Exposing the Masculinist Narrative in Federal Antislavery Law: A History of *U.S. v. Tony Booker* (1980)

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In June 1980 Federal Bureau of Investigation agents freed from a Florida agricultural migrant labor camp a worker named Helen Marshall Spencer, who was too afraid to make her own escape. The crew leader, Willie Warren Sr., had removed her from the field and held her in a trailer where, she said, "many workers took sexual advantage of her." When she asked to leave, Warren "slapped her because he didn't want her to leave and put an end to this situation." The Department of Justice assigned the case to federal prosecutor Bruce J. Berger, the nation's first Involuntary Servitude and Slavery Coordinator for the Civil Rights Division, Criminal Section. Berger was a modern-day abolitionist. He prosecuted cases that violated federal antislavery laws passed to enforce the Thirteenth Amendment. Berger opened Spencer's case as a peonage matter because Warren had battered her and told her that "if you leave, it's your ass." Later he regretfully closed the case in part due to the gendered limits of federal peonage and slavery laws. Spencer "could not be a victim in a slavery prosecution," Berger stated, because "she had not been working [in the fields]." The limitations of federal law weighed on Berger. It appeared the crew leader had enslaved Spencer in violation of her Thirteenth Amendment protections. Yet the nation's statutory and case law did not permit the government to prosecute sexual assault crimes as slavery. Three months later another case surfaced, this time in eastern North Carolina. In prosecuting *United States v. Tony Booker* (1980), Berger tested the gendered limits of the law by introducing the sexual assault testimony of an active fieldworker, Leola Stewart.[1]

United States v. Tony Booker, J. D. Rollins and Tony Gibson (1980) proceeded in the federal court for the Eastern District of North Carolina in Fayetteville. In 1981 the Fourth Circuit Court of Appeals upheld the convictions secured in the district court. The complainants were Joe Romeo and Gary Walters, white male migrant farm laborers. Their

Karin Zipf is a professor of history at the University of East Carolina. The author attributes an April 2019 panel at the Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition (Yale University) as inspiration for this article. The panel, hosted by David Blight, included the author and former U.S. Department of Justice prosecutors Bruce J. Berger, Susan King, and Luis C.deBaca. Thank you, also, to the anonymous manuscript reviewers.

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[1] Bruce J. Berger, memo, June 17, 1980, "1995 Cap. Equal." folder, Bruce J. Berger Papers (Gilder Lehrman Center for the Study of Slavery, Yale University, New Haven, Conn.); "Testimony of Leola Stewart," Aug. 19, 1980, trial transcript, II, p. 216, *United States of America v. Tony Booker, J. D. Rollins and Tony Gibson, Jr.,* E.D.N.C. Crim. R. 80-19-CR-5 (1980), Records of District Courts of the United States, RG 21 (National Archives Southeast, Atlanta, Ga.).

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co-worker Leola Stewart served as one of the key witnesses for the prosecution. The prosecutors, Bruce J. Berger and Lani Guinier, used the workers' testimonies as evidence that crew leader Tony Booker intended to enslave migrant farm workers by creating a "climate of fear" through conditions that included violence, death threats, threats of sexual assault and debt peonage, to force workers to stay and work. While the case indeed advanced federal antislavery law, the court's response to Stewart's testimony in 1980 reveals its deeply gendered interpretation of this emerging legal doctrine by defining forced labor violence only in masculinized terms.[2]

Through a feminist lens, this article critiques the narrative that emerged from this case, by examining the wider historical significance of antislavery law and then telescoping in for a close study of the trial transcript. It redirects attention from the male complainants to Stewart. The length and depth at which she describes sexual assault is undeniably remarkable for its very representativeness of the experience of women fieldworkers. Her treatment in court is also categorically representative of the law's often casual consideration of sexual assault, especially regarding the experiences of Black women. Prosecutors tenaciously argued that defendants had attempted to gang rape Stewart to create a climate of fear with an intent to enslave workers.

However, the defense counsel persuaded the judge to dismiss Stewart's graphic testimony as "prejudicial," a separate offense outside of the indictment and thus unfair to their clients. Using tactics steeped in white supremacist and misogynistic tropes of Black women workers, the defense blocked prosecutors' attempts to include sexual assault as an example of migrant slavery violence. Stewart's experience is also relevant to the study of modern human trafficking. The omission by federal lawmakers of sexual violence as a condition of forced labor and involuntary servitude propelled feminists to reinterpret the Thirteenth Amendment. Federal laws, they urged, should be revised to account for women's singular traumas in slavery. Under these pressures, Congress revised federal antislavery laws in the Trafficking Victims Protection Act of 2000.[3]

Sometimes single court cases, such as *Brown v. Board of Education* (1954) and *Roe v. Wade* (1973), attain fame by establishing new precedent. Others, such as *United States v. Booker,* are an important part of a genre or "clutch" of cases that advance the law in a specific direction. In the late 1970s and early 1980s, the Department of Justice pursued a series of farm worker slavery cases in the American Southeast, each of which, brick by brick, "advanced" federal antislavery. These cases are well known among legal scholars who study federal antislavery law and human trafficking. As such, *Booker* fits into a specific judicial discourse on peonage and federal antislavery law. Namely, it shaped judicial discourse by defining the principles of "a climate of fear" and "intent to enslave" in instances of farm worker slavery. The historian Ranajit Guha notes that judicial discourse "[traps] crime in its specificity, by reducing its range of signification to a set of narrowly defined legalities, and by assimilating it to the existing order as one of its negative determinants." The outcome of *Booker* and its sibling cases narrowed and condensed the meaning of slavery by controlling the circumstances of the case. Historical actors, including judges, attorneys, and policy advocates adopted this narrow meaning of slavery, one that

[2] Bridgette Carr et al., *Human Trafficking Law and Policy* (New Providence, 2014), 59.

[3] Catharine A. MacKinnon, *Women's Lives, Men's Laws* (Cambridge, Mass., 2005), 156–57, 441; *United States v. Booker,* 655 F.2d 562, 566 (4th Cir. 1981); Victims of Trafficking and Violence Protection Act, div. A, 114 Stat. 1464 (2000), https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf.

excluded violence against women. Leola Stewart's testimony on sexual assault pulls away the curtain on that judicial discourse just long enough to disrupt the masculinist narrative of farm worker violence and slavery. The *Booker* case, then, is significant not for any precedent-setting standard, but rather for its narrow scope—a masculinist narrative of slavery reinforced one year later by the court of appeals.[4]

Women's migrant slavery experiences bear an alarming resemblance to pre–Civil War plantation slavery. Black feminist scholar bell hooks revised contemporary interpretations of slavery as not only a mode of forced labor but also an institutionalized method of terrorism by sexual assault. In her seminal 1982 treatise, *Ain't I A Woman,* hooks argues that slave owners imposed the constant threat of rape and sexual assault to dehumanize enslaved women and girls. Historians, she says, often treat evidence of sexual exploitation and rape in slavery as spontaneous outbursts of white male lust. Hooks disagrees. She argues that slaveholders methodically employed sexual exploitation, rape, and sadistic misogynistic acts as necessary political mechanisms of slavery to create a climate of fear. "The female slave," hooks asserts, "lived in constant awareness of her sexual vulnerability and in perpetual fear that any male, white or black, might single her out to assault and victimize." Although separated by more than a century, Stewart's and Spencer's experiences and the lives of enslaved women of the distant past bear a horrific resemblance.[5]

Scholars since the publication of this book contend that narratives centered on slavery as primarily a forced labor experience are profoundly misogynistic. Rachel A. Feinstein asserts that before and after the Civil War, rape of enslaved women was part of white masculine identity. "White American history and white male identity," Feinstein argues, "is deeply intertwined with sexual violence." This legacy persists in white men's entitlement to rape perpetuated by the light sentences judges mete out today. Another legacy is the persistent sexual vulnerability that Black women face at the hands of men of their own race. Any characterization of slavery as primarily a forced labor practice thus promotes the masculinist narrative, one focused chiefly on labor and control of Black men that stripped them of their masculinity and denied them participation in the patriarchy. This sexism persists in popular culture and the courts, where modern slavery and human trafficking cases fail to fully address the sexual vulnerabilities borne by women workers. Leola Stewart's story thus exposes the misogyny that existed in the realm of forced labor law and advocacy. The masculinist narrative of slavery was so deeply embedded in the nation's laws that as late as 1980 federal civil rights prosecutors struggled to expose the centrality of sexual assault on workers in the landmark federal antislavery trial discussed here.[6]

The two federal prosecutors who tried this case were a formidable team. Bruce J. Berger and Lani Guinier advanced the groundbreaking "climate of fear" doctrine at the center of *United States v. Booker*. Young, Ivy League educated, and minority identified, the two had much in common. Guinier was raised by a Jewish mother and African American

[4] *Brown v. Board of Education,* 347 U.S. 483 (1954); *Roe v. Wade,* 410 U.S. 113 (1973). Carr et al., *Human Trafficking Law and Policy,* 43–93. Ranajit Guha, "Chandra's Death," in *A Subaltern Studies Reader, 1986–1995,* ed. Ranajit Guha (Minneapolis, 1997), 38. Katherine Luongo, *Witchcraft and Colonial Rule in Kenya, 1900–1955* (Cambridge, Eng., 2011), 102–3.

[5] bell hooks, *Ain't I a Woman: Black Women and Feminism* (London, 1981), 22–29, esp. 24.

[6] *Ibid.*; Rachel A. Feinstein, *When Rape Was Legal: The Untold History of Sexual Violence during Slavery* (New York, 2018), 5, 79; Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill, 2009); Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill, 2004); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill, 2016), 2–3.

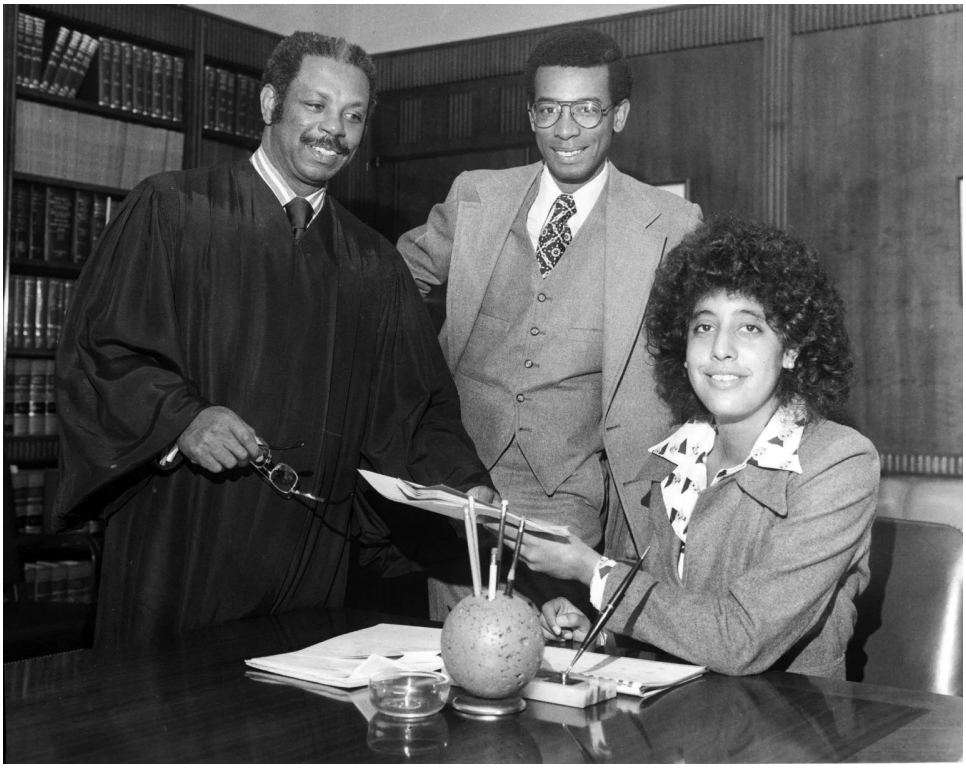
father, Ewart Guinier, an attorney and Harvard University history professor. Neither was a stranger to the federal courtroom. Berger clerked in the Fifth Circuit Court of Appeals and Guinier in the Sixth Circuit. Their young adult experiences at the Department of Justice fostered lifelong commitments to human rights issues. In retirement Berger has produced fiction exploring the lives of Holocaust survivors. Lani Guinier's esteemed career at the Department of Justice's Civil Rights Division grew into a successful professorship at the Harvard Law School, where she became the school's first woman of color granted tenure. Her books on race, democracy, and civil rights strategy have propelled national conversations, debate, and political controversy on voting rights, districting, affirmative action, and social justice.[7]

We do not know much about Leola Stewart except that she was thirty-three years old and had lived in Apopka, Florida. She told the court that she attended Apopka's all-Black high school with the defendant J. D. Rollins (aged 30). She also attested that she knew Tony Booker (aged 53). She did not mention how well she knew the third defendant, Tony Gibson (aged 21), the son of Booker's common-law wife. According to her testimony, she was an experienced migrant worker. She might have worked for Booker in the past. She testified that she had known him for twenty years. Trial records indicate that she had no convictions against her. Her former classmate, by contrast, possessed a criminal record. Rollins, who answered to three aliases, had committed several misdemeanor offenses. His most egregious conviction was for assault and battery in 1971. She testified that she was a free agent and accompanied the men to North Carolina on her own volition. Yet when she challenged Booker about unfair treatment, he responded several times with assaults and battery. Fearing for her life, she fled the migrant camp under the cover of darkness. Terrified and traumatized, she did not willingly return to North Carolina to testify. A federal agent served her the subpoena and a bus ticket at her home in Fort Pierce, Florida, just one week before the trial.[8]

Leola Stewart served as a witness only. Berger and Guinier centered the case on two male victims. The grand jury had indicted three African American crew leaders on charges of the kidnapping and brutal beatings of two workers, Joe Romeo and Gary Walters, both white men, with the intent to enslave them. The defendant J. D. Rollins recruited Romeo at a blood bank in Orlando, Florida, and Walters at a nearby mission. He brought them to North Carolina with about twenty other farm workers, mostly African American men. The camp was nothing more than a barn and a few outbuildings. The recruiters directed them to the "barracks," a barn outfitted with fifteen or twenty beds. A large room housed the male workers, who passed through indiscriminately. Sometimes the number of men

[7] "Bruce J. Berger," *Prabook World Biographical Encyclopedia,* https://prabook.com/web/bruce_j.berger/3145166; Jamie Anfenson-Comeau, "D.C. Attorney-Turned-Novelist Bruce J. Berger Talks about the Jewish Characters of His Imagination," *Washington Jewish Week,* Sept. 15, 2021, https://www.washingtonjewishweek.com/d-c-attorney-turned-novelist-bruce-j-berger-talks-about-the-jewish-characters-of-his-imagination. Matt Schudel, "Lani Guinier, Law Professor and Embattled Justice Department Nominee, Dies at 71," *Washington Post,* Jan. 9, 2022; Margaret C. Lee, "Lani Guinier," in *Notable Black American Women: Book II,* ed. Jessie Carney Smith (Detroit, 1996), 261–62.

[8] "Testimony of Leola Stewart," II, pp. 216–19, 235. Although the transcriber of Leola's Stewart's oral testimony wrote out the name of the city she was from as "Apacaw," it is corrected here as Apopka. The same misspelling was used in the transcription of the testimony of Tony Booker, who we know was from Apopka. "FBI Criminal History on J. D. Rollins," Jan. 9, 1984, Motion file of John Daniel Rollins, *United States v. Booker,* E.D.N.C. Crim. R. 80-19-CR-5, Records of District Courts of the United States; "Testimony of Tony Booker," Aug. 20, 1980, trial transcript, II, p. 279, *ibid.*; "Subpoena of Leola Stewart," Aug. 11, 1980, *United States v. Booker,* box 1, *ibid.*; Trial transcript, I, pp. 8–9, *United States v. Booker,* E.D.N.C. Crim. R. 80-19-CR-5, *ibid.*; "Memorandum in Support of Motion for Judgment of Acquittal," Aug. 28, 1980, Motion file of Tony Gibson, p. 2, *ibid.*

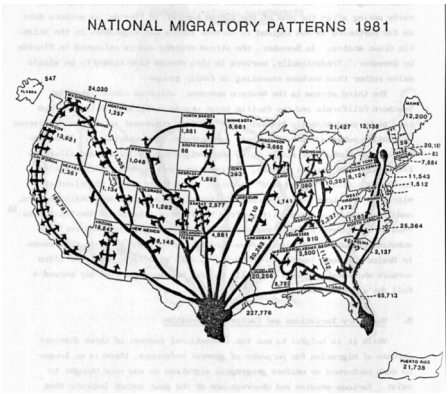


Civil rights attorney Lani Guinier, a prosecutor in the *United States v. Booker* case, handled the questioning of Leola Stewart, who testified on violence, peonage, and sexual assault charges. Guinier, raised in New York and educated at Harvard Law School, interned with Julius Chambers, of North Carolina and, later, Damon J. Keith (pictured far left with Guinier, seated) on the Sixth Circuit Court of Appeals. Upon graduation in 1976, she took a job in the Carter administration Department of Justice, Civil Rights Division, where she joined Involuntary Servitude and Slavery Coordinator Bruce Berger on the *Booker* case. She departed the Department of Justice in 1981 to join Chambers, who had taken on the directorship of the National Association for the Advancement of Colored People Legal Defense Fund. From there she launched her storied career in civil rights law. NAACP *Legal Defense Fund, https://www.naacpldf.org/press-release/ldf-mourns-the-passing-of-trailblazing-harvard-law-professor-and-voting-rights-defender-lani-guinier/.*

in the room appeared to exceed the number of beds. There was very little work, and the kitchen was filthy and inoperable. Worse yet, Booker rarely issued workers more than $5.00 on payday, arguing that everyone was indebted to him for the costs of transportation, food, beer, wine, and cigarettes that he sold to workers illegally and at marked-up prices.[9]

Stewart, Romeo, and Walters joined 25,000–50,000 migrant workers and their families as fieldworkers in North Carolina during the 1979 season. That year, several different growers near Smithfield, North Carolina, had hired Tony Booker as their labor contractor. He employed migrants who he transported from Florida and elsewhere to harvest tobacco and vegetables, including potatoes, strawberries, corn, squash, eggplant, and peppers. Growers provided the land for the migrant camp. Booker was responsible

[9] "Indictment of Tony Booker, J. D. Rollins and Tony Gibson, Jr.," June 4, 1980, *ibid.*; "Testimony of Gary Lee Walters," date, trial transcript, I, pp. 42–50, *ibid.*



This map demonstrates the scope of national migratory patterns in the United States in 1981. North Carolina ranked fourth among states in the number of migrant farm workers who worked in the state each year. Nationally, farm workers traveled in three main "streams." Employers recruited migrant farm workers across the Southeast and Washington, D.C., to begin the season on citrus farms in Florida and to end at vegetable farms across the Eastern Seaboard, then to repeat the cycle the following year. *Reprinted from Edward F. Dement, "Out of Sight, Out of Mind: An Update on Migrant Farmworker Issues in Today's Agricultural Labor Market," March 1985, p. 22, a working paper prepared for the National Governors' Association, Washington D.C.*

for recruiting, managing payroll and the camp, and providing room and board for his employees. Stewart, Romeo, and Walters had worked the fields before and understood the difficult living and working conditions ahead. But in the employ of Booker, they also experienced assault and battery. When Booker threatened to kill workers if they departed without paying their debts, he had also committed peonage, the crime that launched his case into the stratosphere of the federal courts.[10]

Peonage happened away from the public gaze. The Civil Rights Division hoped *United States v. Booker* would shine a light on forced labor in the fields of the nation's southeastern states. On August 19, 1980, in Fayetteville, North Carolina, the case proceeded in the federal courtroom of Judge W. Earl Britt. Berger and Guiner chose to prosecute crew leaders Tony Booker, J. D. Rollins, and Tony Gibson Jr. under U.S. Statute 77-1583, which made illegal the willful kidnapping of someone with the intent to hold that person as a slave. Specifically, the indictment charged the three crew leaders with "aiding and abetting the willful kidnapping and carrying away of Gary Walters and Joseph Romeo with the intent to hold Gary Walters and Joseph Romeo as slaves." The operative word in this indictment is the term *intent*. The statute specified that slavery did not actually need to occur, but the evidence must show that the defendants had a stated or expressed "intent" to hold someone as a slave.[11]

[10] On farm workers in the Southeast, see David Griffith, *Jones's Minimal: Low-Wage Labor in the United States* (Albany, 1993); Cindy Hahamovitch, *The Fruits of Their Labor: Atlantic Coast Farmworkers and the Making of Migrant Poverty, 1870–1945* (Chapel Hill, 1997); Cindy Hahamovitch, *No Man's Land: Jamaican Guestworkers in America and the Global History of Deportable Labor* (Princeton, 2011); Charlotte Gail Blake, "North Carolina's New Involuntary Servitude Statute: Inadequate Relief for Enslaved Migrant Laborers," *North Carolina Law Review,* 62 (Sept. 1984), 1189; Ginny Carroll, "Migrant Slavery Difficult to Prove," *Raleigh (NC) News and Observer,* July 8, 1980, p. 9; and Ginny Carroll, "Migrants Flow with the Seasons Searching for Ways to Survive," *ibid.*, July 6, 1980, p. 7-I. "Testimony of Tony Booker," II, pp. 278–80.

[11] "Indictment of Tony Booker, J. D. Rollins and Tony Gibson, Jr."; Peonage, Slavery, and Trafficking in Persons, secs. 1581–88, 62 Stat. 772–773 (1948), https://www.loc.gov/item/llsl-v62/.

Kidnapping with an intent to enslave seems a fair interpretation of the victims' narration of events. Probably there were other victims, but the prosecution framed the case around Romeo and Walters because almost everyone at the camp had witnessed their kidnapping and battery. Five witnesses testified, including Stewart, two other workers, a nun, and a priest. Witnesses described incidents where Booker wielded a shotgun and chased other workers around the camp. He also refused to pay workers. Feeling cheated, Romeo and Walters explained that they left the camp to find a telephone where they could call for help to escape. They described the harrowing and gripping experience of being followed, kidnapped, ruthlessly battered, and threatened with death if they left again without paying debts that Booker said they owed him. At Booker's direction, crew leaders Gibson and Rollins pursued them, beat them with an ax handle, dragged them back to camp, and then beat them again. While both men lay on the ground bruised and bloody, Booker approached and bent over them. He looked one of them straight in the eyes. "Never leave again," he said, menacingly, "because you are in the red with me. If you do, I'll ought to kill you." Booker then stood up and added, "I will kick your fucking ass if you ever try to leave again." It is no wonder that Berger and Guinier believed that the victims' testimonies gave them a solid case.[12]

Clarification of terminology further contextualizes this story. In 1980 federal authorities categorized *United States v. Booker* as an "involuntary servitude" or "modern slavery" case. No one at the time referred to it or other similar cases as *human trafficking,* a misleading term that is in vogue today but did not exist in law until Congress passed the Trafficking Victims Protection Act in 2000. The phrase "human trafficking" currently operates as an umbrella term for many crimes involving the holding of a person and compelling them into service without compensation. "Human trafficking" usually presumes a mobile work force that is moving or being moved from one place to another. The term *slavery* accounts for all cases of forced labor or compelled service regardless of movement, including forced marriage. Kevin Bales, a foremost scholar of modern slavery, offers several broad categories of work where slavery most often occurs, including prostitution, domestic service, agricultural work, work in small factories and workshops, mining, land clearance, selling in a market, and begging.[13]

The term *involuntary servitude* also requires definition here. In 1865, framers of the Thirteenth Amendment prohibited the condition of state-sponsored slavery and "involuntary servitude," signaling their abhorrence of unfree labor compelled by law or individual action. Former U.S. ambassador-at-large Luis C.deBaca argues that *involuntary*

[12] "Testimony of Gary Lee Walters," I, pp. 40, 60–62; "Testimony of Joseph Romeo," Aug. 19, 1980, trial transcript, I, pp. 111–16, 127–32, *United States v. Booker,* E.D.N.C. Crim. R. 80-19-CR-5, Records of District Courts of the United States; "Testimony of Michael Anthony Neal," Aug. 19, 1980, trial transcript, I, pp. 190, 192, 197, *ibid.*; "Testimony of Sister Evelyn Mattern," date, trial transcript, I, p. 98, *ibid.*; "Testimony of Leola Stewart," II, pp. 216–17, 231–33; "Testimony of Tony Booker," II, pp. 335–38.

[13] Carr et al., *Human Trafficking Law and Policy,* 232; Genevieve LeBaron, "20 Things about Slavery Everyone Ought to Know," panel handout, presented virtually at the annual meeting of the Organization of American Historians, April 16, 2021 (in Karin Zipf's possession); Kevin Bales, "Testing a Theory of Modern Slavery," paper delivered at the conference "From Chattel Bondage to State Servitude: Slavery in the 20th Century," Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University, New Haven, Oct. 23, 2004, https://glc.yale.edu/sites/default/files/files/events/cbss/Bales.pdf; Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* (Berkeley, 2009), 6; Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley, 2012), xix, 5–6; Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley, 2005), 146. Austin Choi-Fitzpatrick, "From Rescue to Representation: A Human Rights Approach to the Contemporary Antislavery Movement," *Journal of Human Rights,* 14 (Fall 2015), 487–88.

servitude is distinguished as a term in its own right. C.deBaca is a former federal prosecutor, U.N. Special Rapporteur on Trafficking in Persons, and head of the U.S. State Department's Office to Monitor and Combat Trafficking in Persons during the Obama Administration. "Involuntary servitude" he argues, is where one or more individuals use "force, threats, coercion, to hold someone in service." He observes that *involuntary servitude* is a modern term related to "ancient" crimes of peonage, servitude, human trafficking, domestic violence, child abuse, and rape. "Whether it's for sex or labor," C.deBaca argues, "maybe we just need to focus upon whether that person is held in compelled service." Simply stated, "involuntary servitude" is a modern form of slavery where one person or persons compels the service of another. U.S. antislavery law first originated in the language of forced labor or coerced servitude. In 2000, Congress expanded it to include sexual violence, primarily in the form of forced prostitution.[14]

Thus, in 1980 Berger and Guinier faced a legal milieu that defined involuntary servitude only as forced labor or peonage. They had at hand a legal tool chest containing a handful of appellate and Supreme Court cases, statutory law, legal treatises, and historical accounts of abolition, emancipation, and peonage. These legal instruments drew their power from the text of the Thirteenth Amendment. Congress designed the Thirteenth Amendment to serve as a powerful human rights tool for protection of labor rights. In these terms it banned the existence of slavery or involuntary servitude and permitted congressional action against any such holding. The amendment's language drew from quintessentially American revolutionary origins. Thomas Jefferson, deeply conflicted by his own slaveholding status in a land "where all men are created equal," penned the language for the 1787 Northwest Ordinance. The ordinance prohibited the Northwest Territory from legislating slavery and criminalized individuals holding others in involuntary service. At the time, involuntary and voluntary servitude existed in many forms, including indentured servitude, chattel slavery, peonage, apprenticeship, and the marriage contract. After the Civil War, the enactors of the Thirteenth Amendment adopted Jefferson's 1787 terminology—that there shall be no slavery or involuntary servitude—reflecting the circumstances of emancipation. The framers' intent to end slavery nationwide and forevermore is clear.[15]

In crafting the language of antislavery laws, Congress never directly addressed sexual violence. By immediate necessity, Congress interpreted the new amendment in terms of forced labor and compelled service. In 1866 it passed the parent statute for the law that Berger and

[14] For the "force, threats, coercion," "ancient," and "whether it's for sex or labor" quotations, see Luis C.deBaca, keynote delivered at the National District Attorneys Association Conference, Washington, D.C., Aug. 23, 2010, https://www.c-span.org/video/?295145-3/ambassador-louis-cdebaca-remarks. "Human Rights of Trafficked and Exploited Persons beyond the Palermo Protocol," moderated by Genevieve LeBaron, round table discussion presented in the webinar "20 Years After: Implementing and Going beyond the Palermo Protocol," Office of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, United Nations, June 29–30, 2020, https://www.ohchr.org/en/documents/thematic-reports/a75169-20-years-after-implementing-and-going-beyond-palermo-protocol. Luis C.deBaca, speech delivered at "Anti-Human Trafficking Symposium: Transforming the Coalition," Georgetown University, Washington, D.C., Jan. 30, 2013, https://www.c-span.org/video/?310697-8/luis-cdebaca-anti-human-trafficking-symposium. Luis C.deBaca and Griffin Thomas Black, "The Development of U.S. Anti-Slavery Law: A Historical Review," in *The Historical Roots of Human Trafficking: Informing Primary Prevention of Commercialized Violence,* ed. Makini Chisolm-Straker and Katherine Chon (London, 2021), 127–29.

[15] William M. Carter Jr. "Race, Rights and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery," *U.C. Davis Law Review,* 40 (April 2007), 1311–79. On Thomas Jefferson and the Thirteenth Amendment, see Eric Foner, "We Are Not Done with Abolition: The Framers of the Thirteenth Amendment Did Not Intend to Establish an Empire of Prison Labor," *New York Times,* Dec. 15, 2020. C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 137–38.

On April 18, 2019, the Gilder Lehrman Center for Study of Slavery, Resistance, and Abolition held a panel entitled, "Prosecuting Slavery in a Time of Freedom: Late 20th Century Enforcement of the 13th Amendment." Seen here (from left to right) are Karin Zipf and three retired coordinators of the Involuntary Servitude and Slavery Office in the Department of Justice Civil Rights Division, Criminal Section: Bruce Berger, Susan King, and Ambassador Luis C. deBaca (ret.). *Yale MacMillan Center, https://macmillan.yale.edu/news/prosecuting-slaverytime-freedom-late-20th-century-enforcement-13th-amendment.*

Guinier used more than one hundred years later to charge Tony Booker. Legislators who introduced the law worried that former slaveholders would kidnap their former slaves and sell them to plantations in Cuba and Brazil, where slavery was still legal. An Act to Prevent and Punish Kidnapping prohibited the kidnapping of any person, "whether negro, mulatto, or otherwise," with the intent that such person shall be sold or carried into involuntary servitude or held as a slave. Unlike the 1807 slave trade law, the 1866 statute applied to any person, regardless of race. It also specifically addressed the question of intent. The mere "intent" to enslave constituted a crime even if no actual enslavement or involuntary servitude had occurred. In 1874 Congress revised this law in response to the servitude of Italian children in New York. Italian "padrones" had kidnapped thousands of Italian children, brought them to New York City, and pressed them into service shining shoes and other similar jobs on the street. The 1874 padrone law applied not only to kidnapped foreigners but also to "any person" held in involuntary servitude for "any term whatsoever." In another bold action, Congress employed the Thirteenth Amendment to prohibit peonage. In 1867 Congress passed the Anti-Peonage Act to address the rampant and state-sponsored Mexican practice that still thrived in southwestern territories, including California, New Mexico, and Texas. The law forbade "the voluntary or involuntary service or labor of any person as peons, in liquidation of any debt or obligation." While Congress initiated the law in response to practices in the Southwest, it adopted this broad language to prohibit the pernicious practice nationwide.[16]

The events leading up to the *United States v. Booker* took place in central Florida and eastern North Carolina, two of the former Confederate states that had innovated new practices to coerce labor after the war. Southern states circumvented or ignored the 1867 Anti-Peonage Act and exploited the "punishment of a crime" loophole in the Thirteenth Amendment with new forced labor devices that emerged immediately after emancipation.

[16] An Act to Prevent and Punish Kidnapping, sec. 1201–4, 14 Stat. 50 (1866); Michael F. Magliari, "'A Species of Slavery': The Compromise of 1850, Popular Sovereignty, and the Expansion of Unfree Indian Labor in the American West," *Journal of American History,* 109 (Dec. 2022), 523–24; Adam Rothman, *Beyond Freedom's Reach: A Kidnapping in the Twilight of Slavery* (Cambridge, Mass., 2015), 183; Andrés Reséndez, "North American Peonage," *Journal of the Civil War Era,* 7 (Winter 2017), 597–98, 602–5, 609–10. John M. Cook, "Involuntary Servitude: Modern Conditions Addressed in *United States v. Mussry,*" *Catholic University Law Review,* 34 (Fall 1984), 155–63; Baher Azmy, "Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda," *Fordham Law Review,* 71 (no. 3, 2002), 1020–22; C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 133, 139–41. Anti-Peonage Act, chap. 187, sec. 1, 14 Stat. 546 (1867).

Aimed at controlling Black Americans, the practice known as "convict lease" allowed courts to rent prisoners as laborers to individual growers and corporations. Some state laws required convicts to work off court costs. Other states devised plea bargain arrangements that allowed them to bond convicts to growers for sentences involving hard labor. Several scholars have shown that county authorities encouraged mass arrests and forced plea bargains of Black Americans at harvest. Sharecropping, a practice where farmers contracted their labor to pay off their debts, propped up the system of peonage. Courts permitted growers to arrest sharecroppers when they abandoned restrictive or unfair agreements. Sharecroppers caught in this web had virtually no recourse. Prosecutors cited them with "fraudulent intent," whereby the mere act of leaving the contract signaled a prima facie breach. In response, Congress outlawed most of these practices in 1909 by consolidating the older involuntary servitude laws. The federal courts upheld the 1909 statutes in 1911, 1914, 1937, and 1944. Yet peonage persisted. In 1969 Pete Daniel lamented its prevalence throughout the South. "Like Mississippi River floods, the incidence of peonage rose and fell, unpredictable, violent, inexorable."[17]

Meanwhile, the federal government largely ignored the problem of sexual violence in slavery. Women abolitionists had long decried it. Angelina Grimke, Sarah Grimke, Sojourner Truth, Harriet Jacobs, and Maria W. Stewart all advocated for Black women's bodily autonomy before the Civil War. However, U.S. law derived from English common law antecedents. States adopted the English practice that defined rape not as a crime on a woman's body but as a crime against the government or a man's estate. The category of rape did not exist for enslaved women, and where it existed for free women, it did so typically when a man complained of an offense against his property in the body of his wife or daughter. In 1863, Lincoln's Lieber code defined rape as a war crime without regard to race, but even that law defined the offense as a crime against the government, not against the individual woman. Little changed after the Civil War, though women continued their protest. Ida B. Wells most famously raised the problem of rape as a white supremacist tool for political control. When Congress finally legislated on sexual slavery, it was in the form of morality laws, including the White Slave Traffic Act (Mann Act) of 1910. Rooted in the commerce clause, the Mann Act defined women as property and construed interstate prostitution as a crime against the state. These laws treated women forced into prostitution as co-conspirators in criminal vice cases rather than as victims of forced servitude deserving protection under the Thirteenth Amendment. Even in marriage women possessed little to no bodily autonomy. Indeed, the law in North Carolina protected men against claims of marital rape until it was outlawed in 1993.[18]

[17] For cases in which the U.S. Supreme Court ruled against forced labor arrangements, see *Bailey v. Alabama,* 219 U.S. 219 (1911); *United States v. Reynolds,* 235 U.S. 133 (1914); and *Pollock v. Williams,* 322 U.S. 4 (1944). Azmy, "Unshackling the Thirteenth Amendment," 983–85. Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901–1969* (Urbana, 1972), 108, 138, esp. 149, 172, 186. Daniel A. Novak, *The Wheel of Servitude: Black Forced Labor after Slavery* (Lexington, Ky., 1978), 75–80, 111. Tamar R. Birckhead, "The New Peonage," *Washington and Lee Law Review,* 72 (Fall 2015), 1616, 1623; C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 141–43, 148, 152; Luis C.deBaca, "Manufacturing Freedom," in *Historical Roots of Human Trafficking,* ed. Chisolm-Straker and Chon, 40–41. On the lingering practices of forced labor after emancipation, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York, 1988); Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York, 2008); and David M. Oshinsky, *"Worse Than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice* (New York, 1997).

[18] Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York, 1975), 17; Crystal N. Feimster, "When Black Women Reclaimed Their Bodies: The Fight for Sexual Justice during Reconstruction," *Slate,* Feb. 2, 2018, https://slate.com/human-interest/2018/02/how-formerly-enslaved-black-women-fought-for-human-dignity-and-sexual-justice.html; Crystal N. Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching*

Only one major involuntary servitude case before 1980 addressed women's experience in postwar slavery. In *United States v. Ingalls* (1947), the Southern District of California held that Elizabeth Ingalls kept Dora L. Jones, a Black domestic worker, "wholly under [her] control . . . and . . . in a state of enforced compulsory service." Ingalls enticed Jones as a teenager to work as a domestic servant, which she did, without compensation, for more than twenty-five years. According to the court, Jones testified to physical abuse and threats that if she left, Ingalls would have her sent to prison for an illegal abortion resulting from an "adulterous relationship" with Ingalls's former husband. The court convicted Ingalls, but its language was ambiguous. First, the court defined slavery vaguely. It held that a slave is "a person who is wholly subject to the will of another," a definition so broad that a future court rejected it. Second, the decision reflected the court's ambivalence toward sexual violence.[19]

For any farm worker woman in 1979, then, the threat of sexual violence was a matter of course. For this reason, Leola Stewart would not have accepted the job if her friends Mary Ann and Russell Snow had not also agreed to make the trip. Stewart was an experienced picker and knew that migrant labor camps were precarious places, especially for women. Crew chiefs had few incentives to protect women workers from marauding men. Some bosses engaged in an illicit sex trade or, at the very least, looked the other way. Sexual servitude threatened women, particularly the young, single, or disabled who lived in the migrant camp. Under the euphemism of "prostitution," sex slavery flourished in nearby cheap motels, where crew leaders pimped out women to satisfy male workers. Sister Julianna DeWolf, an activist nun in Wilson and Nash Counties, characterized the forced prostitution that women suffered as "a special case of slavery within slavery." Worse yet, communicable diseases, including AIDS (acquired immune deficiency syndrome), syphilis, and tuberculosis, ravaged the camps throughout the 1970s and 1980s. In myriad ways, single women faced intolerable conditions in migrant camps.[20]

As a Black woman, Stewart was especially vulnerable. African American feminist scholars have documented the almost singular experience of sexual abuse that Black women suffered in slavery and freedom. Angela Davis, Maya Angelou, and bell hooks have documented the pervasive sexual stereotypes that characterized Black women as lewd and

(Cambridge, Mass., 2009); Jessica R. Pliley, *Policing Sexuality: The Mann Act and the Making of the FBI* (Cambridge, Mass., 2014), 66–72; Carr et al., *Human Trafficking Law and Policy,* 97–100; Jaye Sitton, "Old Wine in New Bottles: The Marital Rape Allowance," *North Carolina Law Review,* 72 (Nov. 1993), 271–74, 286–87. Francis Lieber, *Instruction for the Government of Armies of the United States in the Field* (Washington, 1863). White-Slave Traffic Act of 1910, chap. 395, 36 Stat. 825 (1910).

[19] *United States v. Ingalls,* 73 F. Supp. 76 (S.D. Cal. 1947); Carr et al., *Human Trafficking Law and Policy,* 43–47.

[20] "Testimony of Leola Stewart," II, pp. 218–20; Kathleen Guest Smith, "The Hazards of Migrant Farm Work: An Overview for Rural Public Health Nurses," *Public Health Nursing,* 3 (March 1986), 48–56; Phyllis R. Bleiweis et al., "Health Care Characteristics of Migrant Agricultural Workers in Three North Florida Counties," *Journal of Community Health,* 3 (Fall 1977), 32–34; David J. Weber et al., "Epidemiology of Tuberculosis in North Carolina, 1966 to 1986: Analysis of Demographic Features, Geographic Variation, AIDS, Migrant Workers, and Site of Infection," *Southern Medical Journal,* 82 (Oct. 1989), 1204–14; Carroll, "Migrant Slavery Difficult to Prove," 9; "Mentally Ill Often Recruited as Migrants," *Raleigh (NC) News and Observer,* Sept. 10, 1978; Ginny Carroll, "Funds for Migrant Health Just Don't Reach," *ibid.*, July 7, 1980, p. 1; Angelia Herrin, "On the Trail of VD Fugitives," *ibid.*, Aug. 12, 1980, p. 8; "Wilson Authorities Arrest 13 in Prostitution Case," *ibid.*, Aug. 8, 1986, p. 64; Sara Rimer, "Belle Glade Fights Its High AIDS Rate," *ibid.*, Nov. 25, 1990, p. 112; John Coit, "Migrant Children Get Help," *ibid.*, Aug. 21, 1973, p. 19. For the "slavery within slavery" quotation, see Paul Farmer, "Haitians without a Home," *Aeolus: The Chronicle's Weekly Magazine,* Feb. 24, 1982, pp. 10–11, Articles on Farmworkers in North Carolina folder, box 1, Joan Preiss Papers (Rubenstein Manuscript Collection, Duke University, Durham, N.C.), https://idn.duke.edu/ark:/87924/r48p6136c. Steven Edelstein interview by Karin Zipf, March 8, 2018, video recording (in Zipf's possession).

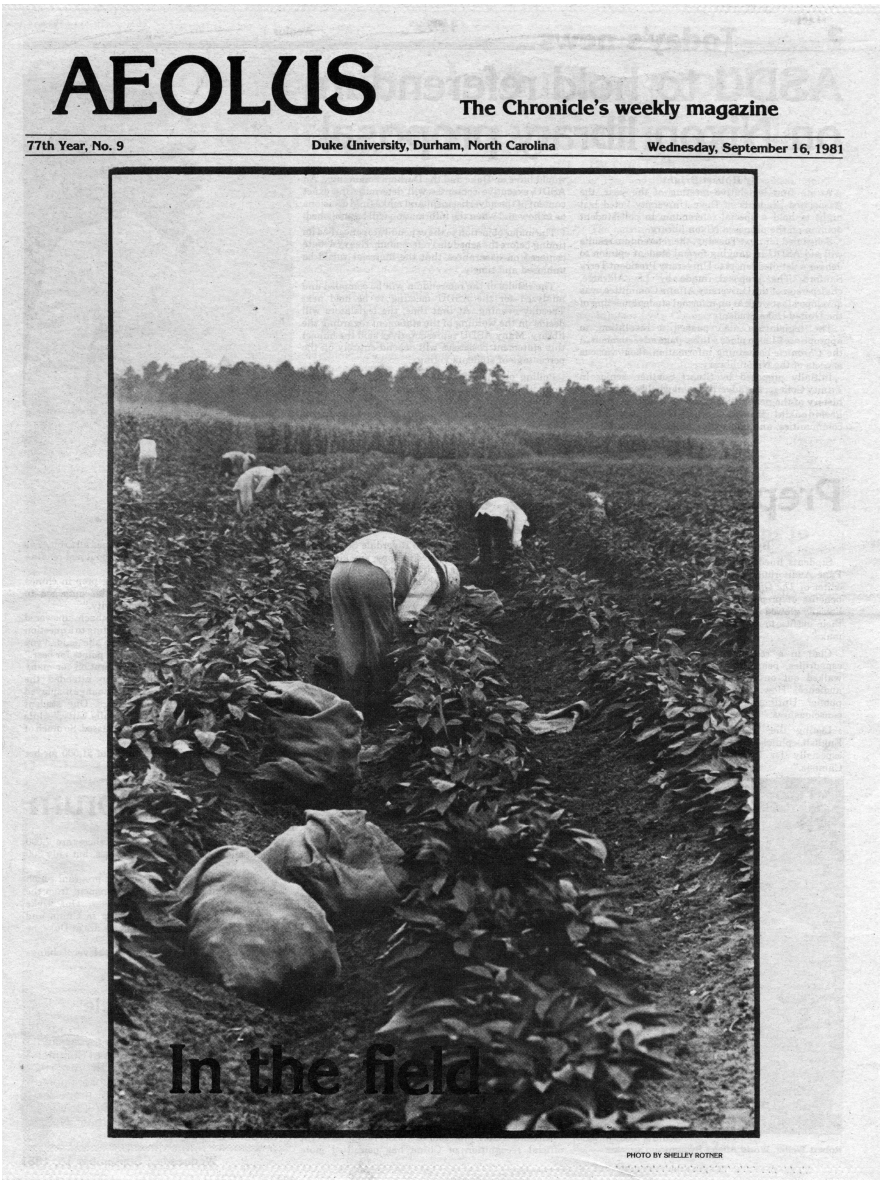
lascivious and white women as virtuous and chaste. These sexual stereotypes perpetuated myths about white women's purity and Black women's immorality, assumptions that heightened the precarity of all Black women, but especially those who worked as farm laborers. Elsa Barkley Brown argues that race and class influence every sexual assault case. White middle-class women's experiences as professional women or as homemakers appeared to others as normative. A Black woman agricultural worker who did not fit these white middle-class norms instead appeared as deviant to many of the people with whom she interacted, including crew leaders, other farm workers, growers, law enforcement officers, judges, and juries. Because she was presumed deviant, a Black woman farm worker was thus more vulnerable than a middle-class white woman to sexual harassment and sexual abuse. The daily experience and interactions of these Black women involved a constant struggle for physical safety and emotional wellness.[21]

In a highly publicized death penalty case in 1974, North Carolina courts recognized the persistence of these stereotypes. The state prosecuted Joan Little, an African American woman, for killing a white jailer in Beaufort County. The defense argued that Little had killed him in self-defense while he raped her. In a successful motion to move the trial to Raleigh, defense attorneys argued that Little would not receive a fair trial in her home county. The defense based their motion on a survey of residents in Beaufort and nearby Pitt County that demonstrated that two-thirds of the respondents believed that African American women were lewder than white women and that African American people were more dangerous than whites. Stereotypes imbued the ensuing trial. The prosecution argued that Little was lewd and had solicited sex to make her escape. Little's attorney persuasively argued that the stab wounds she inflicted on her attacker were made in self-defense. The case drew national media attention for questioning whether Black women could receive justice in courtrooms in the American South.[22]

Pervasive sexual stereotypes presented dire consequences for migrant farm women, sometimes regardless of ethnicity or race. These stereotypes applied to all women on the lowest rung; their class served as the common denominator that determined how others viewed their sexuality. Growers, crew leaders, and male workers presumed women workers, both Black and white, were sexually available due to their mere presence in the fields. In 1980 Romeo Lewis, a doctor in Clinton, North Carolina, told newspaper reporters that he had treated one young girl for several sexually transmitted diseases, including syphilis, gonorrhea, and crabs, acquired in sexual slavery. A crew leader had imprisoned the nineteen-year-old mentally handicapped white girl named Mary and pimped her out to the crew. "She was an alcoholic," the physician said. "As long as they kept her

[21] For the most recent treatment on this topic, see Kaisha Esty, "'I Told Him to Let Me Alone, That He Hurt Me': Black Women and Girls and the Battle of Labor and Sexual Consent in Union-Occupied Territory," *Labor: Studies in Working-Class History of the Americas,* 19 (March 2022), 34–35. Angela Y. Davis, *Women, Race, and Class* (New York, 1983); hooks, *Ain't I a Woman;* Maya Angelou, *I Know Why the Caged Bird Sings* (New York, 1969); Keeanga-Yamahtta Taylor, ed., *How We Get Free: Black Feminism and the Combahee River Collective* (Chicago, 2017); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston, 1990); Gloria T. Hull, Patricia Bell Scott, and Barbara Smith, eds., *All the Women Are White, All the Blacks Are Men, but Some of Us Are Brave: Black Women's Studies* (New York, 1982); Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum* (no. 1, 1989), 139–68. Elsa Barkley Brown, "'What Has Happened Here': The Politics of Difference in Women's History and Feminist Politics," *Feminist Studies,* 18 (Summer 1992), 299–300.

[22] Jeffrey Abramson, *We, the Jury: The Jury System and the Ideal of Democracy* (Cambridge, Mass., 2000); Angela Davis, "Joan Little: The Dialectics of Rape," *Ms. Magazine,* June 1975, https://web.archive.org/web/20020803065202/http://msmagazine.com/spring2002/davis.asp.


AEOLUS

The Chronicle's weekly magazine

77th Year, No. 9 Duke University, Durham, North Carolina Wednesday, September 16, 1981

In the field

PHOTO BY SHELLEY ROTNER

In 1981, eight Duke University students documented their "Summer Work Program," where they worked alongside migrant laborers for ten weeks in eastern North Carolina fields and packinghouses. Duke student Aida Wakil wrote about working with other women. She described in some detail the sexual division of labor and the sexual harassment she experienced while packing cucumbers in a North Carolina distribution center. In speaking of one of the other male workers, she said, "Yeah, I know he is oppressed, too . . . But if he calls me "sweet pussy" one more time I am going to throw a rotten cucumber at him." *Reprinted from Aida Wakil, "What Am I Doing Here?,"* Aeolus: The [Duke University] Chronicle's Weekly Magazine*, Sept. 16, 1981, Rubenstein Library Collection, Duke University.*

drunk, she didn't care what they did to her, whether they all used her or how frequently they used her. When she sobered up[,] she cared enough to complain a little." Possibly

Dr. Lewis's patient, Mary, also visited another local health care worker. Juanita Abston Henderson, a midwife at the Tri-County Community Health Center in Newton Grove, Johnston County, treated six thousand migrant and seasonal farm workers each year. One patient especially "haunted her," she said. She described her to a reporter as a mentally ill nineteen-year-old white girl who was "kept by a crew leader as a camp prostitute." Henderson alleged that the girl's mother, who lived in Florida, sold her at age seventeen or eighteen to the crew leader for $500. When authorities contacted the mother, purportedly she asked, "do I have to give back the $500?" The narratives of the authorities, the reporter, and even the midwife in 1980 vilified her mother instead of demanding justice of the crew leader. The only outcome for the men who had raped her, according to one newspaper reporter, was that medical personnel notified them, as her "sexual contacts," of her sexually transmitted diseases before sending her back to Florida.[23]

Activists and medical workers reported that gonorrhea and syphilis ravaged camps deeply entrenched with sexual slavery. Sister Julianna DeWolf reported that crew leaders organized widespread institutionalized prostitution to satisfy and to keep a firm grip on the male crew. The nun activist referred to employees of the crew boss as "henchmen pimps" who "lured or pushed" women workers into "prostitution." Women confided in DeWolf that crew leaders forced them to live in the camps. Girls of any age suffered. Hazel Filoxsian escaped years of sexual abuse in the orange groves of Florida and the sweet potato fields of Wilson, North Carolina, to become an advocate for farm workers. Filoxsian had spent her childhood in the 1960s working in the fields. At age six she worked in a bean field in Belle Glade, Florida, where she was raped repeatedly by the foreman of the labor camp. By age twenty-one she married, but she could not conceive because of the rapes she had endured as a child. In 1983 she was working in a labor camp in Wilson, North Carolina, when a man named "Mule" decided he wanted her as his "reward." The woman who ran the camp maintained a sex slavery ring to keep "hard working men on the job," Filoxsian claimed. When Mule came to her room at night and attacked her, she shot him in the hand with her .22 and escaped out a window. At the time of her interview in 1990, Filoxsian explained that growers and crew leaders treated farm workers like they were subhuman. She described camps in Florida where workers were held like prisoners behind fences topped with barbed wire. The abuse, slavery, and sexual servitude had not changed in twenty years. "I would go," said Filoxsian to her interviewer, "with some protection, onto any labor camp to prove to you that things have not changed one iota."[24]

Meaningful change in these conditions would require an ingenious interpretation of an outdated involuntary servitude law. Berger and Guinier built their case against Booker, Rollins, and Gibson on a revised set of statutes Congress passed in 1948 to consolidate the federal peonage laws. The 1948 code combined the 1867 Anti-Peonage Act and the 1874 and 1909 involuntary servitude laws into a four-part set of statutes that prohibited selling any person "into any condition of involuntary servitude." These companion statutes

[23] For the Romeo Lewis quotations, see Carroll, "Funds for Migrant Health Just Don't Reach," 1. Barry Jacobs, "Nuns Labor for Liberation of the Poor and Oppressed," *Charlotte (NC) Observer,* Oct. 1, 1979, p. 1B. For the Juanita Abston Henderson quotations, see Doris Cannon, "She's Fighting Battles for Life on the Migrant Front," *Smithfield (NC) Herald,* n.d., clipping, Articles on Farmworkers in North Carolina folder, box 1, Preiss Papers. Farmer, "Haitians without a Home," 10–11.

[24] For the Julianna DeWolf quotations, see Farmer, "Haitians without a Home," 10–11. For the "hard working men on the job" quotation, see Matt Schudel, "Up from the Fields of Shame," *Fort Lauderdale Sun Sentinel,* March 11, 1990, p. 16.

appeared in the Federal Criminal Code as 77-1581 (prohibiting peonage), 77-1583 (prohibiting kidnapping with the intent to hold as a slave or in involuntary servitude), 77-1584 (prohibiting any condition of involuntary servitude), and 77-1582 (prohibiting slavery on sailing vessels). Section 1584 contained the critical definition upon which prosecutors would measure violations against the other sections. While sections 1581–1583 detailed circumstances of slavery, section 1584 established the definition of an illegal holding as "any condition of involuntary servitude." Thus, when prosecutors chose to charge Tony Booker with violating section 1583, they did so based upon the premise that he intended also to violate section 1584. The 1948 code made no mention of sexual violence as a condition of slavery or involuntary servitude; in fact, section 1584 contained no concrete definition at all of what constituted a "holding."[25]

The 1948 code remained weak in two other major respects. First, it did not address the agricultural political economy that operated at the advantage of growers and agribusiness. James Gray Pope argues that U.S. laws, courts, and state regulatory agencies confined federal prosecutors to a modern slavery paradigm steeped in a strictly criminal definition of unfree labor. Adjudication predominantly vilified rogue individuals who transgressed acceptable free market behaviors. Unlike the industrial sector, the agricultural economic system lacked regulations covering workplace problems, such as substandard housing, minimum wage law and sanitation violations, workplace injuries, and pesticide exposure. The agricultural industry's exploitation of farm workers was a nationwide crisis. In western states, farm workers mobilized under the leadership of Cesar Chavez and Dolores Huertas to form the United Farm Workers (UFW). The UFW defended workers' rights through collective bargaining, boycotts, lawsuits, strikes, and community organizing. By the 1980s, UFW influence declined due to external factors and internal disputes, but not before it made an impact on legislation and policy. California passed a Labor Relations Act in 1975 that defended workers against certain unfair labor practices. Except in some Florida campaigns, the UFW had little impact in the nation's Southeast. Not until the 1990s did unions, including the Farm Labor Organizing Committee in North Carolina and the Coalition of Immokalee Workers in Florida, reach into the Southeast agricultural sector. Indeed, during the mid-twentieth century, southeastern growers acted with near impunity. Edward R. Murrow's *Harvest of Shame* on CBS television in 1960 summarized especially well the region's system in one farmer's comment: "We used to own our slaves; now we just rent them."[26]

Growers dodged the 1948 code simply by hiring labor contractors to shield them from federal scrutiny. From 1964 to 1983, federal protections for most agricultural workers rested almost solely in a single law, the Farm Labor Contractor Registration Act (FLCRA, 1964, amended in 1974, 1976, and 1978). Crew leaders (or labor contractors) served as intermediaries between agricultural workers and growers. They transported workers to

[25] The 1948 text makes no mention of sexual assault or sexual abuse. Peonage, Slavery, and Trafficking in Persons, secs. 1581–88, 62 Stat. 772–773 (1948); Cook, "Involuntary Servitude," 161–62; Carr et al., *Human Trafficking Law and Policy,* 73–74; C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 154.

[26] James Gray Pope, "A Free Labor Approach to Human Trafficking," *University of Pennsylvania Law Review,* 158 (no. 6, 2010), 1854–58; Matthew Garcia, *From the Jaws of Victory: The Triumph and Tragedy of Cesar Chavez and the Farm Worker Movement* (Berkeley, 2012), 1–11, 27–31; Agricultural Labor Relations Act, 1975 Cal. Stats. 3d Ex. Sess., chap. 1, sec. 1. Susan L. Marquis, *I Am Not a Tractor! How Florida Farmworkers Took on the Fast Food Giants and Won* (Ithaca, 2017), 3–9, 20–25; Patrick O'Neill, "Union Leader Brings Organizing Campaign to Cucumber Pickers," *National Catholic Reporter,* July 4, 1997, p. 12. For the "we used to own our slaves" quotation, see Edward R. Murrow, *Harvest of Shame,* prod. David Lowe and Fred Friendly, *CBS Reports* (CBS, Nov. 25, 1960).

job sites, supervised them, paid them, furnished housing, supplied meals, and collected room and board. The FLCRA provided certain protections such as requiring registration and issuing licenses to contractors. The FLCRA also required contractors to provide workers with contracts disclosing the type of work they would be doing and their pay. Crew leaders needed to present proof of insurance, meet housing standards, and provide detailed pay stubs. The Wages and Hours Division, established by the 1938 Fair Labor Standards Act (FLSA) had few powers except to levy fines or revoke licenses of bosses who failed to pay minimum wage or social security and unemployment taxes, or refused to post disclosures about work, meals, and housing. If any wrongdoing was uncovered, growers enjoyed impunity while crew leaders might suffer a slap on the wrist.[27]

Public outcry over *United States v. Booker* and other cases prompted criticism of the statutes that indemnified growers and that created the idealized free market system in which the nation's agricultural industry operated with little employment oversight. During a 1982 congressional hearing on farm worker abuse, executives from the Farmworker Justice Fund identified Tony Booker as a worst-case example of exploitation. Their report, "Bitter Harvest: The Continuing Exploitation of Farmlabor in the United States, 1974–82," stated that the law indemnified growers who were nonetheless complicit in exploitation and abuse. "The connections between growers, the contractors, and the violations of law is plain, systematic, and purposeful," the report read. Growers arranged margins so narrow that contractors were encouraged to cheat workers to make money. Additionally, growers year after year hired the same contractors known to cheat and abuse workers. "Attempts to bring these contractors to justice are met with fierce resistance by employers." In the example of Booker, upon his conviction he posted an appeal bond and resumed work with the same growers in eastern North Carolina. "Who do you suppose hired him?" the report's writers incredulously inquired, "Is there any law but FLCRA which would penalize an employer for hiring Tony Booker?" Under the FLCRA the contractor always becomes the "fall guy," the report continued, because the law scrutinizes only labor contractors. "Even growers who are covered by FLCRA for violations," the report concludes, take refuge in court in the oft-repeated claim that "the crew chief is the one who is guilty."[28]

In addition to these shortcomings, the courts had also enfeebled the 1948 code by making it virtually impossible to prove involuntary servitude, whether sexual or otherwise. In *United States v. Shackney* (1964), the Second Circuit Court of Appeals defined involuntary servitude very narrowly. The lower court had convicted a farmer named David Shackney for the involuntary servitude of a Mexican family on his chicken farm by threatening to deport them. The lower court, citing *Ingalls,* had ruled that the holding of the family was illegal based upon psychological and economic forms of intimidation. The

[27] "Statement of Robert B. Collyer, Deputy Under Secretary of Labor for Employment Standards, Accompanied by William Otter, Administrator, Wage and Hour Division, Employment Standards Administration and Craig Berrington, Associate Deputy Under Secretary of Labor for Employment Standards," in *Hearing on the Migrant and Seasonal Agricultural Worker Protection Act,* by U.S. Congress, House of Representatives, Committee on Education and Labor (Washington, 1983), 43–54. "Statement of William Beardall, Staff Attorney, Texas Rural Legal Aid; Mark Schacht, Executive Director, Farmworker Justice Fund; and Garry B. Bryant, Attorney, David, Seigal, and Gugino," *ibid.*, 60–66, 94–99; C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 151. Fair Labor Standards Act, 52 Stat. 1060 (1938).

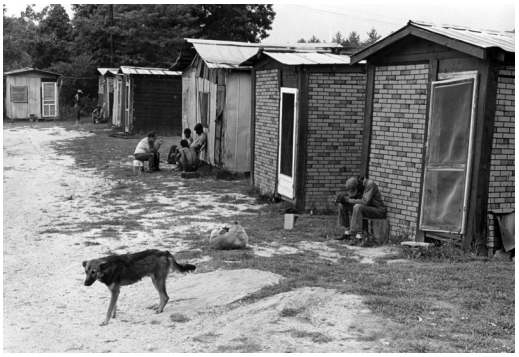
[28] "Statement of William Beardall, Staff Attorney, Texas Rural Legal Aid," 60–66. "Bitter Harvest: The Continuing Exploitation of Farmlabor in the United States, 1974–82," in *Hearing on the Migrant and Seasonal Agricultural Worker Protection Act,* by Committee on Education and Labor, 65–110, esp. 94, 95, 97. "Prepared Statement of Vincent Trivelli, Subcommittee Counsel," in *Oversight Hearing on Peonage among Agricultural Workers,* by U.S. Congress, House of Representatives, Committee on Education and Labor (Washington, 1984), 2–6.

appeals court overturned this decision by rewriting the definition of "holding." Involuntary servitude occurred only by a holding in law (such as imprisonment for debt) or by physical force. "A holding in involuntary servitude," stated the court, is defined as a "superior and overpowering force, constantly present and threatening." *Shackney* set the bar so high that prosecutors would need to provide evidence of physical violence or physical restraint, such as immediate imprisonment or the presence of armed guards. Psychological or economic intimidation did not constitute a "holding" in involuntary servitude.[29]

By the 1970s, government prosecutors (and agricultural laborers) faced a grim reality. Unless they could present the court with proof of shackles and chains, almost any involuntary servitude case was a waste of time. However, reports of brutal beatings of migrant workers in both Florida and North Carolina forced prosecutors to act. To convict especially violent labor contractors, the Civil Rights Division employed a legal doctrine known as "a climate of fear," an environment of terror caused by threats or beatings. This language drew from the work of the prominent historian Benjamin Quarles. In *The Negro in the Making of America* (1964), Quarles argued that the state enforced slavery by creating a climate of fear among the enslaved through the spectacle of public punishment of recaptured escapees. Prosecutors invoked Quarles's study in their prosecution of rogue contractors in Florida and North Carolina. The first case, *United States v. Bibbs* (1977), involved labor contractors who viciously beat migrant workers in North Carolina and Florida when they attempted to escape. A "climate of fear," prosecutors argued, forced other migrant workers to remain at the camp for fear of physical violence. In a victory for the government, the federal appeals court the next year held that "a defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape."[30]

Bibbs had a profound impact on Berger, a junior attorney who helped prosecute it. "In the first trial [Bibbs]," Berger explained at a recent symposium, "I was the one managing the witnesses, keeping track of the victims, making sure they come to court." Berger recalled that his partner, U.S. Attorney Michael Johnson, invented the term *climate of fear* as part of his "excellent closing argument that led to the conviction in that case." Two years later, Berger assumed his role as the first Involuntary Servitude and Slavery Coordinator under the direction of Dan Rinzel, chief of the Criminal Section, Civil Rights Division. The role empowered him to direct the investigation and prosecution of migrant slavery cases. In this capacity, Berger attempted to expand the "climate of fear" doctrine. A Department of Justice crackdown on exploitative agricultural labor ensued and resulted in several defining cases. All involved Florida labor contractors who worked for North Carolina growers. The court in *United States v. Booker* (1981) held that evidence of a defendant's intent by kidnapping, violence, and threats of violence also reinforced a "climate of fear," even where no actual slavery or peonage occurred. This ruling paved the way for the *United States v. Harris* (1983), in which the court held that actual and threatened physical violence satisfied the involuntary servitude statute as defined by *Shackney*. *United States v. Warren* (1985) further broadened the definition of involuntary servitude to encompass "various forms of coercion" and the court also stated that "the use, or threatened use, of

[29] *United States v. Shackney,* 333 F.2d 475, 486 (2d Cir. 1964); Carr et al., *Human Trafficking Law and Policy,* 56.
[30] C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 155; Benjamin Quarles, *The Negro in the Making of America* (New York, 1964); *United States v. Bibbs,* 564 F.2d 1165, 1168 (5th Cir. 1978).



In 1979, Dr. John Moses, a physician at Duke University, researched rural health at farm worker housing camps. This photograph, taken near Asheville, North Carolina, represents typical farm worker housing. Witnesses in *United States v. Booker* who worked in the eastern part of the state usually lived in barracks, except Leola Stewart and other women, who were assigned their own small "private" cabin. *John Moses Photographs, box 2, Rubenstein Library Collection, Duke University. Courtesy of Dr. John Moses.*

physical force to create a climate of fear is the most grotesque example of such coercion." In the end, however, none of these cases acknowledged sexual abuse as a form of "overpowering force" or the terror of sexual violence as a component of a "climate of fear."[31]

This long history of agricultural exploitation and indifference in the law to sexual violence in slavery framed Leola Stewart's testimony when she took the stand in 1980. Stewart, like most women, experienced farm worker violence differently from male workers. Her gendered experience of violence by its very nature involved sexual assault. An experienced farm worker, she understood the dangers she faced and employed strategies to mitigate the threat. Her strategies involved surrounding herself with people she trusted. On the day of her recruitment, Stewart boarded a blue van and casually observed the other passengers, mostly men she did not know. She knew only two other people, her friends Russell and Mary Ann. Yet she could not rest her personal safety solely on her friends. Seated behind her was a man, short but muscular and slightly younger than she. He was leaning against the window, listening to the chatter on the bus. When she turned to look at him, she caught his eye.

"Hey, what's your name?" she asked him.

"Darryl," he responded.

"You got any other names?" she asked. Farm workers and crew chiefs often took aliases and responded to nicknames. She could tell a lot about a man by his nickname.

"No, just Darryl. Darryl Eugene Daniels." Momentarily, he turned away. Stewart considered Daniels's response. He seemed truthful. After all, who would pick the name Eugene as an alias? Stewart and Daniels chatted and flirted until they reached North Carolina. When they arrived at the migrant camp, Stewart was assigned a room of her own, a double-edged sword in a migrant camp. A single room only pretended privacy. She had

[31] "Prosecuting Slavery in a Time of Freedom," panel moderated by Karin Zipf, Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University, April 18, 2019, https://www.youtube.com/watch?v=ZBEgjzTyc0c; *United States v. Booker,* 655 F.2d at 562; *United States v. Harris,* 701 F.2d 1095 (4th Cir. 1983); *United States v. Warren,* 772 F.2d 827, 832, 833–34 (11th Cir. 1985), cert. denied, 475 U.S. 1022 (1986); *United States v. Mussry,* 726 F.2d 1448, 1450 (9th Cir. 1984), cert. denied, 469 U.S. 855 (1984); James Henry Haag, "Involuntary Servitude: An Eighteenth-Century Concept in Search of a Twentieth-Century Definition," *Pacific Law Journal,* 19 (no. 3, 1988), 885–88, 897–901.

no idea who else might have a key to the door. Daniels was headed to the barracks with the other men, but Stewart called him over and asked him to be her "boyfriend." Daniels readily agreed. Stewart had made a calculated compromise. She would share her bed with her new crush. In return, she expected him to protect her, but would he?[32]

Black feminists have coined terms, including the *politics of respectability,* the *rhetoric of purity,* and the *struggle for sexual sovereignty* to describe numerous strategies that twentieth- and twenty-first-century Black women have employed to survive the precarity of sexualized working environments. In 1994 Evelyn Brooks Higginbotham first used the term *politics of respectability* to explain Black Baptist women's embrace of Progressive Era reforms such as temperance, hygiene and piety, sexual purity, and domesticity to "uplift" the race. Other scholars have shown how the "politics of respectability" and the "rhetoric of purity" placed inordinately restrictive demands on young women. Since then, scholars have begun to explore the rejection by some Black women of rigid respectability politics in favor of sexual self-determination. Kaisha Esty's research demonstrates how working-class Black women in the late nineteenth-century South redefined their sexual respectability by generating "a critical framework around sexual sovereignty as a natural right" and shedding "light on the widespread problem of sexual harassment and abuse in the work environment."[33]

Esty's study on "sexual sovereignty" and Elsa Barkley Brown's work on race and sexual harassment offer the best historical frameworks for understanding Leola Stewart's predicament. Stewart, a sexually active Black woman and experienced migrant worker, had accepted Tony Booker's offer of employment. However, she refused to make the journey alone. The trip to North Carolina required her to build a three-layered fire wall for protection that she knew the law would not provide. First, she accepted a job with men with whom she had some familiarity. She might have worked for Booker in the past, and she knew J. D. Rollins from high school. Second, she secured the company of her friends, Mary Ann and Russell, on the ride to North Carolina. She stayed as close to them as possible short of joining them in their own room. Third, she established a monogamous relationship with Daniels, a good-hearted soul who joined her in her room and offered her protection when Mary Ann and Russell did not. Her skepticism of the law, her awareness of human behavior, and her experience in a racist and sexualized society taught her that just one or two layers in the fire wall would not suffice.

Within a few days, Stewart was entrapped by Booker's web of debt peonage. Without any cash, she charged her meals at the steeply priced camp commissary. One day Booker called the entire crew out into the yard. "Y'all we got to have a little talk. Jennie Mae here has gone to collect your food stamps, but y'all ain't getting 'em because you owe me for the days you been here," Booker said. Stewart stepped forward. "Tony, that's not right," she said. "The food stamps are allotted to the people, the workers. They're supposed to get the food stamps and you should give them to them." Booker bristled in indignation.

[32] "Testimony of Leola Stewart," II, pp. 219–41.

[33] Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880–1920* (Cambridge, Mass., 1994), 185–87; Christina Simmons, "'I Had To Promise . . . Not to Ask "Nasty" Questions Again': African American Women and Sex and Marriage Education in the 1940s," *Journal of Women's History,* 27 (Spring 2015), 112–13; Tanisha C. Ford, "SNCC Women, Denim, and the Politics of Dress," *Journal of Southern History,* 79 (Aug. 2013), 626–27. Kaisha Esty, "'You had the impudence to offer a decent woman like myself a dollar': Black Women, Sexual Assault and the Struggle for Sexual Sovereignty in the Late 19th Century," paper presented virtually at the annual meeting of the Organization of American Historians, April 16, 2021; Esty, "'I Told Him to Let Me Alone, That He Hurt Me.'"

"Shut up, woman, you ain't nothin' but a troublemaker," he angrily replied. "Listen up, if any a y'all leave owing me money, I'm going to kill you. Anybody leave this camp and owe me my money, I'm going to get in my truck and I'm going to go and find them." Booker looked directly at Stewart. "And when I find them, I'm going to ask them, do you have the money? And if they say no, I'm going to take my gun out and I'm going to say 'pow!'" Booker pointed his finger as if he were cocking a gun. Here, Stewart's account fit neatly into federal prosecutors' narrative of a "climate of fear."[34]

Tony Booker and J. D. Rollins terrified Stewart. They knew exactly where she and her friends lived. When they had signed up to work, the crew leaders had parked in the street in front of the house while Stewart and Mary Ann packed their bags. She fully believed that he would make good on his promise and hunt her down. But Tony Booker was a man full of surprises. Later that afternoon, Booker sent for the workers to board the van. He gave each worker $5.00 in food stamps and allowed them to enter a store, two-by-two. Stewart knew her allotment exceeded $5.00, but she had won this first battle and opted not to press her luck.[35]

She waited until Friday to ask for her wages. "Tony, I worked two days. Here it is a Friday. I think, you know, I should get a little some of my money because I need some little personal items." Stewart waited for Booker to respond. "I'm busy," he said, and walked away. Stewart followed him. She pressed on. "I'd like my money." Her voice was insistent. Booker turned his back to her. He reached in his wallet and pulled out a twenty-dollar bill. He threw it on the floor and walked away without turning around. It was humiliating for Stewart to have to pick up the money, but she retrieved it and then asked Rollins to drive her to the store. She bought some personal items and one bottle of liquor. That night, she and Daniels invited three other couples to their room to drink the liquor and to listen to music on an old record player.[36]

Tony Booker knocked on the door. Daniels answered. Booker had a shotgun in his hand. "I want to talk to you. You all owe me money," Booker said to Daniels. "Stay here, Leola," Daniels instructed. He left the room and followed Booker to the yard. Stewart waited. Daniels was gone so long that she decided to leave the room to look for him. She found Daniels and Booker in a heated argument in the yard. Booker still held the shotgun. Fearing that he might hit or shoot Daniels, she pushed in between the two of them. Before Daniels could protest, Booker raised his free hand and smacked Stewart, knocking her to the ground. Daniels picked her up. "Leola," he started, but before he could finish, Booker slapped her down again. Once again, Daniels picked her up. "Leola," he whispered. "Get back to the room. We're leaving here tonight." It seemed that she had picked the right partner. She had bet her safety on Daniels, and he had just pledged to help her escape.[37]

A year later Stewart recounted these events in the courtroom. She had not yet mentioned the sexual assault. Booker, Rollins, and Gibson sat only feet away. She sensed them glaring at her from the defense table. She could feel the fear welling up inside of her. Everyone else in the courtroom sensed it, too. Speaking slowly and deliberately, she recounted the events. "We went back to our room and it was getting later on over in the evening and Calvin, J. D., [Tony Gibson Jr.] were walking around the camp. Checking the rooms

[34] "Testimony of Leola Stewart," II, pp. 221–26.
[35] *Ibid.*, 222, 231–32, 241.
[36] *Ibid.*, 223–24.
[37] *Ibid.*, 237–38; "Testimony of Michael Anthony Neal," I, pp. 200–201; "Testimony of Joseph Romeo," I, pp. 136–38.

and everything." Some of the tension in the courtroom emanated from whether the judge would allow her to proceed. No case had yet tested sexual assault as a form of violence that created a "climate of fear."[38]

Stewart continued her testimony. "There was a knock on our door, on my door. We had a wooden door and then a screen with a latch on it. Darryl opened the door to see who it was. There was J. D., there was [Tony Gibson Jr.] and there was Calvin. They snatched the screen door open. They was going to come in there. And I hate to say that and there's ladies in the place and I'm a Lady, but they just went on to say what they were going to do to me, sexually, like." At this point, Tony Booker's attorney loudly objected. "We expressly object to this. The testimony is outside of what is required," he argued. He did not want the jury to hear a single utterance about sexual assault or threats of it. The judge called the attorneys to the bench.[39]

The attorneys gathered at the bench and spoke in whispered tones. Berger explained that Stewart's testimony was indeed relevant. Her account helped prove a "climate of fear." The crew leaders had assumed a position of overwhelming and superior force over the workers and could choose to exercise that power any way they wanted. Stewart's account, he explained, was necessary evidence to establish intent to enslave by the creation of a "climate of fear." Prosecutors strongly suspected that Judge Britt might throw out the sexual assault testimony, but Stewart's testimony was so compelling and her experience was so clearly part of the environment of fear that they decided to take the risk. If Judge Britt were to allow the testimony, *United States v. Booker* not only would set a precedent for the "intent to enslave" doctrine but would also for the first time establish sexual assault as contributing to a climate of fear.[40]

Judge Britt dismissed the jury and then continued the discussion with the attorneys at the bench. Booker's attorney loudly refuted the prosecution's argument, intending to sway the judge to dismiss this part of Stewart's testimony as irrelevant. The action she was speaking of, the defense attorney insisted, had occurred in the "privacy of Miss Stewart's own room." By opening the door, Darryl had invited them into the room. The defense cast the incident as a private "sexual favor." Didn't Stewart say that she knew J. D. Rollins in high school, and didn't she admit to having a romantic relationship with Darryl Eugene Daniels? The defense needed to persuade the judge that Stewart's motivation at the camp was sexual and that Booker's men were only responding to invitation. To suggest that they had threatened sexual assault was "highly prejudicial" against all three clients, but especially against Tony Booker, who was not present at the incident.[41]

Berger disagreed. A sexual threat constituted assault like any other. Stewart had physically pointed out at least one of the defendants in the courtroom, J. D. Rollins, as one of her attackers. Tony Booker was not present, but neither had he been at the beating of Walters and Romeo. He had aided and abetted the assault on Stewart just as he had aided and abetted the kidnapping, and the assault and battery on Romeo and Walters. The "climate of fear" doctrine must extend to the threat of sexual assault, he firmly argued. "Disallowed," Judge Britt responded suddenly. The probative value in Stewart's testimony, Britt ruled, "is substantially outweighed by the danger of unfair prejudice to the defendants." Judge Britt had agreed with the defense. He added that in the courtroom

[38] "Testimony of Leola Stewart," II, p. 226.
[39] *Ibid.*, 226–28, 232.
[40] *Ibid.*, 227–29.
[41] *Ibid.*, 228–30.

she had positively identified only one of her three attackers (J. D. Rollins), which served as another reason to disallow her claim.[42]

Stewart's hesitancy on the stand suggests that she had likely expected little protection from the law. Even in her role as a witness on the stand, surrounded by court officials and law enforcement, she exhibited extreme discomfort and distress about testifying against Booker. Police and state protection against violence did not apply to Black women in the same way as it did for white women. Kali Nicole Gross explains that this exclusionary nature of the law is a legacy of the "politics of protection," embedded in the historical realities of slavery and Jim Crow, whereby Black women were not entitled to the law's protection, though they could not escape its punishment. For example, in the American South, colonial and antebellum rape laws did not acknowledge the protection of Black women as victims. Further worsening Black women's subjugation, Gross explains, "ruinous myths" exacerbated beliefs about Black women's "libidinous sexual proclivities." She notes that Black women, denied the law's safeguards, devised strategies of survival. Black women, she argues, "would have to create those circumstances for themselves, which often placed them on the receiving end of harsh sentences from the same legal system that failed them." These old racial hierarchies persisted after the Civil War in the form of sexual assault that perpetrators described as consensual because of Black women's presumed deviance.[43]

What happened next at the trial bears out Gross's findings. Judge Britt called the jury back into the courtroom. He explicitly warned the defense that in banning Stewart's testimony about the sexual assault, no party in court could raise her sexual history. Britt's order comported with rule 412 of the Federal Rules of Evidence (passed in 1978), which restricted introduction of a rape victim's past sexual history. The defense, however, ignored Britt's warning and proceeded to sexually malign Stewart. The trial transcript is not clear about the demographic composition of the jury. The defense's strategy of smearing Stewart nonetheless seemed calculated to appeal to an all-white or mostly white male jury. With frightening ease, the defense leaned on prevailing biases against working-class Black women by ignoring the judge's order and questioning Stewart on her sexual history. Neither the prosecution nor the judge objected to the defense attorney's effort to discredit Stewart as a witness. The exchange on the stand took place as follows:

"Besides sleeping with Darryl while you were there, did you also sleep with Micheal Neal?"

"No."

"Did you sleep with Freddie Hollaway [sic]?"

"No."

"Did you sleep with J. D. [Rollins]?"

"No."

"You only slept with Darryl the whole time you were there?"

"That's right. Yes sir."[44]

This attempt to smear Stewart as promiscuous raises a question: Why would the jury care that Leola Stewart was sleeping with anyone at the camp when the judge had already

[42] *Ibid.*, 229, 236.

[43] *Ibid.*, 238–39, 241; Kali Nicole Gross, "African American Women, Mass Incarceration, and the Politics of Protection," *Journal of American History,* 102 (June 2015), 25–28, esp. 26.

[44] "Testimony of Leola Stewart," II, pp. 237, 245–50.

disallowed the sexual assault testimony? The defense likely employed this line of questioning to trigger the jury's implicit bias. The attorney for the defense most likely suspected Stewart had not had sex with anyone but Darryl at the camp. Yet he sought to leave the jury with the idea that Stewart was "unchaste," a common law designation for a woman who was not "virtuous" and thus presumed unlikely to resist uninvited sex. He did not stop there. He also questioned her about a rumored love triangle between Stewart, Mary Ann, and Russell. Here, Berger objected, but Britt allowed the questioning to proceed, effectively facilitating the smear. Stewart adamantly testified that the accusation was not true. With characteristic acuity, Stewart pointed out that generally she got along with Mary Ann, but after a few drinks her friend sometimes slipped into a state of jealousy and accused of her of having affairs with Russell. The sexualized and racist tropes haunted Stewart no matter how she testified, and no matter with whom she interacted, including her friend Mary Ann.[45]

Federal records do not indicate how the jury responded to the defense's racist and sexist tactic. We do know that prosecutors won their conviction of the defendants. On August 21, 1980, the jury found all three defendants guilty of aiding and abetting the kidnapping of Gary Walters and Joe Romeo with the intent to enslave them. Judge Britt sentenced Tony Booker and J. D. Rollins to ten years in prison. The court sentenced a third defendant, Tony Gibson Jr., to six-months imprisonment and four years probation, on account of his youth.[46]

Yet even after the trial the dynamics of race and sex continued to operate against Leola Stewart. In a statement he wrote in prison, J. D. Rollins pleaded for an appeal on the grounds that the witnesses had lied. Romeo and Walters, he said, lied about being kidnapped; other witnesses lied about the debt, the presence of weapons, and Booker's threat. Leola Stewart not only lied, he argued, but she was the real troublemaker in the camp. He claimed she had jumped bond, that "she was a hell raiser," and that "she put stuff into other peoples heads." She had unfairly accused him of rape, he claimed. He described the sexual assault as Stewart accusing "people of sleeping with her . . . and then her boyfriend, a short muscular Black dude, would go after people with a knife. I would try to stop him." He said that she lied about Booker hitting her. The battery she testified about, Rollins claimed, had occurred at the hands of her boyfriend, not Tony Booker. "Leola's old man knocked her down three times and stomped her. No one else ever knocked her down." Rollins, acutely aware of the vulnerability borne by a Black woman agricultural migrant worker, leveled the same racist tropes against her in a bid to overturn his conviction.[47]

Rollins leaned on these tropes because he understood Leola Stewart's tenuous legal position. In framing a Black woman in this way, he hoped to turn the "politics of protection" to his advantage. His strategy comports with Black feminists' critiques of Black men who turn on Black women. Sarah Haley argues that Black women faced a "carceral terror," a tool of white supremacist control by state violence that compounded the intraracial abuse they faced in their own homes and communities. Racist applications of the law by police, the courts, and the carceral system buttressed a state terror in Black communities

[45] *Ibid.*, 237, 247–49; J. Alexander Tanford and Anthony J. Bocchino, "Rape Victim Shield Laws and the Sixth Amendment," *University of Pennsylvania Law Review,* 128 (no. 3, 1980), 544–602.

[46] Trial transcript, I, pp. 516–17, *United States v. Booker,* E.D.N.C. Crim. R. 80-19-CR-5, Records of District Courts of the United States; "Criminal Docket of Tony Booker," *ibid.*; "Criminal Docket of J. D. Rollins," *ibid.*; "Motions before the Honorable W. Earl Britt," Sept. 3, 1980, *ibid.*, I, pp. 32–33. *United States v. Booker,* 655 F.2d at 562.

[47] "Appeal of J. D. Rollins to the U.S. Court of Appeals, Fourth Circuit: Record on Appeal," Oct. 17, 1980, *United States v. Booker,* box 1, E.D.N.C. Crim. R. 80-19-CR-5, Records of District Courts of the United States.

that prevented Black women from seeking justice in intraracial intimate violence. Black women could not escape the "politics of protection," even at home and in their own communities. As former classmates, Rollins and Stewart shared a communal, if not intimate, relationship. By claiming that Stewart had perjured herself, Rollins hoped that the court would not only reverse its decision and release him but also send authorities after Stewart.[48]

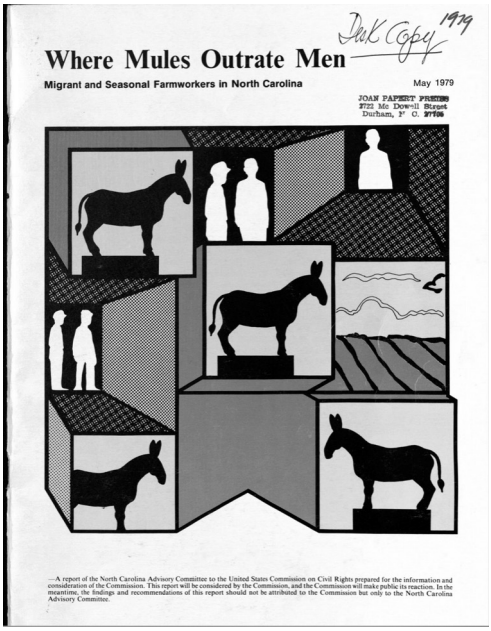
Indeed, Rollins rested his appeal to the Fourth Circuit in part on his complaints about Stewart. Booker and Rollins filed an appeal to overturn the convictions on the grounds that because the farm workers had lied, no evidence existed that slavery had occurred. While they awaited their appeal, Judge Britt released the two men on bond, at which point farm worker advocates discovered them continuing to employ farm workers for the same growers. The Fourth Circuit nonetheless affirmed the convictions. Citing C. Vann Woodward, John Hope Franklin, and James L. Roark, renowned historians of slavery and segregation, the Fourth Circuit affirmed the intent of Congress to fully eradicate all forms of involuntary servitude, whether state-sanctioned slavery or private forms of involuntary servitude. It also stated that the doctrine of "a climate of fear" was compatible with *Shackney*. "Just the sort of violence and threats of violence prevalent in this case, which infringe the statute," stated the Fourth Circuit, was sufficient to sustain a felony prosecution.[49]

The decision in *Booker* thus reinforced masculinist narratives of slavery and involuntary servitude by circumscribing the scope of a "climate of fear" in gendered terms. Despite Stewart's damning evidence, Judge Britt would not consider the range of conditions that produced fear in women. To be sure, the conviction established an unprecedented linkage of the doctrines "intent to enslave" and a "climate of fear." Yet only masculine demonstrations of physical violence, threats of physical harm, and peonage were admissible. Despite the success it represents on behalf of labor advocacy, *Booker* upholds a masculinist narrative of farm worker violence, insensitivity to women farm worker experiences, and subliminal endorsement of racist stereotypes of Black women. Even in the face of clear testimony, the federal trial court in 1980 refused to acknowledge sexual violence or threats of sexual assault as contributing to a climate of fear.

Nearly a decade passed before the courts recognized sexual violence as a component of involuntary servitude. Feminist theorists and legal analysts first applied gendered analysis to the language of the Thirteenth Amendment in the 1970s. These scholars stressed that involuntary servitude and slavery includes sex violence, forced prostitution, and domestic abuse. In her 1979 landmark book, *Female Sexual Slavery,* Kathleen Barry argued that sexual exploitation is a political condition that serves as the foundation of women's subordination and the basis of gender discrimination. Two federal circuit court of appeals cases, *United States v. King* (1988) and *United States v. Sanga* (1992), established precedents by defining forced sex and forced prostitution as involuntary servitude. In the early 1990s, two influential articles, both citing Barry's book, called for a gendered application of the Thirteenth Amendment, particularly in terms of sexual violence. In 1992, Joyce

[48] Haley, *No Mercy Here,* 2–3; Gross, "African American Women, Mass Incarceration, and the Politics of Protection," 26–28.

[49] Trial transcript, II, pp. 516–17, *United States v. Booker,* E.D.N.C. Crim. R. 80-19-CR-5, Records of District Courts of the United States. "Criminal Docket of Tony Booker," *ibid.*; "Criminal Docket of J. D. Rollins," *ibid.*; "Motions before the Honorable W. Earl Britt," I, pp. 32–33. *United States v. Booker,* 655 F.2d at 567. "Bitter Harvest," 97.



Federal antislavery cases in the late 1970s spurred the North Carolina Advisory Committee to the North Carolina Civil Rights Commission to study and publish a report on the condition of farm workers in the state. In May 1979 the commission published *Where Mules Outrate Men: Migrant and Seasonal Farmworkers in North Carolina*. Staff Director Louis Nuñez called the deplorable conditions of the 152,000 farm workers in the state "grievously apparent." He urged state and federal agencies to step up enforcement efforts. *Cover reprinted from* Where Mules Outrate Men: Migrant and Seasonal Farmworkers in North Carolina *(Washington, 1979), box 23, c.1, Joan Preiss Papers, Rubenstein Library Collection, Duke University.*

McConnell defined domestic abuse as creating involuntary servitude. One year later, Neal Katyal defined forced prostitution as involuntary servitude, as well as concluding that "government officials who fail to enforce laws against pimps are acting unconstitutionally." By 1993, the idea that the Thirteenth Amendment's prohibition against involuntary servitude encompassed cases of domestic abuse and sexual violence had entered the mainstream.[50]

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), but its enforcement has yielded inconsistent results in terms of protecting women. On the one hand, the TVPA advanced the 1948 involuntary servitude statutes by expanding definitions of force to include sexual violence and psychological coercion. It defines force, threat of force, fraud, or coercion to include the act of "aggravated sexual abuse or the attempt to commit aggravated sexual abuse." The 2000 act also shifts forced prostitution from a commerce clause violation to a breach of the Thirteenth Amendment. It further specifies

[50] Kathleen Barry, *Female Sexual Slavery* (Englewood Cliffs, 1979), 4–11. *United States v. King,* 840 F.2d 1276 (6th Cir. 1988); *United States v. Sanga,* 967 F.2d 1332 (9th Cir. 1992). Joyce E. McConnell, "Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment," *Yale Journal of Law and Feminism,* 4 (no. 2, 1992), 208–9. Neal Kumar Katyal, "Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution," *Yale Law Journal,* 103 (Dec. 1993), 792–826. MacKinnon, *Women's Lives, Men's Laws,* 156–57, 441. Pamela Scully and Kerry Ward, "Gender and Coerced Labor," in *Cambridge World History of Slavery,* vol. IV: *AD 1804– AD 2016,* ed. David Eltis et al. (Cambridge, Eng., 2017), 562–82; Kevin Bales, "Contemporary Coercive Labor Practices, Slavery Today," *ibid.*, 655–78.

stiff criminal penalties for anyone who commits or benefits from forced commercial sex acts or the sexual trafficking of children, where evidence of force is not required. Other provisions offer human rights protections in the form of victims' services. The TVPA, argue Luis C.deBaca and Griffin Thomas Black, "is a strong, modern anti-slavery law" that reflects the longer narrative of freedom in the United States.[51]

On the other hand, enforcement efforts chiefly prioritize immigration and international sex trafficking. Scholars have criticized TVPA enforcement as downplaying labor rights. While sex trafficking most certainly required attention, the focus on this problem has almost completely obscured the issue of modern slavery and involuntary servitude. According to the U.S. State Department's 2019 *Trafficking in Persons Report,* 95 percent of antitrafficking prosecutions (208 of 220) and convictions (454 of 475) in fiscal year 2019 involved sex traffickers. In the last twenty years, two dominant patterns of enforcement have emerged. First, states and agencies have gravitated toward immigration, border security, and deportation solutions. Once the province of the Departments of Justice and Labor, modern slavery prosecutions and enforcement efforts are today predominantly undertaken by Immigration and Customs Enforcement and the State Department. Second, antitrafficking campaigns prioritize antiprostitution enforcement solutions rooted in a racialized fear of female sexuality. Trafficking thus focuses on children sold into prostitution, not on women who may have engaged in sex work or who had active sex partners and were later abused or exploited, sexually. Today, a Helen Marshall Spencer or Leola Stewart caught in the snare of a crew leader such as Tony Booker might initially find hope in the law's language because it has expanded to include aggravated sex abuse. Yet chances remain slim that any agency would bring forth her case or, for that matter, the case of any male laborer. Imagine a pendulum of enforcement where sex trafficking and labor trafficking each represent a pole. It is ironic to argue that the pendulum has swung too far in the direction of sex-trafficking enforcement, where once women received few protections, if any. Yet historians must do the work of recognizing and correcting masculinist narratives by exposing damaging gendered and racist tropes as the first of many steps in moderating the pendulum's swing.[52]

[51] Congress passed the Trafficking Victims Protection Act after the U.S. Supreme Court reversed Department of Justice efforts to expand the definition of "holding" to include psychological coercion. See *United States v. Kozminski,* 487 U.S. 931, 952 (1988); Victims of Trafficking and Violence Protection Act, 22 U.S.C. 78 (2000); Victims of Trafficking and Violence Protection Act, 114 Stat. 1464–1548 (2000); and Peonage, Slavery, and Trafficking in Persons, secs. 1581–88, 62 Stat. 772 (1948). C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 128–30, 158–61.

[52] U.S. Department of State, *Trafficking in Persons Report: June 2020* (Washington, 2020), 515–16, https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf; Jennifer K. Lobasz, "Beyond Border Security: Feminist Approaches to Human Trafficking," *Security Studies,* 18 (June 2009), 319–21; Jennifer K. Lobasz, *Constructing Human Trafficking: Evangelicals, Feminists, and an Unexpected Alliance* (London, 2019), 2, 29–31, 216–17; Ann Gallagher, "Trafficking, Smuggling and Human Rights: Tricks and Treaties," *Forced Migration Review,* 12 (Jan. 2002), 25–28; "Counteracting the Bias: The Department of Labor's Unique Opportunity to Combat Human Trafficking," *Harvard Law Review,* 126 (Feb. 2013), 1012–13. Dina Francesca Haynes, "Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act," *University of St. Thomas Law Journal,* 6 (Fall 2008), 91–92; C.deBaca and Black, "Development of U.S. Anti-Slavery Law," 161; Prabha Kotiswaran, "The Sexual Politics of Anti-Trafficking Discourse," *Feminist Legal Studies,* 29 (Feb. 2021), 43–44, 515–16; Laura Admans, "Analyzing the Effectiveness of the Trafficking Victims' Protection Act of 2000" (M.A. thesis, California State University, Long Beach, 2015), 2–5, 32–38, 55.