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# African-American Grandmothers: Does the Gender-Entrapment Theory Apply?

## Essay Response to Professor Beth Richie

Jessica Dixon Weaver\*

First, I would like to extend my appreciation to Dean Appell and Vice-Provost Davis for inviting me to discuss how my research on the African-American family intersects with Professor Richie's work in the anti-violence black feminist movement area. My focus on the black family deals with how the family has been historically structured, how law and policy have changed the lens by which families of color are viewed, and how the presence of a normative African-American family in the White House has affected families in America. Today, my focus is on the role of African-American grandmothers and the role that they play in the cycle of incarceration that is prevalent in poor black communities.

Professor Richie and other scholars have written about the effects of the mass incarceration of African-American women during the last thirty years.<sup>1</sup> In *Compelled to Crime: The Gender Entrapment of*

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\* Assistant Professor, SMU Dedman School of Law. I thank Annette Appell and Adrienne Davis for inviting me to participate in the Access to Justice Symposium and for the opportunity to comment on the very important work of Beth E. Richie. A special thanks goes to my former law student, Brittany Barnett, the founder of G.E.M., Inc. She is a true example of how law students can inspire and create positive change in our world.

1. BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN* (1996); *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* (Marc Mauer & Meda Chesney-Lind eds., 2002); *POLICING THE NATIONAL BODY: RACE, GENDER AND CRIMINALIZATION* (Jael Silliman & Anannya Bhattacharjee eds., 2002); PAULA C. JOHNSON, *INNER VOICES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON* (2003); *GENDERED (IN)JUSTICE: THEORY AND PRACTICE IN FEMINIST CRIMINOLOGY* (Pamela J. Schram & Barbara Koons-Witt eds., 2004); Dorothy Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004); Beth E. Richie, *Black Women, Male Violence and the Build-up of a Prison Nation* (unpublished manuscript).

*Battered Black Women*,<sup>2</sup> Professor Richie sets forth her gender entrapment theory, which is a concept of criminal entrapment of women battered by male partners, who are marginalized in the public sphere because of their race/ethnicity, gender and class.<sup>3</sup> Essentially, Richie argues that “some women are forced or coerced into crime by their culturally expected gender roles, the violence in their intimate relationships, and their social position in the broader society.”<sup>4</sup>

One of the ways in which Professor Beth Richie’s research reveals the particular vulnerability of some incarcerated African-American women is in their socialization as privileged children in their family of origin.<sup>5</sup> Their higher status and the knowledge that they have received a greater investment from parents who envisioned their successful future resulted in a heightened sense of self-confidence.<sup>6</sup> While these women felt unique and special within their household, this privileged status came with a tension that resulted in them feeling burdened by the pressure to meet expectations so that they would maintain their privileged status.<sup>7</sup> Ironically, their identity as competent, “potential-filled” female children left them more vulnerable in the public sphere in that they became women who believed that they were in a better position than men to secure employment and take on the responsibility of caring for those in the family with inadequate resources, i.e. men, older family members and other children.<sup>8</sup>

In addition, despite their surroundings and the fact that marriages were not as common in their own families, African-American women were socially raised to seek the ideological normative family and to remain loyal to their race in seeking to marry African-American

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2. RICHIE, COMPELLED TO CRIME, *supra* note 1.

3. *Id.* at 133–34.

4. *Id.* at 133.

5. *Id.* at 33–36. The article notes that as children, African American battered women had more clothing and other possessions, more discretionary spending money, and more frequent inclusion in social activities and cultural events outside the home. Adults in the home also expressed their appreciation for their personal qualities and used them as positive examples for other children. *Id.*

6. *Id.* at 35.

7. *Id.* (noting that the privileged status came with “responsibilities for caring for younger siblings, pressure to do extraordinarily well in school, and the burden of being their caretakers’ confidantes”).

8. *Id.* at 42–43.

men.<sup>9</sup> This “sense of racial/ethnic identity and family loyalty had a contradictory effect on [the identities of African-American battered women] similar to the contradiction of gender and role privilege.”<sup>10</sup> Black battered women tended to feel sorry for the men in their lives, tolerating and excusing negative behavior such as violence and involvement in criminal activities because of racial discrimination and inequalities in the public sphere, while holding themselves and other women to a higher standard.<sup>11</sup> Though their identities and loyalties were valued within their families and communities, the public sphere offered them limited social success educationally and economically.<sup>12</sup> As their sense of self was threatened publicly, the emotional, physical, and sexual abuse in their private lives led to isolation,<sup>13</sup> and eventually they fell prey to breaking the law in order to survive and make their intimate relationships “work.”<sup>14</sup> Professor Richie’s gender-entrapment theory illustrates how the marginalized treatment of these women in the public sphere set the stage for violence in their intimate relationships, which in turn, compelled them to commit crimes.<sup>15</sup>

In her latest works, Professor Richie highlights the fact that the buildup of a prison nation has resulted in the punishment of women, disadvantages for norm violations such as teenage pregnancy, the rejection of the hetero-normative family, and the destabilization of African-American families by being less safe.<sup>16</sup> She uses three cases of male violence to frame her argument of gender oppression: the

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9. *See id.* at 56, 61–62.

10. *Id.* at 61.

11. *Id.* at 62.

12. *Id.* at 102–03.

13. *Id.* at 100 (noting that they rarely reached out for emergency assistance because of their distrust of the criminal justice system).

14. *Id.*

15. *Id.* at 39, 68, 105–27 (noting six paths to crime for battered African-American women: (1) being held hostage by their batterer during his criminal act(s), (2) committing violent acts toward men by projecting and associating them with their batterer, (3) sexual exploitation by their batterer, (4) fighting back against their batterer, (5) poverty motivated property crimes, and (6) drug addiction motivated by the desire for intimacy with batterer and pain control).

16. Beth E. Richie, Professor, University of Illinois-Chicago, Keynote Address at the Washington University School of Law 11th Annual Access to Equal Justice Colloquium: Black Feminism, Gender Violence, and the Build-Up of a Prison Nation 8–11 (Mar. 28, 2011) (transcript available in the Washington University School of Law Library).

stories of Tanya, Mrs. B, and four openly lesbian African-American women.<sup>17</sup> The intersection within black feminist theory of race, class, and gender has an intergenerational effect on how black women sustain their families in poor communities that are left without 50 percent of their men and an increasingly larger percentage of its young mothers. In addition to the narratives that Professor Richie set forth, another narrative that reflects the effect of mass incarceration on the black community is that of the grandmothers and children left behind.

The same manner of socialization of African-American females set forth in Richie's gender-entrapment theory could also be used to identify other ways in which African-American women are vulnerable in their roles as single grandmothers. The role that African-American grandmothers play when an adult female child is incarcerated reinforces the elevated status within the community that black grandmothers have always had. When a man is incarcerated, his children usually remain with their mother because they were likely residing with her prior to the father's incarceration.<sup>18</sup> However, when a mother is incarcerated, the father is not typically the primary caretaker of the children. In many instances, the maternal grandmother takes on the full-time responsibility of raising her imprisoned daughter's children.<sup>19</sup> African-American families have typically been governed by the matriarch, or in more familiar terms, "big mama"—the person who was the most stable, economically reliable, and self-sufficient member of the family.<sup>20</sup> Often one of the most respected members of her community, she also was the person that took on the responsibility of keeping the family together at all costs. The extended family network in the African-American community dates back to slavery, and grandmothers were relied upon

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17. *Id.* at 13–27, 29–36.

18. Jeff Porterfield et al., *Special Situation of Incarcerated Parents*, in TO GRANDMOTHER'S HOUSE WE GO AND STAY: PERSPECTIVES ON CUSTODIAL GRANDPARENTS 184, 187 (Carole B. Cox ed., 1999) (noting that 90 percent of children with imprisoned fathers do not change placement because they reside with their natural mother before a father's incarceration).

19. *Id.* at 168 (noting that 50 percent of the children of incarcerated mothers are placed with grandparents, 25 percent with their father, 15 percent with friends and relatives, and the remaining 10 percent in foster care).

20. E. FRANKLIN FRAZIER, *THE NEGRO FAMILY IN THE UNITED STATES* 102–03 (1966).

to take in both biological as well as non-biological children who were abandoned by their parents or guardians and other wayward members of the family.<sup>21</sup> From the gender-entrapment theory perspective, the positive qualities (strength, self-confidence, cultural and family loyalty) that may lead some African-American women into battered relationships and criminal acts also led grandmothers to continue their traditional roles as the family matriarch.

Because they have always been viewed as pillars of strength, grandmothers (and their families) have ignored the physical and emotional toll that raising several generations takes on the body and mind. Research shows that African-American custodial grandmothers are often single, living on limited income, and suffer disproportionately from serious illnesses such as hypertension and heart problems.<sup>22</sup> Similar to the gender entrapment of battered women, grandmothers are often trapped by their circumstances of being the only private source of support for their grandchildren who are temporarily or permanently without parents. Otherwise, the state, an untrustworthy public entity in the black community, would be responsible for raising their family members. Whereas battered women feel obligated to support their batterers and are left vulnerable to exploitation and manipulation, grandmothers feel obligated to support the dependent members of the family and are left vulnerable to poverty, generational diseases and shorter life spans.

The irony remains that the reality for African-Americans, both male and female, is still centered on outdated gender roles that have never quite fit the formation of black families. By failing to redefine gender roles or to change the manner in which African-American children are socialized, African-American families are positioned at the bottom of the politically acceptable family structure in the United States. As Professor Richie stated earlier, African-American women are also marginalized within their own community. The expectation for black women to be ALL things—the ever-present nurturer, family backbone, spiritual guide, teacher, financier, motivator—essentially relegates them into a certain genderized space from which escape is

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21. See *id.* at 115, 117.

22. Diane R. Brown & Joan Mars, *Profile of Contemporary Grandparenting in African-American Families*, in *TO GRANDMOTHER'S HOUSE WE GO*, *supra* note 18.

difficult. The same woman that raises daughters caught by the gender-entrapment theory also raises her daughters' children. How is this affecting the grandmothers' raising of her grandchildren? How do we change the socialization of these children? If the family is the child's first school, how do we teach them what family is and how to go about forming a more stable, productive and beneficial one?

The mass incarceration of African-American men and women has affected African-American families in monumental ways. In this Essay, I will primarily focus on: (1) the history of African-American grandmothers in the United States; (2) their status when they take on the role of raising grandchildren of their incarcerated children; and (3) the impact of mass female incarceration on these children. Finally, I will offer some possible solutions to reduce the impact on the families of African-American women caught in the gender entrapment cycle of crime and imprisonment.

## I. HISTORICAL OVERVIEW OF AFRICAN-AMERICAN GRANDMOTHERS

Raising children in the African-American community has been similarly gendered as that of raising children in the Anglo-American community. However, African-American mothers were not always the primary caregivers of their own children—historically they spent more time working or raising white children than their own.<sup>23</sup> Their children were often raised by their mothers or the father's mother—the grandmothers and great-grandmothers in the community. The West African culture and tradition of caregiving across generations through the extended family carried over into America,<sup>24</sup> and most African-American grandmothers pride themselves on being the glue that holds their families together. In fact, among black families, the oldest women are typically regarded as the head of the family.<sup>25</sup>

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23. ROBERTA L. COLES, *RACE AND FAMILY: A STRUCTURAL APPROACH* 163 (2006) (noting that black women's long hours as maids or nannies meant that they spent little time in their own homes or with their own children (some were only allowed to go home on the weekends)); Kristin Waters, *Some Core Themes of Black Feminism*, in *BLACK WOMEN'S INTELLECTUAL TRADITIONS: SPEAKING THEIR MINDS* 763 (Kristin Waters & Carol B. Conaway eds., 2007).

24. See Brown & Mars, *supra* note 22, at 204.

25. See FRAZIER, *supra* note 20, at 117.

The extended family was actually recognized as a vital tenet of our society in the U.S. Supreme Court case *Moore v. City of East Cleveland*.<sup>26</sup> The case involved a black grandmother, Inez Moore, who raised two grandsons from two different adult children. Moore's daughter had died, leaving a son behind—of whom she took custody—and her adult son and his child also lived with her.<sup>27</sup> Moore owned her home and was the person in the family with the most resources to help support her grandsons. When she refused to abide by a local ordinance that set forth that only single nuclear families could occupy dwelling units (i.e. only children from one adult child could reside in the home with a homeowner), she was jailed and fined by the police.<sup>28</sup> She appealed her case all the way to the U.S. Supreme Court, and a 5–4 majority held that the housing ordinance was unconstitutional under the Due Process Clause of the Fourteenth Amendment.<sup>29</sup> The Court acknowledged that the Constitution protects the sanctity of the family because the institution of the family is deeply rooted in the nation's history and tradition, and the tradition of “uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”<sup>30</sup> The Court maintained that the state could not deny the choice of relatives in this degree of kinship the right to live together because the Constitution prevents states from forcing all children and adults to live in certain narrowly defined family patterns.<sup>31</sup>

Supreme Court Justices William J. Brennan and John Marshall noted in their concurrence in *Moore* that the extended family pattern of living was prominent among immigrants and minorities as a means of survival.<sup>32</sup> The Justices noted, “[t]he ‘extended’ form is especially familiar among black families . . . in black households whose head is

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26. 431 U.S. 494, 510 (1977).

27. *Id.* at 496–97, 505; see also Peggy Cooper Davis, *Moore v. City of East Cleveland: Constructing the Suburban Family*, in *FAMILY LAW STORIES* 77, 78 (Carol Sanger ed., 2008) (citing Brief for the Appellant at 25, *Moore v. E. Cleveland*, 431 U.S. 494 (1977) (No. 75-6289)).

28. *Moore*, 431 U.S. at 497.

29. *Id.* at 502–06.

30. *Id.* at 503–04.

31. *Id.* at 505–06.

32. *Id.* at 508.



an elderly woman, as in this case . . . 48% of such black households, compared with 10% of counterpart white households, include related minor children not offspring of the head of the household.”<sup>33</sup> Dating back to the nineteenth century, black grandmothers, especially in the rural south, have served as matriarchs of the family.<sup>34</sup> The 1940 census indicated that black children were more likely to reside in the home of a grandparent(s) than were white or Hispanic children.<sup>35</sup> This tradition of kinship care was prevalent in the African-American family because the women historically worked outside of the home for long hours each week, and relatives and neighbors were necessary allies in the care of children.<sup>36</sup> Grandmothers served many roles in their community—all of which solidified her dignified place among blacks and whites alike.<sup>37</sup> She was a midwife—assuring the safe passage of children at birth; oral historian—connecting present generations with the past; and guardian and caretaker—parent to orphaned and abandoned children.<sup>38</sup>

The role of grandmother as the family matriarch has not always been considered a good thing—it is contrary to the normative patriarchal Anglo families in the United States, and was at the center of the controversial “Moynihan Report”<sup>39</sup> in 1965. This report, authored by then Assistant Secretary of Labor Daniel Patrick Moynihan, asserted that the deterioration of the Negro family was at

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33. *Id.* at 509–10.

34. See FRAZIER, *supra* note 20, at 103.

35. Robert Taylor et al., *Recent Demographic Trends in African American Family Life*, in FAMILY LIFE IN BLACK AMERICA 14, 15 (Robert Joseph Taylor et al. eds., 1997).

36. See Penelope Green, *Your Mother is Moving In? That's Great*, N.Y. TIMES, Jan. 14, 2009, at D1, available at <http://www.nytimes.com/2009/01/15/garden/15mothers.html?page-wanted=all>; Moore, 431 U.S. at 509 n.6 (“The extended family often plays an important role in the rearing of young black children whose parents must work. Many such children frequently ‘spend all of their growing-up years in the care of extended kin . . . .’ Often children are ‘given’ to their grandparents, who rear them to adulthood . . . . Many children normally grow up in a three-generation household and they absorb the influences of grandmother and grandfather as well as mother and father.”) (quoting J. LADNER, TOMORROW’S TOMORROW: THE BLACK WOMAN 60 (1972)).

37. See FRAZIER, *supra* note 20, at 114–15.

38. *Id.* at 116–20.

39. LEE RAINWATER & WILLIAM L. YANCY, THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY 3 (1967). “The Moynihan Report” was a confidential report entitled *The Negro Family: The Case for National Action* released by the Office of Policy Planning and Research of the Department of Labor.

the heart of the deterioration of the fabric of Negro society. Moynihan stated that the matriarchal family structure of the Negro family perpetuated weak family relationships and created a “tangle of pathology” that was responsible for persistent black poverty across generations.<sup>40</sup> The root of this unconventional family structure was traced back to slavery, which according to Moynihan and other scholars, had caused disorganization of the family because of the emasculation of Negro males by white society.<sup>41</sup> Though sociologist E. Franklin Frazier, sociologist and historian W.E.B. DuBois, historian Stanley Elkins, and social psychologist Kenneth Clark all researched and wrote about the social pathology of black families prior to Moynihan, it was the Moynihan Report that brought the issue of the structure of black families into the public sphere.<sup>42</sup> On the one hand, the public claimed that poor black women were at fault because they were unemployed, and on the other hand, they were blamed for not marrying and having babies anyway.<sup>43</sup> Another “accusation against black women claimed that they had jobs while African-American men did not, in effect depriving black men not only of jobs but of status.”<sup>44</sup> This ideology supported political arguments that blacks were unworthy of government assistance because of their inferior culture and depraved values.<sup>45</sup>

In response to the Moynihan Report, many sociologists and researchers rebuked the denigration of the black matriarch and rather than blame her for the defective black family, they instead viewed her and the extended family system as a source of strength and support

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40. Douglas S. Massey & Robert J. Sampson, *Moynihan Redux: Legacies and Lessons*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 6 (2009).

41. See COLES, *supra* note 23, at 157, 163 (noting that slave families had instability imposed upon them in that slave marriages had no legal standing and slave parents had no legal rights to their children); PEGGY COOPER DAVIS, *NEGLECTED STORIES* 32 (1997) (noting that slave marriages were often ended by force or sale and an enslaved man could not protect himself against the abuse or seduction of his wife nor the separation from his wife and children).

42. JAMES T. PATTERSON, *FREEDOM IS NOT ENOUGH* 25–36 (2010); Jualynne Elizabeth Dodson, *Conceptualizations and Research of African American Family in the United States*, in *BLACK FAMILIES* 53–56 (Harriette Pipes McAdoo ed., 4th ed. 2007).

43. See LINDA F. WILLIAMS, *THE CONSTRAINT OF RACE* 160 (2003).

44. *Id.*

45. *Id.* at 161.

for protection and mobility of family members.<sup>46</sup> Herbert Gutman's book, *The Black Family in Slavery and Freedom*, presented a counterargument by analyzing black family records between 1880 and 1925 and concluded that "the dual-parent household was the dominant family type during slavery and that a majority of post-slavery African Americans lived in nuclear families."<sup>47</sup> Others, such as sociologists Ronald Angel and Marta Tienda, argued that economic pressure rather than cultural patterns caused African Americans to form nonnuclear family arrangements.<sup>48</sup> Carol Stack's work supported this argument by illustrating how the kinship structures of poor African-Americans was a creative adaption to poverty whereby individuals could "swap" time (for child care), goods (such as food, clothes, or furniture), and cash.<sup>49</sup> Among black feminists, many viewed the Moynihan Report as a means by which anti-black sexism was sparked to prevent the emergence of black female leaders within the Civil Rights movement.<sup>50</sup>

Moynihan's solution to establishing greater family stability within the black community was a "dedicated effort to provide jobs for black men."<sup>51</sup> This solution was not a novel one with regards to the U.S. government attempting to reestablish the male authority within the black family. In fact, there was a concerted effort to reassert the patriarchal family model within the black community after slavery ended during the Reconstruction Era and World War I. The roots of the gender entrapment theory may have taken hold during this time of struggle for equal rights which seemed to position black men against black women in the public sphere. The Freedman's Bureau, a federal governmental agency that aided freed slaves between 1865 and 1869, designated the black man as head of the black household and established his right to sign contracts for the labor of his entire

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46. *Id.* at 60.

47. DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH AND SOCIAL POLICY IN AMERICA 113 (1999).

48. *Id.*

49. *Id.* at 114.

50. See Waters, *supra* note 23, at 377.

51. RAINWATER & YANCEY, *supra* note 39, at 7 (Moynihan's hypothesis was that whenever males in any population subgroup lack widespread access to reliable jobs, decent earnings, and key forms of socially rewarded status, single parenthood will increase, with negative side effects on women and children).

family.<sup>52</sup> Wage scales were set that paid black women less than black men for identical plantation labor, and less land was allocated to families without a male head of household.<sup>53</sup> In addition to the unequal gender division of labor among freed slaves in the public sphere, obligations of black women to nurture children and elders, as well as to promote the general welfare of the community likely increased due to larger groups of kinship clusters and social obligations to non-kin.<sup>54</sup>

There was also an increase in domestic violence in the black homes involving men against their wives. This wife-beating was attributed to an “overwhelming sense of powerlessness and impotence which threatened the man’s concept of his manhood and fatherhood.”<sup>55</sup> Black women were hesitant to report their husbands to white authorities because this information could be used against black men to justify violence against them, including lynching. In her book, *Ensuring Inequality*, Donna Franklin gives an explanation of black women’s behavior during this time that is similar to the behavior of incarcerated black battered women discussed by Professor Richie in *Compelled to Crime*:

All women were expected to defer to men, but for black women deference was a racial imperative. Slavery and racism sought the emasculation of black men. Black people sought to counter such effect . . . part of the responsibility of black women was to encourage and support the manhood of our men . . . never intimidate him with her knowledge or common sense, let him feel stable and dominate.<sup>56</sup>

Perhaps the biggest difference in how the gender entrapment theory applies to battered African-American women who are incarcerated and the African-American grandmothers who are left as caretakers of their children is the grandmothers’ ability to survive and to help their families under such poor circumstances. The 1997 hit

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52. DONNA L. FRANKLIN, *ENSURING INEQUALITY* 31 (1997).

53. *Id.*

54. *Id.*

55. *Id.* at 32 (citing ANN PATTON MALONE, *SWEET CHARIOT* 229 (1992)).

56. *Id.* at 32 (citing James O. Horton, *Freedman’s Yoke: Gender Conventions among Antebellum Free Blacks*, 12 FEMINIST STUD. 70 (1986)).

movie, *Soul Food*, is a good illustration of how the stereotypical “big mama” served as both the fist and glue (strength) of the extended family, how she passed down her values, and the importance of family to her children and especially her grandson.<sup>57</sup> She emphasized helping family members when they were down on their luck and allowing the men in the family to feel strong and in charge, even when they made critical mistakes or when the women in the family were really leading behind the scenes.<sup>58</sup> Ultimately, big mama’s “sugar” or diabetes condition caught up with her and caused her demise, but even in death she helped bring the family unit back together as a social network of love and support.<sup>59</sup> In contrast, incarcerated African-American women who were battered often leave their families without a primary caretaker, breadwinner, teacher and nurturer for their children. Their families are left weaker as a result of gender entrapment and subsequent imprisonment.

Today, grandmothers continue to play an important role in the lives of African-American children. A 1991 survey reveals that 22 percent of black children lived in extended households which included at least one parent and someone, related or unrelated, beyond the nuclear family.<sup>60</sup> Often these extended households involve grandparents and great-grandparents. In 2000, one in nine black children lived in their grandparents’ household, and two-thirds of these grandparents or great-grandparents were the primary provider for the children.<sup>61</sup> The sense of stability that grandparents offer is well documented.<sup>62</sup> African-American grandparents in particular have been noted to do a significant amount of teaching of

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57. *SOUL FOOD* (20th Century Fox 1997).

58. *Id.*

59. *Id.*

60. M. Belinda Tucker & Angela D. James, *New Families, New Functions: Postmodern African-American Families in Context*, in *AFRICAN AMERICAN FAMILY LIFE* 86, 92 (McLoyd et al. eds., 2006).

61. *Id.*

62. See J.C. Soloman & J. Marx, “*To Grandmother’s House We Go*”: *Health and School Adjustment of Children Raised Solely by Grandparents*, 35 *GERONTOLOGIST* 386, 386–94 (1995) (noting that children raised by grandparents “evidenced better physical health and fewer behavioral problems than children living with only one biological parent”).

their grandchildren.<sup>63</sup> As noted earlier, black grandmothers held a highly constructive role in the family because of poverty and early childbearing, and they often provided leadership during times of family stress.<sup>64</sup> They supported grandchildren with advice, problem solving and encouragement—resulting in the greater likelihood of grandchildren graduating from high school and maintaining steady employment (if the mothers and grandmothers had a strong relationship).<sup>65</sup>

## II. STATUS OF GRANDMOTHERS RAISING CHILDREN OF INCARCERATED FEMALES

In the general population, there has been an increase of children being raised by grandparents. The 2010 Census shows that 4.9 million children under age eighteen live in grandparent-headed households, up from 4.5 million ten years ago.<sup>66</sup> Approximately 20 percent of these children have neither parent present and their grandparents are responsible for their basic needs.<sup>67</sup> Due to the economic recession and housing and foreclosure crisis, grandparents are increasingly providing stability and security of home for their families.<sup>68</sup> Twenty-four percent of black grandparents have grandkids living with them, which is down from 28 percent in 2000.<sup>69</sup>

Statistically, maternal grandmothers bear the brunt of the child-rearing responsibilities when the female parent is incarcerated. In 2007, there were approximately 65,600 mothers in U.S. prisons with 147,400 children.<sup>70</sup> Seventy-five percent of incarcerated women have

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63. Jeffrey A. Watson et al., *African American Grandmothers as Health Educators in the Family*, in CUSTODIAL GRANDPARENTING: INDIVIDUAL, CULTURAL, AND ETHNIC DIVERSITY 255, 255 (Bert Hayslip Jr. & Julie Hicks Patrick eds., 2006).

64. *Id.* at 258–59.

65. *Id.* at 259.

66. Amy Goyer, *More Grandparents Raising Grandkids*, AARP (Dec. 20, 2010), [http://www.aarp.org/relationships/grandparenting/info-12-2010/more\\_grandparents\\_raising\\_grandchildren.html](http://www.aarp.org/relationships/grandparenting/info-12-2010/more_grandparents_raising_grandchildren.html).

67. *Id.*

68. *Id.*

69. *Id.*

70. LAUREN E. GLAZE & LARUA MARUSCHAK, BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUST., PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (Aug. 2008, rev. Mar. 30, 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>. NCJ 222984, U.S. DEP'T OF

children, and two-thirds of these women have children under the age of eighteen.<sup>71</sup> Forty-two percent of mothers in state prison commonly identify the child's grandmother as the current caregiver, as compared to fathers (37 percent) and other relatives (23 percent).<sup>72</sup>

"Since 1991, the number of children with a mother in prison has more than doubled, up 131 percent."<sup>73</sup> Black children are seven-and-a-half times more likely than white children to have a parent in prison.<sup>74</sup> Twenty-eight percent of mothers in the nation's prisons are African-American, and 30 percent of the children with a mother in prison have an African-American mother.<sup>75</sup> Because black women are disproportionately represented in jail, the number of black children affected by maternal incarcerations continues to increase.

The majority of African-American grandmothers who have full custody of their grandchildren are single, in poor health, and have incomes below the poverty line. Ninety-eight percent of the African-American grandparents taking care of grandchildren on a full time basis are grandmothers, and 80 percent of these women are single.<sup>76</sup> The average age of black custodial grandmothers is 55.8, and she has, on average, eleven years of education.<sup>77</sup> Almost half of custodial grandparents did not graduate from high school.<sup>78</sup> Limited education, income, and social class account for differences in the physical and mental health of custodial grandmothers.

When a grandparent assumes the role of caregiver of the child of an incarcerated adult, the responsibility imposes financial burdens on

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JUST., PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

71. Beth E. Richie, *The Social Impact of Mass Incarceration on Women*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 136, 139 (Marc Mauer & Meda Chesney-Lind eds., 2002).

72. GLAZE & MARUSCHAK, *supra* note 70, at 5.

73. *Id.* at 2.

74. *Id.*

75. *Id.*

76. Jennifer Crew Solomon & Jonathan Marx, *The Physical, Mental and Social Health of Custodial Grandparents*, in *GRANDPARENTS RAISING GRANDCHILDREN* 183, 195 (Bert Hayslip Jr. & Robin Goldberg-Glen eds., 2000) (citing tbl. 11.1 Demographics of Grandparents by Race and Caregiving).

77. *Id.*

78. *Id.* at 199.

an already economically vulnerable population.<sup>79</sup> The economic strain on the grandparent household could include: elimination of discretionary spending, an inability to purchase necessities such as food, and an increase on economic costs associated with incarceration such as collect phone calls and travel costs for out-of-state visitation.<sup>80</sup> In addition to the economic demands of additional household members, many grandparents must balance their role as caregiver with their own employment, and this adjustment could require changes in hours, shifts, and jobs.

### III. HEALTH OF AFRICAN-AMERICAN CUSTODIAL GRANDPARENTS

There are mixed results from studies done on the mental and physical well-being of African-American custodial grandparents. In general, over 60 percent of custodial grandparents have hypertension.<sup>81</sup> Over 27 percent have heart problems, and approximately 55 percent suffer from arthritis or rheumatism.<sup>82</sup> African-American grandparents reported that they felt stressed by the experience of raising their grandchildren.<sup>83</sup> Part of the stress could be attributed to increased financial difficulties, attempts to access services and assistance in the community, and the social stigma and shame associated with incarceration of a family member. At times, the social costs involve isolation of the grandparent from non-supportive relatives and others in the community who pass judgment on the situation. Grandparents can also have a sense of blameworthiness regarding their adult child's incarceration.

Physically, black custodial parents fare much worse than white custodial grandparents, but rate themselves as doing well emotionally.<sup>84</sup> This variance may have to do with many things—religious or spiritual influence, socialization, and community or

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79. See Porterfield et al., *supra* note 18, at 190.

80. *Id.*; Donald Braman, *Families and Incarceration*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 120–21 (Marc Mauer & Meda Chesney-Lind eds., 2002).

81. Solomon & Marx, *supra* note 76, at 197.

82. *Id.*

83. COLES, *supra* note 23, at 145–46.

84. Solomon & Marx, *supra* note 76, at 198.



family support. However, black custodial grandparents reported depression, unhappiness and sadness because for many of them, raising another generation (their grandchildren) after already having raised their own children was not what they had envisioned for their lives.<sup>85</sup> They expressed some dissatisfaction with certain aspects of their lives, including their house/apartment, neighborhood, job, and life as a whole.<sup>86</sup> On the other hand, they also expressed a great deal of satisfaction with regard to caregiving experience, observations of the child's positive growth and development and the child's mere presence in their lives.<sup>87</sup>

#### IV. SINGLE STATUS OF GRANDMOTHERS

Older, poor African-American women who provide shelter and care for various family members are generally single. They choose to remain that way; oftentimes because they have experienced a series of romantic relationships and understand that the level of independence that they have acquired in life could be affected by living with or marrying a man. People whose means are limited strive to reduce risk in their lives.<sup>88</sup> As such, older women generally avoid serious romantic relationships due to the financial, physical, and psychological risks associated with romantic involvement at that stage of life.<sup>89</sup> Many women have finally obtained some degree of financial stability and are concerned that monetary entanglements with another would deplete their resources. Women recognize that older men are more likely to become infirm, require care, and become physically dependent on them. Psychologically, they prefer a life of independence, finally free from the demands of others—

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85. Porterfield, *supra* note 18, at 191.

86. Brown & Mars, *supra* note 22, at 213–14; Steven J. Kohn & Gregory C. Smith, *Social Support Among Custodial Grandparents Within a Diversity of Contexts*, in CUSTODIAL GRANDPARENTING: INDIVIDUAL, CULTURAL, AND ETHNIC DIVERSITY 199, 216–17 (Bert Hayslip Jr. & Julie Hicks Patrick eds., 2006).

87. Porterfield, *supra* note 18, at 191.

88. Linda M. Burton & M. Belinda Tucker, *Romantic Unions in an Era of Uncertainty: A Post-Moynihan Perspective on African American Women and Marriage*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 132, 135 (2009).

89. *Id.* at 135–36.

something they had been denied in the past in every aspect of their lives.

Older black women are expected to continue to be providers for their children, and thus, they often seek co-providers. If a man could not be a co-worker within a marriage or co-habitate space, the women will continue to live by themselves. Older African-American women who have achieved some level of independence often do not want to travel back down the road from whence they came by entering into a relationship that may result in domestic abuse. Early feminists who talked about this issue of poor men taking out their frustrations on women include one of the first black feminists, Pauli Murray, who published a piece in the 1940s in the *Negro Digest* entitled “Why Negro Girls Stay Single.”<sup>90</sup> Interestingly, this article tracks many of the reasons why African-American women today remain single and never marry. Murray references the saying, “Pa beats Ma, Ma beats me, and I beat hell out of the cat,” to reflect how black men would often vent their frustrations and resentments regarding their subordinate status in society upon the black woman.<sup>91</sup> Because marriage in the African-American community was viewed less as an institution and more as a co-operative venture in the task of making a living, living with a man as his wife was desirable only if he could lessen the burden of her work.<sup>92</sup> The old saying, “I can do bad all by myself,” resonates with both old and young black women alike. So, in order to supplement their financial shortages, black women choose to build a support network amongst other female friends or trusted male family members.<sup>93</sup>

But when we look at how our grandmothers become mothers in the first place, we have to acknowledge that procreation in the African-American community is not all about the fruit of love and companionship.<sup>94</sup> The reality has been that sexual access to African-

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90. Pauli Murray, *Why Negro Girls Stay Single*, NEGRO DIG., July 1947, at 4.

91. *Id.* at 7.

92. E. FRANKLIN FRAZIER, *THE NEGRO FAMILY IN THE UNITED STATES* 105–06 (1966).

93. *Id.*

94. See COLES, *supra* note 23, at 157. Female slaves were sometimes “breeders” and might be mated nonmaritally with several men over the course of their lives. *Id.* It was also common for white slave owners to have sexual relations with black slave women, mostly by rape. *Id.*

American women has always been more open to all men (whether by force or choice) such that motherhood is often accepted by a large group of black women with an attitude of resignation.<sup>95</sup> Often black grandmothers were teenage parents themselves, and they were co-dependent with other female family members—their mothers and grandmothers—in order to raise their own children. African-American families have not fit the normative model where there is a husband, a non-working wife, and biological children of the married couple. Instead, the family units are made up of any group of individuals who collectively come together in order to provide economic and emotional support to the members of the group.<sup>96</sup> Black children's legitimacy has not depended on marital status. Many black women had no choice in the matter of the use of their bodies; therefore, pregnancy was typically not a planned event.<sup>97</sup> When children were born, they were welcomed into the world as both a blessing and responsibility.

#### V. LEGAL STATUS OF CUSTODIAL GRANDMOTHERS

From a legal perspective, custodial grandmothers are placed in a position where they have no legal authority over the grandchildren in their physical custody unless there is state intervention that forces termination of parental rights. Parental rights are relinquished or transferred by the parent when they are incarcerated, if the state intervenes, or when a private court action is initiated by the grandmother to obtain temporary or permanent custody.<sup>98</sup> The latter is seldom an option because of limited finances and the loyalty that grandmothers have toward their female children in their role as mothers. Even in situations where the mother may not get out of prison or escape her drug addiction before the child reaches adulthood, the grandmother is unwilling to force the legal issue of a change in custodial rights, which would enable her to access more

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95. Waters, *supra* note 23, at 382–83.

96. See COLES, *supra* note 23, at 70, 166–67.

97. Waters, *supra* note 23, at 383–85.

98. See Raymond Albert, *Legal Issues for Custodial Grandparents*, in GRANDPARENTS RAISING GRANDCHILDREN 330–32 (Bert Hayslip Jr. & Robin Goldberg-Glen eds., 2000).

benefits from the state and federal government that could assist her financially with the care of her grandchildren.

As mentioned earlier, kinship care has a rich history in the African-American community. There are three types of kinship care: (1) private kinship care, (2) volunteer kinship care, and (3) kinship foster care.<sup>99</sup> Private kinship care involves an informal agreement between the birth parent and the kin caregiver that the latter will assume caregiving responsibility, and it is the most common type of care provided by grandmothers to the children of their incarcerated adult children.<sup>100</sup> Voluntary kinship care is when a child is placed with a state-approved relative, but the relative is not licensed as a foster parent.<sup>101</sup> Kinship foster care is when the state has placed the child with relatives who become licensed foster parents.<sup>102</sup> Research has shown that children in kinship care with relatives or grandparents fare much better than those who are placed in foster care.<sup>103</sup> They have significantly fewer placements and are less likely to still be in care. Children in kinship care with relatives have fewer allegations of institutional abuse or neglect, and are less likely to be involved with the juvenile justice system.<sup>104</sup> They also have more communication with their parents and are more likely to remain in their same neighborhood community or to be placed with siblings.<sup>105</sup> Statistics show that kinship caregivers are working with much fewer resources than are foster care parents. The data on kinship foster parents shows that they are typically poorer than non-kin foster parents, have less formal education, are older and in poorer health than non-kin foster parents, are less likely to be employed, more likely to be single, and

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99. Ellen E. Pinderhughes and Brenda Jones Harden, *Beyond the Birth Family: African American Children Reared by Alternative Caregivers*, in AFRICAN AMERICAN FAMILY LIFE 285, 292, 294 (McLoyd et al. eds., 2006).

100. *Id.* at 292.

101. *Id.* at 293.

102. *Id.*

103. Marc A. Winokur et al., *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes*, 89 FAMILIES IN SOCIETY: CONTEMP. SOC. SERVS. 338, 344–45 (2008); David M. Rubin et al., *Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care*, 162 ARCH PEDIATR. ADOLESC. MED. 550, 554 (2008).

104. See Winokur et al., *supra* note 103, at 344–45.

105. See Rubin et al., *supra* note 103, at 551.

more likely to be caring for sibling groups than non-kin foster parents.<sup>106</sup>

In 2008, former President Bush passed the Fostering Connections to Success and Increasing Adoptions Act.<sup>107</sup> This Act amends Part E (Federal Payments for Foster Care and Adoption Assistance) of title IV of the Social Security Act<sup>108</sup> (SSA) to give state plans the option of allowing the state to enter into agreements to provide kinship guardianship assistance payments to grandparents and other relatives who have assumed legal guardianship of children for whom they have: (1) cared as foster parents; and (2) committed to care on a permanent basis.<sup>109</sup> Prior to the Act, grandparents had no way to access government subsidies and took on the care of their grandchildren based on their own limited income. The Act also provides requirements for: (1) case-by-case waiver of licensing standards for relatives; (2) adoptive or guardianship placement after attaining age eighteen; (3) a transition plan for children aging out of foster care; (4) short-term training for child welfare agencies, relative guardians, and court personnel; (5) educational stability of the child while in foster care; (6) ongoing oversight and coordination of health care services for any child in a foster care placement; (7) placement of siblings in the same foster care, kinship guardianship, or adoptive placement; (8) foster care and tribal programs operated by Indian tribal organizations; and (9) adoption of children with special needs.<sup>110</sup> Unfortunately this Act may not be fully implemented as intended because of the budget crisis that our country faces,<sup>111</sup> so it is

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106. See Pinderhughes and Harden, *supra* note 99, at 293–95.

107. 42 U.S.C. § 679(c) (2008).

108. 42 U.S.C. § 671 (1997), amended by 42 U.S.C. § 679(c) (2008).

109. *Fostering Connections to Success and Increasing Adoptions Act*, CHILDREN'S DEFENSE FUND (July 2010), available at <http://www.childrensdefense.org/policy-priorities/child-welfare/fostering-connections/>.

110. *Id.* at 1–3.

111. Jim McDermott, *Celebrating Fostering Connections While Envisioning More for Youth*, THE CONNECTION MAGAZINE, Winter 2011, at 1; Tamara A. Steckler & Adriene L. Holder, *Testimony of the Legal Aid Society on the 2010–2011 Executive Budget Before the Senate Finance Committee and the Assembly Committee on Ways and Means* 5, THE LEGAL AID SOCIETY (Feb. 9, 2010), available at [http://www.legal-aid.org/media/130811/las\\_human\\_services\\_budget\\_testimony.2010.pdf](http://www.legal-aid.org/media/130811/las_human_services_budget_testimony.2010.pdf) (expressing concern that the money to subsidize kinship guardianships is taken from the foster care block grant, which is already massively underfunded and “barely meeting the needs of children in the foster care system in New York State”).

not guaranteed that this funding will always be available for grandparents.

#### VI. IMPACT OF FEMALE INCARCERATION ON CHILDREN

A study conducted in the 1980s in Baltimore, Maryland on the conditions confronting incarcerated mothers and their children reveals interesting facts regarding parent-child separation.<sup>112</sup> Eighty-five percent of the primary caregivers of children during the mother's incarceration were maternal grandmothers.<sup>113</sup> Moreover, the extended family relationships of black children played an important role even before the mothers' incarceration. Seventy-eight percent of the children were reared by both their mothers and maternal grandmothers prior to their mother's imprisonment, with only 28 percent of the children receiving a high degree of quality care from their mothers.<sup>114</sup> Many mothers had limited involvement in childrearing because they were teenage mothers and had problems associated with adolescent parenthood.<sup>115</sup> In some cases, the grandmother assumed primary care of the child from birth and had strong attachments to her grandchildren.<sup>116</sup>

In the era of mass incarceration, maternal imprisonment for African-American children with low-education mothers has become somewhat common.<sup>117</sup> Five percent of African-American children born in 1990 had incarcerated mothers who are high school dropouts.<sup>118</sup> In comparison to fathers who did not complete high

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112. Velma LaPoint et al., *Enforced Family Separation: A Descriptive Analysis of Some Experiences of Children of Black Imprisoned Mothers*, in BEGINNINGS: THE SOCIAL AND AFFECTIVE DEVELOPMENT OF BLACK CHILDREN 240–44 (Margaret B. Spencer et al. eds., 1985).

113. *Id.* at 243–44.

114. *Id.* at 246.

115. *See id.* at 247 (noting that excessive participation in adolescent social activities reduced some mothers' childcare responsibilities, while others had idle time as a consequence of dropping out of high school and being unemployed. There were also mothers who "purposefully chose to live away from their children to prevent exposing them to negative aspects of their lifestyles").

116. *Id.*

117. Christopher Wildeman & Bruce Western, *Incarceration in Fragile Families*, 20 THE FUTURE OF CHILDREN 2, 162 (2010), available at [http://futureofchildren.org/futureofchildren/publications/docs/20\\_02\\_08.pdf](http://futureofchildren.org/futureofchildren/publications/docs/20_02_08.pdf).

118. *Id.*

school, 50 percent of children born to these fathers in 1990 had imprisoned fathers.<sup>119</sup> A recent special report from the U.S. Bureau of Justice Statistics reveals that between 1991 and 2007, there was a 79 percent increase in the number of parents of minor children held in the nation's prisons.<sup>120</sup> The number of children with a mother in prison has more than doubled since 1991, and there is "a faster rate of growth in the number of mothers held in state and federal prisons (up 122%) compared to the number of fathers (up 76%)."<sup>121</sup>

What does this family life mean for black children in our communities? A large majority of these children are basically stuck in a cycle of poverty and low/poor education, and they live static lives. The poverty rate for black children is estimated to be close to 50 percent by 2020, and their places of residence reflect the impact of poverty.<sup>122</sup> With more children living with their grandparents because of parental incarcerations, drug addictions, or the deaths of their parents, over half of the children who are in kinship care live in low-income households; many below the poverty line.<sup>123</sup> Though females are incarcerated for shorter periods of time, their job prospects upon return to a free society are severely limited.<sup>124</sup> Because the mothers are unable to earn enough money to maintain economic stability for their children, the children often are disrupted from their homes and placed again with relatives or simply remain with the grandmother.<sup>125</sup>

The emotional difficulties children encounter due to maternal incarceration vary. Since most of the children were significantly attached to their mothers, they displayed confusion, fear, shame, stigmatization, and trauma related to the imprisonment of their mothers.<sup>126</sup> Children typically "display poor academic performance,

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119. *Id.* at 162, tbl.2.

120. GLAZE & MARUSCHAK, *supra* note 70, at 1.

121. *Id.* at 2.

122. Harriette Pipes McAdoo, *African American Demographic Images*, in *BLACK FAMILIES* 157, 164 (Harriette Pipes McAdoo ed., 4th Ed. 2007).

123. *Id.*

124. AMY E. HIRSCH ET AL., CENTER FOR LAW AND SOC. POL'Y AND CMTY LEGAL SERVS, INC., *Every Door Closed: Barriers Facing Parents With Criminal Records* 11 (2010), available at [http://www.clasp.org/admin/site/publications\\_archive/files/0092.pdf](http://www.clasp.org/admin/site/publications_archive/files/0092.pdf).

125. See Ross D. Parke & K. Alison Clarke-Stewart, *The Effects of Parental Incarceration on Children in PRISONERS ONCE REMOVED* 217–18 (Jeremy Travis & Michelle Waul eds., 2003); see LaPoint et al., *supra* note 112, at 241, 249.

126. See McAdoo, *supra* note 122, at 254.

aggressive and withdrawal behaviors, and strained interpersonal relationships with parents, guardians, and peers.”<sup>127</sup> Professor Richie’s earlier research asserts that “almost irreplaceable damage” [is] done to their role as mothers and their status as parents when they are removed from their communities and [imprisoned].”<sup>128</sup> The sudden forced separation between mother and children as well as the sparse and often difficult visitation seriously interferes with the family bond.<sup>129</sup> In addition, their familiarity with the criminal system due to their mothers’ incarceration also affected children’s mental health in that certain children were exposed to traumatic experiences such as the mother’s criminal activity, arrest, prosecution, or involuntary confinement.<sup>130</sup>

Paul Barton and Richard Coley wrote *America’s Smallest School: The Family* in 1992 and 2007, identifying the ways in which family structure and life impact the educational trajectory of children in the United States.<sup>131</sup> If our smallest school is the family, then what does that mean for the children of these incarcerated mothers? In the worst case scenario, they might end up like Tanya, who Professor Richie spoke about in her keynote address.<sup>132</sup> Tanya grew up in a family where most members were so consumed with survival that they neglected to notice that Tanya was pregnant. After having been sexually assaulted by a male family member and victimized by both her boyfriend and teacher, she did not turn to the formal legal system to help her. After giving birth in a school bathroom stall, she dumped her newborn in the dumpster behind her school where the child died. Tanya was arrested for crimes related to the death of her baby.<sup>133</sup> She

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127. LaPoint et al., *supra* note 112, at 241.

128. Richie, *The Social Impact of Mass Incarceration on Women*, *supra* note 71, at 139.

129. *Id.* at 139–40 (noting that visitation between parents and children is logistically and economically difficult because of the distance between the facility and the neighborhood, lack of access to public transportation, obscure visiting hours and long waits); *see also* Glaze and Maruschak, *supra* note 70, at 18, app., tbl. 10 (noting that almost 60% of children with mothers in jail never have personal visits with them).

130. *Id.* at 250–51.

131. PAUL BARTON & RICHARD COLEY, *THE FAMILY: AMERICA’S SMALLEST SCHOOL*, ETS (1992 rev. 2007), *available at* [http://www.ets.org/Media/Education\\_Topics/pdf/5678\\_PERCReport\\_School.pdf](http://www.ets.org/Media/Education_Topics/pdf/5678_PERCReport_School.pdf).

132. Richie, Keynote, *supra* note 16, at 13–19.

133. *Id.* at 19.



is another young black woman compelled to crime by her marginalization in both her private and public spheres.

In the best case scenario, children of incarcerated mothers would break the cycle of entering into violent, destructive relationships, of having children too early, and of succumbing to drug use and addiction. This task is made difficult in that the grandmother is likely raising the child of her incarcerated daughter in the same or similar environment that exposes the child to the same societal ills as the incarcerated parent. The grandmother, left to pick up the pieces of the family after her daughter is incarcerated, is usually the only one left standing. The men are usually gone—similar to the story of single Ms. B battling in the housing projects to save her community (another example given by Professor Richie).<sup>134</sup> The men of the family are either gone, dead, or few and far between, and the woman is expected to “do what she has to do,” even if it means sacrificing her health and independence.<sup>135</sup>

## VII. ADVOCACY SOLUTIONS

### *A. Female Prisoners' Family Rights Clinic*

The most powerful way that social or legal theory can inform our society is through its application to real life situations. Legal clinics serve a critical role in the training of law students as lawyers, and they also serve an even more important role in that they often provide legal services for those who would not otherwise have access to justice. One of the ways that students and lawyers can combat the gender oppression that results from the gender entrapment theory is through the formation of female prisoners' family rights clinics. The basic concept would revolve around student attorneys assisting female prisoners in establishing a legal custody and visitation plan for her minor children in her absence. Supervising attorneys and law students would meet with female prisoners upon their placement in a

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134. *Id.* at 22, 49–51.

135. *The Early Show: The Other Mother in the White House* (CBS television broadcast May 8, 2009) (noting that the First Grandmother, Marian Robinson, used a common saying among African-American families, “you do what needs to be done [for family]”).

facility to discuss a family plan regarding the temporary or permanent placement of her children with relatives, friends, or in state foster care. The clinic could facilitate family group conferences in order to reach a custody agreement.

A collaborative law approach could also be offered by the clinic through the use of volunteer collaborative law attorneys and mental health professionals. The clinic would file the appropriate paperwork once an agreement is made, and issues regarding visitation and child support could be determined as well. In addition, the clinic could assist in finding necessary financial, psychological, and social services available in the community for the family caregiver and children.

Currently there are several prisoners' rights clinics at various U.S. law schools, but many of these deal with discipline and parole hearings or appeals. Other clinics handle constitutional violations of prisoners' rights through civil rights clinics. There are a few law school clinics that assist prisoners with family law issues. The University of Wisconsin has a Legal Assistance to Institutionalized Persons Project (LAIP) which provides free legal services through students and clinical faculty regarding various issues including family law problems.<sup>136</sup> The Prisoners and Families Clinic at Columbia Law School provides both education and advocacy for prisoners regarding their parental rights and responsibilities.<sup>137</sup> This clinic operates at the intersection of the criminal justice and family court/child welfare systems, and it works with a women's prison and the Family Initiative of the Center for Appellate Litigation.<sup>138</sup> The students teach and work with incarcerated women to provide preventative lawyering in order to help the women prisoners "take the steps necessary to improve their chances of success" in family court proceedings or to avoid legal problems altogether.<sup>139</sup> They also assist people who have been recently released from prison by providing education and legal advocacy for them and/or their family members in order to help them

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136. *Legal Assistance to Institutionalized Persons Project*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://www.law.wisc.edu/fjr/clinicals/laip.html> (last visited Oct. 26, 2011).

137. *Prisoners and Families Clinic*, COLUMBIA LAW SCHOOL, <https://www.law.columbia.edu/focusareas/clinics/pastclinics> (last visited Oct. 26, 2011).

138. *Id.*

139. *Id.*

achieve reunification. These types of clinics are examples of how law schools, prisons, community organizations, and courts can work together to alleviate some of the legal and social problems created by the separation of mothers and children due to incarceration.

### *B. Formation of Girls Talk Groups*

One of the major recurring issues in impoverished minority communities is the cycle of teenage pregnancy, violence, incarceration. In order to break the chains of gender entrapment theory, incarcerated women, their mothers, and their daughters need an open space to share life experiences and lessons learned. Intergenerational caregiving within the prison nation context is often coupled with intergenerational disconnection between grandmother, mother, and children. It would be key to include the grandmothers in these communications because they provide a vital link from past to present to future. The creation of a lecture and discussion series regarding the issues that arise with female children with incarcerated mothers and fathers could be an avenue to a new path for the younger girls left behind in the community. Family members, community leaders, teachers, historians, psychologists, social workers, doctors, professors, and others could talk and promote discussion on various topics such as the history of African-American women in the United States, the relationship between education and financial stability, dating violence, healthy male/female relationships, dealing with depression and other mental health problems, development of key technological skills for the workplace, and the college admissions process.

An example of such a support group is the non-profit organization, Girls Embracing Mothers (G.E.M.) Incorporated, formed by law student Brittany Barnett at Southern Methodist University Dedman School of Law ("SMU Law"). G.E.M.'s mission is "to empower young girls ages 7 through 17 whose mothers are currently incarcerated by providing a support system in a caring, inclusive, and learning environment."<sup>140</sup> The organization is

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140. *Breaking the Cycle. Building the Bond*, GIRLS EMBRACING MOTHERS, <http://www.girlsembracingmothers.org> (last visited Oct. 26, 2011).

committed to “lessening the impact of maternal separation due to incarceration” by strengthening the mother-daughter relationship and inspiring young girls to succeed by instilling a sense of hope for the future.<sup>141</sup> The motto is “Breaking the Cycle. Building the Bond.”<sup>142</sup> There are several goals and objectives set forth by G.E.M., including opening channels of effective communication by encouraging open, honest dialogue amongst the girls as well as with their mothers and mentors, developing and implementing an incentive program that will teach the girls responsibility and accountability for their own actions and accomplishments, and promoting personal growth and development with a wide-range of activities including but not limited to building self-esteem, endorsing healthy life styles, and encouraging the girls to set goals and follow through on commitments.<sup>143</sup>

### *C. Tax Reform to Better Support Custodial Grandmothers*

A public policy action that could help support the caretakers for children impacted by female incarceration is a decrease in the overall tax rate for custodial grandparents who acquire custody via certain situations, such as incarceration of a parent, death of a parent, or mental illness of a parent. Though relatives caring for a child on a full-time basis can take advantage of the child care tax credit and the dependent care exclusion,<sup>144</sup> these are not enough for elderly caregivers living on a fixed income with a greater likelihood of continuing and/or worsening health conditions. Economic support through expansion of welfare, child support payments, Medicaid, and housing subsidies are unlikely to occur during the current economic recession and with the rising U.S. debt. A tax cut would provide direct material assistance to the grandparent and could increase the economic stability for the household.

In a forthcoming article, *Grandma in the White House*,<sup>145</sup> I explore tax reform and housing reform as a means for financially

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141. *Id.*

142. *Id.*

143. *Id.*

144. I.R.C. § 21 (2007); I.R.C. § 152(d) (2010).

145. Jessica Dixon Weaver, *Grandma in the White House* (forthcoming 2012).

assisting single mothers and single grandmothers. With respect to custodial single grandparents, the idea of a decreased tax rate would increase the grandparent's take home pay (if still employed) and decrease the amount of taxes taken out of pension/retirement payments. The decreased tax rate could be limited to custodial grandparents with an income less than a certain amount, such as \$40,000, and this amount could increase depending on how many children resided with the grandparent, e.g. \$5,000 extra per child (with a maximum of four children). Child support would ordinarily not be feasible because of the circumstances of the parent.

### CONCLUSION

Professor Richie set forth several lessons in her concluding statements about how three African-American women's experiences in their communities were shaped by their gender, status within the private and public spheres, and violence perpetrated by men that went unpunished.<sup>146</sup> Considering that the build-up of a prison nation has been marketed as making our streets safer, she notes that African-American women are actually less safe in their communities than before mass incarceration ensued.<sup>147</sup> Contemplating how our justice system does not work, she suggests the following: (1) avoid oversimplified solutions; (2) develop much more radical anti-prison practices that do not reiterate the masculine norm; (3) create leadership opportunities for legal scholars to become activists; and (4) build a social justice movement centered on women's stories.<sup>148</sup>

The solutions that I suggested will help improve our justice system in meaningful ways by allowing law professors and students to provide family legal services to mothers in prison, creating intergenerational opportunities for black females to break the cycle of violence and crime within their family, and using stories from the private sphere to influence public social responsibility within the government financial system. The reality that the poor, young African-American girls of today become the single grandmothers

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146. Richie, Keynote, *supra* note 16, at 38–43.

147. *Id.* at 10–11.

148. *Id.*

raising grandchildren tomorrow means that it is important for women to define their own family networks while still acknowledging the strengths and weaknesses of the matriarchal and patriarchal family structures.