assault and discounting her suffering. It is possible to argue, in fact, that it is the ubiquitous acceptance of the Jezebel myth that sits at the heart of the exclusion of race from narratives of residential sexual harassment.

III. THE PREVAILING "DIRTY OLD MAN" NARRATIVE

The previous Part exposed testimonial evidence of racialized sexual harassment in housing and suggested that, even in the face of such evidence,

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102. *See id.* ("Enslavers achieved this high rate of fertility through the use of verbal encouragement, subtle manipulation, and overt coercion."); Sharla M. Fett, *Childbirth*, *in* BLACK WOMEN IN AMERICA, *supra* note 100, at 199 (discussing the psychological damage of forced unions between slaves); Kathleen Thompson, *Sexual Harassment*, *in* BLACK WOMEN IN AMERICA, *supra* note 100, at 113; Crenshaw, *supra* note 98, at 1469 ("Forced sexual access to Black women was institutionalized in slavery and was central to its reproduction.").

103. Although intra-group racialized sexual harassment presents different issues for Black women than sexual harassment by a White perpetrator, it remains a unique brand of sexual harassment that should not be excluded from the legal narrative advanced. *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243-44 (1991) (discussing how, because of the historical experience of Black men, the Black woman's experience of sexual harassment is omitted from the cultural understanding of her sexual assault). In fact, some scholars discuss how pervasive silence has become a cultural norm in the Black community when a Black woman is sexually assaulted by a Black man. *See* Crenshaw, *supra* note 98, at 1472 ("[T]he pervasive silence about this issue in the Black community is grounded in fears that speaking about sexual abuse will reinforce negative racial stereotypes about Blacks in general and about Black men in particular."); *see also* Patricia A. Broussard, *Black Women's Post-Slavery Silence Syndrome: A Twenty-First Century Remnant of Slavery, Jim Crow, and Systemic Racism—Who Will Tell Her Stories*, 16 J. GENDER RACE & JUST. 373, 375-76 (2013) ("The muted tongues of Black women have protected Black men because the women do not want their voices to be an instrument that further neuters Black men, while White men have been empowered by the silence of the American justice system.").

the "dirty old man" narrative prevails. This Part establishes just how pervasive the "dirty old man" narrative is by engaging in thorough analysis of the body of scholarship on residential sexual harassment and the universe of state and federal case law addressing such claims. There are two distinct elements to this Part. First, it introduces the primary avenues of legal redress for residential sexual harassment and provides a brief introduction to the methodology of the case law research. Second, it sets out the current state of the literature on the topic and tracks how both scholars and courts have advanced the "dirty old man" narrative by focusing on two component parts of residential sexual harassment: (1) the economically vulnerable victim, and (2) sexual harassment as an invasion of the sanctity of the home.

A. Residential Sexual Harassment in the Law

The primary legal avenue for bringing a residential sexual harassment challenge in court is the federal Fair Housing Act and analogous state and local statutes.[104] Apart from federal, state, and local fair housing laws, plaintiffs have sought relief for sexual harassment in housing under various legal theories, including sexual battery,[105] assault and battery,[106] intentional infliction of emotional distress,[107] tortious interference with contract,[108] breach of covenant of quiet use and enjoyment,[109] and unlawful entry.[110] Scholars have also proposed using the Thirteenth Amendment's prohibition against involuntary servitude as a means of legal redress for sexual harassment in housing[111] and instituting an implied warranty of freedom from sexual harassment.[112] The most frequently cited legal basis for a claim of sexual harassment in housing, however, remains the federal Fair Housing Act and its state and local analogs.

Under the Fair Housing Act, complainants have more than one avenue for seeking relief. One may file an administrative complaint with HUD[113] or may file a civil action in a United States federal district court or state court.[114] Further, upon making certain findings, the Secretary of HUD may file a

104. 42 U.S.C. §§ 3601-3619 (2006).

105. Beliveau v. Caras, 873 F. Supp. 1393 (C.D. Cal. 1995).

106. Brillhart v. Sharp, No. 4:CV-07-1121, 2008 WL 2857713 (M.D. Pa. July 21, 2008).

107. Cavalieri-Conway v. L. Butterman & Assocs., 992 F. Supp. 995 (N.D. Ill. 1998).

108. *Id.*

109. Salisbury v. Hickman, 974 F. Supp. 2d 1282 (E.D. Cal. 2013).

110. *Id.*; *see also* Cahan, *supra* note 22, at 1083-87 (cataloguing techniques for challenging sexual harassment at home, including issuing a counterclaim in an eviction action, asserting an unfair trade practice, seeking redress under real estate licensing laws, or asserting state law actions, including assault and battery, intentional infliction of emotional distress, trespass, invasion of right to privacy and constructive eviction).

111. Short, *supra* note 23.

112. Theresa Keeley, *An Implied Warranty of Freedom from Sexual Harassment: The Solution for Harassed Tenants Where the Fair Housing Act Has Failed*, 38 U. MICH. J.L. REFORM 397 (2005).

113. 42 U.S.C. § 3610 (2006).

114. *Id.* § 3613.

Secretary-initiated complaint in federal district court[115] or the Attorney General may file a claim alleging a pattern or practice of discrimination in federal district court.[116]

The jurisprudence on residential sexual harassment—a total of one hundred and two state and federal opinions—was initiated by *Shellhammer v. Lewallen* in 1983.[117] In *Shellhammer*, the court found that sexual harassment is cognizable as sex discrimination under the Fair Housing Act.[118] In addition to setting the stage for sexual harassment claims, *Shellhammer* has had lasting impact on development of the jurisprudence because of its absolute reliance on Title VII jurisprudence analyzing sexual harassment in employment. *Shellhammer*'s application of Title VII's strict "severe or pervasive" standard for establishing a hostile environment claim ignores the difference between sexual harassment in the workplace and sexual harassment in the home. Although scholars have raised significant concerns about the strict application of Title VII sexual harassment law to allegations of sexual harassment under Title VIII,[119] courts have generally followed the legal structure set forth by the *Shellhammer* court.[120] *Shellhammer* symbolizes the way that the judiciary has assessed residential sexual harassment as a standard claim with a narrow vision of the kind of sexual harassment, the victim of sexual harassment, and the impact of sexual harassment.[121]

B. More Methodology and Data

To collect the universe of state and federal court opinions addressing residential sexual harassment, I[122] searched online engines (Lexis and Westlaw) in the search form for all state and federal law. The results included several hundred opinions, many of which arose under employment discrimination laws

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115. *Id.* § 3610.

116. *Id.* § 3614. The Attorney General may initiate a suit whenever she
> has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance.

Id.

117. Shellhammer v. Lewallen, 4 Equal Opportunity Housing Rep. (P-H) ¶ 15,472 (W.D. Ohio 1983), *aff'd*, 770 F.2d 167 (6th Cir. 1985) (unpublished table decision).

118. *Id.*

119. *See infra* Section III.C.

120. Several scholarly articles carefully consider the history of the Fair Housing Act's jurisprudence and therefore, I do not delve deeply into the analysis here. For an in-depth analysis of the *Shellhammer* case, see Cahan, *supra* note 22, at 1075-81. For an historical look at sexual harassment under the Fair Housing Act and the relationship between Title VII and Title VIII, see Schwemm & Oliveri, *supra* note 29, at 774-86.

121. For a more in-depth discussion of the judicial narrative of the residential sexual harassment jurisprudence, see *infra* Section III.C.

122. It was actually three fabulous research assistants—Briana Carlson, Aabru Madni, and Liz Lehman—who undertook the bulk of this work. I could not have captured the entire universe of case law or broken it down so intelligently without them.

or other statutes or common law. After weeding out the cases that did not involve allegations of sexual harassment in housing, I was left with one hundred and two opinions.[123] I then created a chart as a repository for the standard information I wanted to gather from the court opinions, including case name; citation/court/case number; posture for order; causes of action; implication of Title VII; sanctity of the home; vulnerability of victim; race; and other.[124] I read each court opinion and charted the data.[125]

Electronic searches revealed one hundred and two state and federal court opinions arising from allegations of residential sexual harassment.[126] Nearly half of the opinions explicitly cited to Title VII or the analogous state employment statute to guide their analysis under Title VIII, and several more cited to Title VII case law as precedent,[127] most frequently when assessing a hostile environment sexual harassment claim.[128] Courts' reliance on Title VII

123. To create the most complete list of cases dealing with sexual harassment in housing, we ran a different search in each database. Beginning with Westlaw, my first research assistant, Aabru Madni, ran the following search in "All State and Federal" cases: (sy,di("Housing") & "sexual harassment"). The search returned more than 500 cases, only some of which involved claims of residential sexual harassment. My second research assistant, Briana Carlson, ran a slightly more expanded search in Lexis (Housing & "sexual harassment"). That search turned up additional opinions touching on sexual harassment in housing. After I did a thorough read of each case, I omitted certain cases that did not involve allegations of residential sexual harassment. As I read the cases, I also checked the citations within one case against the chart to make sure that we had not excluded any court opinions. Where the pulled court opinion suggested that another opinion might exist (i.e. the search revealed a circuit court opinion that referenced a trial court opinion), I looked for the additional opinion. That analysis turned up several additional cases. After charting those cases, I asked my final research assistant, Liz Lehman, to recreate the chart that I created with her own analysis of the cases. I also asked her to recreate the searches to ensure that we had the most complete listing possible. Her search turned up an additional handful of cases. The count is current as of October 1, 2015, and does not include unpublished cases in landlord-tenant court where sex discrimination or sexual harassment was raised as a defense to eviction.

124. A pared down version of that chart is attached as Appendix A to this Article.

125. I did not limit the search or data-gathering to cases alleging residential sexual harassment under anti-discrimination law, although the great majority of cases did make such an allegation. Because the court opinions did not universally name the causes of action, I did not include that data in the Article.

126. I query whether the fact that Black women and other women of color are disproportionally subjected to residential sexual harassment, *see infra* notes 158-160 and accompanying text, is itself a determining factor in the paucity of written court opinions, in that cases may not be filed or may not warrant a written decision.

127. Several court opinions included in the total count solely involved procedural matters, where the underlying case related to residential sexual harassment, but the court opted not to engage in analysis of the substance of the anti-discrimination law itself.

128. Other scholars have suitably addressed the problems with a wholesale adoption of Title VII into Title VIII. *See supra* notes 119-120 and accompanying text. I will not rehash that analysis. It is worth noting, however, that courts are not the only ones to apply an assessment of sexual harassment in employment to sexual harassment in housing. In addition to the obvious citation to precedent, in certain circumstances, parties have actively advocated for the application of Title VII to Title VIII. *See, e.g.*, People of State of N.Y. by Abrams v. Merlino, 694 F. Supp. 1101, 1104 (S.D.N.Y. 1988) (plaintiffs invoked the relationship between Titles VII and VIII to advocate for a finding that sexual harassment can be cognizable without the loss of a tangible housing benefit); United States v. Peterson, No. 09-10333, 2010 WL 2992367, at *6 (E.D. Mich. July 27, 2010) ("The Government urges the Court to extend the reasoning of Waffle House beyond the Title VII context to the Fair Housing Act claims at issue here, inasmuch as the statutes are structurally similar and the Attorney General should not be precluded from bringing a lawsuit on behalf of the victims of unlawful discrimination.").

case law as precedent for Title VIII analysis generally arises from "the fact the 'two statutes are part of a coordinated scheme of federal civil rights laws enacted to end discrimination.'"[129] In part because of the limited jurisprudence on sexual harassment under the Fair Housing Act and analogous state fair housing and civil rights laws, the law on employment discrimination provides the framework for assessment of sexual harassment as housing discrimination.

C. The Case Law and Critiques and Limits of that Law

This Section of the Article makes the connection between the current state of the law, the scholars' critique of the law, and the development and adoption of the "dirty old man" narrative by both scholars and courts. The current scholarship falls into two primary categories: (1) critique of the *Shellhammer* approach of applying Title VII sexual harassment law to Title VIII, and (2) suggestions of alternate paths to redress. I focus primarily on the former, which often is also found in the latter as part of the rationale for seeking an alternate path of redress. The critique rests primarily on the notion that the experience of and injury attendant to sexual harassment in the home is different than sexual harassment in the workplace. Specifically, scholars have focused primarily on the role of poverty in sexual harassment and the impact of sexual harassment and abuse in the home, which should be a safe refuge protected by society and law. This is important work that has raised the profile of residential sexual harassment and pushed advocates and courts to think critically about the jurisprudence as it develops.[130] It has shed light on a relatively unknown and under-acknowledged kind of subjugation of women.[131] It has challenged the courts' unrelenting commitment to Title VII as a guidepost for Title VIII sexual harassment claims[132] and encouraged courts to assess housing discrimination

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129. *Merlino*, 694 F. Supp. at 1104 (quoting Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 934 (2d Cir. 1988) (citing United States v. Starrett City Assoc., 840 F.2d 1096 (2d Cir. 1988), and Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032 (2d Cir. 1979))).

130. I approach the current body of scholarship on residential sexual harassment with admiration and respect. In my analysis and critique of the current body of literature on residential sexual harassment, I channel Kathryn Abrams's positive discussion of the import of second wave feminists, even while recognizing that their work tended toward "singular characterizations of female subjects." *See* Abrams, *supra* note 3, at 2482 ("The claim that 'second wave' feminists embraced a notion of a unitary, identitarian female subject should not be overstated. The singular conceptualizations of women's perception or experience that marked early feminist efforts were partly strategic; to highlight the voices that had been excluded, it was often useful to streamline the message and downplay complexity or contradiction. Moreover, even when unitary conceptions were not attributable solely to strategic ends, they often held the seeds of their dissolution. Accounts that hypothesized the social construction of gender at least implicitly raised the question of why women were not subject to other constructive influences as well. In addition, the juxtaposition of any two such theories—the difference and dominance theories, for example—revealed that even one's identity 'as a woman' could be shaped by multiple images, norms, and influences.").

131. *See supra* Section I.B.

132. *See* Adams, *supra* note 7, at 44-48 (making a case for courts to understand and consider the different in context between residential and workplace sexual harassment); Forkenbrock Lindemyer,

under a different or more nuanced standard.[133] Scholars have creatively imagined novel ways of using the Fair Housing Act as a tool to combat sexual harassment[134] and proposed alternate claims to seek redress,[135] and they have been successful in pushing courts to account for the vulnerable victim and sexual harassment as invasion of the sanctity of the victim's home.

By focusing on differentiating residential sexual harassment from workplace sexual harassment, however, the current scholarship in this specific space does little to challenge the prevailing notion of anti-discrimination law as a tool to deal with individual bad actors, rather than systemic and institutional bias.[136] The focus on the financial disparity between perpetrator and victim and invasion of the sanctity of the victim's home is rooted in individual bad acts that constitute aberrant behavior. It is the "dirty old man" narrative.

1. The Sanctity of the Home: Scholars' Perspective

One of the primary concerns levied against the application of Title VII jurisprudence to residential sexual harassment claims is that such application fails to account for the trauma attendant to sexual abuse in the home, which is

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supra note 29, at 352 (defining her thesis as an assessment of how "the current doctrinal analysis of residential sexual harassment, imported from employment sexual harassment, fails to address core issues particular to the context of the home.").

133. *See* Balos, *supra* note 29, at 90-95 (challenging courts' approach to a landlord's right to privacy in his home and business to the exclusion of a female tenant's right to privacy in her home); Zalesne, *supra* note 29 (proposing a two-step analysis under the Fair Housing Act that assesses the conduct of the perpetrator, rather than the effect on the victim, alongside the relationship between the perpetrator and victim).

134. *See* Schwemm & Oliveri, *supra* note 29 (proposing an increased use of the Fair Housing Act's Section 3604(c) to combat sexual harassment in housing).

135. *See* Keeley, *supra* note 112 (proposing an implied warranty of freedom from sexual harassment as a new kind of claim); Short, *supra* note 23 (proposing claims based on the Thirteenth Amendment as a challenge to residential sexual harassment).

136. Such is particularly the case in claims asserting disparate treatment, which is generally the cause of action under which a charge of residential sexual harassment arises. *See* Honce v. Vigil, 1 F.3d 1085, 1088-89 (10th Cir. 1993) (citing St. Mary's v. Hicks, 509 U.S. 502 (1993), and Sorensen v. City of Aurora, 984 F.2d 349, 352 (10th Cir.1993)); *see also* Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CALIF. L. REV. 1, 3 (2006) (arguing that "structural employment inequalities cannot be solved without going beyond the generally accepted normative underpinnings of antidiscrimination law"); Tristin K. Green, *Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory*, 38 HARV. C.R.-C.L. L. REV. 91, 111 (2003) ("Examining the various theories and their underlying conceptions of discrimination, however, it becomes clear that existing Title VII doctrine, although it recognizes the importance of structural factors in some contexts, is ill-equipped to address the forms of discrimination that derive from organizational structure and institutional practice in the modern workplace."). Green further finds that, post-*Walmart*, even class action claims of discrimination are unlikely to succeed in challenging the structural forces that perpetuate discrimination. Tristin K. Green, *The Future of Systemic Disparate Treatment Law*, 32 BERKELEY J. EMP. & LAB. L. 395, 405 (2011) ("Requiring a policy of discrimination focuses inquiry on the state of mind of high-level decision makers (the policy makers) of a defendant organization. It is not enough according to this view that discrimination proliferates within the organization, even if fueled by organizational structures, institutional practices, and work cultures implemented and controlled by the employer. The fact finder must find that the entity employer adopted a policy of discrimination."); *see also* sources cited *supra* note 3.

different than the injury attendant to sexual harassment in the workplace. More specifically, scholars and litigators have consistently argued that residential sexual harassment infringes on the sanctity of the home. Regina Cahan first made that claim in 1987, arguing:

> Although the research on the effects of sexual harassment in the workplace and academia is relevant, the implications of being harassed in one's home may be even more traumatic. When sexual harassment occurs at work, at that moment or at the end of the workday, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion in her life. Ideally, home is the haven from the troubles of the day. When home is not a safe place, a woman may feel distressed and, often, immobile.[137]

Since 1987, several scholars have agreed with and expanded on Cahan's insight, looking at the issue of sexual harassment in the home from different angles. Michelle Adams, for example, argues that courts fail to account for the unique context of residential sexual harassment.[138] Citing case law in other areas recognizing and promoting the sanctity of the home, she notes: "[A]s an ideal, the home is the repository of all that has happened in one's life that is 'good' or supposed to be good; it is the place where we imagine a life that is better than it ever was."[139] Nicole Forkenbrock Lindemyer agrees, arguing that "the current practice of transporting Title VII standards used in analyzing employment sexual harassment into Title VIII cases of residential sexual harassment fails to appreciate the fundamental conceptual and circumstantial distinctions between the two contexts."[140] Deborah Zalesne finds sexual harassment in housing particularly troubling because of its invasion into the sanctity of the home.[141]

Not all scholars believe that there is a history of universally recognizing the sanctity of a person's home. While Beverly Balos agrees that courts have recognized the sanctity of the home as a rationale for privacy protections, she argues that the national jurisprudence limits that protection to select groups. She contrasts the invocation of privacy protections for male domestic violence

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137. Cahan, *supra* note 22, at 1073.

138. Adams, *supra* note 7, at 17; *see also* Carlotta J. Ross, DiCenso v. Cisneros*: An Argument for Recognizing the Sanctity of the Home in Housing Sexual Harassment Cases*, 52 U. MIAMI L. REV. 1131, 1137 (1998) (using *DiCenso* as an springboard to discuss how Title VII's misapplication to Title VIII ignores ingrained principles of the home as a sacred space).

139. Adams, *supra* note 7, at 25.

140. Forkenbrock Lindemyer, *supra* note 29, at 353.

141. Zalesne, *supra* note 29, at 862.

perpetrators with the failure to recognize the privacy interest of female tenants who are targets of sexual harassment by their landlords.[142]

2. The Sanctity of the Home: Courts' Perspective

Although courts have not gone as far as scholars and advocates would like in recognizing how residential sexual harassment invades the sanctity of the woman's home, the concept has gained some traction in case law. Of the more than one hundred court opinions on residential sexual harassment, twelve courts explicitly highlighted or discussed the fact that the harassing conduct occurred in the woman's home, a place where she should feel safe and secure.[143] That count does not include factual assertions that would indicate the invasion of the sanctity of a woman's home (i.e. illegal use of passkey or plaintiff's fear of defendant at home) without further discussion by the court. Cahan's argument has been cited favorably by three federal district courts,[144] HUD,[145] and at least two state and federal trial and appellate briefs.[146] The court in *Beliveau v. Caras*, for example, noted:

> Particularly where, as here, the alleged battery was committed (1) *in* plaintiff's own home, where she should feel (and be) less vulnerable, and (2) by one whose very role was to provide that safe environment, defendants' contention that plaintiff has failed to allege "conduct that was so severe or pervasive to 'alter the conditions' of plaintiff's housing environment" and has failed to "allege an 'abusive' housing environment" resulting from defendants' conduct is not well-taken.[147]

The lower court in *Quigley v. Winter* also drew an explicit distinction between sexual harassment at work and at home, finding that "[a] tenant should be able to feel secure in her own home, and there was testimony from Ms. Quigley that she was not,"[148] a sentiment adopted by the Eighth Circuit on

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142. Balos, *supra* note 29, at 79-80. *But see* Keeley, *supra* note 112, at 417-19 (suggesting that an emphasis on the context of the home could backfire as a litigation strategy and arguing that "courts should first focus on the nature of the relationship between the parties and why it exists rather than the setting in which the harassment occurs").

143. *See infra* Appendix A, "Sanctity of Home."

144. Salisbury v. Hickman, 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013); Richards v. Bono, No. 5:04CV484-OC-10GRJ, 2005 WL 1065141, at *5 n.34 (M.D. Fla. May 2, 2005); Beliveau v. Caras, 873 F. Supp. 1393, 1397 n.1 (C.D. Cal. 1995).

145. Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, 65 Fed. Reg. 67666-01 (Nov. 13, 2000) (to be codified at 24 C.F.R. pt. 100).

146. Brief of Plaintiff-Appellee at 26 n.4, Akron Metro. Hous. Auth. v. Ohio Civil Rights Comm., No. 07-0254, 2007 WL 3090515 (Ohio Oct. 3, 2007); Plaintiff's Supplemental Memorandum at 11, Brown v. Univ. Mgmt. Inc., No. 05-71896, 2007 WL 4590006 (E.D. Mich. Apr. 20, 2007).

147. *Beliveau*, 873 F. Supp. at 1398; *see also id.* at 1397 n.1 (citing Cahan for the proposition that "sexual harassment in the home is in some respects more oppressive" than sexual harassment in the workplace).

148. Quigley v. Winter, 584 F. Supp. 2d 1153, 1157 (N.D. Iowa 2008).

appeal.[149] In *United States v. Veal*, the court found that the defendant's entry into the aggrieved women's homes "had the effect of destroying any sense of security the women had in their homes,"[150] and the court in *United States v. Peterson* lamented the defendant's "egregious" behavior, which interfered "with the women's peaceful enjoyment of their homes, which should have been the one place where they could turn for refuge."[151]

3. The Vulnerable Victim: Scholars' Perspective

Set inside and alongside the sanctity of the home narrative is the vulnerable victim narrative. The vulnerable victim narrative sets up the economic power differential between the deviant male landlord and the vulnerable female tenant.[152] Like the narrative in the *Hurt* case described at the beginning of this Article, vulnerability attendant to poverty rises to the surface of the stock story. Unsurprisingly, allegations in sexual harassment cases and the existing data bear out the hypothesis that poverty is a key factor for residential sexual harassment.[153] The singular focus on economic vulnerability, however, further cements the concept that sexual harassment has a universal nature and universal impact unrelated to the race of the victim or the perpetrator.

Scholars who have specifically written about sexual harassment in rental housing have nearly all found that poverty is a critical factor in assessing a female tenant's susceptibility to sexual harassment. Michelle Adams argues that, while there are multiple vulnerabilities that may operate to increase a woman's susceptibility to residential sexual harassment, "the final gloss on all of these factors is the relationship between gender and poverty."[154] Beverly Balos contends that "[b]eing a low-income tenant or experiencing poverty is a key factor in being vulnerable to sexual harassment in housing. . . . Looking at

149. Quigley v. Winter, 598 F.3d 938, 947 (8th Cir. 2010) ("We emphasize that Winter subjected Quigley to these unwanted interactions in her own home, a place where Quigley was entitled to feel safe and secure and need not flee, which makes Winter's conduct even more egregious."); *see also* Williams v. Poretsy Management, 955 F. Supp. 490, 498 (D. Md. 1996) (citing *Beliveau* for the proposition that "[a]t least one court has recognized that sexual harassment in the home may have more severe effects than harassment in the workplace"); Salisbury v. Hickman, 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013) (same); Richards v. Bono, No. 5:04CV484-OC-10GRJ, 2005 WL 1065141, at *5 n.34 (M.D. Fla. May 5, 2005) (same); Reeves v. Carrollsburg Condominium Unit Owners Ass'n, No. CIV. A. 96–2495RMU, 1997 WL 1877201, at *6 (D.D.C. Dec. 18, 1997) (same); People *ex rel.* City of Santa Monica v. Gabriel, 186 Cal. App. 4th 882, 888 (Ct. App. 2010) (citing Cahan, *supra* note 22for the proposition that harassment in the home is more severe than harassment at work in the context of a sexual harassment claim under state unfair business practice law).

150. United States v. Veal, 365 F. Supp. 2d 1034, 1038 (W.D. Mo. 2004).

151. United States v. Peterson, No. 09-10333, 2011 WL 824602, at *2 (E.D. Mich. Mar. 3, 2011).

152. *See* Zalesne, *supra* note 29, at 866 ("Sexual harassment occurs when one person is in a position of power with respect to the other.").

153. *See* United States v. Koch, 352 F. Supp. 2d 970, 983 (D. Nev. 2004) (one sexual harassment victim testified that, "as a result of her eviction, she had no permanent home for three months, living 'everywhere' and 'anywhere'"); Woods v. Foster, 884 F. Supp. 1169 (N.D. Ill. 1995) (plaintiff forced to choose a period of homelessness over sexual coercion in homeless shelter).

154. Adams, *supra* note 7, at 37.

the descriptions of the plaintiffs in the reported federal cases reveals that they are poor women, often providing the only support for their families and often facing homelessness."[155] Aric Short agrees, noting that "[v]ictims of sexual harassment are not selected at random."[156] Short points to poverty, isolation and desperation as the critical factors for susceptibility to residential sexual harassment and, based on the victims' fear of consequences resulting from non-compliance with sexual demands, makes a distinction between sexual harassment and "other forms of residential harassment, including racial, disability, or national origin harassment."[157]

Statistics and case law establish that poverty is, indeed, a primary risk factor for experiencing sexual harassment in rental housing. In Regina Cahan's survey, she found that, of those reports identifying specific characteristics, "seventy-five percent of the women possessed annual incomes under $10,000, twenty-three percent between $10,000-$20,000 and the remaining two percent between $20,000-$30,000."[158] Robert Schwemm and Rigel Oliveri update her assessment by cataloguing cases and scholarship further recognizing the link between poverty and sexual harassment in rental housing.[159]

Scholars have largely acknowledged the relationship between poverty and race. In other words, there is explicit (and important) recognition that women of color, particularly Black women, are disproportionately poor and therefore, disproportionately subject to sexual harassment in housing. Citing statistical evidence of the relationship between race and poverty, Deborah Zalesne finds that "[t]he typical victim of landlord sexual harassment . . . is a poor, minority, and often powerless woman."[160] Michelle Adams notes the additional burden that race discrimination may play in further exaggerating the gap in bargaining power between landlord and tenant:

> The inequality of bargaining power between female tenants and male landlords is exacerbated by aspects of those renters' lives that further diminish their chances of competing effectively for the relatively few affordable housing units that are available. These factors reduce bargaining power and increase the pressure on women to accede to a landlord's sexual demand or to remain in a hostile housing

155. Balos, *supra* note 29, at 97.

156. Short, *supra* note 23, at 841.

157. *Id.*

158. Cahan, *supra* note 22, at 1067 (looking at residential sexual harassment complaints primarily between 1980 and 1985).

159. *See* Schwemm & Oliveri, *supra* note 29, at 786-87 n.92.

160. *See* Zalesne, *supra* note 29, at 864; *see also* Forkenbrock Lindemyer, *supra* note 29, at 371-75 (citing Zalesne and arguing that "[i]t is therefore impossible to ignore the composition of those primarily affected by sexual harassment in housing: women of color struggling to raise their children in situations of dire poverty"); Keeley, *supra* note 112, at 416 (arguing that Title VII's jurisprudence is a poor fit for analyzing claims under Title VIII because "a disproportionate number of renters affected by sexual harassment are poor women of color").

> environment. One of those factors is race. Although it is difficult to determine with absolute certainty the racial background of the plaintiffs in the relevant cases, several salient facts about them are known: they are women; many of these women are the sole financial support for their families; they are renters; and at least some of them are homeless or facing homelessness.[161]

In recognizing that women of color are disproportionately poor, renters, and single heads of household, Adams draws the conclusion that women of color are disproportionately susceptible to sexual harassment in housing. She also recognizes that the mere fact of race and racism impedes a woman of color's bargaining power in competing for the limited number of affordable housing units in the country. Both assessments, while helpful in identifying the problem of residential sexual harassment, subsume the Black woman's (or other woman of color's) experience into the generic problem of sexual harassment in rental housing.[162]

4. The Vulnerable Victim: Courts' Perspective

A review of the case law uncovers twelve opinions that explicitly acknowledge the economic vulnerability of particular women experiencing sexual harassment in the home.[163] That count does not include opinions where the facts (i.e. plaintiff received government benefits or subsidized housing) set forth would lead a reasonable reader to conclude that the plaintiff or plaintiffs are financially vulnerable. Unlike the scholarship in the area, however, the opinions focus on specific instances of sexual harassment and specific women experiencing both poverty and sexual harassment in housing. Where the scholarship acknowledges the institutional power differential for women in poverty, a disproportionate number of whom are Black or otherwise women of color, the judicial narrative generally limits itself to assessment of the single (or multiple) plaintiffs.

The court opinion that comes closest to recognizing the structural impact of poverty on a woman's vulnerability to residential sexual harassment resides in a dissent. In *Honce v. Vigil*, Judge Seymour chastised the majority by calling attention to the plaintiff's dire financial circumstances:

> The majority seemingly believes that a single mother of a young child who has just borrowed money to buy a mobile home and has signed a

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161. Adams, *supra* note 7, at 35.

162. *But cf.* Zalesne, *supra* note 29, at 864 (challenging a single standard for a reasonable women standard, citing the difference types of subordination experienced by poor women and wealthy women and women of different races).

163. *See infra* Appendix A, "Vulnerability of Victim."

> rental agreement for the lot onto which she has moved it somehow is completely free to abandon the lease and leave the premises upon finding the conduct of her new landlord offensive. This inference, adversely drawn by the majority against Ms. Honce, is belied by Mr. Vigil's insistent testimony that Ms. Honce was in severe financial straits, and by the fact that she ultimately was required to borrow $1,000 from her parents to pay the cost of moving the cost of moving the mobile home. It also defies common sense regarding the economic realities of single working mothers such as Ms. Honce."[164]

The rest of the examples limit their assessment to the particularized facts of the plaintiff's circumstances and her experience with discrimination. The Eighth Circuit majority in *Quigley*, for example, acknowledged the plaintiff's lack of financial resources, which, according to the court, gave significant power to the landlord:

> Winter's conduct was reprehensible. Quigley lived alone with small children at the time of Winter's harassment, and she had few, if any, alternate housing options. Quigley's financial vulnerability was evidenced by her need for Section 8 housing vouchers. Winter held a certain level of power over Quigley and her family.[165]

Several other courts referenced the plaintiff's reliance on government subsidies or the risk of homelessness to indirectly acknowledge the relationship between the plaintiff's financial circumstances and her experience with sexual harassment in housing.[166] In *United States v. Veal*, the court found the defendants' conduct to be "reprehensible" in part because "[e]ach of the victims was financially vulnerable—all of the women were receiving Section 8 public housing assistance at the time of the harassment, and several had been homeless prior to renting from the Veals."[167] The court in *Boswell v. Gumbaytay* cited to an audio recording of Mr. Gumbaytay making sexual propositions to the plaintiff, saying, "[S]ometimes a woman has to do what a

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164. Honce v. Vigil, 1 F.3d 1085, 1094 (10th Cir. 1993) (Seymour, J., dissenting).

165. Quigley v. Winter, 598 F.3d 938, 954 (8th Cir. 2010); *see also* Cennamo v. Deem, No. 02 CA 22, 2002 WL 31873792, at *4 (Ohio Ct. App. Dec. 20, 2002) (reporting plaintiff's testimony that she did not report the incidents of sexual harassment "because she was in a custody battle and feared the ramifications of losing stable housing" and her housing subsidies).

166. *See* United States v. Koch, 352 F. Supp. 2d 970, 983 (D. Neb. 2004) (referencing one witness's testimony that she had no permanent home for three months after being evicted by defendant); Woods v. Foster, 884 F. Supp. 1169, 1172 (N.D. Ill. 1995) (noting that plaintiff experienced a period of homelessness after leaving the shelter where she would have been forced to accede to plaintiff's sexual demands); Grieger v. Sheets, No. 87 C 6567, 1989 WL 38707, at *1 (N.D. Ill. Apr. 10, 1989) (noting that defendant threatened to make plaintiff lose her Section 8 certificate if she rejected his sexual advances).

167. United States v. Veal, 365 F. Supp. 2d 1034, 1038 (W.D. Mo. 2004); *see also* United States v. Peterson, No. 09-10333, 2011 WL 824602, at *2 (E.D. Mich. Mar. 3, 2011) (noting that the record reflected that the defendant had "eagerly and repeatedly exploited their plight").

woman has to do in order to feed her family and live a comfortable lifestyle for her and her family."[168] The clear implication is that Mr. Gumbaytay recognized that the plaintiff's financial status gave him the power to abuse his authority.

The courts' willingness to consider the relationship between poverty and sex discrimination (in the form of residential sexual harassment) is encouraging. The courts' unwillingness to assess that poverty in terms of institutional poverty and/or racial poverty is discouraging. It stands as a symbol for the critique of anti-discrimination law as a means of addressing structural and complex discrimination.[169]

IV. WHY THE "DIRTY OLD MAN NARRATIVE" IS PROBLEMATIC

There are legitimate reasons to choose to pursue the "dirty old man" narrative. Like any stock story, the "dirty old man" narrative is prevalent in part because it is successful. The Attorney General settled *Gumbaytay*, *Mitchell*, *Pontotoc*, and *Sorenson*. The *Mitchell* case, for example, ended with an agreement from the defendants to pay one million dollars in monetary damages to aggrieved persons and to the government as a civil penalty[170] and the related cases of *Hawecker v. Sorensen* and *United States v. Sorensen* resulted in a $2.13 million settlement.[171] Further, an alternate story is difficult to tell. Not only does it face legal hurdles due to the civil rights laws' focus on individual conduct, but there are legitimate strategies for choosing the "dirty old man" narrative. From a litigation strategy perspective, the standard narrative explains why women subject to residential sexual harassment in housing do not extricate themselves from the situation.[172] Second, it takes the sting out of the female tenants' personal history—for example, poverty, joblessness, addiction, prostitution, criminal charges—because it makes their vulnerability to victimization part of a stock story. Third, it acts as a common narrative thread in a class action or a case alleging a pattern or practice of discrimination. As explained by Anthony Amsterdam and Jerome Bruner, each party must develop a "rhetorical strategy" that categorizes both the aggrieved women and the

168. Boswell v. Gumbaytay, No. 2:07-CV-135-WKW, 2009 WL 1515872, at *5 n.4 (M.D. Ala. June 1, 2009); *see also Boswell*, 2009 WL 1515912, at *9 (M.D. Ala. June 1, 2009) (citing to the plaintiff's deposition, where she stated that she was "constantly afraid that [her] family would not have a place to live if [she] did not meet his demands"); *cf.* Gromko v. Berezin, No. 105640/07, 2008 N.Y. Misc. LEXIS 8791 (Sup. Ct. Mar. 17, 2008) (plaintiff alleged that defendant rented apartments disproportionately to young, single women upon whom he could prey).

169. *See* sources cited *supra* note 3.

170. *$1 Million Judgment in Sexual Harassment Case Against Cincinnati Landlord*, U.S. DEP'T JUSTICE (Sept. 4, 2008), http://www.justice.gov/archive/opa/pr/2008/September/08-crt-776.html.

171. *California Landlord Settles Sexual Harassment Lawsuit for $2.13 Million*, U.S. DEP'T JUSTICE (Sept. 11, 2012), http://www.justice.gov/opa/pr/california-landlord-settles-sexual-harassment-lawsuit-213-million.

172. *See* Reed, et al., *supra* note 19.

defendant in an effort to persuade a jury faced with competing rhetoric and categorization advanced by the defendant's attorney.[173]

Exclusively advancing the "dirty old man" narrative, especially in the face of evidence of racialized sexual harassment, however, remains problematic. The most obvious problem, of course, is that it omits race from the discourse. Such an omission is of significant concern because it silences a subset of victims of residential sexual harassment, perpetuating the cultural myth of the Black Jezebel. Further, it ignores the other structural forces inherent in residential sexual harassment that have operated, together with the myth of the Black Jezebel, to perpetuate the sexual subjugation of Black women in the private sphere.

A. The Exclusion of Race

Whereas courts have been somewhat explicit in acknowledging the dual elements of the "dirty old man" narrative—invasion of the sanctity of the home and the tenant's economic vulnerability—the impact of race is generally ignored. Of the more than one hundred court opinions, only nine mention race at all.[174] For all but two opinions, race drops out of the analysis before the court gets to the substantive analysis.[175]

In certain judicial opinions, race drops out of the analysis after laying out the facts without explanation. In *People of the State of New York by Abrams v. Merlino*, for example, the court recognized, in the introduction of the opinion, that the two plaintiffs were Black; thereafter, race was absent from the opinion.[176] In *Fahnbulleh v. GFZ Realty, LLC*, the court acknowledged that the case alleged discrimination on the basis of both race and sex, but limited its analysis to hostile housing environment on the basis of sex.[177] In *Krueger v. Cuomo*, in setting out the facts, the court noted that the female tenant, who is Black, told the defendant that she did not date White men.[178] That acknowledgement was the sum total of the court's recognition of the impact of race in the case.

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173. ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW: HOW COURTS RELY ON STORYTELLING, AND HOW THEIR STORIES CHANGE THE WAYS WE UNDERSTAND THE LAW–AND OURSELVES 48 (2000).

174. *See infra* Appendix A, "Mention of Race."

175. *See* Reeves v. Carrollsburg Condominium Unit Owners Ass'n, No. CIV. A. 96-2495RMU, 1997 WL 1877201 (D.D.C. Dec. 18, 1997); Brown v. Smith, 55 Cal. App. 4th 767 (Cal. Ct. App. 1997).

176. People of the State of N.Y. by Abrams v. Merlino, 694 F. Supp. 1101 (S.D.N.Y. 1998); *cf.* Braun v. Bolton, No. 13-1093-RGA, 2013 WL 5486877 (D. Del. Sept. 30, 2013) (although the plaintiff alleged that the defendant treated her like a "slave," there was no mention of race in the opinion); Walker v. Crawford, No. 5:97-CV-1033, 1999 WL 33917846 (N.D. Ohio Sept. 16, 1999) (noting that plaintiffs voluntarily withdrew their claims of discrimination on the basis of race).

177. Fahnbulleh v. GFZ Realty, LLC, 795 F. Supp. 2d 360 (D. Md. 2011).

178. Krueger v. Cuomo, 115 F.3d 487, 490 (7th Cir. 1997).

In other judicial opinions, courts explicitly silo the race discrimination and sex discrimination allegations to the detriment of the overall complaint. *Harmon v. Mattson* typifies the impact of that approach.[179] In *Harmon*, the plaintiff brought suit against the defendant under state law, alleging discrimination in housing on the basis of race, gender, disability, and receipt of public assistance.[180] Ms. Harmon alleged that her landlord, Mr. Mattson, peeped through her windows, rubbed up against her, entered her apartment late at night to do repairs, and stayed on the premises ten to twelve hours per day.[181] She also recalled that Mr. Mattson called her a "bitch," "goofy," "crazy," "idiot," and a "nigger" and chased her daughters, calling them "niggers."[182] Although the advisory jury found for Ms. Harmon on all claims, awarding her and her children compensatory damages, out-of-pocket costs, and punitive damages, the appellate court reversed on all claims except the race discrimination claim, finding that Ms. Harmon provided insufficient evidence to rise to the level of a hostile housing environment based on sex or sexual harassment and that evidence of intentional infliction of emotional distress failed to rise to necessary severe and pervasive level.[183] The court's analysis ignores the possibility that Ms. Harmon's experience of sexual harassment was sufficiently severe and pervasive in light of its relationship with the race discrimination. The court disregarded the possible impact of race on Ms. Harmon's sex discrimination claim. This Article suggests, throughout, that the omission of race from the assessment of sex discrimination is troubling. *Harmon* stands as an example of a case in which an analysis of sex discrimination accounting for race may have led to a different result. It is a symbol of the practical results of excising race from analysis of sex discrimination.

The opinion in *Brown v. Smith* is similarly troubling. Mr. and Mrs. Brown brought suit against their landlord, Mr. Smith, alleging that the defendant sexually harassed Mrs. Brown in violation of state anti-discrimination and civil rights laws. After a jury awarded the tenant more than $200,000 in damages and attorney's fees,[184] the defendant appealed and, citing evidentiary errors, the appellate court reversed. The reported facts included allegations of racialized sexual harassment. Mrs. Brown testified that "[the defendant would] say that he loved Black women and he had lots of Black women—and that he, he wanted

179. *See also* Essex Ins. Co. v. Harris, No. 4:09CV2071 TIA, 2011 U.S. Dist. LEXIS 113421 (E.D. Mo. Sept. 30, 2011) (insurance case where the underlying matter involved two current plaintiffs and two prospective tenants alleging race discrimination and sex discrimination in the form of sexual harassment; brief discussion of the race of the parties was limited to the race claims).

180. Harmon v. Mattson, No. C0-99-755, 1999 WL 1057236 (Minn. Ct. App. Nov. 23, 1999). The complaint also alleged intentional infliction of emotional distress. *Id.*

181. *Id.* at *2.

182. *Id.*

183. *Id.* at *4, *6-7.

184. Brown v. Smith, 55 Cal. App. 4th 767, 767, 774 (Ct. App. 1997).

to have an affair with me and he wanted to have sex with me. He wanted to lick my pussy and suck my titties, and all those despicable things."[185] Further, plaintiffs introduced evidence from four other witnesses—all Black female tenants—who testified to similar sexual harassment.[186] The appellate court's analysis with respect to Mrs. Brown's allegations, however, excluded race,[187] with one exception. In discussing the propriety of permitting the other tenants to testify, the appellate court speculated:

> Brown has alleged intentional sexual harassment in connection with her housing, and the evidence was offered toward proving that theory. However, it is possible to find within this evidence a more innocuous pattern of Smith's sexual attraction to Black females between the ages of 20 and 40. Such attraction does not necessarily amount to sexual harassment absent additional elements of coercion, unsolicited sexual attention, abuse of his status as landlord, and the like. Findings on this issue would have been helpful. . . .[188]

Rather than assuming that the defendant had engaged in racialized sexual harassment, the court excused the defendant's racist statements and discounted their impact on the plaintiff's sexual harassment claim.

Out of the one hundred and two court opinions, only one explicitly acknowledged the relationship between racism and sexism in residential sexual harassment. In *Reeves v. Carrollsburg Condominium Unit Owners Association*, the plaintiff alleged violation of the Fair Housing Act (in addition to other claims) on the basis of both race and sex.[189] Specifically, the suit alleged that one of the White residents of the condominium building racially and sexually harassed the plaintiff, a Black woman.[190] The *Reeves* court refrained from creating silos around the race discrimination and sex discrimination allegations.[191] It noted that defendant "repeatedly subjected Ms. Reeves to threats of rape and lynching, in addition to the racial and sexual character of his

185. *Id.* at 774-75.

186. *Id.* at 788.

187. *Id.* at 792-94 (summarizing Mrs. Brown's allegations of sexual harassment and eliminating any discussion of race or racialized sexual harassment).

188. *Id.* at 794-95.

189. Reeves v. Carrollsburg Condominium Unit Owners Ass'n, No. CIV. A. 96–2495, 1997 WL 1877201, at *1 (D.D.C. Dec. 18, 1997). Although pleading is the most obvious stage to begin thinking about reframing the narrative of sexual harassment in housing, there is evidence that there is risk to ultimate success on the merits if one pleads multiple claims, *see, e.g.*, Emma Reece Denny, *Mo' Claims Mo' Problems: How Courts Ignore Multiple Claimants in Employment Discrimination Litigation*, 30 LAW & INEQ. 339, 350 (2012), *Reeves* provides an example of how a complaint can assert both race discrimination and sex discrimination in a way that gains traction with the court.

190. *Reeves*, 1997 WL 1877201, at *1.

191. *Compare Reeves*, 1997 WL 1877201, *with* Smith v. Mission Assocs. Ltd., 225 F. Supp. 2d 1293, 1299 (D. Kan. 2002) (acknowledging allegations of disparaging remarks about race and sexual orientation, but dismissing the sexual harassment case for lack of evidence and reframing the claim as one for hostile housing environment based on race discrimination).

verbal abuse and his admitted racism. There is no question that such conduct was unwelcome and was based on sex and/or race . . . ."[192] The allegations in *Reeves*, however, present an atypical fact pattern for residential sexual harassment. According to a contemporaneous news story, Ms. Reeves was an attorney in Washington, D.C. at the time of the harassment.[193] Further, the perpetrator was Ms. Reeves' neighbor, not her landlord.[194] Although *Reeves* offers a glimmer of hope for intersectionality claims of sexual harassment, one must wonder whether courts are receptive to creative theories only when stock stories are unavailable. Reviewing the analysis of court opinions on residential sexual harassment, it is striking that the courts are simultaneously committed to the particularities of any one woman's story of sexual harassment and yet unwilling to recognize that any one woman's story is outside of the stock story,[195] especially when it comes to the intersection of sex and race.[196] Seemingly in tension with one another, those dual commitments operate to ignore structural and institutional racism as it relates to sexual harassment in housing.

Why does the exclusion of race in this context matter? It matters because engaging the "dirty old man" narrative adopts gender essentialism; it assumes that all women experience residential sexual harassment in the same way. As Angela Harris explains, however, gender essentialism silences certain voices to privilege others.[197] The evidence set forth above, especially when viewed in light of the historical structural forces perpetuating the sexual subjugation of Black women throughout American history, is a clear example of how the standard narrative, which has found success in residential sexual harassment cases for certain women, silences those Black women experiencing racialized sexual harassment. It matters because, as Kimberle Crenshaw and Dorothy Roberts have explained, the intersection of race and gender is impossible to separate and trying to do so disadvantages Black women.[198]

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192. *Reeves*, 1997 WL 1877201, at *7.

193. Bill Miller, *D.C. Condo Owners to Pay for Member's Racial Insults*, WASH. POST (June 10, 1998), https://www.washingtonpost.com/archive/politics/1998/06/10/dc-condo-owners-to-pay-for-members-racial-insults/198e1599-166b-4ba7-847f-33e32df43076.

194. *Id.* It is worth noting that the condominium association originally voted to permit Ms. Reeves to sell her unit but failed to proceed to settlement for more than two years. *Reeves*, 1997 WL 1877201, at *1.

195. *Cf.* Adams, *supra* note 7, at 52 (highlighting courts' unwillingness to "import [ ] a contextualized understanding [of a woman's experience of sexual harassment at home] into their determinations").

196. Mayeri, *supra* note 3, at 714 n.6 (highlighting courts' unwillingness to address complex discrimination or intersectionality in Title VII claims).

197. *See* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

198. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Racist Politics*, 1989 U. CHI. LEGAL F. 139, 152-60; Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1424 (1991).

It is more than the dignitary benefit of allowing a woman to tell her individual story in court. Regina Austin, in calling to minority female scholars to "testify" on their own behalf, explains why testimony, complete as she notes "with footnotes," matters:

> We must write with an empowered and empowering voice. The chief sources of our theory should be black women's critiques of a society that is dominated by and structured to favor white men of wealth and power. We should also find inspiration in the modes of resistance black women mount, individually and collectively, on a daily basis in response to discrimination and exploitation. Our jurisprudence should amplify the criticism and lend clarity and visibility to the positive transformative cultural parries that are overlooked unless close attention is given to the actual struggles of black women. In addition, our jurisprudence should create enough static to interfere with the transmission of the dominant ideology and jam the messages that reduce our indignation, limit our activism, misdirect our energies, and otherwise make us the (re)producers of our own subordination. By way of an alternative, a black feminist jurisprudence should preach the justness of the direct, participatory, grass-roots opposition black women undertake despite enormous material and structural constraints.[199]

Austin's call, albeit to an arguably different audience than that to which this Article speaks, gives voice to the normative value of eschewing a legal strategy that adopts a standard narrative that ignores the experience of racialized sexual harassment.

Beyond the significant concerns of erasing racialized sexual harassment in favor of a standard narrative drawn from a White woman's experience, further developing and cementing a jurisprudence of residential sexual harassment devoid of an understanding of the relationship between race and sexual harassment will make it harder for the next plaintiff seeking to raise an intersectional claim.[200] Exclusive adoption of the "dirty old man" narrative, which leaves out evidence of harm associated with the racial animus embedded in the residential sexual harassment, limits the potential recovery for women experiencing racialized sexual harassment. And it ignores the structural forces perpetuating the acceptance of the sexual subjugation of women, particularly Black women.

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199. Austin, *supra* note 95, 542-44.

200. *See* Abrams, *supra* note 3; Mayeri, *supra* note 3, at 714 n.6.

B. The Focus on Invasion of the Sanctity of the Home Ignores the Role of Legal Rights in the Structure of Subjugation

Legal authority, grounded in property law, provides the structure allowing harassment and coercion in the rental transactions. In property law, a property owner holds certain rights, depending on the means by which he holds title to the property.[201] Fee simple ownership, for example, affords a property owner certain rights, including the right to retain possession of his property permanently and the right to transfer ownership rights to any party at any time.[202] At the most basic level, landlords and property owners legally retain certain rights to enter their property.[203] A property owner or his agent must be able to enter his property to fix a broken pipe or stop a fire.[204] Thus, the landlord's property rights limit the renter's privacy rights in her home. One of the most prevalent allegations in residential sexual harassment cases is the use of the landlord's (or his agent's) passkey to enter a tenant's home uninvited.[205] Renters also hold certain property rights, generally designated in the lease and derived from state or local law. Oftentimes, the renter's rights are relative to the owner's rights.[206] For example, the renter has the right to live in a house that is maintained in habitable condition.[207] For practical purposes, that means, for example, that the owner is obligated to fix leaky pipes or cure rodent infestation.[208] Another common sexual harassment allegation is that the property owner or his agent conditioned maintenance work on the tenant's submission to sexual demands.[209]

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201. *See generally*2 THOMPSON ON REAL PROPERTY § 14.04 (David A. Thomas ed., 2d. ed. 2002) ("Real Property"); B. BARLOW BURKE, PROPERTY: EXAMPLES AND EXPLANATIONS 108-10 (2004).

202. *See* 28 AM. JUR. 2D *Estates* § 13 (2015); Luther Blissett, *What Does "Fee Simple Ownership" Mean?*, S.F. GATE, http://homeguides.sfgate.com/fee-simple-ownership-mean-57263.html.

203. 5 THOMPSON ON REAL PROPERTY § 40.06 (David A. Thomas ed., 2d. ed. 2002) ("Right to Enter the Leased Property") (setting out the exceptions to the general rule that a landlord does not have a right to enter leased premises); *see also* Zalesne, *supra* note 29, at 866 (citing Robert Rosenthal, Comment, *Landlord Sexual Harassment: A Federal Remedy*, 65 TEMP. L. REV. 589 (1992)).

204. 5 THOMPSON ON REAL PROPERTY, *supra* note 203.

205. *See, e.g.*, Richards v. Bono, No. 5:04CV484-OC-10GRJ, 2005 WL 1065141, *1 (M.D. Fla. May 2, 2005); Ramirez v. Wong, 188 Cal. App. 4th 1480 (Cal. Ct. App. 2010); Haddad v. Gonzalez, 576 N.E.2d. 658, 660 (Mass. 1991); *see also* Adams, *supra* note 7, at 35 (citing Krueger v. Cuomo, 115 F.3d 487, 490 (7th Cir. 1997), as an example of allegations involving use of a passkey)); Forkenbrock Lindemyer, *supra* note 29, at 375 ("At any time, the landlord could use his passkey to enter the victim's apartment and further assault her.").

206. 49 AM. JUR. 2D *Landlord and Tenant* § 454 (2015).

207. *Id.*

208. 43 AM. JUR. PROOF OF FACTS 3D § 329 (2015) ("To establish a breach of the implied warranty of habitability of leased residential premises, the tenant must put forth facts showing the nature and duration of the defective condition, as well as the seriousness and substantial effect of the condition on the use of the premises for living purposes. There a number of common types of defects or conditions that may render the premises unfit for human habitation, including insect and rodent infestation; water leakage through roofs, ceilings, and walls; faulty plumbing; lead-based paint hazards; renovation and construction activities undertaken by the landlord; and noise by other tenants." (internal citations omitted)).

209. Grieger v. Sheets, No. 87 C 6567, 1989 WL 38707, *1 (N.D. Ill. Apr. 10, 1989).

For Black women, there is a history of formal and de facto laws operating to permit or condone sexual subjugation, grounded in privacy, property and home. During slavery, a number of legal classifications and definitions operated to grant a slaveholder physical rights over his slaves' bodies, including sexual access.[210] First, of course, was a female slave's legal status as the property of her slave owner.[211] Second, the absence of legal protection against rape or sexual assault of slave women or girls.[212] Coupled with laws forbidding Black testimony against Whites,[213] formal law left Black enslaved women without legal remedy for sexual assault or rape.

Because law gives a "framework for legitimate discourse and action in the exercise of power,"[214] historic legal authority granting men access to Black women and ignoring resulting sexual assault in the private sphere has seeped into the consciousness of American society and has been replicated in various constructs over time. In addition to being found in Black women's experiences under slavery, it existed in the sexual assault of Black domestic workers after emancipation.[215] Melissa Harris-Perry explains:

> For decades following the end of Southern slavery, more than three-fourths of African American women worked primarily as domestic workers. Their labor put them in proximity and subordinate status to white men, many of whom held deeply ingrained sexual beliefs about black women. Further, their race and gender denied them full protection of the law. These realities meant that black women were particularly vulnerable to sexual assault.[216]

Like the enslaved Black women before them, domestic workers were explicitly excluded from legal protections designed to prevent or remedy exploitation and abuse. Both the Fair Labor Standards Act, passed in 1938, and

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210. "Historians estimate that at least 58 percent of all enslaved women between the ages of 15 and 30 had been sexually assaulted by White men." *See* Carolyn M. West, *Sexual Violence in the Lives of African American Women: Risk, Response, and Resilience, National Online Resource Center on Violence Against Women*, NAT'L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN 1 (Oct. 2006), http://www.vawnet.org/Assoc_Files_VAWnet/AR_SVAAWomen.pdf (citing Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 912, 920 (1989)). *But see* Diane Miller Sommerville, *Rape, in* BLACK WOMEN IN AMERICA, *supra* note 100, at 22 (noting that historians "have long debated the pervasiveness of sexual relations between masters and slaves, with some claiming the practice was widespread and systematic, or at the very least routine")

211. Miller Sommerville, supra note 210, at 21.

212. *Id.*

213. *Id.*; Jeffrey J. Pokorak, *Rape as a Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 NEV. L.J. 1, 6 (2006).

214. Spearlt, *Enslaved by Words: Legalities & Limitations of "Post-Racial" Language*, 2011 MICH. ST. L. REV. 705, 710.

215. Jane E. Dabel, *Domestic Workers, in* BLACK WOMEN IN AMERICA, *supra* note 100, at 361-67 (detailing the large percentage of Black women who worked as domestic workers in White homes between 1800 and the 1970s).

216. HARRIS-PERRY, *supra* note 95, at 59.

the National Labor Relations Act, passed in 1935, specifically excluded agricultural and domestic workers from the list of protected workers.[217] Without inclusion in those laws, domestic workers, primarily African American women, went without important labor rights, including the right to wages, and lacked the ability to unionize and bargain collectively.

Today, we see the national acceptance of the sexual subjugation of Black women in the private sphere in in the failure to prosecute perpetrators of rape against Black women at the same rate as rapes against White women.[218] It is found in the disproportionate number of Black women imprisoned and denied downward departures under the criminal sentencing guidelines.[219] Looking at both the history of and current societal approach to sexual assault of Black women, Jeffrey Pokorak argues that "[t]he influence of slavery and racism on criminal prosecutions and punishments cannot be overemphasized" and warns that "the centuries-long history of disparate treatment of Black rape victims continues today."[220] In other words, the legal authority permitting sexual abuse of enslaved Black women has infused America's legal and extralegal framework in a way that perpetuates sexual subjugation of Black women. One venue in which that plays out is in rental transactions.

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217. National Labor Relations Act, ch. 372, 49 Stat. 449 (1935) (current version at 29 U.S.C. §§ 151-69 (2012)); Fair Labor Standards Act, ch. 676, 52 Stat. 1060 (1938) (current version at 29 U.S.C. §§ 201-19 (2012)); *see also* RISA GOLUBOFF, THE LOST PROMISE OF CIVIL RIGHTS 29 (2007); Risa Goluboff, *The Thirteenth Amendment and the Lost Origins of Civil Rights*, 50 DUKE L.J. 1609, 1678 (2001) [hereinafter Goluboff, *Lost Origins*].

218. In 1968, a study in Maryland uncovered that a Black man who was convicted of raping a White woman averaged a sixteen-year sentence, as compared to a 4.2-year sentence for the rape of a Black woman. Miller Sommerville, *supra* note 210, at 26. In 1991, Kimberle Crenshaw cited to a Dallas report of rape dispositions, noting that the average prison term for a man convicted of raping a Black woman was two years, relative to the average five-year sentence of a man convicted of raping a Latina and ten-year sentence for conviction of rape against a White woman. Crenshaw, supra note 103, at 1269 (citing *Race Tilts the Scales of Justice. Study: Dallas Punishes Attacks on Whites More Harshly*, DALL. TIMES HERALD, Aug. 19, 1990, at A1). Although current rape statistics suggest that a woman's race is not indicative of her vulnerability to rape, studies also show that the race of the victim continues to play a large role in the prosecution of the rape. *Compare* Patricia Tjaden & Nancy Thoennes, , *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. DEP'T JUSTICE (2000), https://www.ncjrs.gov/pdffiles1/nij/183781.pdf, *with* Pokorak, *supra* note 213, at 38-43. A study in Miami-Dade, Florida, for example, found that 58.1 percent of rejected or dismissed rape prosecutions involved a Black victim, as compared to 31.1 percent involving a White victim. Pokorak, *supra* note 213, at 41 (citing Cassie Spohn, Dawn Beichner & Erika Davis-Frenzel, *Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the "Gateway to Justice,"* 48 SOC. PROBS. 206, 224 tbl. 3 (2001)). A study in Kansas City and Philadelphia examining prosecutorial decisions in rape cases showed that prosecutors were "'4½ times more likely to file charges if the victim was white,' than if the victim was Black," especially in cases of unarmed stranger rape. Pokorak, *supra* note 213, at 42 (citing Cassia Spohn & David Holleran, *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners*, 18 JUST. Q. 651, 671-73 (2001)).

219. Smith, *supra* note 97, at 1701 (internal citations omitted).

220. Pokorak, *supra* note 213, at 43.

Therefore, while advancing a "dirty old man" narrative may be a successful litigation strategy,[221] it is one that is built on the experience of the White, not Black, woman. Like Beverly Balos's searching inquiry into the differential treatment that law and society has provided to different groups,[222] this Article challenges the application of the "dirty old man" narrative across groups, especially as applied to Black women. Although the Supreme Court has famously acknowledged privacy protections related to the sanctity of the home,[223] to the extent that protection has extended to women, it has not historically been universally applied, especially for Black women. This is not to suggest that Black women or Black families do not view the home as sacred. In fact, one could imagine that, where the public sphere can be a dangerous place for Blacks in America, the home may take on increased significance as a refuge from violence and racism. Rather, it is broader society, including institutional actors, that has failed to treat the Black home as sacred. Legal authority and access have permitted violation of the Black home, seen in the Fourth Amendment context,[224] in the domestic violence context[225] and in the subsidized housing context.[226] Famously, during the Memphis Riots in May of 1866, two hundred White police officers and men came into a Black neighborhood and Black homes and "commenced an indiscriminate robbing, burning and murdering. . . ."[227] A Congressional Report on the riots detailed the atrocities, including brutal rapes and sexual terrorizing of Black women.[228] By

221. *See supra* Section IV.A.

222. Balos, *supra* note 29, at 79-80.

223. For a catalogue of Supreme Court cases recognizing the sanctity of the home, see Carlotta J. Roos, DiCenso v. Cisneros*: An Argument for Recognizing the Sanctity of the Home in Housing Sexual Harassment Cases*, 52 U. MIAMI L. REV. 1131, 1139-44 (1998).

224. *See, e.g.*, Carol S. Steiker, *Second Thoughts About First Principles*, 107 HARV. L. REV. 820, 838, 840-41 (1994) (in responding to Akhil Amar's work on the Fourth Amendment, acknowledging the "*connections* between our country's history of racial discrimination in law enforcement and the creation of the modern pillars of Fourth Amendment law" and noting that "prevalent racial segregation in housing allows for more aggressive and intrusive policing of black and other minority neighborhoods than of white or mixed communities" (emphasis in original)).

225. *See, e.g.*, Roberts, *supra* note 95, at 14 (citing Carol B. Stack, *Cultural Perspectives on Child Welfare*, 12 N.Y.U. REV. L. & SOC. CHANGE 539, 541 (1983-84) (arguing that the misunderstanding of cultural family patterns contributes to a disproportionate number of minority children placed in foster homes)) (analyzing why the state intervenes more often in Black homes in child welfare matters); Michael S. Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 STAN. L. REV. 623, 629 nn.21-22 (1976) (arguing that more minority parents are charged with neglect because they are disproportionately on welfare and thus subject to greater social work supervision); *cf.* Martha A. Fineman, *Intimacy Outside of the Natural Family: The Limits of Privacy*, 23 CONN. L. REV. 955, 959 (1991) (distinguishing between "private" families that earn the right to government protection by living up to ideological expectations, and "public" families that are subject to state supervision and control because they deviate from social norms).

226. *See* Priscilla A. Oven, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. Rev. 1540, 1543-48 (2012) (recognizing and providing examples of the "surveillance, harassment, and regulation of subsidy-reliant Black women and their families" through wholesale targeting of Black homes in traditionally-White neighborhoods).

227. H.R. REP. NO. 39-101, at 7 (1866).

228. *Id.* at 14.

failing to account for how legal and extra-legal rights afforded only certain members of society, the "dirty old man" narrative excludes a critical context to assess liability and damages related to the residential sexual harassment of Black women and ignores the structural factors that support and ignore the sexual abuse.

C. Legal Authority and Location Provide Unfettered Access

The sanctity of the home construct arises from an understanding that home is separate from one's public life, including employment.[229] For Black women in certain periods of American history, that separation did not exist. In fact, the relationship between Black women and White men, in many cases, centered on or resided exclusively in the home. Enslaved Black women lived on their owner's land, accessible at all times. Domestic workers worked (and sometimes lived) in their employer's home, accessible at all times. And, for those women vulnerable to sexual harassment at home, their landlords have access to their homes and their families at all times. Unfettered and unregulated access to a woman in her home increases the opportunity for and perpetuation of sexual assault.[230]

Not only have Black women lived and worked in spaces where they were particularly vulnerable to sexual assault, but those same spaces also permitted access to the women's families.[231] Such access increases the coercive nature of sexual harassment. For enslaved women, slaveowners could split apart families or otherwise punish a woman's family if she failed to concede to sexual demands or failed to conceive children.[232] Risa Goluboff reports similar coercion in the relationship between domestic workers and their employers. For example, Goluboff points to a Congressional Hearing in which George Triedman, Section Chief of the Civil Rights Section of the Department of Justice, told the tale of a domestic worker who, upon leaving her employment, found that her employers refused to let her son leave with her.[233]

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229. *See, e.g.*, Adams, *supra* note 7, at 21-28; Cahan, *supra* note 22 at 1073.

230. Miller Sommerville, *supra* note 210, at 21 (Black women in slavery were vulnerable to sexual attacks by their masters, by overseers and drivers, by young men and boys being "initiated" into sexual intercourse, and by forced breeding with other slaves); Dabel, *supra* note 215, at 361 (noting that women who worked as domestic slaves "lived with the constant threat of physical and sexual abuse"). Dabel also notes, however, that slaves who worked in the house had unique opportunities to engage in acts of resistance. *Id.*

231. It is interesting to pause here to think about the usefulness of the Title VII sexual harassment framework developed in *Shellhammer* and its progeny to sexual harassment directed at domestic workers. Because, for many domestic workers, there was little to no separation between work and home, the same critiques levied against the use of *Shellhammer* for residential sexual harassment cases, *see supra* Section III.C., may be equally as applicable to employment sexual harassment cases involving domestic workers and others who work in the home.

232. Miller Sommerville, *supra* note 210, at 23.

233. Goluboff, *Lost Origins*, *supra* note 217, at 1664-65 (citing *Hearing on Peonage and Slavery Before Subcomm. No. 4 of the H. Comm. on the Judiciary*, 82d Cong. 14-15 (1951) (Statement of

The access that a landlord has to a tenant, while of a different sort, bears resemblance to the access slaveholders had to female slaves and employers had to live-in domestic workers.[234] Allegations in residential sexual harassment cases involve landlords or their agents entering a female tenant's home uninvited;[235] driving by a female tenant's property day and night and calling her incessantly;[236] and roaming the halls of her apartment building at night, accompanied by a guard dog.[237] For example, one plaintiff alleged that, after sexually assaulting her, the defendant "would stare at [her], wink at her, and stick his tongue out whenever he would see her. [Defendant] engaged in these actions while [plaintiff] was at her mailbox, while she was sitting on her porch, while she was walking her dog, and while she was walking around the park."[238] Because of the landlord's professional responsibilities and the structure of his legal rights, he has access to his female plaintiffs, in and around their homes.[239] And for those landlords or agents who live on the same property as their tenants, their access is further increased.

Further, the landlord's access to a renter's family gives him incredible coercive power. A review of case law evidences allegations of residential sexual harassment in front of or in close proximity to the tenant's family, particularly young children.[240] For example, in *Krueger v. Cuomo*, the Seventh Circuit affirmed the Administrative Law Judge's finding for the tenant, relying on the tenant's testimony that defendant:

> [M]ade a habit (three to four times a week, Maze recalled) of arriving unannounced; he would knock on the first-floor doorway, enter before Maze could respond, and climb the internal staircase to her apartment.

George Triedman, Chief, Civil Rights Section, Criminal Division, Department of Justice) (unpublished hearing, on file with the Duke Law Journal)).

234. *Cf.* Davis, *supra* note 99 (conceptualizing slavery as an early form of sexual harassment as sexual harassment is understood in the feminist theory and literature on sexual harassment in employment). Davis makes a compelling case for slavery as an original form of sexual harassment, describing the sexual subjugation of enslaved women related to their "roles as captive workers." *Id.* at 457. While Davis recognizes that plantations operated as both home and workplaces for enslaved women, her analogy to modern sexual harassment does not reach landlords or other perpetrators of sexual harassment in housing. *Id.* at 463.

235. Quigley v. Winter, 598 F.3d 938, 944 (8th Cir. 2010); Salisbury v. Hickman, 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013).

236. Glover v. Jones, 522 F. Supp. 2d 496, 501 (W.D.N.Y. 2007).

237. Chomicki v. Wittekind, 128 Wis. 2d 188, 192 (Ct. App. 1985).

238. Brillhart v. Sharp, No. 4:CV-07-1121, 2008 WL 2857713, at *4 (M.D. Pa. July 21, 2008).

239. Such is also the case with respect to a landlord's agent. *See* Salisbury v. Hickman, 974 F. Supp. 2d 1282, 1293 (E.D. Cal. 2013) (recognizing that, "as the on-site manager, Mr. Crimi is first in-line to respond to any issue that might interfere with Ms. Salisbury's use and enjoyment of her residence, such as a rent dispute or a request for repairs. Mr. Crimi's ability to influence Ms. Salisbury's well-being thus adds yet another degree of severity to Mr. Crimi's conduct").

240. *See, e.g.*, Fair Housing Council v. Penasquitos Casablanca Owner's Ass'n, 381 F. App'x 674, 676 (9th Cir. 2010) (finding that minor children had standing under the Fair Housing Act because they witnessed the sexual harassment of their mother).

> Once inside, he would grab and touch Maze, doing so on at least one occasion in front of her children.[241]

A landlord's access to his female tenants and their families is structural, not a result of a deviancy. In other words, a landlord has access to a tenant and her family due to the legal rights inherent in the landlord-tenant relationship and economic and racial hierarchies throughout American history. The landlord's access to tenants, of course, is generally the same, regardless of the tenant's race. But for Black female tenants, who are burdened by the cultural myth of the Black Jezebel and the historical ways in which Black women have been subjected to sexual assault in the private sphere without protection or recourse, the access is that much more dangerous.

D. The Focus on Economic Disparity Ignores the Structural Force of Generational Privilege

Scholars and advocates have recognized the relationship between race and poverty and the results of that intersection with respect to a woman's vulnerability to sexual harassment in housing.[242] And courts have acknowledged the effect of economic disparity on the vulnerability to and experience of residential sexual harassment.[243] Economic disparities and, to a lesser extent, generational economic disparity, can be found in the "dirty old man" narrative. Yet the role of race in differentiating experiences between Black women and other women remains obscured by the prevailing narrative. And the prevailing narrative fails to account for the racial power that White men have historically held in America to harass, intimidate and terrorize Black families and Black women.

For Black women, economic and racial hierarchy is institutional and generational. Although slaveholders held physical power over their slaves, they also held economic and emotional power. Slaveholders invoked that racial and economic power to engage in the sexual abuse of their Black slaves. Slaveholders forced breeding through sexual assault and harassment. Such abuse came with promises like lightened work load or extra food or penalties such as punishment or sale of the woman or her family members.[244]

Similarly, Black domestic workers often found their way into working in a White family's house out of economic necessity, forced into sexual relationships with their employers in order to salvage their meager income or protect their families.[245] Risa Goluboff, in detailing the historical approach of

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241. Krueger v. Cuomo, 115 F.3d 487, 490 (7th Cir. 1997).
242. *See supra* notes 154-162 and accompanying text.
243. *See supra* Section III.C.4.
244. Gray White, *supra* note 101, at 399.
245. Miller Sommerville, *supra* note 210, at 25.

the Department of Justice to prosecuting civil rights actions, notes the increase in complaints of young women working as domestic servants in the late 1940s.[246] Goluboff calls attention to the "lack of pay, degrading conditions, and hard work" facing domestic servants at the time.[247] One woman complained, for example, that she "slept in a hen house and suffered sexual abuse, beatings, no wages, poor conditions and treatment, and work too strenuous for a young woman."[248]

Today, Black women experience poverty at nearly double the rate of White women, are more than twice as likely to live in inadequate housing, "have less education and higher rates of underemployment, poverty, disease, and isolation than white women."[249] That economic gap is generational and connected to long-standing racial hierarchy in the United States.[250] The experience of the Black women in *Pontotoc* provide an example. One woman in *Pontotoc* averred that the loan officer asked her if she had ever been with a white man,[251] asked two others if they liked white men,[252] and, after stopping by one declarant's home uninvited and asking to "do" her, asked if she was scared of white men.[253] These comments must be viewed through the lens of generational economic and racial hierarchies, evidenced in a declarant's averment that it was common knowledge that First National Bank of Pontotoc was one of the "few places black women could have their loans processed."[254] The economic power hierarchy cannot be separated from the historic experience of institutional and structural racism.

As noted above, there may be legitimate tactical reasons for choosing a "dirty old man" narrative as a case theory. Case theory is not designed to be the entire story.[255] And, yet, the choice of case theory is what "drives much of the work in representing clients, from interviewing the client, to fact-gathering and investigation, and finally to negotiation, trial or some other resolution of the case."[256] So the choice of case theory matters; excluding race from case theory has a broad impact on the women's experiences of the case, the outcome, and damages. It challenges the court to recognize race and the structural forces inherent in sexual harassment, or it perpetuates the stock story. This Article

246. Goluboff, *Lost Origins*, *supra* note 217, at 1663.

247. *Id.*

248. *Id.* (citing Affidavit of Polly Johnson, Washington, D.C. 1-3 (1946) (on file with the Duke Law Journal)).

249. HARRIS-PERRY, *supra* note 95, at 46 (internal citations omitted).

250. *See id.* at 206.

251. Joint Stipulation Regarding Distribution of Settlement Fund at Affidavit No. 4 ¶ 10, United States v. First Nat'l Bank of Pontotoc, No. 3:06-cv-00061 (N.D. Miss. Sept. 19, 2008).

252. *Id.* at Affidavit No. 8 ¶ 15, & No. 28 ¶ 15.

253. *Id.* at Affidavit No. 13 ¶ 20.

254. *Id.* at Affidavit No. 9 ¶3.

255. Miller, *supra* note 12, at 298 ("The case theory is a snapshot, a framework, the essence of the story or what the case is about. It is not the whole story that a video camera filming the event would tell, but rather the coherent meaning that the elements create.").

256. *Id.* at 297.

argues that adoption of that "dirty old man" narrative misses an opportunity both to account for race in residential sexual harassment and to address the structural forces underlying the intersection of race and sex. This Article suggests that such an approach omits a challenge to the underlying premise in anti-discrimination law of an aberrant bad actor engaged in discrimination unsupported by the structural forces of law and society.

CONCLUSION: BEGINNING TO RECONSTRUCT THE NARRATIVE

This Article named and critiqued the standard "dirty old man" narrative commonly advanced in residential sexual harassment scholarship and advocacy.[257] It exposed testimonial evidence of racialized sexual harassment in housing and noted that, even in light of that evidence, race drops out of the legal narrative. It argues that adoption of the stock story assumes that the perpetrator is an aberrant bad actor, preying on economically vulnerable women.[258] The prevailing narrative ignores the possibility that racialized sexual harassment is, in fact, a symptom of structural forces operating to perpetuate and ignore the sexual subjugation of Black women in the private sphere.[259] Connecting the sexual harassment of Black women in housing across generations through an analysis of cultural mythology and structural forces of power, this project suggests that racialized sexual harassment stands as a

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257. I recognize, of course, that this Article risks essentializing the experience of Black women dealing with residential sexual harassment. Not all Black women experiencing sexual harassment in housing suffer the same kind of harassment or feel it in the same way. Because the evidence that was gathered for this Article establishes the near complete excision of race from the scholarly and advocacy narratives about sexual harassment in housing, however, every Black woman's experience is subsumed in the generic experience of sexual harassment. The narrative itself, by omitting the Black voice and the Black experience, by making the Black victim of sexual harassment invisible, and by assuming the defendant is an aberrant bad actor operating outside of societal norms, risks perpetuating the structural assault on Black women. *See* HARRIS-PERRY, *supra* note 95, at 39 ("As a group, [African American women] have neither the hiding place of private property nor a reasonable expectation of being properly recognized in the public sphere. This situation undermines the intersecting needs for privacy and recognition that underlie the democratic social contract."); Broussard, *supra* note 103, at 380 ("The first remedy to the systemic silence would be an acknowledgement that a Black woman needs to be able to tell 'her story' and allow a collective exorcism of the pain that has lingered just below the consciousness of Black women for centuries.").

258. *Cf.* Deborah N. Archer, *There is No Santa Claus: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a "Post-Racial" Society*, 4 COLUM. J. RACE & L. 55, 60 (2013) (describing how, "[i]n a post-racial world, racism is perpetrated by a few bad actors" and that "[o]vert racial animus is seen as an aberration from our normal race neutrality"). Archer challenges the notion that we have achieved post-racialism wherein racism is actually an aberration. In this Article, I similarly argue that sexism, experienced as residential sexual harassment, is viewed as an aberration from the norm. Like Archer, I challenge that construction, especially when race is factored into the analysis.

259. Of course, not all Black women experience racialized sexual harassment in rental housing of the same variety or in the same way. I find myself drawing from critical race feminism here, which "recognizes the need to be strategically essentialist in order to avoid simply discussing individual experiences and to instead draw from the overlapping themes and experiences that permit a broader analysis." Coleman, *supra* note 8, at 408 (citing CRITICAL RACE FEMINISM: A READER 7 (Adrien Katherine Wing ed., 2d ed. 2003)).

modern-day symbol of the institutional acceptance and ignorance of the sexual subjugation of Black women.

Not only does the standard narrative disregard evidence of racialized sexual harassment against Black women, by focusing on the aberrant bad actor, it discounts the structural forces that have, throughout American history, perpetuated the sexual subjugation of Black women in the private sphere. Historian Diane Miller Sommerville argues:

> [B]lack women's sexual vulnerability and the institutionalized access that white men in America historically have had to black women's sexuality is one of the most salient aspects of black women's lived experiences and continues to shape black women's lives, identities, and psyches, even through much of the twentieth century and beyond.[260]

In other words, the historic use of the structural elements to perpetuate sexual abuse against Black women, especially under the cover of property, privacy and private transaction,[261] has woven permission and ignorance of racialized sexual harassment into the fabric of our society.[262] It is those structural forces—cultural acceptance of the Jezebel myth, legal rights, access, and generational economic and racial hierarchies—that operate to perpetuate and silence sexual subordination of Black women in the private sphere. Those forces were operating during slavery, against Black domestic workers and in the state's failure to acknowledge and prosecute the full extent of sexual assaults against Black women. And they are operating in mobile home parks, apartment buildings, and single-family and multi-family homes across the country.

The structure of the landlord-tenant relationship defines the landlord's legal right to grant or deny the use and enjoyment of their property at his discretion. It grants him the legal right to retain a copy of the tenant's key, enter her home, determine when and home to make repairs, and deny housing. Access gives the landlord the means to execute sexual harassment against the

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260. Miller Sommerville, *supra* note 210, at 21.

261. Balos, *supra* note 29, at 79 (in assessing residential sexual harassment, noting that the "landlord's private exchange of sex in place of cash for rent take on the appearance of a private business transaction not to be intruded upon"). Balos, in comparing the tenant's privacy rights with the landlord's business rights, argues that the landlord's rights are protected at the expense of the tenant's rights. *Id.* at 90. This Article goes a step further, recognizing that, for Black women, privacy rights have historically been subjugated to White men's property rights. Residential sexual harassment is yet another example where structural forces operate to perpetuate and ignore the willful disregard for Black women's privacy rights at home.

262. *See* Roberts, *supra* note 95, at 7 ("The intimate intertwining of race and gender in the very structure of slavery makes it practically impossible to speak of one without the other. The social order established by white slaveowners was founded on two inseparable ingredients: the dehumanization of Africans on the basis of race, and the control of women's sexuality and reproduction. The American legal order is rooted in this horrible combination of race and gender.").

tenant. Through his legal authority, he has access to her home, which gives him access to her body and access to her family. Generational hierarchies—economic and racial—give him the power to abuse his authority and access. And the cultural myth of the Black Jezebel, carried over from the institution of slavery, gives him the justification. Any of those structural elements may exist in residential sexual harassment of a woman of any color. But it is particularly problematic for Black women, who have been historically subjected to sexual abuse in the private sphere with the support or willful ignorance of the state. It is particularly salient for Black women, for whose voice and particularized experience of residential sexual harassment the standard "dirty old man" narrative silences.

Recall, for example, the case of *Chomicki v. Wittekind*,[263] the Wisconsin case where the landlord, after the plaintiff rebuffed his sexual advances, engaged in increasingly hostile harassment, including "roam[ing] through her apartment building at all hours of the night accompanied by his guard dog."[264] At trial, Ms. Chomicki testified that she was "devastated" and "distraught" after the defendant instituted eviction proceedings upon her sexual rebuff, that she was forced to relocate herself and her two young children during a Wisconsin winter, and that she had nightmares about the defendant and his patrol dog.[265] In affirming the jury's $19,000 award to Ms. Chomicki, the Wisconsin appeals court made no mention of race. According to a contemporaneous article in the *Milwaukee Journal*, however, Ms. Chomicki was a "black mother of two young children" and, in making sexual demands, the defendant allegedly told her, "All black women like it."[266]

Chomicki demonstrates both the existence of the structural forces identified above in racialized sexual harassment and the court's willful ignorance of the significance of race in residential sexual harassment. Mr. Wittekind's ability to condition Ms. Chomicki's continued tenancy on acceding to his sexual demands arose from his legal right to evict. He used his access to Ms. Chomicki's apartment to harass her and his access to her children to coerce her. He adopted the Jezebel myth when justifying his conduct with the statement that "[a]ll Black women like it,"[267] silencing Ms. Chomicki specifically and Black women generally. And one might imagine that Ms. Chomicki, an African American woman, was profoundly affected by Mr. Wittekind's threatening use of a patrol dog in part because attack dogs stand as a traditional symbol of intimidation and violence aimed at Blacks in American history.[268] Mr.

263. 128 Wis. 2d 188 (Ct. App. 1985).

264. *Id.* at 192.

265. *Id.* at 202.

266. *Suit Cites Sexual Harassment*, *supra* note 80.

267. *Id.*

268. *See* Pro-Choice Network of W.N.Y. v. Project Rescue W.N.Y., 799 F. Supp. 1417, 1439 (W.D.N.Y. 1992), *aff'd in part, rev'd in part sub nom.* Pro-Choice Network v. Schenck, 67 F.3d 359 (2d Cir. 1994), *aff'd as modified sub nom.* Pro-Choice Network of W.N.Y. v. Schenck, 67 F.3d 377 (2d Cir.

Wittekind's use of the dog evidences how institutional racial power is a mechanism through which the sexual subjugation of Black women in the home is perpetuated. That impact of race was, however, absent from the court's analysis. Although specifically citing a race discrimination case finding that the plaintiff suffered humiliation when he "was subjected to a racial indignity which is one of the relics of slavery,"[269] the *Chomicki* court failed to make any connection between the defendant's conduct in this case and race.

So where do we go from here? There is significant work to be done to educate courts and the public on the problem of sexual harassment in housing. There is work to be done in integrating race and sex in civil rights challenges to residential sexual harassment. The standard narrative has found some success in challenging such harassment under a civil rights framework.[270] But it presents a single vision of the female tenant and her experience, leaving out the nuance and import unique to each woman, especially those Black women experiencing racialized sexual harassment. Perhaps the answer lies in pleading race discrimination alongside sex discrimination, pushing the courts to understand the intersection of race and class in residential sexual harassment. Perhaps, because the assessment of emotional damages should consider both the "emotional distress and the circumstances of the act that allegedly caused the distress," and "[t]he more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action,"[271] damages are one possible avenue to address the impact of racialized sexual harassment in a civil rights claim. In other words, a litigator need not specifically allege both sex

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1995) (comparing violence against women seeking abortions to the civil rights movement, when "segregationists congregated in front of schools and polling places with attack dogs and clubs in order to intimidate blacks into foregoing their constitutional rights to an integrated education and to vote"); Irving Joyner, *Pimping* Brown v. Board of Education*: The Destruction of African-American Schools and the Mis-Education of African-American Students*, 35 N.C. CENT. L. REV. 160, 185 (2013) (telling the story of Greg Hannibal, one of the first African Americans to attend Grainger High School in North Carolina, who remembers that "people would drive by and splash water on him, or allow their dogs to attack him as he made his way to school"); Lewis R. Katz & Aaron P. Golembiewski, *Curbing the Dog: Extending the Protection of the Fourth Amendment to Police Drug Dogs*, 85 NEB. L. REV. 735, 787 (2007) ("[L]aw enforcement has historically abused the use of canines against African-Americans. From the slave era when dogs were used to hunt down runaway slaves, to the Civil Rights Era where police in the South turned snarling dogs loose to control and disperse crowds gathered in peaceful protest, law enforcement has used dogs to terrorize black communities."); Brandon M. Lofton, *Fifty Years After* Brown*, the Civil Rights Ideology and Today's Movement*, 29 N.Y.U. REV. L. & SOC. CHANGE 719, 726 (2005) (remembering Bull Connor's use of "vicious police dogs and high-pressured water hoses to attack the peaceful demonstrators, many of whom were children"); Douglas U. Rosenthal, *When K-9s Cause Chaos–An Examination of Police Dog Policies and Their Liabilities*, 11 N.Y. L. SCH. J. HUM. RTS. 279, 307-08 (1994) (reporting LAPD statistics establishing that K-9 bites "occur most often in neighborhoods where the population is mostly black" and reporting that, in bite case where race had been determined, more than ninety-seven percent of the dog bit victims were Black or Latino").

269. Seaton v. Sky Realty Co., Inc., 491 F.2d 634, 636 (7th Cir. 1974).

270. *See, e.g.*, *Housing and Civil Enforcement Overview*, *supra* note 46 (listing settlements and orders in sex discrimination cases arising under the Fair Housing Act).

271. Krueger v. Cuomo, 115 F.3d 487, 492 (7th Cir. 1997).

discrimination and race discrimination to tell a narrative that has race powerfully embedded within the sex discrimination case theory.[272] Unquestionably, there are other, or multiple, approaches to this problem. This Article issues a call to scholars and advocates to be thoughtful about the role of race in residential sexual harassment and not to shy away from asserting it as part of the case theory. It is only when lawyers—advocates and scholars—push the law that we can see it grow and expand. Devotion to the "dirty old man" narrative risks perpetuating the structural support of residential sexual harassment and ignoring the interplay of race. It operates to silence, rather than expose, the unique experience of each woman, particularly each Black woman, victimized by sexual harassment in their homes.

272. *See also* Quigley v. Winter, 598 F.3d 938, 954 (8th Cir. 2009) ("In *Gore*, the Supreme Court declared the degree of reprehensibility was '[p]erhaps the most important indicium of the reasonableness of a punitive damages award.' In assessing the degree of reprehensibility, we must consider whether 'the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.'" (citing BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 576-77 (1996))). Beyond the scope of this paper, I intend to explore in a future project possible strategies for addressing structural and racialized sexual harassment in housing, including the damages approach.

Appendix A

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
FEDERAL CIRCUIT COURT					
Shellhammer v. Lewallen	770 F.2d 167 (6th Cir. 1985) (No. 84-3573)	X			
United States v. Presidio Investments, Ltd.	4 F.3d 805 (9th Cir. 1993) (Nos. 92-15176; 92-15254)				
Honce v. Vigil	1 F.3d 1085 (10th Cir. 1993) (No. 92-2074)	X		X	
Doe v. Maywood Housing Authority	71 F.3d 1294 (7th Cir. 1995) (No. 95-1288)				
DiCenso v. Cisneros	96 F.3d 1004 (7th Cir. 1996) (No. 95-2940)	X			
Krueger v. Cuomo	115 F.3d 487 (7th Cir. 1997) (No. 96-2906)			X	X
Claiborne v. Wisdom	414 F.3d 715 (7th Cir. 2005) (Nos. 04-1191; 04-1302)				
Hall v. Meadowood Limited Partnership	7 F. App'x 687 (9th Cir. 2001) (Nos. 99-17122; 99-CV-00084)	X			

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Fair Housing Council v. Penasquitos Casablanca Owner's Association	381 F. App'x 674 (9th Cir. 2010) (Nos. 08-55069; 08-55072; 08-55151)				
Quigley v. Winter	598 F.3d 938 (8th Cir. 2010) (Nos. 08-3630; 08-3752)	X	X	X	
Tagliaferri v. Winter Park Housing Authority	486 F. App'x 771 (11th Cir. 2012) (No. 12-10109)	X			
United States v. Hurt	676 F.3d 649 (8th Cir. 2012) (No. 11-1925)	X			
Snider-Carpenter v. City of Dixon, Mo.	504 F. App'x 527 (8th Cir. 2013) (No. 12-1811)				
Cavalieri v. L. Butterman & Associates	1999 US App. LEXIS 851 (7th Cir. 1999) (Nos. 98-1569; 98-1724)	X			
FEDERAL DISTRICT COURT					
Shellhammer v. Lewallen	W.D. Ohio, 11-22-83 (No. C 82-689)	X			
Snider-Carpenter v. City of Dixon, Mo.	2013 WL 3166621 (W.D. Mo. June 20, 2013) (No. 10-3063-CV-S-FJG)				
United States v. Hurt	2010 WL 3940176 (E.D. Ark. Oct. 6, 2010) (No. 3:09-CV-00031 BSM)				
United States v. Hurt	2010 WL 3946331 (E.D. Ark. Oct. 5, 2010) (No. 3:09-CV-00031 BSM)				

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
United States v. Hurt	2010 WL 3304298 (E.D. Ark. Aug. 18, 2010) (No. 3:09-CV-00031)				
People of the State of N.Y. by Abrams v. Merlino	694 F. Supp. 1101 (S.D.N.Y. 1998) (No. 88 Civ 3133)	X			X
Braun v. Bolton	2013 WL 5486877 (D. Del. Sept. 30, 2013) (No. 13-1093-RGA)	X			
Grieger v. Sheets	689 F. Supp. 835 (N.D. Ill. 1988) (No. 87-C-6567)				
Grieger v. Sheets	1989 WL 38707 (N.D. Ill. 1989) (No. 87-C-6567)	X		X	
Shuttlesworth v. Housing Opportunities Made Equal	873 F. Supp. 1069 (S.D. Oh. 1994) (No. 1-94-352)				
Woods v. Foster	884 F. Supp. 1169 (N.D. Ill. 1995) (No. 94-C-4187)			X	
Beliveau v. Caras	873 F. Supp. 1393 (C.D. Cal. 1995) (No. CV 94-5398 RAP)	X	X		
Williams v. Poretsky Management	955 F. Supp. 490 (D. Md. 1996) (No. CCB-95-2051)	X	X		
Reeves v. Carrollsburg Condominium Unit Owners Association	1997 WL 1877201 (D.C. Cir. 1997) (No. 96-2495(RMU))	X	X		X
Cavalieri-Conway v. L. Butterman & Associates	992 F. Supp. 995 (N.D. Ill. 1998) (No. 96-CV-5631)	X			

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Walker v. Crawford	1999 WL 33917846 (N.D. Oh. 1999) (No. 5:97-CV-1033)	X			X
American Nat. Gen. Ins. Co. v. L.T. Jackson	203 F. Supp.2d 674 (S.D. Miss. 2001) (No. 3:99-CV-885-LN)				
Smith v. Mission Assoc.	225 F. Supp. 2d 1293 (D. Kan. 2002) (No. 01-2416-JAR)	X			X
United States v. Koch	352 F.Supp.2d 970 (D. Neb. 2004) (No. 8:03-CV-406)	X		X	
Williams v. Hernandez	221 F.R.D. 414 (S.D.N.Y. 2004) (No. 02 Civ. 4473 (LMM) (RLE))				
United States v. Veal	365 F. Supp. 2d 1034 (W.D. Mo. 2004) (No. 02-0720-CV-W-DW)		X	X	
Gorman v. Norris & Stevens, Inc.	2005 WL 582868 (D. Or. 2005) (No. 04-816)	X			
Rich v. Lubin	2004 U.S. Dist. LEXIS 9091 (S.D.N.Y. 2004) (No. 02-CIV-6786 (TPG))	X			
Lunini v. Grayeb	305 F. Supp. 2d 893 (C.D. Ill. 2004) (No. 02-3028)				
Richards v. Bono	2005 WL 1065141 (M.D. Fla. 2005) (No. 5:04-CV-484-OC-10GRJ)	X	X		
Gurrola v. Jervis	2009 U.S. Dist. LEXIS 133234 (C.D. Cal. 2009) (No. CV 08-8029-GW(JTLx))				

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
United States v. Peterson	2011 U.S. Dist. LEXIS 21540 (E.D. Mich. 2011) (No. 09-10333)		X		
Shameka Banks & Greater New Orleans Fair v. Housing Authority of Bossier City	2011 U.S. Dist. LEXIS 113434 (W.D. La. 2011) (No. 11-0551)				
Miles v. Gilray	2012 U.S. Dist. LEXIS 90941 (W.D.N.Y. 2012) (No. 12-CV-599S)				
Doe v. Ore Duckworth	2013 U.S. Dist. LEXIS 113287 (E.D. La. 2013) (No. 11-2963 Section "C" (3))	X			
Ponce v. 480 East 21st St. LLC	2013 U.S. Dist. LEXIS 122769 (E.D.N.Y. 2013) (No. 12 Civ. 4828 (ILG) (JMA))	X			
United States v. Bathrick	2007 U.S. Dist. LEXIS 64911 (D. Minn. 2007) (No. 04-940 (DWF-JJG))				
Robbins v. American Preferred Mgmt. Co., Inc.	2007 WL 2728746 (W.D. Mich. 2007) (No. 5:05-CV-182)	X			
Glover v. Jones	2006 U.S. Dist. LEXIS 80667 (W.D.N.Y. 2006) (No. 05-CV-6124 (CJS))	X			
Glover v. Jones	522 F. Supp. 2d 496 (W.D.N.Y. 2007) (No. 05-CV-6124 (CJS))	X			

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Fair Housing Council v. Penasquitos Casablanca Owners Ass'n	523 F. Supp. 2d 1164 (S.D. Cal. 2007) (No. 05-CV-0072-LAB (CAB))				
Quigley v. Winter	584 F. Supp. 2d 1153 (N.D. Iowa 2008) (No. 06-CV-4053-DEO)	X	X		
Brillhart v. Sharp	2008 WL 2857713 (M.D. Pa. 2008) (No. 4:CVC-07-1121)	X			
Boswell v. Gumbaytay	2009 WL 151872 (M.D. Ala. 2009) (No. 2:07-CV-135-WKW)				
Boswell v. Gumbaytay	2009 WL 151912 (M.D. Ala. 2009) (No. 2:07-CV-135-WKW)	X		X	
United States v. Peterson	2010 WL 2992367 (E.D. Mich. 2010) (No. 09-10333)	X			
United States v. Gumbaytay	757 F. Supp. 2d 1142 (M.D. Ala. 2010) (No. 2:08-CV-573-MEF)	X			
Madison v. Philadelphia Housing Authority	2010 WL 2572952 (E.D. Pa. 2010) (No. 09-3400)				
Fahnbulleh v. GFZ Realty, LLC	795 F. Supp. 2d 360 (D. Md. 2011) (No. 8:10-CV-02074-AW)	X			X
United States v. Katz	2011 WL 2175787 (S.D.N.Y. 2011) (No. 10-Civ-3335)	X			
United States v. Barnason	852 F. Supp. 2d 367 (S.D.N.Y. 2012) (No. 10-Civ-3335)			X	

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Salisbury v. Hickman	974 F. Supp. 2d 1282 (E.D. Cal. 2013) (No. 1:12-CV-01098 LJO JLT)	X	X		
Butler v. Carrero	2013 WL 5200539 (N.D. Ga. 2013) (No. 1:12-CV-2743-WSD)	X			
Cain v. Rambert	2014 U.S. Dist. LEXIS 74188 (E.D.N.Y. 2014) (No. 13-CV-5807 (MKB))	X			
Kubiak v. Meltzer	2014 WL 258707 (N.D. Ill. 2014) (No. 12-CV-6849)				
Jane Doe v. Maywood Housing Authority	1993 U.S. Dist. LEXIS 9020 (N.D. Ill. 1993) (No. 93-C-2865)				
Dubois v. House	1995 U.S. Dist. LEXIS 16985 (N.D. Ill. 1995) (No. 95-C-0683)		X		
Cavalieri v. L. Butterman & Associates	1997 U.S. Dist. LEXIS 2976 (N.D. Ill. 1997) (No. 96-C-5631)				
Pittman v. Johnson	2006 U.S. Dist. LEXIS 27236 (E.D. Tenn. 2006) (No. 3:05-CV-336)				
Essex Ins. Co. v. Harris	2011 U.S. Dist. LEXIS 113421 (E.D. Mo. 2011) (No. 4:09CV2071 TIA)				X
Hawecker v. Sorensen	2011 U.S. Dist. LEXIS 3018; 2011 WL 98757 (E.D. Cal. 2011) (No. 1:10-CV-00085 OWW JLT)				

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Porter v. Richardson	2011 U.S. Dist. LEXIS 78530 (W.D. Wis. 2011) (No. 11-CV-408-BBC)				
United States v. Bailey	2012 U.S. Dist. LEXIS 27018 (S.D. Ohio 2012) (No. 1:11-CV-059)				
Fair Housing Council of Central California, Inc. v. Tylar Prop. Mgmt. Co.	2013 U.S. Dist. LEXIS 57709 (E.D. Cal. 2013) (No. 12-CV-794 AWI GSA)				
Fancher v. East Orange Senior Citizens Housing Association	2013 U.S. Dist. LEXIS 149250 (D.N.J. 2013) (No. 2:12-CV-06749 (WJM))				
Batavia Woods LLC v. Wainright	2014 U.S. Dist. LEXIS 23056 (S.D. Ohio 2014) (No. 1:12-CV-00696)				
Veater v. Brooklane Apts., LLC	2014 U.S. Dist. LEXIS 44118 (D. Utah Mar. 31, 2014) (No. 2:11-CV-487-PMW)			X	
Lofton v. Hinton	2015 U.S. Dist. LEXIS 95864 (N.D. Ohio 2015) (No. 1:15-CV-00486)				
Fair Housing Council v. Pensasquitos Casablanca Owners Ass'n	2007 U.S. Dist. LEXIS 17484 (S.D. Cal. 2007) (No. 05CV0072-LAB (CAB))				
United States v. Bahr	856 F. Supp. 2d 1225 (M.D. Ala. 2012) (No. 2:08-CV-573-MEF)				

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Fair Housing Council of San Fernando Valley, Inc. v. Katz	2011 U.S. Dist. LEXIS 130310 (C.D. Cal. 2011) (No. CV 10-8317-ODW (JEMx))				
STATE COURT					
Chomicki v. Wittekind	128 Wis. 2d 188 (Ct. App. 1985) (No. 85-0740)	X		X	
Brown v. Smith	55 Cal. App. 4th 767 (1997) (No. D020282)	X			X
Haddad v. Gonzalez	410 Mass. 855 (Sup. Ct. 1991) (No Number)				
Nero v. Kansas State Univ.	253 Kan. 567 (Sup. Ct. 1993) (No. 68564)				
Gnerre v. Mass. Commission Against Discrimination	402 Mass. 502 (Sup. Ct. 1988) (No. 4610)	X			
Szkoda v. Illinois Human Rights Commission	302 Ill. App. 3d 532 (App. Ct. 1998) (No. 1-96-3051)	X			
Allen v. Seventy-Seven Acres	48 Va. Cir. 318 (1999) (No. CH98-11532)	X			
Cennamo v. Deem	2002 WL 31873792 (Ct. App. Ohio 5th Dist. 2002) (No. 02-CA-22)			X	
State Div. of Human Rights v. Stoute	36 A.D.3d 257 (Sup. Ct. App. Div. N.Y. 2006) (No. 1005-01193)	X			
State ex rel. Dobbs v. Burche	729 N.W.2d 431 (Sup. Ct. Iowa 2007) (No. 145 /04-0273)				

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Ewers v. Columbia Heights Realty, LLC	44 A.D.3d 608 (Sup. App. Div. N.Y. 2007) (No. 2006-06557)				
Ramirez v. Wong	188 Cal. App. 4th 1480 (Ct. App. 2nd Dist. 2010) (No. B217957)	X			
McDonald v. Burton	2011 WL 6009611 (Ct. App. Ohio 2011) (No. 24274)	X			
Stewart v. Storch	274 Ga. App. 242 (Ga. Ct. App. 2005) (No. A05A0267)				
People ex rel. City of Santa Monica v. Gabriel	186 Cal. App. 4th 882 (Ct. App. 2010) (No. B214828)		X		
Hurst v. Hochman	2012 Tenn. App. LEXIS 867 (Tenn. Ct. App. 2012) (No. E2012-00239-COA-R3-CV)				
Gromko v. Berezin	2008 N.Y. Misc. LEXIS 8791 (Sup. Ct. 2008) (No. 105640/07)				
Harmon v. Mattson	1999 WL 1057236 (Minn. Ct. App., Nov. 23, 1999) (Nos. CS-99-132; CO-99-755)				X
Tafoya v. State Human Rights Commission	177 Wash. App. 216 (Ct. App. 2013) (Nos. 43003-7-II; 43376-1-II)	X	X		
Aly v. Garcia	333 N.J. Super. 195 (App. Div. 2000) (No. A-3778-98T2)				
Commonwealth v. Aron	2001 Mass. Super. LEXIS 388 (Mass. Super. Ct. 2001) (No. 00-4411)	X			

CASE NAME	CITATION & CASE NO.	REFERENCE TO TITLE VII	SANCTITY OF HOME	VULNERABILITY OF VICTIM	MENTION OF RACE
Welter v. Christensen	1999 Minn. App. LEXIS 1254 (Ct. App. Minn. 1999) (No. C2-99-448)				
TOTAL		**47**	**12**	**12**	**9**