

EDITORS' NOTE

It is our duty to fight for our freedom.
It is our duty to win.
We must love and protect one another.
We have nothing to lose but our chains.
— Assata Shakur

On June 7, 2016, Black Lives Matter-Los Angeles held a peace gathering in front of the City of Pasadena's courthouse attended by hundreds of people.¹ That morning, Los Angeles Superior Court Judge Elaine Lu held a sentencing hearing for Black Lives Matter-Pasadena organizer Jasmine Richards, a queer, Black woman.² The week before, a jury containing no Black jurors convicted Jasmine of attempting what was known until 2015 as a "felony lynching."³ The California legislature passed the felony lynching statute 80 years ago to protect Black people from lynch mobs.⁴ The felony lynching statute allows a district attorney to prosecute anyone that removes or attempts to remove someone from police custody during a riot, although it has rarely been used to charge protestors or Black people.⁵

In 2015, after another Black Lives Matter organizer in Sacramento was charged with felony lynching, the California legislature removed the word "lynching" from the statute but left the substantive matter of the statute intact.⁶ Two months later, Jasmine was charged with the crime formerly known as felony lynching for attempting to remove a Black woman from police custody during a peace march.⁷ The police report

¹ Marina Pena, *Hundreds Protest Sentencing of Black Lives Matter Activist in Pasadena*, PASADENA STAR-NEWS, (Jun. 7, 2016), <http://www.pasadenastarnews.com/social-affairs/20160607/hundreds-protest-sentencing-of-black-lives-matter-activist-in-pasadena>.

² Nadra Nittle, *How a Black Lives Matter Protester Was Sentenced to 90 Days for "Lynching"*, LAIST (Jun. 8, 2016), http://laist.com/2016/06/08/jasmine_richards_lynching.php.

³ *Black Lives Matter Activist Convicted of "Felony Lynching": "It's More Than Ironic, It's Disgusting,"* DEMOCRACY NOW! (Jun. 2, 2016), http://www.democracynow.org/2016/6/2/black_lives_matter_activist_convicted_of.

⁴ *Id.*

⁵ Nittle, *supra* note 2.

⁶ *Id.*

⁷ DEMOCRACY NOW!, *supra* note 3.

from Jasmine’s arrest thus says she was arrested for “felony lynching,” while the words “felony lynching” were not used at trial.⁸

Judge Lu ultimately sentenced Jasmine to 90 days in jail and three years of probation.⁹ One week earlier, California superior court Judge Aaron Persky had sentenced Brock Turner, a wealthy, White, male, Stanford student to 180 days in county jail for which Brock was expected to serve only 90 days.¹⁰ Brock was convicted of three sexual assault charges including raping an unconscious woman.¹¹ Judge Persky’s reason for giving Brock such a short sentence was fear that a longer sentence would have a “severe impact” on Brock’s life.¹² Judge Lu did not express similar concern about the impact incarceration would have on Jasmine’s life during her sentencing hearing.

Jasmine was arrested after an August 29, 2015 peace march in a Pasadena park. Black Lives Matter-Pasadena organized the march for Kendrec McDade, a 19-year old Black man who was shot and killed by two police officers in 2012.¹³ Kendrec died one week after George Zimmerman shot and killed Trayvon Martin.¹⁴ Officers shot Kendrec seven times and handcuffed his bleeding body splayed out on the ground.¹⁵ Kendrec died in the hospital the next day.¹⁶ In a post-shooting police report, the involved officers admitted to not following department protocol to ensure officer safety in their pursuit of Kendrec.¹⁷ In 2013, the

⁸ Nittle, *supra* note 2.

⁹ *Id.*

¹⁰ Veronica Rocha & Richard Winton, *Light Sentence for Stanford Swimmer in Sexual Assault ‘Extraordinary,’ Legal Experts Say*, LOS ANGELES TIMES (Jun. 8, 2016), <http://www.latimes.com/local/lanow/la-me-ln-stanford-sexual-assault-sentence-20160607-snap-story.html>.

¹¹ *Id.*

¹² Randye Hoder, *Stanford Rape Case: How Can Brock Turner Accept Responsibility for His Actions if His Father Excuses Them?*, LOS ANGELES TIMES (Jun. 7, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-hoder-brocker-turner-dad-letter-20160608-snap-story.html>.

¹³ DEMOCRACY NOW!, *supra* note 3.

¹⁴ Simone Wilson, *Is Kendrec McDade the Next Trayvon Martin? L.A. Civil Rights Leaders Question Pasadena Police Shooting*, LA WEEKLY (Mar. 27, 2012), <http://www.laweekly.com/news/is-kendrec-mcdade-the-next-trayvon-martin-la-civil-rights-leaders-question-pasadena-police-shooting-2394960>.

¹⁵ Jason Kandel & Ted Chen, *Autopsy: Kendrec McDade Shot by Pasadena Police 7 Times*, NBC LOS ANGELES (Dec. 17, 2012), <http://www.nbclosangeles.com/news/local/Kendrec-McDade-Autopsy-Shot-Pasadena-Police-151255425.html>.

¹⁶ *Id.*

¹⁷ Brian Day, *Court Documents Show Pasadena Police Officers Made Tactical Errors in Kendrec McDade Shooting*, PASADENA STAR NEWS (Mar. 26, 2015), <http://www.pasadenastarnews.com/government-and-politics/20150326/court-documents-show-pasadena-police-officers-made-tactical-errors-in-kendrec-mcdade-shooting>.

man who called 911 to report that two armed Black men robbed him, which lead officers to pursue Kendrec, admitted to making a false report.¹⁸ Like Jasmine, this man was convicted to 90 days in jail.¹⁹ Unlike Jasmine, whose actions hurt no one, this man got 90 days for a lie that took someone's life.

In Jasmine's case, she and other folks marching for Kendrec encircled a Black woman who police were trying to arrest for her involvement in a disagreement with a nearby restaurant.²⁰ No one was injured.²¹ The protesters had no weapons and did no damage to anyone's property.²² The protestors took action to help a Black woman they saw police aggress against during a march to protest police violence against Black people.²³ Under these facts, the Los Angeles County District Attorney's Office convinced a jury to convict Jasmine for the charge formerly known as attempted lynching – attempting to remove a person from police custody during a riot.²⁴

Kendrec's death, Jasmine's conviction, and the geography in which they occurred reflect America's history of segregation, police violence against Black bodies, and unequal criminal sentencing of Black and Brown people. Pasadena, like many American cities, has a deep history of racial segregation.²⁵ In the *New Jim Crow*, Michelle Alexander identifies mass incarceration and over-policing of Black and Brown people as evolving in response to the end of racial segregation and the civil rights movement.²⁶ There are currently almost 7 million people under

¹⁸ Zen Vuong, *Man Who Made False Claims After McDade Robbery Gets 90 Day Prison Sentence*, PASADENA STAR-NEWS (Jun. 17, 2013), <http://www.pasadenastarnews.com/article/ZZ/20130617/NEWS/130619249>.

¹⁹ *Id.*

²⁰ Nittle, *supra* note 2.

²¹ Eddie Rivera, *Black Lives Matter Pasadena Organizer Convicted of Felony "Lynching" Charge*, PASADENA NEWS NOW (Jun. 1, 2016), <http://www.pasadenanow.com/main/black-lives-matter-pasadena-organizer-convicted-of-felony-lynching-charge/>.

²² *Id.*

²³ DEMOCRACY NOW!, *supra* note 3.

²⁴ *Id.*

²⁵ See Gary Orfield & Jongyeon Ee, *Segregating California's Future: Inequality and Its Alternative 60 Years after Brown v. Board of Education*, THE CIVIL RIGHTS PROJECT (May 2014), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/segregating-california2019s-future-inequality-and-its-alternative-60-years-after-brown-v.-board-of-education/orfield-ee-segregating-california-future-brown-at.pdf>; Catherine Foster, *Desegregation of Pasadena Schools – 12 Years Later*, CHRISTIAN SCIENCE MONITOR (Jan. 28, 1983), <http://www.csmonitor.com/1983/0128/012850.html>.

²⁶ MICHELLE ALEXANDER, *THE NEW JIM CROW* 22 (2012) (“[T]he seeds of [a] new system

the supervision of an adult corrections facility in the U.S.²⁷ About 2.2 million people are currently incarcerated,²⁸ which is a greater than 400% increase of the prison population since 1980.²⁹ This population is overwhelmingly Black, Brown, poor, and minimally educated.³⁰ For this reason, Alexander argues that mass incarceration is a new Jim Crow system of racial segregation, violence, and ostracization. For this reason,³¹ “all those who care about social justice should fully commit themselves to dismantling this new racial caste system.”³²

In this context, Kendrec McDade’s shooting by Pasadena police officers hunting for armed Black men based on a false accusation can be understood as the most recent manifestation of America’s ugly history of racism, racial exclusion, and racial violence. Jasmine Richards’ actions to protect a woman from police custody can be understood as an attempt to protect a Black woman from succumbing to America’s new racial caste system. And Jasmine’s conviction and sentencing for a crime formerly known as attempted felony lynching can be understood as the government’s attempt to suppress the Black Lives Matter movement.

Volume 25 of the National Black Law Journal contributes to exposing how over-incarceration and over-policing of Black people damages society. Volume 25 contains a speech given by retired U.S. District Court Judge Shira Scheindlin at the Eighth Annual Critical Race Studies Symposium at UCLA Law School. Judge Scheindlin ruled New York City’s

of control – mass incarceration – were planted during the Civil Rights Movement itself, when it became clear that the old caste system was crumbling and a new one would have to take its place); *see also id.* at 40-58.

²⁷ Danielle Kaeble, Lauren Glaze, Anastasios Tsoutis, & Todd Minton, *Correctional Populations in the United States, 2014*, U.S. Department of Justice (revised Jan. 21, 2016) at 1, <http://www.bjs.gov/content/pub/pdf/cpus14.pdf>.

²⁸ *Id.* at 2.

²⁹ *See Trends in U.S. Corrections*, The Sentencing Project at 2 (finding 182,288 people were incarcerated in jails and 319,598 people were incarcerated in prisons in 1980, which compared to 2.2 million in jails and prisons today is an increase of over 400%).

³⁰ E. Ann Carson, *Prisoners in 2014*, U.S. Department of Justice, 15 (Sep. 2014), <http://www.bjs.gov/content/pub/pdf/p14.pdf> (finding that 37% of the prison population is Black, 22% Hispanic, and only 22% White); Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Policy Initiative (Jul. 9, 2015), <http://www.prisonpolicy.org/reports/income.html> (finding that 57 of incarcerated men between the ages of 27-42 earned less than \$22,500 prior to incarceration and 72% of women between 27-42 earned less than \$22,500 in 2014 dollars).

³¹ Alexander, *supra* note 26, at 11.

³² *Id.*

stop and frisk policies unconstitutional in 2013.³³ Her speech roots modern policing practices in slavery, post-emancipation efforts to subjugate Black people, and White mob lynchings of Black people in which law enforcement was often complicit. In this way, Judge Scheindlin locates New York’s racially biased policing policies – under which 4.4 million *Terry* stops of mostly Black and Brown people occurred between 2004 and 2011³⁴ – within America’s long history of using policing to maintain racial order. Kelly Orians describes in detail how criminal convictions deprive the poor Black men of Louisiana from jobs, housing, and access to capital that might enable them to build small businesses. She describes multiple pointless barriers facing formerly incarcerated individuals that keep them trapped in a cycle of poverty, debt, violence, and vulnerability. These barriers in turn prevent these individuals from reentering society, rebuilding their lives, and contributing to their communities. Volume 25 serves to expand on Michelle Alexander and the Black Lives Matter movement’s work to expose how incarceration and policing policies overtly target Black people, divest resources from Black communities, and create and reinforce cycles of poverty.

In the wake of Kendrec McDade’s shooting, Black students at the primarily Black Blair High School in Pasadena held a protest in front of their school.³⁵ The students dressed in hooded sweatshirts, which Trayvon was wearing when he was shot, and held Skittles and soda, which Trayvon held when he died.³⁶ One student, Sheddric Walker said, “The only way we can end racism and these kinds of shootings is if we all start speaking about it . . . but when we do, it seems like the community tries to push back and pretend like there is no racism in the world.”³⁷ When the bailiff escorted Jasmine Richards out of the courtroom after her lynching conviction, she threw her fist into the air and cried out Assata Shakur’s chant: “It is our duty to fight for our freedom! It is our duty to win!”

³³ Joseph Goldstein, *Judge Rejects New York’s Stop-and-Frisk Policy*, NEW YORK TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

³⁴ See *Stop-and-Frisk Data*, NEW YORK CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data>.

³⁵ André Coleman, *The Kids Are Not Alright*, PASADENA WEEKLY, Apr. 5, 2012 at 9, 12.

³⁶ *Id.*

³⁷ *Id.* at 12.

We must love and support one another! We have nothing to lose but our chains!”³⁸

The fight for freedom is far from over, as most recently exemplified by the U.S. Supreme Court’s June 2016 ruling permitting police officers to look up outstanding warrants for detained individuals to use as justification for property searches unrelated to the warrant.³⁹ In her dissent, Justice Sotomayor stated “it is no secret that people of color are disproportionate victims” of unjustified police stops.⁴⁰ Until the nation can engage in real dialogue about the role of race in the structure of American criminal justice, the *National Black Law Journal* will continue to discuss and publish on this fundamental civil rights issue. The *National Black Law Journal* stands with Sheddrick Walker, Jasmine Richards, and the Black Lives Matter movement to expose, discuss, and transform the unfair targeting and destruction of Black life in America. We will not stop until we win. We have nothing to lose but our chains.

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³⁸ Rivera, *supra* note 21.

³⁹ Adam Liptak, *Supreme Court Says Police May Use Evidence Found After Illegal Police Stops*, *New York Times* (Jun. 20, 2016), <http://www.nytimes.com/2016/06/21/us/supreme-court-says-police-may-use-evidence-found-after-illegal-stops.html>.

⁴⁰ *Id.*