

**DISPARITIES IN LAW ENFORCEMENT’S INVOLVEMENT WITH DOMESTIC VIOLENCE CASES FOR BLACK AND NATIVE AMERICAN WOMEN: HOW THE GLOBAL ATTENTION TO GABBY PETITO’S MURDER SPARKED CONVERSATIONS OF THE SILENT VICTIMS**

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In 1994, American football player O.J. Simpson’s wife, Nicole Brown Simpson, was murdered in front of their home in California.<sup>1</sup> The case sparked a media phenomenon and subsequently started a movement for victims and activists of domestic violence awareness.<sup>2</sup> The worldwide coverage of the domestic violence between O.J. and Nicole Simpson increased the nation’s awareness of the systematic issue of intimate partner abuse. However, many scholars and domestic violence activists recognized that the issue was largely gaining popularity because Nicole Simpson embodied the “ideal American victim:” a white woman.<sup>3</sup> Twenty-five years later, the disproportionate attention the public pays to intimate-partner violence when the victim is white remains a pressing issue.<sup>4</sup>

On September 11, 2021, twenty-two-year-old Gabby Petito’s parents reported her missing.<sup>5</sup> At the beginning of the summer, Petito and her boyfriend, Brian Laundrie, set out on a cross-country road trip, documented by Petito on Instagram.<sup>6</sup> But on September 1, Laundrie returned to his home in Florida in Petito’s van, without Petito.<sup>7</sup> The story sent shock-waves throughout the nation, inspiring many to use their own social media platforms, such as TikTok and Twitter, to spread awareness about the missing twenty-two year old, and to help

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<sup>1</sup> Kimberly A. Maxwell, *Covering domestic violence: How the O.J. Simpson case shaped reporting of domestic violence in the news media*, 77 JOURNALISM & MASS COMM’N Q. 258-272 (2000).

<sup>2</sup> Rinku Sen, *Between a rock & a hard place: domestic violence in communities of color*, 2 COLORLINES (1999).

<sup>3</sup> Maxwell, *supra* note 1, at 258.

<sup>4</sup> For purposes of this Article, the terms “domestic violence” and “intimate partner violence” are used to describe physical violence or threats of violence perpetrated by a partner, boyfriend, girlfriend, or spouse. This is not encompassing of all actions that may be or contribute to domestic or intimate partner violence.

<sup>5</sup> Katherine Rosman, *How the Case of Gabrielle Petito Galvanized the Internet*, N. Y. TIMES (SEPT. 20, 2021), <https://www.nytimes.com/2021/09/20/style/gabby-petito-case-tiktok-social-media.html>.

<sup>6</sup> Christina Maxouris, *A timeline of 22-year-old Gabby Petito’s case*, CNN (Sept. 28, 2021), <https://www.cnn.com/2021/09/16/us/gabby-petito-timeline-missing-case/index.html>.

<sup>7</sup> *Id.*

law enforcement find her.<sup>8</sup> Within five days of Petito being reported missing, law enforcement began to investigate Laundrie, ultimately sending fifty law enforcement officers from local agencies and the FBI to the Carlton Reserve in Florida in search of Laundrie.<sup>9</sup> The FBI also began to search the Grand Teton National Park in Wyoming, where Petito was last believed to be, and where her remains were ultimately discovered on September 19th.<sup>10</sup> The national coverage of the search for the two illuminated that the young couple may not have been living the “happily ever after” social media had made it seem. As the case unfolded, both law enforcement officers and other passerby reported they had witnessed the couple engaged in arguments, and potentially, domestic violence disputes, on their trip.<sup>11</sup>

Gabby Petito and Nicole Simpson are far from alone in experiencing domestic and intimate partner violence. The news and social media attention surrounding Petito’s case and the domestic violence she may have endured inspired many families of other missing persons and domestic violence victims to voice their dismay with the grave disparities in how law enforcement handles domestic violence or missing persons’ cases when it involves a young, white woman compared to people of color.<sup>12</sup>

In the United States, more than ten million women and men will experience domestic or intimate partner violence in a year, and one in four women will experience domestic violence during their lifetime.<sup>13</sup> Of those women, 41% of Black women will experience intimate partner violence, compared to 31% of White women, 30% of Hispanic women, and 15% of Asian or Pacific Islander women.<sup>14</sup> Additionally, 39% of Native American women will experience domestic violence.<sup>15</sup> Of those victims who experience domestic violence, a little

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<sup>8</sup> Rosman, *supra* note 5.

<sup>9</sup> Maxouris, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Samantha Gholar Weires, *Gabby Petito case reveal stark disparities in coverage of missing people*, HERALD TRIBUNE (Sept. 24, 2021) <https://www.heraldtribune.com/story/news/2021/09/24/research-suggests-public-views-missing-persons-color-less-worthy/8419515002/>.

<sup>13</sup> National Coalition Against Domestic Violence, *Statistics*, <https://ncadv.org/STATISTICS> (last visited Nov. 7 2021).

<sup>14</sup> The National Center on Violence Against Women in the Black Community, *Intimate Partner Violence*, <https://ujimacommunity.org/wp-content/uploads/2018/12/Intimate-Partner-Violence-IPV-v9.4.pdf>.

<sup>15</sup> Rebecca A. Hart & M. Alexander Lowther, *Honoring Sovereignty: Aiding Tribal Efforts to Protect Native American Women from Domestic Violence*, 96 CAL. L. REV. 185, 190-191 (2008).

more than half are reported to police, and police respond to almost two-thirds of all reports.<sup>16</sup>

*Disparities in Law Enforcement Treatment of Domestic Violence Cases Against Black Women*

Generally, police officers have broad discretionary powers when investigating crime, but studies show officers use added discretion in domestic violence cases.<sup>17</sup> Generally, police are more lenient when making arrests or reports in domestic violence cases, making a comparatively lower number of arrests and reports than with other crimes.<sup>18</sup> This leniency can be attributed to the intimate nature of the crime, and the personal relationship of the victim and the perpetrator.<sup>19</sup>

Additionally, a victim's social status can impact the police response to crimes. Since women are afforded a lower social status than men, and minorities afforded a lower social status than white people, issues related to intersectionality become an additional hurdle to Black women seeking law enforcement involvement for reports of domestic disputes.<sup>20</sup> When Black women seek law enforcement's assistance in domestic disputes, they do not face lower amounts of police responses to the crime, but may see a larger discrepancy in the "quality" of protections.<sup>21</sup> Police are less likely to initiate an arrest when faced with domestic disputes between a Black victim and a Black perpetrator, compared to when the dispute involves two white persons or two Latino persons.<sup>22</sup> It is possible officers may take the dispute less seriously by believing violence in Black communities is more typical than in white or Latino communities.<sup>23</sup>

While research shows that a large portion of Black victims do contact the police to report intimate partner violence, Black women still feel hesitant when seeking

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<sup>16</sup> Brian A. Reaves, *Police Response to Domestic Violence, 2006-2015*, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., (2017), <https://bjs.ojp.gov/content/pub/pdf/prdv0615.pdf> (statistics collected from a ten-range period from 2006-2015 reported that 56% of victimizations were reported to police and of those, police responded to 64% within 10 minutes).

<sup>17</sup> Amanda L. Robinson & Meghan S. Chandek, *Differential Police Response to Black Battered Women*, 12 WOMEN & CRIM. JUST. 2000 at 29, 33.

<sup>18</sup> *Id.* at 35.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 51.

<sup>22</sup> Joongyeup Lee, Yan Zhang, & Larry T. Hoover, *Police response to domestic violence: multilevel factors of arrest decision*, 36 POLICING: AN INT'L J., 157 (2013).

<sup>23</sup> *Id.*

police involvement.<sup>24</sup> These hesitations can be attributed to the cycle of Black women receiving lower quality of protections from law enforcement, both for domestic violence and crimes generally. Most prominently, Black women’s lack of reporting stems from a large distrust in law enforcement.<sup>25</sup> In the same vein, Black women face pressure when reporting domestic violence against a Black male for fear of contributing to the often unjust criminal sanctions against Black men and which can re-enforce stereotypes of Black men as violent offenders.<sup>26</sup> Additionally, research shows Black women are even less likely to report domestic violence against perpetrators of a different race.<sup>27</sup> Further, Black women are often discredited by law enforcement officers as true victims, especially when they are living in disadvantaged neighborhoods, have or currently use drugs and alcohol, or where police fault Black women for allowing the abuse to occur in the presence of children.<sup>28</sup>

Moreover, many policies that have been implemented to better protect victims of domestic violence increase the disparate treatment of Black women in domestic disputes.<sup>29</sup> One such law calls for the mandatory arrest of abusers in domestic violence situations.<sup>30</sup> In Black communities, the policy of mandatory arrests often causes deeper additional issues than providing protections to victims. For example, perpetrators of abuse who are arrested and who are unemployed have higher rates of recidivism for violent crimes.<sup>31</sup> Economic disparities for Black victims may mean they rely on their partner for financial support, and in many cases, criminal sanctions against a batterer will re-enforce economic hardships on both the assailant and the victim.<sup>32</sup> The disproportionate rates of unemployment and wealth disparities that Black men and women face because of systematic

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<sup>24</sup> *For Many Black Survivors, Reporting Raises Complicated Issues*, RAINN, (June 19, 2020), <https://www.rainn.org/news/many-black-survivors-reporting-raises-complicated-issues#:~:text=According%20to%20Department%20of%20Justice,and%20women%20from%202005%2D2010>.

<sup>25</sup> Bronwen, Lichtenstein & Ida M. Johnson, *Older African American Women and Barriers to Reporting Domestic Violence to Law Enforcement in the Rural Deep South*, 19 *WOMEN & CRIM. JUST.* 286 (2009).

<sup>26</sup> *Id.* at 288.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* See also Robinson & Chandek, *supra* note 16, at 45-46.

<sup>29</sup> Geneva Brown, *Ain't I A Victim? The Intersectionality of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 *CARDOZO J.L. & GENDER* 147, 165 (2012).

<sup>30</sup> See e.g., D.C. Code §16-1031 (2021) (a law enforcement officer shall arrest a person if the officer has probable cause to believe the person committed an “intrafamily offense”).

<sup>31</sup> Brown, *supra* note 29, at 167-168.

<sup>32</sup> *Id.*

racism are thus bolstered by mandatory arrest laws.<sup>33</sup> Additionally, controversy exists around mandatory arrests for Black men and women given the current tensions in law enforcement's misconduct in Black communities.<sup>34</sup> Arrests for domestic violence may also place Black women in danger of future violence from their perpetrators, as their abuser may seek retaliation when released from custody.<sup>35</sup> Finally, Black women themselves risk being arrested when they report domestic violence.<sup>36</sup> This stems in part from perceptions of Black women as "less innocent" and in need of "less protection" than their white counterparts.<sup>37</sup>

*Disparities in Law Enforcement Treatment of Domestic Violence Cases Against Native American Women*

The overwhelming law enforcement response to Gabby Petito's case similarly sheds light on the disproportionate quality Native American women receive from police and the lack of media attention for their experiences as missing persons or experiencing domestic violence.<sup>38</sup> For example, in 2017, Ashley Loring Heavyrunner, a member of the Blackfeet Nation, went missing from the Blackfeet Indian Reservation in Montana.<sup>39</sup> Tribal law enforcement searched for Ashley for three days, but it took two months for the bureau which exercises federal jurisdiction over reservations to become involved.<sup>40</sup> Even though there is possible evidence that would help solve her disappearance, Ashley is still missing after four years, and her family has been left to find search for her on her own.<sup>41</sup>

Domestic violence rates against Native American women are some of the highest percentages of intimate partner violence as well as violence perpetrated against women generally.<sup>42</sup> 39% of Native American women are victims of domestic

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<sup>33</sup> *Id.* at 150.

<sup>34</sup> *Id.* at 167-168.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence*, ACLU (2019) <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/legal-system-has-failed-black-girls-women-and-non>.

<sup>38</sup> Ruth Hopkins, *If I am Taken, Will Anyone Look For Me? As a Native woman, I know the media probably wouldn't cover my disappearance*, THE CUT (2021) [https://www.thecut.com/2021/10/what-about-the-missing-women-who-look-like-me.html?utm\\_source=instagram&utm\\_medium=social\\_acct&utm\\_campaign=cut&utm\\_content=curalate\\_like2buy\\_Icy7Dv3z\\_\\_701569a8-d92b-4e11-b021-3d7319746782](https://www.thecut.com/2021/10/what-about-the-missing-women-who-look-like-me.html?utm_source=instagram&utm_medium=social_acct&utm_campaign=cut&utm_content=curalate_like2buy_Icy7Dv3z__701569a8-d92b-4e11-b021-3d7319746782).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Hart, *supra* note 15 at 190-191 (noting that incidents of domestic violence are underreported through all groups in society, especially in Native American

violence and 75% of the violence is perpetrated by non-Native men.<sup>43</sup> Although Native women face some of the highest rates of victimization, media coverage of these crimes and law enforcement involvement is significantly lacking. Native American women face added barriers to effective legal protection and redress for domestic violence due to a unique system of colonization that contributes to both racially and gender motivated violence.<sup>44</sup>

A unique roadblock in these cases stems from the deep-rooted, complicated relationships tribal lands have with federal and state governments, causing domestic violence reports to face serious jurisdictional issues.<sup>45</sup> In some states, only tribal law enforcement or federal agencies are responsible for responding to domestic violence emergencies, leaving state authorities with no jurisdiction.<sup>46</sup> Therefore, if tribal law enforcement and federal agencies fail to respond to Native American women's domestic violence complaints, those women are left with no legal assistance.<sup>47</sup> In states that do allow state or local enforcement agencies to have jurisdiction, the legal recourse for Native American women is still often difficult to obtain given the hostility between tribes and local enforcement, which can impact the state's willingness to respond to crimes on tribal lands.<sup>48</sup>

When tribal law enforcement does intervene in domestic violence disputes, they lack adequate jails to arrest perpetrators and shelters to protect survivors.<sup>49</sup> Federal law enforcement does not provide survivors with any better recourse in these situations. This is because where a crime has been committed between two tribal members, in order to confer jurisdiction to the federal government, the crime must be considered a federal felony.<sup>50</sup> Domestic violence is not a federal

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societies, suggesting the actual rate of domestic violence in Native American populations may be higher than reported.)

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 193.

<sup>45</sup> *Id.* at 194.

<sup>46</sup> *Id.* at 207. Public Law 280 was established in 1953 to force some states to assume the jurisdiction of the federal government for governance over tribal lands. One implication of that law was that tribes and states now have concurrent jurisdiction for criminal conduct between two tribal members on tribal lands. The effect of the law means, in states not under P.L. 280, if there is no tribal law enforcement, the FBI or Bureau of Indian Affairs is responsible for domestic violence complaints. State authorities have no jurisdiction over the matter.

<sup>47</sup> *Id.* at 208.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 212. According to Bureau of Justice Statistics data collected between 1998 and 2004, less than 8% of tribes operated a correctional facility of any kind, and the ten largest jails on tribal lands held almost half of all inmates. 91% of tribal jail facilities are capable of housing less than fifty prisoners and have a 2.5 inmate-to-staff ratio.

<sup>50</sup> *Id.* at 214.

felony absent extreme circumstances.<sup>51</sup> When the crime is perpetrated by a non-Native member and is handled by the federal government, it is up to the discretion of the U.S. Attorney to bring the case.<sup>52</sup> Many attorneys with the United States Attorney's office hesitate to do so because of the difficulties in both prosecuting domestic violence crimes and accessing tribal lands.<sup>53</sup> The lack of resources in tribal lands for handling domestic violence cases is furthered by the isolated nature of Native American populations.<sup>54</sup> Often, knowledge of domestic violence is more difficult to obtain, and response times to reports of abuse are slower.<sup>55</sup> Further, the cultural commitment and loyalty Native American women have to their community often stops victims from reporting.<sup>56</sup>

### *Conclusion*

Uncovering the intimate-partner violence in Gabby Petito and Brian Laundrie's relationship has propelled news outlets, social media users, and the public to engage in conversations about the often-silenced issue of domestic violence. However, the popularity of Petito's case highlights the stark contrast of white women's experiences with domestic violence and law enforcement with that of Black and Native American women. Black and Native American women face some of the highest rates of domestic violence in the country, yet their socio-economic status and overall positions in society grant them less coverage and police assistance when they are victims of abuse. It is deeply important to include Black and Native American women in this new discussion on the silent issue of domestic violence.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Loring Jones, *The Distinctive Characteristics and Needs of Domestic Violence Victims in a Native American Community*, 23 J. FAM VIOL 113-118 (2008).

<sup>55</sup> *Id.* at 115.

<sup>56</sup> *Id.* at 115-116.