

Spring 2015

## Broken Promises: Rape, Race, and the Union Army

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BROKEN PROMISES: RAPE, RACE, AND THE UNION ARMY

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A Thesis

Presented to

The Graduate Faculty

Central Washington University

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In Fulfillment

of the Requirements for the Degree

Master of Arts

History

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by

Kellie Janelle Hedgers

May 2015



ABSTRACT

BROKEN PROMISES: RAPE, RACE, AND THE UNION ARMY

by

Kellie Janelle Hedgers

May 2015

Through the use of Union courts-martial records, this paper will examine the ways in which black women who had been assaulted by white men were denied justice in military courts. Although the Union Army was often perceived of as an army representing freedom and higher moral purpose, the court martial records reveal a darker side. They reveal that sometimes black women found no safety behind Union lines; rather, they found themselves victims of sexual violence by white men and had little recourse to justice. Although outwardly the Union Army was devoted to abolishing slavery, the inner workings of its courts reveal that black women, supposedly protected by Lincoln's Lieber Code, were often sexually dehumanized by Union soldiers and military judges.



## ACKNOWLEDGEMENTS

Dedicated to Daniel Herman. Without him, this thesis never would have been written.





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## CHAPTER I

### INTRODUCTION

In July of 1863, Private Robert E. Cropps of the 2nd Maryland Volunteers was sentenced to five years of hard labor on government works and to be dishonorably discharged from the service. Cropps had seized a slave girl named Sarah, over the objections of her mistress, and raped her in full sight of several witnesses. A soldier who was present said that he had tried to stop Cropps, but Cropps threatened to shoot him if he intervened. After he released Sarah, Cropps took aim at her with his rifle. If another soldier had not knocked the gun up right as it went off, Cropps most likely would have added Murder to the list of charges against him. The evidence against Cropps seemed to be airtight--multiple witnesses testified to the brutality of his actions, and the Court was convinced. However, because the Court had not been held in the location specified in the order convening the Court, Cropps was released and returned to duty.<sup>1</sup> What does the case of Robert Cropps tell us? It tells us that when a rape victim was nonwhite, military justice could be fickle. Although the military declared that it was dedicated to prosecuting those soldiers that dared to rape civilian women no matter their race, white soldiers who raped black women frequently escaped harsh punishment. In some cases, like that of Robert Cropps, they managed to avoid being punished at all.

President Lincoln, perhaps anticipating the brutality of the Civil War, recognized the necessity of protecting women, both white and black, from the destruction and chaos

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<sup>1</sup> National Archives, RG 153 *Records of the Office of the Judge Advocate General (Army), Court Martial Case Files 1809-1894*, Cropps, Robert E., NN432.

that inevitably follows warfare, and from the predatory urges of soldiers. General Orders No. 100, also known as the Lieber Code, issued by President Lincoln on April 24, 1863, made explicitly clear how Union soldiers were to interact with civilians, particularly women. Section II, Article 37 states that “The United States acknowledge and protect, in hostile countries occupied by them . . . the persons of the inhabitants, especially those of women.”<sup>2</sup> Section II Article 44 declares that “All wanton violence committed against persons in the invaded country . . . all rape, wounding, maiming or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.”<sup>3</sup> Section II, Article 47 further clarifies that “crimes punishable by all penal codes, such as arson, murder, maiming, assaults . . . and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.”<sup>4</sup>

Even before the appearance of the Lieber Code, individual army commanders sometimes took it upon themselves to issue orders regarding how their soldiers were to interact with civilians. On May 16th, 1862, while camped near Fredericksburg, Virginia, Major General Irvin McDowell issued General Orders No. 12. Hearing reports of women being raped by his soldiers, McDowell decided that action needed to be taken. General Orders No. 12 bluntly stated what would happen to men who dared to offer violence to the women of Virginia: “The punishment for rape will be death; and any violence offered

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<sup>2</sup> Yale Law School, “The Avalon Project, General Orders 100: The Lieber Code,” *The Lillian Goldman Law Library*, accessed March 4, 2014, [http://avalon.law.yale.edu/19th\\_century/lieber.asp#](http://avalon.law.yale.edu/19th_century/lieber.asp#)

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

a female, white or colored, with the evident intent or purpose to commit a rape, will be considered as one, and punished accordingly.”<sup>5</sup> Neither McDowell’s order nor the Lieber Code discriminated by race. However, a perusal of Union court martial records reveals that many Union soldiers apparently did not take sweeping orders like the Lieber Code or more localized orders like General Orders No. 12 seriously, and neither did the military judges charged with dispensing their punishment.

I would like to take a moment to discuss the problems and limitations of my evidence before actually presenting the cases. I have chosen cases that are representative of the trends I discovered in my research. I examined many more cases than are discussed in detail. All cases are cited in the bibliography. We do not always know whether the men in the cases that follow who were found not guilty really were in fact guilty of rape. They may have been not guilty. However, what seems to have been happening, given the relative number of convictions involving white women, is that men guilty of raping black women were being let off. Several men convicted of the rape of a black woman had their sentences overturned due to clerical errors. While it is possible that this was due purely to clerical errors and not to do with the race of the victim, it is striking that no such occurrences are to be found in the random sample of cases of white men raping white women that I have examined. We cannot say that the entire Union Army was letting off rapists. Sometimes it seems courts martial did, and sometimes it did not let rapists free or give them only token punishment; but if we add up the whole, we find that much of the Union Army was dedicated to racial hierarchy, and that rape, or tolerance for rape, was a

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<sup>5</sup> United States War Department, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Series 1, Volume 12, Part 1, 52, <http://ebooks.library.cornell.edu> accessed February 5, 2015.

way to accomplish this. However, it is also important to acknowledge that despite this reluctance to punish white men for assaulting black women, the Union Army was remarkably racially progressive in other ways. It allowed black women to step onto a level legal playing field with white men for the first time. They could testify against white men in a court of law, an impossibility only several years before. Unfortunately, in spite of, or possibly because of, this sudden elevation in black women's status, the Army subtly harkened back to the old racial order by refusing to punish their white attackers. Thus, while the Union Army proved itself an institution of progress in some regards, in others, it was an institution of stagnation.

## CHAPTER II

### LITERATURE REVIEW

Rape was a crime that had a strong hold on the consciousness of early Americans, although it was a very difficult crime to prosecute successfully. Early Americans tended to view sexual violence as a lamentable consequence of unrestrained sexual desire, rather than the original intention of the perpetrator. Early Americans believed that passions, or extremely strong emotions, guided their actions. Well into the nineteenth century, they viewed sexual desires as stemming from these passions. Thus, forced sex was not viewed so much as a violent deviation as it was a continuation of normal sexual relationships. Although Americans today tend to associate rape with physical violence, in the eighteenth and nineteenth centuries this was not the case; sex that was consensual could involve physical force, and an encounter that began consensually could turn into rape.<sup>6</sup> As a consequence of this blurred line between consensual and nonconsensual sex, women who claimed that they had been raped were often thought to be attempting to shirk responsibility for misbehavior. The courts increasingly came to derive evidence of rape from a woman's body and her emotions rather than trust her claim of having been raped. This focus on a woman's body and her emotions, however, severely limited a woman's ability to say no to a sexual interaction.<sup>7</sup> Early Americans viewed men as playing the dominant part in sexual relationships. A man acted, and a woman received. They also

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<sup>6</sup> Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: The University of North Carolina Press, 2006), 17.

<sup>7</sup> *Ibid.*, 18.



conceived of women and men playing certain sexual roles--a man was the one who desired sexual interactions, while a woman valued her chastity, and was likely to have to be pursued. This view of sex allowed men to be forceful in their sexual pursuit of a woman. Women were *supposed* to refuse and therefore men were *supposed* to employ force; it was all seen as part of a scripted cultural interaction. The line between forceful pursuit (which could still be consensual) and rape, a sexual interaction completely against a woman's will, was blurred. Men, it seems, found it hard to believe that when a woman said no she really meant it.<sup>8</sup> Women sometimes said that they had been raped after refusing a sexual offer. Thus a rape might not begin as an aggressive physical attack; it would only become that after a woman had not been persuaded by a man's efforts to engage in consensual sex.<sup>9</sup> Whether men who committed rape could genuinely not tell the difference between a woman's superficial denials of interest and genuine pleas to stop is not known. However, men who committed rape frequently attempted to maintain normal social relationships with their victims after the rape, further confusing the issue. Men also frequently offered gifts of goods or money to women as an incentive to engage in sex, sometimes resorting to rape when these offers were rebuffed.<sup>10</sup>

To further complicate the issue, in the eighteenth and early nineteenth centuries, women were often viewed as being of two minds. In addition to being protectors of their virtue, women were contradictorily seen as temptresses. Thus, even when the virtuous

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<sup>8</sup> *Ibid.*, 20-21.

<sup>9</sup> *Ibid.*, 25.

<sup>10</sup>*Ibid.*, 27.

woman said no, the temptress that existed within her might really be saying yes.<sup>11</sup> This duality also meant that women could never really be trusted to say whether they had consented or not. Men (juries, lawyers, husbands) were entrusted to be the judges of a woman's knowledge of her desires and her sexual behavior. The idea that women were supposed to pretend to resist sexual advances to demonstrate their virtue before yielding to temptation had a strong hold on early American culture. This made it exceedingly difficult for a court, or even for an average man, to determine where play ended and where sexual violence began. Women could not be trusted to be honest about their sexuality; therefore men became the ones who had to navigate the tricky issue of consent.<sup>12</sup>

The writings of Sir Matthew Hale, lord chief justice of Britain in the seventeenth century, were extremely influential in the adjudication of rape cases in the United States into the nineteenth century. Hale was mainly concerned with protecting men who found themselves accused of rape. To ensure the veracity of a woman's claim of rape, Hale suggested that certain criteria should be met. Did the victim report the rape immediately? Did she scream as loudly as she possibly could? Did anyone else hear her cries? Did she resist to the point that she was physically injured?<sup>13</sup> Hale's ideas took hold in the early American justice system. Americans tended to treat a woman's claim of rape with suspicion until she could prove beyond a doubt that a rape had taken place with an immediate report of the crime; that witnesses heard her screams; and that the accused had

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<sup>11</sup> *Ibid.*, 39.

<sup>12</sup> *Ibid.*, 40.

<sup>13</sup> *Ibid.*, 129-131.

injured her body.<sup>14</sup> One reason for this suspicion of claims of rape was that throughout most of the eighteenth century, rape was generally treated as a capital crime. A man convicted of rape could lose his life, and so courts felt a need to eliminate the chance of a wrongful conviction. In the aftermath of the American Revolution, many states altered the British common law system; as a result, sentences for rape varied considerably. By the dawn of the nineteenth century, some states preferred incarceration over a death sentence for a convicted rapist, with prison terms for rapists ranging anywhere from ten years to life imprisonment.<sup>15</sup>

As a result of these cultural ideals and standards, to early Americans, a “true” rape was narrowly defined as an attack of overwhelming physical force, usually committed by a stranger, someone a woman never would have consented to voluntarily.<sup>16</sup> Men in positions of power, whether they were masters, husbands, fathers, or merely respected neighbors or friends, often employed that power to obtain women’s submission. Because early Americans conceived of rape as a brutal, sudden attack by a stranger, this use of social power did not fit into the category of rape. Thus a woman’s social status could either offer her protection or increase her sexual vulnerability. Lower-class women, unlike middle- and upper-class women, often did not have socially powerful male figures to offer them protection, and hence men were able to employ a large variety of bargaining efforts to obtain lower-class women’s submission to their sexual entreaties.<sup>17</sup>

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<sup>14</sup> *Ibid.*, 142.

<sup>15</sup> *Ibid.*, 141-143.

<sup>16</sup> *Ibid.*, 54.

<sup>17</sup> *Ibid.*, 80.

In contrast, men often did not bother with bargaining efforts when dealing with nonwhite women. These sexual encounters were characteristically brutal; they were not so much about sex as they were about torture and white superiority. A nonwhite woman's vulnerability exposed her to sexual attacks that bore no resemblance to the bargaining efforts to engage in sex that white women faced. Forced sex between a white man and a nonwhite woman was not meant to appear to be negotiated or consensual; often it was deliberately sadistic and spoke to a relationship of subordination.<sup>18</sup>

Such scenarios were particularly common in the South. The rape of slave women was a fact of life. Slave women were property, who could be used in any way that their owners saw fit. Enslaved women were vulnerable to sexual assault and outright rape by their masters. Slavery was the ultimate system of exploitation, and that exploitation encompassed every aspect of black women's lives, including sexuality and reproduction. The rape of black women by white men under slavery became a weapon, a way to dominate and repress.<sup>19</sup> A master who raped a slave who subsequently gave birth to his child would not have to fear any sort of paternity liability, as slavery followed the status of the mother; any children that were born as a result of rape would be slaves as well. There was also no need for a master to fear a rape charge. Although it was technically possible for a charge of rape to be brought against a master, it was an extremely remote possibility. No white man was ever convicted of raping an enslaved woman between 1700 and the Civil War.<sup>20</sup>

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<sup>18</sup> *Ibid.*, 84-86.

<sup>19</sup> Angela Davis, *Race, Women and Class* (New York: Vintage Books, 1983), 23-24.

<sup>20</sup> Block, *Rape and Sexual Power in Early America*, 65.

Free black women who had been raped by white men did have access to legal redress, but they were very rarely taken seriously. One case from New York City in 1808 is particularly revealing. A white man raped a black woman, but he was charged with Assault with Intent to Seduce.<sup>21</sup> At first glance it appears that the victim came out on top in this case--she won the suit.<sup>22</sup> However, a closer look reveals that the verdict itself revealed much about how little black women's sexual integrity was valued--she was awarded one dollar in damages.<sup>23</sup>

When Sylvia Patterson accused James Dunn of attempting to rape her in New York City in the early part of the nineteenth century, she found her reputation coming under vicious attack. Witnesses accused her of being married to a man who already had numerous wives, of having a sexually transmitted disease, and associating with known prostitutes. Sylvia's own attorney insulted her by implying that Dunn attacked her only because no respectable white woman wanted anything to do with him.<sup>24</sup>

Even though Sylvia was a free woman who could legally marry (a right that slave women did not possess), early Americans tended to view all black women's sexuality as illicit. This predisposition to view black women as creatures of loose morals and indiscriminate sexuality in turn crippled black women's credibility as victims of rape. All women who claimed to be raped, white or black, could be subjected to slander and a ruined reputation, but no white woman could be so easily dismissed because of her race.<sup>25</sup>

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<sup>21</sup> *Ibid.*, 178.

<sup>22</sup> *Ibid.*, 179.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, 183.

<sup>25</sup> *Ibid.*

One might assume that the situation that black women found themselves would change significantly due to emancipation and the Reconstruction-era laws that made freed people into U.S. citizens. Though black women found that they had gained freedom and increased legal protection, however, they were still vulnerable to the predatory urges of white men. After the Civil War, black women achieved the right to legally accuse any man, regardless of his race, of rape. Federal policies were reorganized to require the former slaveholding states to abolish racial categories in their rape laws. Black women were now legally viewed as legitimate rape victims.<sup>26</sup>

However, this dramatic change in rape law did not necessarily translate to fewer black women being raped by white men. The chaos of Reconstruction gave birth to the Ku Klux Klan, an organization that used rape as a weapon of terror. Black women who had relatives who served in the Union Army frequently found themselves suffering rape as a punishment for their father's or brother's transgressions.<sup>27</sup> The KKK used rape as way to threaten and control the black community, and as a method to reestablish the preeminence of whiteness.<sup>28</sup>

All of this discussion begs the question: if black women were vulnerable to rape under slavery, and vulnerable to rape by the KKK during Reconstruction, surely they were protected to some degree during the Civil War and the years immediately following due to the presence of the Union Army, an army that in theory represented freedom and higher moral purpose? This was not always the case. For black women the coming of the

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<sup>26</sup> Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: The University of North Carolina Press, 2004), 147-148.

<sup>27</sup> *Ibid.*, 148-149.

<sup>28</sup> *Ibid.*, 149.

Union Army sometimes signaled terror and sexual violence rivaling anything they had experienced during slavery. While in the beginning of the war, most northern soldiers did not consider themselves abolitionists, rising anti-slavery rhetoric, the Emancipation Proclamation, and a few Union generals declaring slaves who ran away to their lines to be “contraband of war,” combined to make the image of the Union Army one that represented freedom, particularly to the slaves that ran to supposed safety behind its lines. However, a perusal of Union court martial records reveals that sometimes, for black women, the coming of the Union Army did not signal liberation so much as it did terror and sexual violence. Rape could be a weapon to be deployed to reassert racial hierarchies disturbed by the war, one that was employed by the soldiers who committed the rapes and condoned by the military courts charged with dispensing justice. It was also evidence of white men’s cavalier attitudes regarding the sexual availability of black women.

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Why were black women particular targets for rape by Union soldiers? One reason for the occurrences of rape, both of black and white women, during the Civil War may simply be the fact that there was a war going on. Military combat and rape and sexual violence have long been intertwined.<sup>29</sup> The military has often been indifferent in prosecuting sexual crimes. Historically, military men have seemed to expect rape, and to tolerate it to an extraordinary degree.<sup>30</sup>

There was an attitude to be found in some soldiers in combat that all women are sluts, that they all want sex. What many men viewed as indicators of promiscuousness

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<sup>29</sup> Joanna Bourke, *Rape: Sex, Violence, History* (Great Britain: Virago, 2007), 359.

<sup>30</sup> *Ibid.*, 364-365.

(such as a revealing outfit, or indulgence in alcohol) that may have earned a woman unwanted attention in peacetime, could quite possibly lead to her rape in wartime. The boundary between forced and consensual sex, which has historically been murky, can disintegrate completely in wartime. If a woman resisted a soldier's sexual advances, the soldier often rationalized it as being a form of foreplay.<sup>31</sup>

Rape becomes much easier when the enemy is regarded as racially inferior.<sup>32</sup> "Racist discourse meant that women were not really seen as human. As one Marine said after describing particularly sadistic rapes of Vietnamese women, 'it wasn't like they were humans. We were conditioned to believe that this was for the good of the nation, the good of our country, and that anything we did was ok.'"<sup>33</sup> Although this Marine was speaking of atrocities committed in Vietnam, Union soldiers had their own racial animus. In both North and South white citizens were conditioned to look down upon all black people as inferior. It seems probable that many a white Union soldier held the view that black women were less than human, and therefore it was perfectly acceptable to brutalize them. Michael Fellman lends credence to this idea. In describing the guerilla warfare that took place during the Civil War, he states that protection of white women was a positive value that was psychologically necessary for guerrilla fighters on both sides. However, this protection was for white women only--both black and Indian women received no such courtesy.<sup>34</sup> "Indeed one might argue that all white women were treated with respect

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<sup>31</sup> *Ibid.*, 373.

<sup>32</sup> *Ibid.*, 378.

<sup>33</sup> *Ibid.*

<sup>34</sup> Michael Fellman, "Women and Guerrilla Warfare," in *Divided Houses: Gender and the Civil War*, eds. Catherine Clinton and Nina Silber (Oxford: University of Oxford Press, 1992), 153.



in part because other nonwhite women were available to be trampled.”<sup>35</sup> Fellman also says that white resentment toward black liberation during wartime tended to diminish brutality towards black women.<sup>36</sup> However, Fellman also alleges that the Civil War induced many whites to reassess their attitudes towards blacks. Physical abuse and even murder of blacks, formerly regular disciplinary actions taken by slaveholders, were now becoming crimes punishable in a court of law and were seen as evidence of barbarity by increasing numbers of whites. Fellman states that this is mainly due to the work that blacks did for the Union Army, from spying, to eventually wearing the Union blue. “White Union soldiers had some sense of camaraderie with black soldiers; therefore, they came to understand that black soldiers sought to protect their women in the same way they wished to shelter their own.”<sup>37</sup>

Kim Murphy refutes claims by previous scholars that the Civil War was a “low-rape war” with her book *I Had Rather Die: Rape in the Civil War*. She forcefully states that “historians who assert that Victorian mores somehow imposed gentlemanly restraint during wartime are ignoring the fact that rape is a crime of violence, not sexual desire.”<sup>38</sup> Approximately 450 cases of rape or attempted rape have been found in the records of the Union Army.<sup>39</sup> When this number is compared against the approximately 2.1 million men who served in the Union Army, it would appear that incidences of rape were few and few between. However, Murphy reminds us that rape is a crime that is rarely reported,

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, 154.

<sup>38</sup> Kim Murphy, *I Had Rather Die: Rape in the Civil War* (Batesville: Coachlight Press, 2014), 9.

<sup>39</sup> *Ibid.*, 31.

and that many of the records have been lost, and therefore it is impossible to know how often rape occurred during the Civil War.<sup>40</sup> In her examination of courts-martial records, Murphy reached conclusions that dovetail neatly with the conclusions drawn in this work. She found that white men who raped black women typically received very light sentences, especially if they were officers.<sup>41</sup> She also found that soldiers who raped white women received lengthier sentences than those that assaulted black women. Interestingly though, she found that many of the men did not end up serving their full sentences. The victims of the men that did serve their full sentences had male witnesses to testify on their behalf, bolstering their credibility. Murphy concludes that upper-class white women were more likely to be believed when they accused a man of rape, whereas a poor white woman was likely to suffer assaults on her reputation.<sup>42</sup>

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<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, 85-86.

<sup>42</sup> *Ibid.*, 109.

## CHAPTER III

### ARMY OF LIBERATION, ARMY OF TERROR

#### The Union Army as Emancipatory Force

In the early days of the war, most northern soldiers did not consider themselves to be fighting to abolish slavery. They were fighting for the preservation of the Union. However, rising anti-slavery rhetoric, the actions of a few Union generals, and Lincoln's Emancipation Proclamation worked to change the image of the Union Army. Antislavery spokesman persuasively argued that emancipation was a military necessity, as the Confederacy used slaves to strengthen their military operations by building fortifications and hauling food, among many other duties.<sup>43</sup> In 1861, General Benjamin Butler declared that slaves who escaped their owners by running to Union lines were contraband of war, and refused to return them. Lincoln hesitantly approved this course of action, leading to thousands of slaves journeying to Union lines, seeking safety from slavery.<sup>44</sup> On January 1, 1863, with the implementation of the Emancipation Proclamation, the Union officially dedicated itself to abolishing slavery. The slaves themselves refused to let the Union Army ignore them. Thousands crossed over the Union lines, making themselves contrabands. When their owners came to retrieve their "property" they often encountered significant resistance. Many northern regiments openly sheltered the slaves and even defied orders to return them.<sup>45</sup> Therefore it is safe to say that even though the average

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<sup>43</sup> James McPherson, *Battle Cry of Freedom: The Civil War Era* (Oxford: Oxford University Press, 1988), 354.

<sup>44</sup> *Ibid.*, 355.

<sup>45</sup> *Ibid.*, 357.

northern soldier may not have whole-heartedly supported emancipation, the image of the Union Army, particularly to slaves, was one of liberation. Ira Berlin and his colleagues argued persuasively that the slaves freed themselves by refusing to let the Union Army ignore them. They took every opportunity that arose to demonstrate their willingness to take extreme risks for their freedom. By running to Union lines, by doing whatever manual labor the Union Army needed, and by eventually donning the Union blue, slaves demonstrated that they were loyal, hardworking, and willing to risk everything to achieve their freedom.<sup>46</sup> “In so doing, they gradually rendered untenable every Union policy short of universal emancipation and forced the Confederate government to adopt measures that severely compromised the sovereignty of the master. On both sides of the line of battle, Americans came to know that a war for the Union must be a war for freedom.”<sup>47</sup>

However, the court martial records expose a darker side of the Union Army. They reveal that sometimes black women found no safety behind Union lines; rather they found themselves victims of sexual violence by white men with little recourse to justice. Although outwardly the Union Army was devoted to abolishing slavery, the inner workings of its courts reveal that black women, supposedly protected by Lincoln’s Lieber Code, were often sexually dehumanized by Union soldiers and military judges. While the slaves may have freed themselves, the military establishment was not always willing to dispense justice along with freedom.

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<sup>46</sup> Ira Berlin, et al, *Slaves No More: Three Essays on Emancipation and the Civil War* (Cambridge: Cambridge University Press, 1992), 4.

<sup>47</sup> *Ibid.*

This discrepancy between the ideals of the Lieber Code and how it was implemented or, as was sometimes the case, not implemented, was sometimes recognized by contemporary newspapers. On August 5th, 1864, the *Union County Star and Lewisburg Chronicle* reported on two cases:

A colored Union soldier was hung in the presence of Gen. Butler's army for an attempted rape upon a white woman. Last week, Lieut. Andrew J. Smith, of Kautz's division, was cashiered, and sent to prison for sixteen years for committing a rape upon a young colored girl. Both crimes deserved punishment--but why hang the black man for an offence not accomplished and let live the white man who accomplished the same offence?<sup>48</sup>

These are precisely the sorts of questions this paper will examine. What were the differences in punishment when a white man victimized a black versus a white woman? Why did these differences in punishment exist?

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### Evidence

In July of 1863, Private Robert E. Cropps, Co. B, 2nd Maryland Volunteers, was put on trial for offenses he had committed on the Covington Turnpike, near Frankfort Kentucky earlier that month. Besides getting drunk while he was on duty, Cropps had also seized a slave named Sarah over the objections of her mistress Lydia Howard, and raped her in full sight of several witnesses. He also took the extra step of firing his rifle at

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<sup>48</sup> *Union County Star and Lewisburg Chronicle*, Lewisburg, PA, August 5, 1864, accessed January 27, 2015, <http://chroniclingamerica.loc.gov/>

Sarah after he released her. However, rather than being charged with rape, Cropps was charged with “Conduct Prejudicial to Good Order and Military Discipline.”<sup>49</sup>

Sarah herself did not testify, but Private Norval Nelson of Co. B, 2nd Maryland Volunteers, a witness to the assault, did. He stated that he witnessed Cropps become intoxicated during the day while in command of the outpost on the Covington Pike.<sup>50</sup>

I know that he did seize upon a female slave belonging to citizen Lydia Howard, and after severe language to her did tell her to lay down and upon her refusing, did throw her down, raise her clothes, and place himself upon her. I should say he committed rape upon her. She cried out and asked to be released but he held her down and threatened to beat her if she did not keep quiet. I went toward them but he ordered me back, threatening to shoot me if I did not obey. When he had lain upon her half an hour, he arose and ordered a colored man nearby to take her off and when they were about twenty yards off, he, the prisoner, did fire a rifle toward them, aiming it over their heads. He then seized a second rifle and stooping down did aim at her and fire and would have shot her I believe had not Private Leyman knocked the gun up just as it went off.<sup>51</sup>

The Court found Cropps guilty and sentenced him to five years of hard labor on government works with forfeit of all pay and allowances, and to be dishonorably discharged.<sup>52</sup> However, in an extraordinary bit of correspondence found in Cropps’ case file, H.L. Burnett, the Judge Advocate of the Department of the Ohio, upon reviewing the case, declared the proceedings null and void as the Court was not held in the location

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<sup>49</sup> National Archives, RG 153 Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Cropps, Robert E., NN432, 3.

<sup>50</sup> *Ibid.*, 7.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, 9.

designated in the order convening the Court. He recommended that Cropps be released and returned to duty immediately.<sup>53</sup>

The case of Private William H. Hilton of Co. E, 16th Indiana Infantry, charged with Attempted Rape and Murder for his assault of a mulatto girl named Julia in the Parish of Terrebone, Louisiana on November 24th, 1864 is another stunning example of the miscarriages of justice that could occur when white men were tried for the rape of black women.<sup>54</sup>

Private Garrett Voorkies of the 16th Indiana Mounted Infantry testified on behalf of the prosecution and described the actions of the accused on the day of the crime:

Five or six of us were going down the Bayou to get some potatoes and he stopped behind, and another man or two stopped with him where there were some negroes. All but this man overtook us again when we had travelled for 1/2 or 3/4 of a mile. We stopped on the other side of a bridge, about a mile from where we had left the accused and he came up to us there. He came riding up very fast, and said that he had shot or killed a nigger, or something of that sort. I don't remember his exact language. He was very drunk and pitched forward on on his horse as he spoke. He said no more about it until several hundred yards further when some of the boys asked him if he had shot or killed the nigger and he said he had not. We got him to give up his pistol and found there was five balls out. I remember his having fired three balls out of it before leaving camp. We turned and went back. He stopped before we got to the bridge and we could not get him across. Three of us went on, and left him and two other men. As we came back past the place where the negroes were at work, there was a woman lying by the side of the road. I did not stop but I supposed from her appearance that she was dead.<sup>55</sup>

Felix Jackson, a black man who worked at J.M. Pelton's plantation at Bayou de Lac, was a witness to the crime. He related seeing the accused stop near Julia, who was

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<sup>53</sup> *Ibid*, correspondence in case file.

<sup>54</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files, 1809-1894*, Hilton, William H, LL3201, 2-3.

<sup>55</sup> *Ibid.*, 11-12.

working in the field, and start speaking to her. Jackson overheard Hilton asking Julia if she was a friend to the Yankees, and Julia answering that she was. Jackson then butted into the conversation, saying, “yes sir, she is a friend of the Yankees, and all we colored folks are.”<sup>56</sup> Hilton became extremely hostile, threatening Jackson’s life, and Jackson beat a hasty retreat. As he was retreating he heard a pistol shot and felt the ball whiz past him, but was unsure if Hilton was actually aiming at him, as Jackson’s back was to Hilton. After he had retreated to a safe distance, Jackson turned around to see Hilton with his hands on Julia, and heard Julia begging to be let go. He then heard a pistol shot and saw Julia fall. Hilton mounted his horse and rode off. After he was gone, Jackson went to Julia, and forbade anyone to touch her until the master was sent for.<sup>57</sup> When asked by the Judge Advocate if Julia was dead when he went to her, Jackson answered that she was not, that she lingered for a half an hour before finally expiring.<sup>58</sup> Upon being asked what caused Julia’s death, Jackson replied, “There was a ball hole in her head, passing in at her temple. She was a mulatto girl, and the powder had burned her face.”<sup>59</sup>

Nancy Simpson, a black woman who also lived at Pelton’s Plantation was a witness to the crime, and had vainly tried to save Julia from Hilton’s advances. She offered the following testimony:

He rode along by, and a little girl half grown was at the road and he told her to come to him and hold his horse. She was afraid of him, and commenced crying and he told her that if she did not stop crying he would shoot her. He shot at her once, but did not hit her and she kept on crying. I went to him and begged him for

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<sup>56</sup> *Ibid.*, 16.

<sup>57</sup> *Ibid.*, 16-17.

<sup>58</sup> *Ibid.*, 18.

<sup>59</sup> *Ibid.*



her and told him it was my child though it was not my child. We both went to her, and I put my hand on her, and he put his on her, and he asked me if I was a Union lady. I told that I was. He said if I was a Union lady he would let me have my child, and said if I would let her hold his horse till he got on it, I might have her, and he just stepped back and put his pistol to her head somewhere about the temple and shot her brains out.<sup>60</sup>

Upon being asked if Hilton said anything to Julia while struggling with her, Nancy answered: “He told the girl to let him ride her, and I told him the girl was not fit for a man.”<sup>61</sup> She further stated that Hilton had Julia down on the ground, and had his trousers down.<sup>62</sup> Nancy’s final statement reveals the extent of her attempts to protect Julia and to reason with Hilton. “He threw her down on the ground and tried to ravish her. He said he wanted to ride her. I tried to get her away, and told him to let her alone, that she was not big enough for a man, and that there were plenty other women, but he said no, he wanted that little yellow girl and that if she did not let him ride her he would shoot her.”<sup>63</sup>

Hilton was found guilty of both Attempted Rape and Murder and was sentenced to be hanged.<sup>64</sup> However, the reviewing officer of the case found several clerical errors in the case file. Hilton had been a corporal but was demoted to a private before the trial, but the paperwork in his sentence still listed him as a corporal. There also appeared to be a mix-up with some of the dates listed on the paperwork. Due to these clerical errors the reviewing officer took issue with Hilton’s sentence.<sup>65</sup> “It is with reluctance that the

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<sup>60</sup> *Ibid.*, 19-20.

<sup>61</sup> *Ibid.*, 20.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*, 20-21.

<sup>64</sup> *Ibid.*, 22.

<sup>65</sup> *Ibid.*, correspondence in case file.

proceedings in this case are disappeared but death penalties should only be carried into execution upon perfect records. The sentence is inoperative. The accused will be released and returned to duty.”<sup>66</sup>

In 1865, Adolph Bork, Co. H, 183rd Ohio Volunteer Infantry, was charged with Rape for his assault of Susan, a black woman living on a plantation in Salisbury, North Carolina. Susan testified that Bork came to the plantation with a group of a few other soldiers and asked to be provided with a meal. While the other women prepared the meal, Susan went back to her own house on the plantation grounds, as she was pregnant at the time and was not able to assist with the work.<sup>67</sup> Bork followed Susan back to her house and asked her if she wished to make some money. When Susan, sensing an insinuation of exchange of money for sexual favors, replied that she didn’t care to, Bork replied that, “Whether you make money or not, you will well have to.”<sup>68</sup> Susan replied that she did not, causing Bork to draw his revolver and cock it at her. Susan pleaded with Bork, saying that she was “so situated” that she couldn’t engage in intercourse, a reference to the advanced stage of her pregnancy. Unmoved, Bork forced Susan down onto the bed and raped her.<sup>69</sup> A week and a half later, Susan gave birth to her child.<sup>70</sup> Bork was

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<sup>66</sup> *Ibid.*

<sup>67</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Bork Adolph, MM2407, 5-6.

<sup>68</sup> *Ibid.*, 6.

<sup>69</sup> *Ibid.*, 7-8.

<sup>70</sup> *Ibid.*, 9.

convicted, and sentenced to death. However, his death sentence was later mitigated to five years in prison.<sup>71</sup>

On the face of it, the case of Adolph Bork is very cut and dried. He raped a black woman and was punished severely. However, there is another factor that makes this case not quite what it appears to be at first glance. Along with Rape, Bork was also charged with Assault with Intent to Kill for a drunken fight he got into with another soldier.<sup>72</sup> Bork and Private Ludwig Sweitzer got into a blow-up about a horse-theft that ended with Bork shooting Sweitzer in the thigh, a wound from which he recovered sufficiently to testify against his assailant.<sup>73</sup> Bork was also convicted of this offense.<sup>74</sup> To discover what offense the Court laid more weight by, the rape of Susan, or the wounding of Sweitzer, it is only necessary to read the testimony. The Court expended considerably more effort in establishing the details of Sweitzer's shooting than they did in establishing Susan's rape. The Court was mainly concerned with ascertaining whether or not Susan had accepted money from Bork, or if she had in fact consented.<sup>75</sup> Multiple witnesses testified to Bork's shooting of Sweitzer, and answered detailed questions concerning Bork's level of intoxication, what language he used, what type of pistol he used, and his movements on the day of the shooting.<sup>76</sup> A close analysis seems to suggest that Bork was punished so

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<sup>71</sup> *Ibid.* 22-23.

<sup>72</sup> *Ibid.*, 4.

<sup>73</sup> *Ibid.*, 10-11.

<sup>74</sup> *Ibid.*, 22.

<sup>75</sup> *Ibid.*, 8-9.

<sup>76</sup> *Ibid.*, 10-21.

harshly because he dared to fire on a fellow soldier, rather than because he dared to rape a black woman.

The case of Privates Edward Williams and Patrick O' Brien, both of Co. G, 25th infantry is notable for the brutality of the crime and complete lack of punishment that followed. On October 7, 1867, the two privates went on a regular crime spree that included highway robbery and the gang rape of Milly Jones, a black woman whose home the two privates broke into. Williams and O' Brien were both found guilty of Rape and Highway Robbery and sentenced to twenty-one years in prison.<sup>77</sup> However, the Court took the extraordinary step of disproving its own findings, declaring that the charges of Rape and Highway Robbery should never have been brought before a military court, as they were offenses "of a purely civil character."<sup>78</sup> The Court required that both privates be released from confinement and returned to duty.<sup>79</sup>

There is an eerie similarity between the case of Cropps, the case of Williams and O'Brien, and the case of Hilton. All of these men were convicted of the charges leveled against them and yet all managed to escape punishment.

Despite this, there are several cases where white soldiers who raped black women were punished relatively harshly, receiving several years of prison time or being drummed out of the service. In January 1863, Henry Murphy of the 35th Indiana and the rest of his regiment were looting a plantation near Murfreesboro, Tennessee. Murphy decided to add to his list of crimes by seizing a twenty-year-old married black woman

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<sup>77</sup> Library of Congress, LC Control No. 55047958, United States Army, Law, *General Court Martial Orders: Department of the Cumberland 1866-1870*, <http://lccn.loc.gov/55047958>, 451-454.

<sup>78</sup> *Ibid.*, 452.

<sup>79</sup> *Ibid.*, 453-454.

whose name is unknown, and raping her for two hours while numerous witnesses looked on.<sup>80</sup> “Murphy was convicted and sentenced to be branded with a capital ‘R’ in indelible ink (i.e. tattooed) in the presence of the regiment, put to hard labor for 30 days, and then drummed out.”<sup>81</sup>

Corporal George Hakes, Co. F, 6th Michigan Cavalry, was tried in January 1865, charged with Conduct Prejudicial to Good Order and Military Discipline for his assault of Phoebe Robinson, a free black woman living with her husband Cornelius in Winchester, Virginia the previous November. Hakes came to the Robinson’s home and offered Cornelius money if he would run an errand. As soon as Cornelius left the house, Hakes immediately advanced on Phoebe, saying that if she did not submit to him, he would shoot her. Phoebe replied that he would just have to shoot her. Hakes threw her on the bed and raped her. Phoebe stated that she resisted as long as she could, but she was considerably weakened by the recent birth of a child, then only three weeks old. The infant, and Phoebe’s older child, a son of ten years, were in the next room.<sup>82</sup>

The defense’s cross-examination of Phoebe perhaps did more harm than good as it made the violence of the assault glaringly obvious. When asked if she could have prevented Hakes from entering her “if she had tried,” Phoebe replied “No, I could not. I tried to put my legs off the bed and could not. He told me that if I did not part my legs on the bed he would kill me.”<sup>83</sup> Phoebe further stated that she actually managed to throw

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<sup>80</sup> Thomas Lowry, *Sexual Misbehavior in the Civil War* (Bloomington: Xlibris Corporation, 2006), 155.

<sup>81</sup> *Ibid.*

<sup>82</sup> National Archives, RG 153 Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Hakes, George, NN3743, 3-7.

<sup>83</sup> *Ibid.*, 7.

Hakes off of her several times, but in the end was too weak to continue resisting.<sup>84</sup> The defense also asked Phoebe if the sensation of sexual intercourse with Hakes was “pleasant,” to which Phoebe replied with an indignant “No, it was not pleasant!”<sup>85</sup> Phoebe made it abundantly clear during her testimony that she resisted physically as long as possible. Hakes’ assault on Phoebe most definitely fits the very narrow definition of rape described earlier as a brutal attack of overpowering physical force, committed by a stranger.<sup>86</sup>

In his defense, Hakes’ attorney had the following to say:

Rape is defined to be “the carnal knowledge of a female against her will, by force and violence.” The evidence shows that the woman had sexual intercourse with some person at her house that day, and against her will, but does not show that she resisted the man to the extent that she might have done, nor that he used that amount of force that would be necessary to make up the crime of rape. There was but a partial resistance on her part, as we all know that had she exerted herself to her utmost, she might have stopped him from accomplishing his purpose in so short a time, as her husband was not gone over ten minutes from the house.<sup>87</sup>

The Court was unmoved. It found Hakes guilty, ordered him to be reduced to the ranks, dishonorably discharged, and to be confined at hard labor for two years with forfeit of all pay and allowances.<sup>88</sup> Although a sentence of only two years may not seem like a very harsh sentence, when an attacker’s victim was not white, it was a severe punishment. Judges were sometimes capable of recognizing the incredible brutality of an assault, yet

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<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Block, *Rape and Sexual Power in Early America*, 57.

<sup>87</sup> National Archives, NN3743, 41.

<sup>88</sup> *Ibid.*, 36.

at the same time decide that two or three years in prison was an appropriate punishment for an assault that would often cause a man to lose his life if he had dared attack a white woman. Washington D.C.'s *Evening Star* reported on just such an occurrence on March 28, 1865.

Daniel Standon, indicted for an assault and battery with intent to commit a rape on Celia Grant, a colored woman, over 60 years of age, was found guilty. The circumstances of the case were peculiarly revolting, and the evidence was to the effect that he went to the house of the prosecuting witness, where he asked for something to eat. and she gave him what she had. He then assaulted her, at the same time using a knife, with which he cut her head several times. Judge Olin, in passing sentence, remarked that it was seldom a case of such devilish atrocity came before him, and he sentenced him to three years in the Albany penitentiary.<sup>89</sup>

Although this case took place in a civilian court, it is illustrative of the sort of thinking that seemed to prevail in the military courts. A judge could acknowledge the brutality of an assault and then seemingly experience no cognitive dissonance when sentencing the offender to a mere two or three years in a penitentiary.

In May of 1865, Private Thomas E. Mitchell of Co. E, 1st New York Volunteer Engineers, was charged with Rape for his assault of America Pierman, a black girl of ten years of age who lived near Fort Harrison, Virginia.<sup>90</sup> Brevet Brigadier General James F. Hall of the 1st New York Volunteer Engineers and Mitchell's commanding officer, was a witness for the prosecution. Hall testified that Mitchell accompanied him to Fort Harrison on April 24th, 1865. Hall left Mitchell in charge of his horse and went to conduct his business at the fort. When he returned he was approached by an extremely agitated man,

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<sup>89</sup> *Evening Star*, Washington D.C., March 28th, 1865, accessed January 27, 2015, <http://chroniclingamerica.loc.gov/>

<sup>90</sup> National Archives, RG 153 Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Mitchell, Thomas, 00886, 2-3.

saying that his daughter, a ten-year-old child, had been taken into one of the soldier's huts and abused. The father said that the man who had abused his daughter had mounted a horse and ridden away and the father wanted assistance in tracking the man down. Hall told the man that as it was getting dark, the chances of finding the man were thin, and to come to town the next morning. When Hall reached the place where he had left Mitchell with his horse, he found Mitchell gone. Hall asked the carriage driver where Mitchell was. The driver replied that Mitchell had disappeared with a small child, that the child had come back shortly afterward crying, and that Mitchell had returned shortly after her appearance, but then rode away in search of a spring. Hall and the carriage driver set out for camp, and encountered Mitchell after about a mile. Hall asked Mitchell why he had disappeared and Mitchell replied that he had been sick and wanted to find a spring.<sup>91</sup> When the group arrived at camp, Hall asked Mitchell "why he had treated that little negro girl so."<sup>92</sup> Mitchell replied that she was not a negro, but upon Hall asking what she was, said that he didn't know anything about it. Hall then placed him under arrest.<sup>93</sup>

America Pierman herself testified against Mitchell. Despite being so young, she offered clear and concise testimony of what had happened to her:

I was in the old rebel camp gathering wood. This man spoke to me and said come go with me up to the old camp, there was two gray jackets up there and I might have them for my brother. After I had got up there he caught me by the hand and pulled me into the hut. He then told me to lay down and afterward carried me back and made me lay down. I begged him to let me go back to my mother. I called him master and said please let me go home. He said "Goddamn you, hush." This was while he was carrying me. After he had laid me down, he

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<sup>91</sup> *Ibid.*, 3-5.

<sup>92</sup> *Ibid.*, 5.

<sup>93</sup> *Ibid.*



told me if I didn't hush he would kill me. He made me lay down outside the hut first and he laid down on top of me. I tried to halloo and he tried to put an oilcloth over my face. I pushed it away from my face and then he caught me and took me into the hut and laid me down again and laid down on me again. He laid on me three or four minutes before he carried me into the hut. He laid on me about ten minutes after he carried me into the hut. He pulled my clothes up and touched me with his hands first. He hurt me after he laid down on me and after I had got away from him and went home I was bleeding real hard.<sup>94</sup>

Robert Soughrain, Surgeon for the 20th New York, had examined Pierman several days after the assault. He testified that Pierman had suffered vaginal trauma, and that her hymen had been recently ruptured and had not yet begun to heal.<sup>95</sup> He offered his professional opinion that, taking into account the extent of Pierman's injuries, "I should think that rape committed upon the person of a child that age would produce the same result."<sup>96</sup>

Mitchell was found guilty and sentenced to be dishonorably discharged, to be confined at hard labor for three years, and to forfeit all pay and allowances during his confinement.<sup>97</sup> America's case is unique in that she was examined by a doctor and determined to have suffered a sexual assault, an occurrence rare in Civil War-era military trials. Her young age was most likely the biggest factor, as adult women, whether they were black or white, were rarely examined for evidence of trauma to the pelvic region or any other evidence of sexual assault. Her young age combined with the irrefutable evidence of sexual violence most likely explain Mitchell's sentence of several years in prison, which was a harsh punishment for a rapist whose victim was non-white.

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<sup>94</sup> *Ibid.*, 13-14.

<sup>95</sup> *Ibid.*, 17.

<sup>96</sup> *Ibid.*, 18.

<sup>97</sup> *Ibid.*, 20.

An examination of the records reveals that although white men accused of raping black women were sometimes punished harshly--some were sentenced to several years of prison time or even a death sentence, this type of punishment was rare, and often, never carried out (as in the case of Hilton). It was more likely that a soldier accused of raping a black woman would receive a very middling punishment, usually involving a short period of hard labor and a forfeit of pay. Rape of a black woman was not a severe enough offense to warrant an expulsion from the army in most cases.

In August 1863, Private Samuel H. Clark, Co. F, 62nd Pennsylvania Volunteers was arraigned on several charges, including Disorderly Conduct to the Prejudice of Good Order and Military Discipline, for a violent assault upon an unnamed black woman, and Violation of the 9th Article of War, for speaking in a mutinous manner to a superior officer, who intervened and put a stop to the assault.<sup>98</sup>

Captain M. Martin, Assistant Quarter Master, U.S. Volunteers, 2nd Brigade, 1st Division, 2nd Corps, testified that on the 20th of August, he was alerted by screaming near Cedar Creek, Virginia. He stated that he saw a party of about six or eight men and two women. The men had a hold of the women and were dragging them down a hill. Martin rode toward them, scattering the group. Most of the men ran away, along with one of the women. He stated that three men were left, and that one of them struck the woman as he approached. He stated that all three men had a hold of her, and were pulling on her. Martin demanded that the men let her go. The men reluctantly did. Martin stated that Clark took up stones and started swearing that if Martin did not leave, Clark would kill

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<sup>98</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Clark, Samuel, LL1377, 2-3.

him. Martin stated that Clark made all sorts of threatening remarks, so many that Martin returned to his wagon park for his sword and pistol and for backup. He and his reinforcements arrested Clark and the two other men who were with him.<sup>99</sup> Upon being asked about the condition of the unnamed woman, Martin replied, “Her dress was greatly disarranged about her shoulders and she was bleeding from the mouth or nose.”<sup>100</sup> The Court further desired to know if she was “a colored woman.” Martin stated that she was.<sup>101</sup>

Clark was found guilty of all of the charges against him and sentenced to forfeit ten dollars of his monthly pay for the rest of his term of enlistment and to do fatigue duty in camp for three months with a ball and chain attached to his leg.<sup>102</sup> A review of the case reveals that it is most likely Clark’s mutinous attitude and language toward a superior officer that earned him his punishment. Most of the Court’s questions concerned the exact nature of Clark’s language toward Martin and if his body language was overtly aggressive or threatening. There was no effort made to determine why exactly Clark and the two other men were assaulting the two women, what the extent of the one remaining woman’s injuries were, if the assault was an attempted rape that was interrupted, or indeed, who the women were.<sup>103</sup>

James Connors, Private, Co. H., 1st Battalion, 15th U.S. Infantry, and Whitfield Streets, Private, Co. A., 1st Battalion, 15th U.S. Infantry were both charged with Conduct

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<sup>99</sup> *Ibid.*, 9-11.

<sup>100</sup> *Ibid.*, 11-12.

<sup>101</sup> *Ibid.*, 12.

<sup>102</sup> *Ibid.*, 13-14.

<sup>103</sup> *Ibid.*, 5-13.

Prejudicial to Good Order and Military Discipline.<sup>104</sup> The specification to the charge, which is a detailed explanation of what exactly the defendant was accused of doing, states that on June 20th, 1866, privates Connors and Streets, “did offer violence to, and attempt to commit a rape on the person of one ‘Eliza,’ a colored woman. This on Danphine Island, and near Fort Gaines, Ala.”<sup>105</sup> Private James Connors was found guilty of the charge and of the specification he was found “‘guilty,’ except the words ‘and attempt to commit a rape on.’”<sup>106</sup> Private Whitfield Streets was also found guilty of the charge and the specification, the Court again rejecting the wording stating that a rape had been attempted.<sup>107</sup> Connors was sentenced “to be confined at hard labor in charge of the guard for thirty (30) days, and to forfeit Ten (\$10) Dollars of his pay per month, for six months.”<sup>108</sup> Streets was slightly luckier. He got the same amount of time in confinement, but he only had to forfeit ten dollars a month for three months.<sup>109</sup>

Daniel O’ Brien, Private, Co. E., U.S. Engineer Battalion was charged with Conduct to the Prejudice of Good Order and Military Discipline. The specifications to the charge state that on June 2, 1867, he “did with violence take hold of Lilly Steward, a colored woman, throwing her down with the intention of violating her person, and while

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<sup>104</sup> Library of Congress, LC Control No. 55047957, United States Army, Law, *General Court Martial Orders: Department of the South 1862-1868*, <http://lccn.loc.gov/55047957>, 420.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*, 421.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

she was resisting his attempt, did tear her clothing, and kick her several times.”<sup>110</sup> O’ Brien was found guilty of the charge of Conduct to the Prejudice of Good Order and Military Discipline, and guilty of the specifications related to his attempted rape of Lilly Steward, “except the words ‘to violate her person,’ in the sense of a rape, but in the sense of an assault.”<sup>111</sup> In other words, he was convicted of assault, and not attempted rape. He was sentenced to hard labor in charge of the guard for three months, and ordered to forfeit twelve dollars of his monthly pay for the same period.<sup>112</sup>

The above cases could have been indicative of leniency in rape cases, but it is always possible that these men really were guilty of only assault. At any rate, they reinforce the point made earlier: that white men who assaulted black women were unlikely to be punished harshly. While these cases demonstrate that white soldiers who assaulted black women could typically expect to receive a few months of hard labor and a forfeit of pay as a result, further study of the records reveal that often, a white soldier accused of raping a black woman received merely a slap on the wrist, or no punishment at all.

In January 1862, at Camp Butler, Virginia, Sergeant Henry Snow and Private John Gray, both of the 2nd New York were charged with Conduct Prejudicial to Good Order and Military Discipline, for throwing an elderly black woman named Harriet Lane to the ground, raping her, and causing other bodily injury.<sup>113</sup> In a cold statement of fact, the trial

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<sup>110</sup> Library of Congress, LOC Control No. 53037465, United States Army, Law, *General Court Martial Orders: Department of the Missouri 1866-1867*, <http://lccn.loc.gov/53037465>, 692.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files, 1809-1894*, Snow, Henry E., II773, 3.

transcript reads, “The witness Harriet Lane being dead, the prosecution was here closed.”<sup>114</sup> Both men were acquitted.<sup>115</sup>

In May of 1862, Benjamin Wilson, a citizen teamster employed by the 6th Missouri Volunteers was tried on charges of being absent without leave, breaking into a private dwelling, and conduct prejudicial to good order, for breaking into the house of J.W. Brands with a group of three or four others, stealing some of his property, and raping one of Brands’ slaves.<sup>116</sup> J.W. Brands testified that Wilson and several others demanded entrance into his house around midnight on March 17th, 1862. He stated that he didn’t see Wilson actually steal anything other than some whiskey. However, he did state that had seen Wilson and three others go out to the slave cabins, seize one of his slave girls and rape her.<sup>117</sup> Brands stated that the slave cabins were only about fifteen steps from the main house, that he was watching through an open window, and that the moon was very bright, allowing him to see clearly.<sup>118</sup> Brands admitted that he was not able to verify actual penetration, but he added that his slave girl “fought hard.”<sup>119</sup> The Court found Wilson guilty of being absent without leave, forcibly entering the Brands’ residence, and of conduct prejudicial to good order. However it threw out the specification related to the

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<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*, 4.

<sup>116</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files, 1809-1894*, Wilson, Benjamin, II999, 6-9.

<sup>117</sup> *Ibid.*, 10-11.

<sup>118</sup> *Ibid.*, 11-12.

<sup>119</sup> *Ibid.*, 12.

rape of the slave girl. Wilson was sentenced to forfeit one month's pay and to be confined at hard labor for one month.<sup>120</sup>

William W. Chinock, Corporal, Company F, 26th Massachusetts Volunteers was charged with Conduct to the Prejudice of Good Order and Military Discipline.<sup>121</sup> The specification to the charge stated that on June 10, 1862, Corporal Chinock "did entice a negro woman, named Mary Ellen De Riley, who was living at Fort St. Philip, into a boat, stating to her that he had orders from his Captain to bring her to Fort Jackson and that after he had gained sufficient distance from the shore [...] did have unlawful sexual intercourse with her, the said Mary."<sup>122</sup> Chinock was found guilty of the charge but not guilty of the specification, meaning that once again, a military court felt that it needed to punish a soldier for acting in an inappropriate manner, but not for rape. Chinock was reduced to the ranks and ordered to forfeit ten dollars of his monthly pay for four months.<sup>123</sup>

The underlying message of all of these cases is that rape of a black woman by a white man was often considered an offense worthy of only a slap on the wrist. There is always the chance that the men who were acquitted were indeed innocent of the crimes they were accused of, but in viewing the cases as a whole, a pattern emerges. All of the cases that have been described paint a very clear picture: the military was loathe to punish harshly those soldiers that raped black women. Out of twenty-six total cases in my

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<sup>120</sup> *Ibid.*, 16.

<sup>121</sup> Library of Congress, LC Control No. 55047569, United States Army, Law, General Court Martial Orders: Department of the Gulf 1862-1867, <http://lccn.loc.gov/55047569>, 59.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*, 60.

sample consisting of all the cases I could find, nine white men accused of raping black women were dealt with harshly, with sentences ranging from being drummed out of the service, to several years of prison time, to death. However, four of these men's convictions were overturned on a technicality and they were returned to the service with no punishment at all. One more had his death sentence commuted to five years in prison. Eight white men accused of rape or attempted rape were found guilty of other offenses against them (usually robbery or disorderly conduct), with the Court choosing to throw out the wording that a rape had occurred. Most of these men were sentenced to hard labor for a small number of months and a forfeit of pay. One man was convicted of a brutal attempted rape, but was merely suspended for two months. One man was only required to pay a small fine. Three men were acquitted. Two men never had to answer for their alleged rape of an elderly black woman, as she had died before the trial took place (see Table 1).



Table 1 Punishments of White Offenders w/ Black Victims<sup>124</sup>

| <b>Punishments</b>   | <b># of Offenders</b> |
|--|-----------------------|
| Several Months of Prison Time/<br>Several Months of Hard Labor | 8                     |
| Reduced to the Ranks/<br>Suspension of Pay                     | 2                     |
| Several Years in Prison (Under<br>Five)                        | 4                     |
| Never Tried  | 2                     |
| Acquitted  | 3                     |
| Drummed Out of the Service                                     | 1                     |
| Small Fine   | 1                     |
| Overtured Sentences  | 5                     |
| Total:   | 26                    |

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<sup>124</sup> In this thesis, I have described cases that were representative of most categories. In the interests of brevity, I did not discuss each case that I looked at in detail. All cases are cited in the bibliography.

## CHAPTER IV

### HYSTERICAL WOMEN, CHIVALROUS MEN

#### Prostitution

Allegations of prostitution were sometimes used as a defense strategy by those men accused of rape by black women. There is a possibility that this was merely a strategy designed to win an acquittal for the defendant, and the women were not prostitutes. However, there is an equal possibility that the women could indeed have been prostitutes. Harsh economic circumstances can often force women on the bottom rungs of society into prostitution as a way to survive. Black women in the war-ravaged South found themselves in a difficult economic situation. With a murky legal status somewhere between freedom and slavery, in a society that found itself turned upside down, it is entirely within the realm of possibility that some black women saw the massive influx of white Union troops as a potential way to make money and possibly enable them to improve the tough situation they found themselves in.

Anne Butler, in her study of prostitution in the early American West, describes the many factors that lead to a development of the prostitution industry on the frontier. Nineteenth-century Americans idealized women as virtuous and pure, the keepers of society's morals. However, the reality of the frontier required an entirely different type of woman. The most important thing for women who came to the West was finding employment. Many women came to the frontier and found that few jobs awaited them, and those that society deemed as respectable often did not pay enough for the women to

survive. Many turned to prostitution as the only viable way to survive in an almost entirely masculine environment.<sup>125</sup> Prostitution in the West was largely the occupation of the young, and the poor, those women who had no other options to make their way in the world and who hoped prostitution would enable them to live better lives.<sup>126</sup> However, in the tumultuous atmosphere of the frontier, these women often found that they could not maintain a steady employment or improve their economic situation to any great degree. Prostitutes were overwhelmingly impoverished, and unlike many other types of employment, age and experience worked against a prostitute. As she aged, a prostitute became less desirable, and therefore made less money, leading her economic situation to plummet.<sup>127</sup> Victoria Bynum, in her study of “unruly women” in the antebellum and Civil War-era North Carolina Piedmont lends credence to Butler’s findings. Bynum found that poor women without property or husbands often pooled their resources and lived together. To stay out of the county poorhouse, an institution that in reality was merely a warehouse for the poor, some women turned to working in the fields, or to prostitution. Their society offered them no other options.<sup>128</sup>

The presence of frontier military garrisons also attracted prostitutes, many of whom worked as laundresses for the troops. Although some laundresses did legitimately marry enlisted men and may not have been prostitutes, Butler is confident in identifying

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<sup>125</sup> Anne M. Butler, *Daughters of Joy, Sisters of Misery: Prostitutes in the American West, 1865-1890* (Urbana: University of Illinois Press, 1985), 16.

<sup>126</sup> *Ibid.*, 15-16.

<sup>127</sup> *Ibid.*, 50.

<sup>128</sup> Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: The University of North Carolina Press, 1992), 45.

laundresses as a prostitute group. While officers' wives and other respectable women were treated with civility and deference, the laundresses received no such courtesy. The laundresses lived in dilapidated shacks and tents, often close to the outdoor privies and stables.<sup>129</sup> Laundresses lived in filthy conditions and received little respect. Why would any woman willingly put herself in such a situation? The answer lies in economics. In spite of the shabby treatment and the nightmarish living conditions, the military offered food, shelter, and medical assistance if it was needed. The women could also acquire additional goods by trading sexual favors with the enlisted men.<sup>130</sup> While the officials of the military garrisons tried to portray their establishments as a neat and ordered world unto itself, prostitution thrived in the garrisons, with the knowledge and sometimes the support of the military establishment.<sup>131</sup>

There were white, black, Mexican, Asian, and Indian women working as prostitutes in the brothels and saloons of the Old West. With the exception of white women, all of these women came from pre-industrial cultures where hard work and a lack of material comforts defined their existence. These women from agricultural societies often experienced marginalization by either a wealthy upper class or a foreign invader.<sup>132</sup> "Experience deadened the notions of economic relief, administrative justice, or an alternate way of life. For many of these women the transition from manual to sexual labor involved little or no adjustment in their societal concepts."<sup>133</sup>

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<sup>129</sup> *Ibid.*, 142-143.

<sup>130</sup> *Ibid.*, 144-145.

<sup>131</sup> *Ibid.*, 145.

<sup>132</sup> *Ibid.*, 11.

<sup>133</sup> *Ibid.*

Butler states that black women began to engage in prostitution after the Civil War. Their lives up to the close of the war were ruled by unskilled and agricultural labor. The overwhelming majority of black women were uneducated and lacked training for anything other than hard labor. In the midst of an extremely hostile society with no other viable means of supporting themselves, many made their way to the frontier and worked as prostitutes. The sexual availability to white men that permeated black women's existence under slavery in a way prepared them for lives of prostitution after the end of slavery. Barred from achieving social status or advancing their stations in life, black women, educated by the cruelties of slavery, were nonetheless masters of survival under extremely trying circumstances.<sup>134</sup> “For some the transformation from slave to prostitute flowed from debilitating social and economic effects of bondage.”<sup>135</sup> Bynum again lends credence to this theory. She states that the creation of the Jezebel, or the stereotype of black women as sexually promiscuous, was a rationale for sex between white men and black women. Southern proslavery advocate William Harper supported this idea when he declared that slavery protected promiscuous black women from being shunned by society in the way that promiscuous white women were. He also said that access to enslaved women kept white men from defiling pure white women and allowed the men an outlet for their desires without violating the all-important Southern honor code.

Despite Butler's statement that black women entered the ranks of prostitution after the close of the Civil War, it would seem more likely that they in fact entered its ranks during the war. Enslaved women suddenly found their legal status up in the air due

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<sup>134</sup> *Ibid.*, 13.

<sup>135</sup> *Ibid.*

to the Emancipation Proclamation, and large, occupying armies in their midst. It is probable that many black women realized that their bodies, so long claimed without their consent by white men, could in fact become a tool by which they could earn money and possibly escape their circumstances.

The following two cases are not clear-cut. The allegations of prostitution by the defendants muddied the waters considerably. Nonetheless, they provide a window into the disruption of Southern society caused by the war, and reveal a world where conventional sexual norms appear to have flown out the window. It is possible that the women talked about here, in an attempt to better their situation, took advantage of the large, white, male population that they suddenly found in their midst, and turned to prostitution. It is equally possible that the women did not engage in prostitution and found themselves victims of predatory white males preying on a vulnerable slave population. It is also a possibility that the women did engage in prostitution, and were also victimized. The two are not mutually exclusive. The records reveal some clues.

#### Evidence

In October of 1863, in Beaufort, South Carolina, Assistant Surgeon Charles F. Lauer of the 55th Pennsylvania Volunteers was arraigned on a veritable laundry list of offenses against the black women of the Milne Plantation at Port Royal Island. He was charged with Assault with Intent to Commit Rape for an assault on a woman named Rebecca, Conduct Prejudicial to Good Order and Military Discipline for the attempted rape of a woman named Eda and for a violent assault on a woman named Sarah Jackson,

and Conduct Unbecoming of an Officer and a Gentleman for striking two small girls (daughters of the foreman of Milne Plantation), and for an assault of a woman named Jane Taylor, under the guise of a medical examination.<sup>136</sup>

Rebecca Smith, a witness for the prosecution, offered the following testimony:

I was sitting on a bench with three boys who waited on the officers, Philip, Tony, and Stephen, near the house. The Doctor came along and sat alongside of me and commenced to question me and I told him “No Doctor, I can’t do it,” and he asked me why not and I told him “Because I don’t want to do it,” and then he said he would make me do it and I told him that I would not, and then I went into the house. The Doctor came into the house and caught hold of me behind the door and asked me whether I would do it now, and I refused to. He then slapped me and I told him “When you come to a woman’s house and she don’t want to have anything to do with you, you should leave her and go away.” I called my Uncle Henry to make him take the Doctor away as he was beating me and Aunt Sarah came into the room and the Doctor took a chair and struck me over the eye and I said “Doctor you knocked me on the eye,” and went and told Captain Nesbit who said “he did not think the Doctor would do such a thing,” and I told him the Doctor did do it.<sup>137</sup>

Rebecca further stated that Lauer had kicked her in the stomach twice and struck her in the face, in addition to hitting her with the chair. She showed the Court a visible mark on her forehead left by the chair.<sup>138</sup>

Rebecca’s aunt, Sarah Allen, also testified. She told the Court that she witnessed Lauer harassing Rebecca outside of the house, and that he followed her into the house when she tried to get away from him. She stated that Lauer struck Rebecca several times. “I said to the Doctor that he did a very wrong thing, that when a woman did not give up to him, he should leave her instead of striking her as he had done. He then said to me

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<sup>136</sup> National Archives, RG 153 Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1884*, Lauer, Charles F., NN624, 3-5.

<sup>137</sup> *Ibid.*, 11-12.

<sup>138</sup> *Ibid.*, 12.

‘Now Auntie, you go to your bed. If you do not, I’ll give you hell.’ I told him he could not do it, when he came into my house and fought a girl.”<sup>139</sup>

A woman identified only as Eda also testified that Lauer had done her harm. She stated that during the summer Lauer “came to my house at night and fought with me and I had to go into the cotton field to sleep for three nights to keep away from him.”<sup>140</sup> When asked to clarify what she meant, Eda said that “he come to my house and ‘knocked’ me because I would not let him have anything to do with me.”<sup>141</sup> Eda further stated that both Sarah Allen and Rebecca witnessed Lauer harassing her, as she was living with them at the time.<sup>142</sup> When asked by the Court if Lauer tried to take liberties with her, Eda replied that “He wanted to take it and make a fool of me and I would not let him.”<sup>143</sup>

Sarah Allen was recalled to testify, but was curiously reticent to bolster Eda’s testimony. She stated that Eda and Lauer “had a good deal of ‘turning about’ at my house,”<sup>144</sup> but that she didn’t put too much stock into it, as Eda was a child and a wild one to boot. She stated that the only altercation that she witnessed was Lauer threatening to strike Eda after she called him a hog.<sup>145</sup> However, she did add, “This was the only time in my presence, but what he did at other times, I can’t tell.”<sup>146</sup>

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<sup>139</sup> *Ibid.*, 14.

<sup>140</sup> *Ibid.*, 17.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, 18.

<sup>143</sup> *Ibid.*, 19.

<sup>144</sup> *Ibid.*, 20.

<sup>145</sup> *Ibid.*, 20-21.

<sup>146</sup> *Ibid.*, 21.



Susan Jackson testified that she witnessed Lauer attempting to break into the house of Sarah Jackson.

The Doctor went to Sarah Jackson's door and broke it open. She had her door locked and he drew Sarah out of the room and he caught her by the neck and I said "Doctor don't hold Sarah that way, you will kill her." I then took Sarah and locked her in my house and he came back again and he broke open my door. He then ran off after Sarah, who run off to the house to call the Captain who lived there. I don't know the Captain's name, and the Doctor did not come back again that night.<sup>147</sup>

She further stated that Lauer struck Sarah twice. In fact he struck her so hard that it knocked the wind out of her. She further stated that Lauer said "if that girl did not give up to him he would kill her sure."<sup>148</sup> Susan also reported that Lauer had beaten her two children, Harriet and Charlotte, and that she reported it the next day.<sup>149</sup>

Captain S.S. Metzger, Co. G, 55th Pennsylvania Volunteers, testified on behalf of the prosecution. He stated that he was present when Lauer examined the plaintiff named Jane Taylor on the 21st of July. He further said that Lauer treated Jane gently, even after she initially resisted the examination, and that Jane and Lauer were never alone, that others were present at all times during the examination.<sup>150</sup> When asked why Jane's examination was necessary, Metzger replied "the general impression was that some members of the regiment had been diseased by her."<sup>151</sup> Metzger went on to impugn Jane's reputation for chastity, saying "she was generally considered a prostitute by all on that

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<sup>147</sup> *Ibid.*, 21-22.

<sup>148</sup> *Ibid.*, 22.

<sup>149</sup> *Ibid.*, 22-23.

<sup>150</sup> *Ibid.*, 26-28.

<sup>151</sup> *Ibid.*, 28.

part of the island.”<sup>152</sup> The Court inquired of Metzger what his impressions were of the women of Milne Plantation: “What was the general character and conduct of the negro population there; say for instance, Sarah Allen, Rebecca Smith, Susan Jackson, and Eda?” To which Metzger answered that “they were a tough party. The majority of them were prostitutes.”<sup>153</sup>

Jane Taylor was the next witness to testify. On being asked if she knew Lauer, she stated:

Yes sir, I do know him. He gave me a medical examination. There was three men present and I asked what caused it. He told me that there was an order from the General to search all the girls on the place. And I told him he had no cause to come and search me. Then he tried to search me and I told him not to do it, that he hurt my back on the bench. I struggled with him and told him not to do it, but I could do nothing against three of them in the house and two out doors. I don't know who they were. Two of them and the Doctor took hold of me and threw me down on the table. They raised my clothes as high as my waist and searched me.<sup>154</sup>

After Jane's testimony, the prosecution rested, and Lauer called his first witness. Colonel R. White of the 55th Pennsylvania alleged that Sarah Allen was a nuisance, constantly making complaints to him about the conduct of the soldiers stationed on the island. White stated that he thought Sarah made these complaints as a way to make some money, possibly as a sort of blackmail.<sup>155</sup> On being asked about the character of Rebecca, Eda, and Susan Jackson, White replied:

Rebecca was looked upon as a prostitute of the most degraded character. Eda I don't know much further than that I suppose her to be a bad girl. They were

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<sup>152</sup> *Ibid.*, 29.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*, 30.

<sup>155</sup> *Ibid.*, 31-32.

looked upon as the most degraded negroes that our regiment had met with. Susan Jackson is a very troublesome female and was in the habit of bringing complaints of the most startling kind against the men, which were generally found to be groundless. She accompanied these complaints with shouts and screams so that I hardly thought her “compos mentis.”<sup>156</sup>

Colonel White stated that it was he who ordered Lauer to examine Jane Taylor, as several men in the regiment stated that they had caught a venereal disease from her. He further stated that he ordered several men to accompany Lauer as he anticipated that Jane would fight and Lauer would need assistance.<sup>157</sup>

Lieutenant John Gotshal, Adjutant, 55th Pennsylvania Volunteers, testified that he accompanied Lauer to the house of Sarah Jackson during the summer. He stated that he and Lauer were making the rounds. Because Jackson’s house was a “very suspicious place”<sup>158</sup> they stopped to see that all was as it should be. Gotshal stated that Sarah came to the door, and immediately began abusing them for waking her, and that Sarah’s mother came and joined the chorus. Gotshal said that he and Lauer sat on a bench for fifteen minutes, listening to Sarah and her mother abuse them, and teasing the women, until they got bored and left.<sup>159</sup> Gotshal said that Lauer never struck Sarah, choked her, or attempted to break into her house.<sup>160</sup> Gotshal was then asked about the character of Susan Jackson, the woman who said she witnessed the assault on Sarah. “It is notoriously bad,” he answered. “She is one of the most degraded wenches on the island.”<sup>161</sup> He went on to

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<sup>156</sup> *Ibid.*, 32.

<sup>157</sup> *Ibid.*, 33.

<sup>158</sup> *Ibid.*, 34.

<sup>159</sup> *Ibid.*, 34-35.

<sup>160</sup> *Ibid.*, 35-36.

<sup>161</sup> *Ibid.*, 36.

attack Rebecca's virtue, saying, "I have seen Rebecca at 12 o'clock at night in the tent of a servant not her husband."<sup>162</sup>

Philander Days, a black man who resided at Milne's Plantation was called as a witness for the sole purpose of casting doubt on Rebecca's chastity. He stated that "her reputation for chastity has been rather bad amongst the man out there."<sup>163</sup> When asked if he had ever seen Rebecca go with any of the men at the plantation, Philander said, "I saw her go once. I was sitting at the table and she 'slept' with Humphrey standing up against the door. I did not 'let on' I saw them as it was none of my business."<sup>164</sup>

Sandy Williams, a black boy who lived at Milne Plantation stated that he was living with Dr. Lauer in September, when Susan Jackson said Lauer beat her two daughters. Williams said that Charlotte and Harriet asked him to steal the Doctor's whiskey so they could bring it to their mother. Williams stated that the two girls attacked him when he refused and tore off his shirt. Williams told Lauer what had happened, and Lauer sternly warned them not to do it again or he would send them to jail. Williams stated that he was present when Lauer spoke to the two girls and that he did not touch them.<sup>165</sup> The defense then asked if Williams had seen Rebecca and Sarah that day. When Williams replied that he had, he was asked if they had anything to do with him. He replied, "Yes sir. They took me into the house, pulled off my pants and searched my

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<sup>162</sup> *Ibid.*, 37.

<sup>163</sup> *Ibid.*, 39.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*, 40.

privates and said they were not fit to do anything. Susan Jackson came with a big whip and cut me over the leg and hurt me very bad.”<sup>166</sup>

The next nine witnesses called for the defense, all officers of the 55th Pennsylvania, testified to Lauer’s good character. Lieutenant George M. Parsons, Co. B, 55th Pennsylvania Volunteers, testified that he witnessed some of what occurred between Lauer and Susan Jackson’s two daughters: “I came behind Head Quarters and heard a noise there. Several women were there scolding and making a great fuss and the Doctor only stood by and laughed at them.”<sup>167</sup> When asked why Lauer was at Susan Jackson’s house, Parsons answered, “I think it was on account of the boy coming out of one of the houses crying with his shirt torn off.”<sup>168</sup> Parsons stated that rather than Lauer offering abuse to the women, he was the one being abused. “The whole gang of them come out and abused the Doctor.”<sup>169</sup> Upon being asked of his opinion of the black women who lived at Milne’s Plantation, Parsons answered, “I do not know much about them. But from hearing and seeing them around, I think it is bad. They seem to be very fond of scolding and running into town to make reports about nothing. In general I think their reputation is not very good.”<sup>170</sup>

Lauer was found guilty of only one of the three charges against him, Assault with Intent to Commit Rape, for his mistreatment of Rebecca Smith. He was sentenced to be

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<sup>166</sup> *Ibid.*, 41.

<sup>167</sup> *Ibid.*, 47.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*., 48.

suspended from all pay and rank for two months and to be publicly reprimanded by the Commanding General.<sup>171</sup>

The trial of Charles F. Lauer offers a fascinating view of the racial dynamics that went on between black women and white men during the Civil War. It is apparent from reading the testimony that the women of Milne Plantation had considerable trouble with Lauer, and it is equally clear that Lauer was determined to dismiss them all as abrasive and sexually promiscuous. Lauer's witnesses attempt to paint all of the women of the plantation as harpies, making unreasonable complaints and sleeping with every soldier in sight. Lauer's witnesses also make sure to state that Lauer's character was unimpeachable, that he had never mistreated any woman or child. Lauer and his male witnesses wielded mockery as a powerful weapon. Much of the testimony seems to be almost tongue-in-cheek, such as when Lieutenant Gotshal, with seeming amusement, related the abuse that he and Lauer endured from Sarah Jackson and her mother. He painted himself and Lauer as long-suffering foils to the hysterical behavior of the black women of Milne Plantation, and in doing so, completely undercut the women's testimony. By portraying himself as chivalrous, and by ridiculing his accusers and painting them as unstable, promiscuous Jezebels, Lauer managed to escape punishment for most of the charges leveled against him. For the one charge that he was convicted of, the assault and attempted rape of Rebecca, which was witnessed by her aunt, and which left Rebecca bruised and bleeding, he was slapped on the wrist with a suspension of two months.

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<sup>171</sup> *Ibid.*, 49-50.

The trial of Sergeant James E. Lee of the 1st Alabama Cavalry, U.S.A., in May of 1865 provides a view of racial relations between white men and black women in the Civil War-era, and into the type of treatment a free black woman could expect if she dared to bring charges of rape against a white man. Lee was arraigned on charges of Robbery and Conduct Prejudicial to Good Order and Military Discipline for a foraging expedition gone awry, and a charge of Rape, for an assault committed upon Martha Tabor, “a respectable free woman of color.”<sup>172</sup> Henry and Francis Sykes, residents of Granville County, North Carolina, testified that Lee led a group of men that robbed them on April 22, 1865, stealing gold and silver, flour, apples, and several horses. They also alleged that Lee attempted to burn down their house by setting fire to one of their beds. They stated that their dog and chickens were all shot, although they were not sure if it was Lee that had done it, or one of the men with him.<sup>173</sup>

Martha Tabor testified that on the same day, April 22, 1865, the accused had accosted her while she was working in the field of her employer:

I was in the field with Mr. Loug at work, the prisoner came up and asked Mr. Loug if he knew the prisoners that he had in the road with him, and then asked for the woman that lived in an old house nearby. Mr. Loug said nothing. He, the prisoner ordered me to get up before him. I looked around to Mr. Loug to see if he would tell me not to go--he said nothing. The prisoner then damned me to be in a hurry and tapped me across the shoulders with his sword, and told me he would kill me if I did not go along with them. I then went along with him and he made me get up behind one of the men in the road. The prisoner did not say any more to me but rode on ahead with the two men. The man I was behind carried me along with him into the woods and there he put me down and drew his pistol on me and told “if I did not do as he asked me to do, he would kill me.” I begged him to let me off but he said I had to do it. I went back to the field again and in

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<sup>172</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Lee, James E., OO1086, 6-8.

<sup>173</sup> *Ibid.*, 8-14.

the course of an hour the prisoner came back to the field to me and drew his pistol and sword on me and made me go to the house with him and shut the door and spread myself as I had to do it or die, and then he ravished me.<sup>174</sup>

Upon being asked several questions about her level of resistance and whether Lee had used force or violence, Martha stated that he threw her on the ground, that she attempted to pull away from him, but he threatened to kill her once again if she kept struggling and pulled out his pistol and cocked it.<sup>175</sup> Upon being asked if she was a married woman, Martha replied that she was single.<sup>176</sup>

The testimony of the Sykes and of Martha Tabor appears to be very straightforward. However, the following testimony of other witnesses on the case, both prosecution and defense, muddied the waters considerably.

John Loug, Martha's seventy-two-year-old employer, testified as a witness for the prosecution. Loug testified that on the day in question he and Martha were working in the field and that a man came up, grabbed hold of Martha and took her into a house not far away. He stated that the man used force, drawing his sword, but he could not hear what was said. However, Loug was unable to identify Lee as the man he had seen.<sup>177</sup>

Samuel H. Cheek, of the 1st Alabama Cavalry testified on behalf of the defense. He stated that he was with Lee during the day in question. He stated that he did not see Lee enter the house, let alone attempt to burn it.<sup>178</sup> He also said that he never saw Lee speak to Martha Tabor. However, he did state that he saw one of his comrades go past

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<sup>174</sup> *Ibid.*, 15.

<sup>175</sup> *Ibid.*, 16-20.

<sup>176</sup> *Ibid.*, 19.

<sup>177</sup> *Ibid.*, 21-22.

<sup>178</sup> *Ibid.*, 30-32.



him on horseback with Martha Tabor in tow, and then pass him again without her. He identified this man as Nathan Hobson, also of the 1st Alabama Cavalry.<sup>179</sup>

Jesse and Calvin Mangrew (the prisoners that Martha spoke of seeing in her testimony) appeared as witnesses for the defense. Jesse testified that it was Nathan Hobson who had attempted to burn the Sykes' house down, and that he had not observed Lee take anything from the house.<sup>180</sup> Calvin's testimony corroborated his brother's. He testified that Lee did not steal anything from the Sykes' place, save several horses and that he did not burn anything. He further stated that he saw Nathan Hobson and Martha Tabor pass him on horseback near Mr. Loug's property.<sup>181</sup>

The three final witnesses for the defense were all called in order to attack Martha Tabor's character. These three men, David Lewis, Hanson Hughes, and John J. Overby, all testified that they were familiar with Martha Tabor, and that she was a "whore" and a "drunkard," that she kept a bad house, and that they would not believe her testimony under oath. However, upon being questioned as to their direct knowledge of Martha's character, all had to admit that they had no evidence that Martha kept a house of ill-repute; that they had only heard things.<sup>182</sup>

In the end, it was Lee himself who offered the most damning assessment of Martha's character. In his statement to the Court he related that he came upon Hobson in a small house near Mr. Loug's property after being arrested by General Schofield's escort

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<sup>179</sup> *Ibid.*, 34.

<sup>180</sup> *Ibid.*, 35-39.

<sup>181</sup> *Ibid.*, 39-41.

<sup>182</sup> *Ibid.*, 43-49.

for the robbery of the Sykes' place. "Martha Tabor stepped to the door while the Lieutenant was talking to Hobson. She said to Hobson, 'are you going off now and not pay me?' He said 'No Madam! A woman shall never say she accommodated me and I not pay her'--and unbuttoning his pants took his belt of silver from around him. How much he paid her, I don't know."<sup>183</sup>

Lee was acquitted.<sup>184</sup> A review of the case suggests that Lee was charged as a result of mistaken identity. It seems odd that two men, the brothers Mangrew, who were his prisoners, would be so quick to absolve him of all guilt if he indeed had robbed the Sykes and attempted to burn their house to the ground. The certainty of Cheek and both Mangrews that it was this Nathan Hobson that wreaked havoc on the Sykes and absconded with Martha Tabor lends considerable weight to the idea that Lee was perhaps mistakenly charged. Add to that Mr. Loug's refusal to identify Lee as the man that he saw abduct Martha, and the case for Lee's innocence becomes very strong indeed. However, it seems equally clear that someone assaulted Martha Tabor. Loug, and both Mangrews testified to seeing her being taken off on horseback and Martha offered very clear testimony that she had been raped.

Whatever the truth at the heart of the matter was, the most revealing aspect of this case are the tactics that the defense used to discredit Martha Tabor. Three men, citizens of the town of Raleigh, all testified that they knew Martha Tabor and stated unequivocally that she was a whore and a drunk, despite their having no direct evidence. Then Lee himself dealt the death blow to Martha's respectability by stating directly that she was a

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<sup>183</sup> *Ibid.*, 51.

<sup>184</sup> *Ibid.*, 52.

prostitute, and that he had observed her being paid for her services. In the charges leveled against Lee, it was stated that Martha was “a respectable free woman of color.”<sup>185</sup> The testimony of Lee and his witnesses reveals how easy it was for white men to strip a free black woman of her respectability. Lee, like Lauer, took a distinctly mocking tone when discussing Martha’s accusations of rape. In his testimony, Lee painted an almost whimsical portrait of the chivalrous Nathan Hobson paying the complaining Martha for her services, thereby sanitizing the gritty relationship between prostitute and client, and dismissing any credibility that Martha had established during her testimony. All it took was a few insinuations of sexual promiscuity and Martha’s credibility as a witness in a Court of Law was destroyed. In the end, rather than Lee, it was Martha who was on trial.

So, was Martha Tabor a prostitute? Was Rebecca Smith? Were the other women of Milne Plantation? The answers do not matter so much as what the trial transcripts reveal. They reveal that allegations of unchaste behavior by black women were an effective weapon in the hands of white men who portrayed themselves as chivalrous. They reveal that mockery was another weapon in the arsenal of white Union soldiers. By mocking their accusers as Jezebels and possibly mentally unstable, these men subtly reinforced and perpetuated the existing racial hierarchy that posited black women as undeniably inferior. Black women freely accusing a white man of rape was a novelty at this time in the South. White men resisted this infringement on their previously unrestricted access to black women by cutting mockery that diminished their accusers and elevated themselves. The testimony of these cases reveals an ugly undercurrent in the thinking of the

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<sup>185</sup> *Ibid.*, 8.

occupying army: black women were hysterical harpies trying to extort respectable white men and were not meant to be taken seriously--they were acceptable targets for cruel mockery in a court of law. This ridicule demonstrated that even though black women were gradually extricating themselves from slavery, they were still victims of a racial hierarchy that was enforced in both blatant and subtle ways by the military establishment. By accepting James Lee's testimony that Martha Tabor was a prostitute and that the man whom she said raped her was merely a paying customer, the Court acknowledged that black prostitutes seemingly cannot be rape victims. By punishing Charles Lauer with a suspension of a mere two months for a violent attempted rape on a woman who may have engaged in prostitution, the Court accepted that violence against black women, and against prostitutes, was not a particularly egregious offense. Taken together, these two cases are a stark example of the ways in which black women were sexually dehumanized by a military establishment supposedly dedicated to protecting them.

## CHAPTER V

### THE SACREDNESS OF WHITE WOMANHOOD

In contrast to the military courts' seeming reluctance to punish those white men that assaulted black women, a white man who raped or assaulted a white woman could expect an extremely harsh sentence, typically ranging from multiple years in a penitentiary to death. Out of twenty-three total cases of white men assaulting white women, six offenders were sentenced to death, twelve were sentenced to multiple years in prison (ranging from two years to eighteen), two were shaved and drummed out of the service to the Rogue's March with orders to be shot if they dared enter military premises again, one man was sentenced to several months in prison, and two men had their sentences reversed (see Table 2).

Table 2. Punishments of White Offenders w/White Victims<sup>186</sup>

| <b>Punishments</b>         | <b># of Offenders</b> |
|----------------------------|-----------------------|
| Death                      | 6                     |
| Multiple Years in Prison   | 12                    |
| Drummed Out of the Service | 2                     |
| Several Months in Prison   | 1                     |
| Overtured Sentence         | 2                     |
| Total:                     | 23                    |

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<sup>186</sup> As with the cases of black victims, all cases of white women which I examined are not discussed in detail. The cases discussed are representative of each category. All cases are cited in the bibliography.

## Evidence

The case of Thomas R. Dawson, private of Company A, 19th Regular Massachusetts Volunteers, is typical. In September of 1863, he was charged with deserting his post and with the rape of Mrs. Frances West, a widow residing near Morrisville, Virginia.<sup>187</sup> 1st Lieutenant Henry Swan of the 82nd Regular New York Volunteers testified on behalf of the prosecution. He stated that he was in charge of a portion of the picket line on September 9, 1863. He said that between twelve and one o'clock, a soldier came to him and informed him that he heard a woman's voice in the vicinity of his post. Swan told the man to investigate if he heard anything further. The man did, and so ventured out to the house near the picket line. There he found Dawson hanging around the back of the premises with a light.<sup>188</sup> Swan continued:

An old lady came from the house to the picket post. I saw her after daylight and she informed me that she had been abused by the prisoner and in front of her home he had knocked her down and succeeded in what he attempted--rape. She informed me that where his hat and shoes were found was the spot where he had got the best of her. One of the men sent to the house found his suspender in the house, and the bed was wet. The old lady stated that this man had broke into the house.<sup>189</sup>

Private Robert Mitchell of Co. D, 82nd New York Volunteers testified that he was one of the party sent to arrest Dawson that night. He said that Mrs. Frances West had

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<sup>187</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Dawson, Thomas R., MM792, 154.

<sup>188</sup> *Ibid.*, 154-155.

<sup>189</sup> *Ibid.*, 155.

come to the post and begged them to assist her, that a man had been in her house and behaved badly and she was frightened. Mitchell and another soldier went to West's house and found Dawson with a light in hand, but missing his shoes and cap. Mitchell stated that he thought that Dawson was drunk, and that he could smell liquor on Dawson's breath.<sup>190</sup> He further explained, "The accused seemed stupid. He did not sleep but sat up and he offered one of our men fifty dollars to shoot him and he said that he ought to be ashamed of himself--an old soldier--to be caught in such a scrape."<sup>191</sup>

Frances West herself testified next. After answering a question as to her age, fifty-nine years, she described how Dawson had treated her on the night in question.

This vile man came and raised the hatch and the door and came in and commenced his vile talk and threw me on my bed and got on the bed himself and swore he would do as he pleased from then til day. I said I would inform the officers, and he said "damn the officers," he did not care for them and would do as he pleased. I got off the bed and ran out to call the picket. He caught me, clapped his hand on my mouth and scratched and choked me and drove me into the house. I went out again when he caught me and threw me down and fell on me and acted with violence and brutish he then drove me into the house and threw me on the bed and swore he would continue to do as he pleased. [...] He used the most vulgar language and I was never treated as that man treated me. He used violence and I could not help myself.<sup>192</sup>

The Court asked for clarification--did Mrs. West mean to imply that Dawson attempted to force sexual intercourse on her? She stated definitively that he did. When asked if he had succeeded, she replied, "Certainly he did. I could not help myself. I was

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<sup>190</sup> *Ibid.*, 156-157.

<sup>191</sup> *Ibid.*, 157.

<sup>192</sup> *Ibid.*, 158.

not able.”<sup>193</sup> That was all the Court needed to hear. Dawson was found guilty of both deserting his post and raping Frances West and sentenced to hang.<sup>194</sup>

In August of 1864, Sergeant Charles Sperry of the 13th New York Cavalry was put on trial. He was charged with a laundry list of offenses including quitting his guard near Langley, Virginia, Drunkenness on Duty, Assault and Battery with Intent to Commit a Rape, and Rape.<sup>195</sup>

Annie L. Nelson, fifteen years of age, was called to testify for the prosecution. She stated that on the 18th day of June, 1864, Sperry came to her family’s house in Langley, Virginia. She said that Sperry came into Annie’s mother’s room, where Annie and her mother were, with a pistol in his hand. After threatening to shoot Annie if she put up a light, he went out with another soldier and they attempted to kill the family dogs. He then came back into the room and grabbed Annie. Annie’s mother screamed and Sperry hit her on the head with the pistol. Annie’s mother then made an escape out into the yard. Annie attempted to run, but Sperry caught her and struck her twice. She stated that he tried to put his hands under her clothes, struck her with the pistol, and came very close to raping her.<sup>196</sup> When the Court asked if Sperry had penetrated her, she replied, “He did not but came very near doing it. He had his hands up my clothes. He told me his orders were to kill me and if I did not surrender to him he would kill me. A soldier came to the door

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<sup>193</sup> *Ibid.*, 159.

<sup>194</sup> *Ibid.*, 160.

<sup>195</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Sperry, Charles, NN2427, 3-4.

<sup>196</sup> *Ibid.*, 4-6.



and told him to make haste and I slipped out of the room. He did not hurt me anywhere else except my head and face.”<sup>197</sup>

The next witness for the prosecution was Sarah A. Nelson, Annie’s mother. She corroborated Annie’s timeline of events, verifying that Sperry had indeed come into her room, threatened to kill Annie and then roughly grabbed her. Sarah Nelson stated that she had tried to stop Sperry, but he shoved her and threatened to kill her. Realizing she could not overpower Sperry, Sarah then made her escape out into the yard. She made her way to the porch, where she saw her husband sitting on the porch surrounded by the group of soldiers Sperry had come with. Sarah said that she could hear Annie screaming back in the house.<sup>198</sup> Sarah appealed to her husband for help: “I asked her father if he was a going to sit there and hear that ruffian murder the child in there. He asked me what he could do with the guard over him threatening to blow his brains out. I told him at the risk of my life I would try to do something.”<sup>199</sup> Realizing that it was up to her to save her daughter’s life, Sarah set out to do just that. She ran a quarter of a mile in her nightclothes and stockinged feet to summon a picket.<sup>200</sup> After the picket had captured Sperry, Sarah returned to the house. “Annie was in bed, her head was cut. The blood had run all the way down through her hair and face and hands were all black and swollen out. I asked her if he had accomplished his attempt. She said no. She had fought him off with all her

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<sup>197</sup> *Ibid.*, 6.

<sup>198</sup> *Ibid.*, 7-8.

<sup>199</sup> *Ibid.*, 8.

<sup>200</sup> *Ibid.*

strength. She could scarcely get about for nearly a week, her arms and head were badly bruised.”<sup>201</sup>

Dr. Armistead Peter testified that he tended to Annie the next day, June 19th. He stated that she had a wound on top of her head, and severe contusion over one of her eyes. He also testified that she was in a frightened and agitated state. However, he admitted that her wounds were not so serious as to require a repeat visit.<sup>202</sup>

In his defense, Sperry stated that he and his men simply searched the Nelson’s residence as they suspected that guerillas were being harbored in the neighborhood. Sperry said that he did not attempt to rape Annie, he merely prevented Annie and her mother from leaving the house until the search was completed.<sup>203</sup> He summed it up by saying, “I do not recollect of taking any improper freedom with the girl.”<sup>204</sup> The Court was unmoved. They found Sperry guilty of all of the offenses against him, save that of Rape, as penetration had not occurred. However, the fact that a rape was not accomplished did not inspire the Court to any sort of mercy. They sentenced Sperry to be shot.<sup>205</sup>

Although a death sentence was a very real possibility for a white man who was accused of raping a white woman, a very harsh prison sentence, typically over ten years, was also a distinct possibility.

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<sup>201</sup> *Ibid.*, 9.

<sup>202</sup> *Ibid.*, 9-10.

<sup>203</sup> *Ibid.*, 16-17.

<sup>204</sup> *Ibid.*, 17-18.

<sup>205</sup> *Ibid.*, 18.

In April of 1864, Private Thomas B. Bond was charged with Rape for intercepting a party of three young women near Ocoquan Creek, Virginia, on their return home from visiting a camp of a nearby regiment and raping one of them, a Ms. Sarah Jean Sedman.<sup>206</sup>

Sarah Jean herself was the first witness to testify. She stated that she was walking home with two friends, Lizzie Fairfax and Martha Jane Fair, from visiting the camp of a nearby regiment where they sold socks to the soldiers. She said that they saw Bond coming down the road toward them. He had a knife in his hand, and was whittling. Originally, Bond was very friendly and inquired about how successful they had been selling their wares in the camp. However, his demeanor soon changed. Suddenly Bond stated that he had to arrest Lizzie and take her back to camp, and that there was only one thing she could do to save her from going to camp. He then grabbed both Lizzie and Sarah Jean. Lizzie managed to get away but Sarah Jean was not so lucky. Bond threw her down and threatened her with the knife he had been whittling with. Sarah Jean said that despite struggling and yelling for help, Bond raped her, with Martha Jane watching helplessly while yelling as loud as she could.<sup>207</sup>

Martha Jane also testified and verified Sarah Jean's version of events. She stated that when they originally encountered Bond, he was very friendly, but soon became threatening, wanting to arrest Lizzie. After Lizzie made her escape, Martha Jane was left to watch, horrified, as Bond assaulted her friend. She confirmed that a rape had indeed

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<sup>206</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Bond, Thomas B., NN3927.

<sup>207</sup> *Ibid.*, 1-5.

occurred, that Sarah Jane had struggled all that she could, and that Bond had a knife in his hand.<sup>208</sup> The Court was convinced. They convicted Bond of Rape and sentenced him to be dishonorably discharged, to forfeit all of his pay, and to be confined in a penitentiary for fifteen years.<sup>209</sup>

Also in April of 1864, Private Charles C. Hunter, Co. F, 7th Kentucky Cavalry Volunteers was put on trial, charged with the rape of Mrs. Melissa Kirksey, of Lookout Valley, Tennessee.<sup>210</sup> Mrs. Kirksey testified that she lived about one mile from General Hooker's headquarters, and that since that Army had come she had done the soldiers' washing and sewing for a living. She also stated that she had been a widow for six years.<sup>211</sup> She said that on the 18th of May, 1864, she was doing her work as usual when Hunter showed up at her house. Kirksey was alone with Hunter. A soldier who had been there earlier had departed, and Kirksey's young son was at a neighbors, helping with chores. Originally, Hunter was friendly, making small talk with her about the weather and about her work, even helping her take up the dry clothes hanging in the yard. However, after they returned to the house, Hunter roughly picked up Kirksey and threw her on the bed, hurting her arm badly in the process as she struggled to be free of him. Kirksey begged Hunter to leave her alone, but Hunter silenced her with a leather strap that he wrapped around her mouth.<sup>212</sup> Kirksey continued "The accused then accomplished the

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<sup>208</sup> *Ibid.*, 7-11.

<sup>209</sup> *Ibid.*, 13.

<sup>210</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Hunter, Charles C., NN1921, 8-9.

<sup>211</sup> *Ibid.*, 9.

<sup>212</sup> *Ibid.*, 10-13.

purpose he was after. He did not have my will or consent to do what he did. Everything he done was done by force. He had full connection with me and I could not help myself a particle. I tried to get away from him but it was impossible.”<sup>213</sup> Here, the Court stenographer sympathetically noted that Mrs. Kirksey was so affected that she could barely speak.<sup>214</sup> After raping Mrs. Kirksey, Hunter decided to rub salt in the wound by mocking her. As she sat on the floor crying, “the accused came to me and took my pocketbook out of my pocket and kind of laughed and said that he had a notion to rob me or something of that kind.”<sup>215</sup> Hunter had then left. Kirksey stated that about two hours later, the soldier who had been at her house in the morning before the accused showed up, a man named Crutchfield, returned. Kirksey said that she had been abused and applied to him for protection. Crutchfield seemed curiously unaffected by Kirksey’s pleas and told her that she needed to apply to an officer. Soon afterward, a Captain Cravens of the 6th Kentucky Cavalry showed up with his laundry in tow. Kirksey appealed to him for protection, saying that she had been abused. However, she did not tell either Crutchfield or Cravens that she had been raped. The Captain told Kirksey to let the matter rest.<sup>216</sup> Several days later, Hunter returned. Kirksey, who was in her yard when he showed up, jumped over a fence to escape him, but Hunter was apparently much faster and more agile and caught her.<sup>217</sup> Kirksey detailed what happened next:

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<sup>213</sup> *Ibid.*, 13-14.

<sup>214</sup> *Ibid.*, 14.

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*, 14-15.

<sup>217</sup> *Ibid.*, 15-16.

He asked me if I would forgive him, something of that kind, and to not say anything about what he had done as he intended to marry me. He also said that he would not treat me so anymore. He kept on cursing me and talking to me. I begged him to let go of me, that I was yet sick from the effects of what he had done to me. He threatened to cut my liver out. He said that his intentions were to marry me. I told him that I was not a marrying character. He said that I was a bitch. He said when will you marry me. I wanted to get rid of him. I told him I would give him an answer the next day. He said that he was afraid I would give him an answer that he would not like. He then shook hands with me and wanted to kiss me. He kissed me, I could not prevent it. He also laid some money on my arm, but I told that I had no use for it and did not take it. He then rode away.<sup>218</sup>

When questioned by the Court as to why she had not immediately reported Hunter, she replied “I did not know military rules. I did not know what protection I was entitled to. I asked some advice. I did not like to tell what had been done to me. I merely said that I had been abused.”<sup>219</sup>

Hunter made a cursory attempt to defend himself, calling two witnesses, both soldiers, to cast aspersions on Mrs. Kirksey’s character. Both declined to impugn her.<sup>220</sup> Mrs. Kirksey never had to defend herself against allegations of prostitution during the trial of her rapist, something that black victims often found themselves doing. The Court found Hunter guilty and sentenced him to eighteen years in a penitentiary.<sup>221</sup>

Sometimes, even speaking in a threatening manner to a white woman could earn a man a stiff punishment. In December of 1864, Private Levi Lemon of Co. B, 20th New York Cavalry was put on trial, charged with Assault with Attempt to Commit a Rape and Stealing. The Court charged that Lemon, while on duty at a picket post in Princess Anne

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<sup>218</sup> *Ibid.*, 17.

<sup>219</sup> *Ibid.*, 22.

<sup>220</sup> *Ibid.*, 32-33.

<sup>221</sup> *Ibid.*, 34.

County, Virginia, in November of 1864 assaulted Mrs. Lydia Stanley, and “did then and there use infamous, insulting, and threatening language to her.”<sup>222</sup> The Court also alleged that Lemon stole a blanket from Mrs. Stanley.<sup>223</sup>

Mrs. Lydia Stanley stated that on the 19th of November, 1864, she was on her way back to her house from the Norfolk market. She stopped at the blacksmith’s shop, and there Lemon came to her cart and told her to get up, which she did.<sup>224</sup> The Court then asked what kind of language Lemon used towards her on that occasion. Mrs. Stanley answered matter-of-factly, “I said I had nothing but what was on my person and then the accused said I had more than all the rest besides, you have got a cunt and I am going to fuck you. Soon after that he allowed me to proceed on my way home.”<sup>225</sup> The Court then asked if Lemon touched her in any way. Mrs. Stanley asserted that he did not. The Court desired to know if Lemon took anything out of Mrs. Stanley’s cart. Mrs. Stanley stated that Lemon took a blanket, but it was returned to her.<sup>226</sup>

James Moore, a citizen who happened to be at the blacksmith’s at the same time as Mrs. Stanley also testified. He stated that Lemon was belligerent, saying that no one would leave until he said so. Moore related what happened next, “I said you are a sort of a damn mean folks about here. Then he said to Mrs. Stanley, you are a damn mean woman, and I mean to fuck you. Then she hollered out to me for protection. That is all I

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<sup>222</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General (Army), *Court Martial Case Files 1809-1894*, Lemon, Levi, MM1651, 5.

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*, 13.

<sup>225</sup> *Ibid.*

<sup>226</sup> *Ibid.*

recollect of the occurrence. The other soldier told us to fly and get clear of him and we did so as soon as we could.”<sup>227</sup> When prompted, Moore said that he did not hear Lemon threaten Mrs. Stanley. He did state that he thought Lemon was reaching into Mrs. Stanley’s cart, trying to get ahold of her.<sup>228</sup>

In his defense, Lemon had the following to say:

Gentlemen, when I was posted at Oles Corner, we were ordered to take up all permits, and to search all carts if they had anything not on their permits we were to take it, and if a woman was in a cart, we were to make her stand up and see if she had anything concealed under her clothes. I told the other fellow I would see if Mrs. Stanley had anything not on her permit in her cart and I took hold of her blanket to look under it and then she went on and the Corporal found the blanket the next morning and brought it down to the picket post. If I used any such language as Mrs. Stanley swore, I am very sorry. I never used such to any woman before. I had taken 2 or 3 drinks of whiskey. I had the chills on me at the time and my head was dizzy for several days. I was doing duty as there were only about 18 men fit for duty in the company.<sup>229</sup>

Levi Lemon was found not guilty of Assault with an Attempt to Commit a Rape, but he was found guilty of the specification that stated that he used “insulting and threatening” language towards Mrs. Stanley. The Court also found him guilty of stealing.<sup>230</sup> Lemon was sentenced to be confined at hard labor for six months and to submit ten dollars out of his monthly pay for the same six months.<sup>231</sup> Thus, even speaking harshly to a white woman, a man could be at risk of punishment. The charge of Assault with Attempt to Commit a Rape was perhaps overzealous, considering Lemon never laid

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<sup>227</sup> *Ibid.*, 15.

<sup>228</sup> *Ibid.*, 15-16.

<sup>229</sup> *Ibid.*, 21.

<sup>230</sup> *Ibid.*, 19.

<sup>231</sup> *Ibid.*, 19-20.



hands on Mrs. Stanley, nor does it appear he even made any attempt to hold her at the picket, or do anything other than make an exceedingly inappropriate comment. The charge of theft also appears to be debatable, as it appears that the blanket may have simply been overlooked in the chaos that occurred after Lemon spoke to Mrs. Stanley.

The case of Private Hugh Burns of Company H, 108th Ohio Infantry, is a remarkable exception to the rule that white men who dared to rape white women would be punished harshly. His trial and the subsequent reverses that occurred after it seem to demonstrate that even white womanhood had its limits. In July of 1864, Burns was charged with Murder. Burns was alleged to have raped a woman named Anna Mason on July 11 in Memphis, Tennessee, and while assaulting her, inflicting injuries so severe that she died of her wounds five days later.<sup>232</sup>

The first witness to testify for the prosecution was Dr. D.C. Cracroft, a physician and surgeon who worked in Memphis. He stated that Anna Mason was brought into his hospital in the morning of July 11th or 12th and he was the first to examine her. He bluntly described the extent of her injuries: “As soon as she was given a bed I examined her person. The vagina was torn and lacerated. The neck of the bladder was torn loose from the vulva. She was bruised in several places on the neck and arm and shoulder.”<sup>233</sup> Cracroft stated that Anna Mason’s injuries were recent, no more than four or six hours old, as they were still hemorrhaging.<sup>234</sup> Cracroft asserted that Anna Mason died as a result

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<sup>232</sup> National Archives, RG 153, Records of the Office of the Judge Advocate General, *Court Martial Case Files 1809-1894*, Burns, Hugh, NN3205, 1-2.

<sup>233</sup> *Ibid.*, 3.

<sup>234</sup> *Ibid.*, 4.

of an infection caused by a foreign instrument (likely a stick, as some splinters were recovered) that had been run up into the vaginal canal.<sup>235</sup> Under cross-examination, Cracroft admitted that Anna Mason was a drunk, stating “She would get drunk whenever she could get it, I believe.”<sup>236</sup> Cracroft also revealed that Anna Mason had an eight-year-old daughter.<sup>237</sup>

Private William Wockey, of Co. F of the 113th Illinois Infantry testified that he saw Burns lying under a tree with a woman on the morning of July 12th. He also stated that there was a little girl of about six years of age lying with the woman. He stated that the woman’s clothes were torn and dirty and that “she looked as though she had been rolled around in the dust.”<sup>238</sup> Wockey stated that he thought that Burns was asleep, but that the woman was groaning. Wockey woke Burns up, and Burns walked off towards where his regiment was encamped.<sup>239</sup> He stated that he thought that Burns was intoxicated. When asked if the woman was also drunk, he replied “Either drunk or sick, I could not really tell which.”<sup>240</sup>

Colonel Charles Turner testified that when Burns was arrested, his hat was observed to be very dirty and there appeared to be blood on it. Turner further stated that he examined a shirt and trousers soaked with blood that had been found in camp with the

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<sup>235</sup> *Ibid.*, 3.

<sup>236</sup> *Ibid.*, 6.

<sup>237</sup> *Ibid.*, 5.

<sup>238</sup> *Ibid.*, 8.

<sup>239</sup> *Ibid.*, 9.

<sup>240</sup> *Ibid.*, 10.

camp's washer woman. He then admitted that he had no definitive proof that they were the defendant's clothes, only hearsay.<sup>241</sup>

The washerwoman herself, Mary Eliza, testified that Hugh Burns came to her the day he was arrested and brought her his clothes to wash. She verified that they were very bloody, and that Colonel Turner did indeed come and take them away.<sup>242</sup>

Colonel S.W. Reynolds testified that he escorted Hugh Burns to the city hospital to be brought before Anna Mason on the 12th of July. "I took him there and took him before Mrs. Mason and asked her if she recognized him as being one of the men who abused her and she said she did."<sup>243</sup> When questioned, Reynolds repeated that Anna Mason positively identified Burns as one of her attackers.<sup>244</sup>

In her statement given while she was at the hospital, Anna Mason stated that Hugh Burns and another man who was never identified abused her. "They could not treat me worse if they had killed me. They had two canteens of whiskey and wanted me to drink, which I refused to do. They then commenced to drag me around and beat me."<sup>245</sup> Mason further stated that Burns and the other man tied her to a tree and raped her.<sup>246</sup> The Court found Burns guilty and sentenced him to be dishonorably discharged and to serve ten years in prison.<sup>247</sup>

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<sup>241</sup> *Ibid.*, 12-14.

<sup>242</sup> *Ibid.*, 16-17.

<sup>243</sup> *Ibid.*, 15.

<sup>244</sup> *Ibid.*, 16.

<sup>245</sup> *Ibid.*, 25.

<sup>246</sup> *Ibid.*

<sup>247</sup> *Ibid.*, 23-24.

In November of 1864, Harry F. Lee from the Judge Advocate's Office at the Headquarters of the District of West Tennessee wrote to Colonel William W. Dunn, acting Judge Advocate General. Lee stated that Burns' sentence was irregular, as under the current law in Tennessee he should have been hanged. However, the Judge Advocate's Office was willing to overlook this discrepancy.

But in view of the facts that there was no way of mending the sentence, the Court before which he was tried having long since been disbanded, that the prisoner was convicted of one of the most heinous and horrible offenses in the catalogue of human crimes, and it seemed a crying shame that such a monster should escape the penalty which the atrocity of his offense more than merited and it was deemed advisable to approve the sentence, trusting that the departure from the strict requirement of the law to further the ends of justice will meet your approbation.<sup>248</sup>

However, in May of 1865, the officers of the 108th Illinois Infantry, Burns' regiment, wrote to President Andrew Johnson to ask for Burns' release.

The undersigned knowing the disposition and character of Hugh Burns, and having learned many of the facts connected with the affair for which he was tried and sentenced, feel justified in saying that if he is guilty at all, it is not as having been the principal or leading actor. The evidence in the trial showed clearly that some other person was considered the leader, but it was never discovered who that person was. Said Burns has a wife and children dependent upon him for support who we learn are in want in consequence of a failure to receive any thing for his service for nearly a year past. In view of the foregoing facts referred to, and the further facts that he had already been imprisoned for this offense for more than ten months, we believe that as to him the end of justice have been fully satisfied and therefore confidently ask that he may be pardoned and restored to his former rights, all of which is respectfully submitted.<sup>249</sup>

President Johnson proved to be sympathetic. Only one month after Burns' officers submitted their plea, Hugh Burns was released from prison and returned to duty with his old regiment. The rest of his sentence was remitted, as was his forfeiture of pay from the

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<sup>248</sup> *Ibid.*, correspondence in case file.

<sup>249</sup> *Ibid.*, correspondence in case file.

date of his release forward.<sup>250</sup> After being convicted of murder, Hugh Burns was released only a year into his sentence with a clean slate.

There were several factors that might explain how Burns managed to escape punishment for the rape and murder of which he was convicted. Anna Mason's behavior and lifestyle may have contributed to her accused murderer being treated so leniently. Anna Mason was a single mother and possibly an alcoholic. Whatever she was, she did not fit the image of respectable white womanhood that held sway over public opinion at this time. Another factor seems to have been the presence of another attacker, who was never identified. As this other man was never identified, it was very easy for the members of Burns' old regiment to lay the onus of the crime at the feet of an unknown figure, and not their comrade in arms. In their eyes, Burns was no more than an accomplice at most, swept up by the influence of an nameless man with sinister motives. It is entirely possible that Hugh Burns was only the accomplice that his comrades insisted he was. Burns' counsel made a vigorous attempt to poke holes in the prosecution's case, and succeeded to a great degree. He pointed out that Private Wockey could not definitively say that it was Anna Mason that he saw lying with Hugh Burns, and that there was no proof that Burns wore the bloody clothes he left with Mary Eliza.<sup>251</sup> Why, counsel asked, if the woman that Wockey saw really was Anna Mason, did she not ask for assistance, or say that she had been abused?<sup>252</sup> Burns' counsel also insinuated that Anna Mason was either

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<sup>250</sup> *Ibid.*, Special Orders No. 322, correspondence in case file.

<sup>251</sup> *Ibid.*, argument in defense, 1-2, 4.

<sup>252</sup> *Ibid.*, argument in defense, 6.

lying or in a confused mental state when she accused Burns of being her attacker,<sup>253</sup> even though Dr. Cracroft had already refuted the last possibility when he testified that Anna Mason gave her statement in her right mind in his medical opinion.<sup>254</sup> Counsel also pointed out some discrepancies between when Anna Mason said she was attacked and when others testified that Hugh Burns was in camp.<sup>255</sup> Burns' counsel did his job well, and raised considerable doubt. However, at the very least, Burns seems to have been involved in Anna Mason's death in some capacity. He was seen handling blood-soaked clothing, he was observed lying with a woman who was either drunk or incapacitated who seemingly fit Anna Mason's description, and he was positively identified by Anna Mason as being one of her attackers. If Burns really was only an accomplice, and did not make the assault that eventually killed Anna Mason, it surely seems like he would have been in a position to know who did. Perhaps those were someone else's bloody clothes and Burns was attempting to protect someone. Yet, no attempt was made to question Hugh Burns about this other man. Anna Mason was a white woman, and as such, the Court felt a need to punish someone for her death. Yet, she was a single mother and possibly an alcoholic, and therefore all Hugh Burns' friends had to do was ask nicely and Burns was let out of prison with a completely clean slate after serving less than a year. Maybe an injustice was done to Hugh Burns, and he served a year for something he was minimally involved in, if at all. An injustice was certainly done to Anna Mason. Her case

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<sup>253</sup> *Ibid.*, argument in defense, 2-4.

<sup>254</sup> *Ibid.*, 7.

<sup>255</sup> *Ibid.*, argument in defense, 3.

demonstrates that there were very definite limits to the protection and status that white womanhood received.

### Conclusion

The egalitarian ideology of the Republican North challenged the antebellum status quo that posited that black women were undeniably inferior and sexually available to any white man who wanted them. Rape, it seems, was a weapon that soldiers sometimes deployed to try to reassert the racial hierarchy that had been undermined by the Lieber Code, the Emancipation Proclamation, the Thirteenth Amendment, and other legislative measures that protected the rights of blacks. White men raped black women because they viewed them as little more than prostitutes and perhaps because they resented the challenge to the the old order that had positioned them, as white men, as masters of the universe. The military courts, supposedly guided by Lincoln's Lieber Code, proved that they were attempting consciously or unconsciously to recapture that old world order by refusing to harshly punish those soldiers charged with rape of a black woman. A white soldier who raped a black woman could typically expect to come away from it with little more than a slap on the wrist, evidence that although black women were free from slavery, they were not free from the predatory desires of white men. However, it is also important to realize that despite this desire to recapture the old racial order, the Union Army was also an instrument of progress. Black women, who not so long before were considered property, found themselves on equal legal footing with white men, something unthinkable only several years earlier. They could accuse a white man of rape and offer

testimony in a court of law and the officers of the court were obligated to consider that testimony.

Out of twenty-six total cases of white men accused of raping or assaulting black women, five, Robert E. Cropps, William H. Hilton, Adolph Borke, Edward Williams, and Patrick O'Brien, were convicted and sentenced to be punished harshly with multiple years in prison, or with death. However, all of these sentences were reversed in some way. Cropps had his five-year prison sentence disappeared, and he returned to the service. Hilton's death sentence was overturned and he also returned to the service, despite being convicted of a brutal attempted rape and murder. Adolph Borke was sentenced to be shot, but this was mitigated to five years in prison. Both Edwards and O'Brien had their twenty-one year prison sentences disappeared and found themselves back in the service. The reasons for most of these reversals were simple: clerical errors in the trial paperwork. All of these men were convicted of the charges leveled against them, and yet all escaped serious punishment. Military justice could indeed be fickle when it came to white men assaulting black women.

Despite this apparent fickleness, there were times when white men who assaulted black women were punished rather harshly. Five men convicted of raping or assaulting a black woman were sentenced to several years in prison. However, no matter how brutal the rape, or how the convinced the court was as to the veracity of the victim's claims, no man was sentenced to more than five years. Corporal George Hakes raped Phoebe Robinson, a free woman who had just given birth three weeks previously. He used violence to subdue her, to which Phoebe powerfully testified. The Court was convinced.



While the violence of the assault was recognized, the Court sentenced Hakes to merely two years of confinement at hard labor. Robert Mitchell was convicted of the rape of ten-year-old America Pierman. Pierman herself testified to being assaulted by Mitchell, and a doctor provided his medical opinion that Pierman had suffered pelvic trauma consistent with rape. Mitchell was sentenced to three years in prison. Not even the rape of a child was enough to move the Court to impose a punishment of more than a few years.

By a large margin, eight cases, the most common punishment for the assault of a black woman was several months of hard labor and a forfeit of pay. One man convicted of rape was sentenced to be branded with an “R” and was drummed out of the service. One man was ordered to forfeit ten dollars of his monthly pay for four months. Two men were never tried, as their alleged victim, an elderly black woman, had died. Three men were acquitted. So, while it was technically possible for a white man to receive a prison sentence of several years for raping a black woman, a more likely punishment would be several months of hard labor and a small fine.

By contrast, those men that dared to rape white women could expect an extremely harsh punishment. Out of twenty-three total cases, six men were sentenced to death. Twelve were sentenced to anything from three to eighteen years in prison, with sentences in the double-digits being the most common. Two men were drummed out of the service with orders to be shot if they were found on military premises again. One man was sentenced to six months of hard labor for merely using insulting language to a white woman. Two men had their convictions overturned. One was convicted of Murder, after a brutal rape that led to the death of the victim, and was sentenced to ten years in prison.

However, merely a year into his sentence, he was released and returned to the service with a clean slate. A possible reason for this extraordinary leniency may lie in the lifestyle the victim led. She was described as a single mother and an alcoholic during the trial. Whatever she was, she did not fit the image of respectable white womanhood that the other victims conformed to.

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There are several limitations to my research. There were several cases where a man accused of rape or attempted rape was found guilty of a lesser charge, usually “Conduct to the Prejudice of Good Order and Military Discipline” with the Court rejecting the wording in the original charge that a rape had occurred. It is entirely possible that these men really were only guilty of an assault without a sexual element. However, their sentences, usually just a few months of hard labor and a small fine, reinforce my main argument that black women who had been assaulted by white men were dehumanized by the military establishment. The almost complete uniform harshness of the punishments of the men who raped white women also supports this argument.

There is also the possibility that the women in the cases of Charles Lee and James Lee who accused the men of rape really were prostitutes, as the men alleged. Whether the women were prostitutes or not, the fact that the Army declined to punish harshly the men who abused them supports the idea of the Army as an institution devoted to racial hierarchy. The subtle tone of mockery that both Lauer and Lee used in their testimony perpetuated and reinforced a strict racial hierarchy where black women were undeniably inferior and not to be trusted. Although a black woman could accuse a white man of rape

and testify against him in a court of law, in doing so, she subjected herself to accusations of prostitution and to mockery that undercut her testimony, no matter how convincing she might have been. Catherine Clinton has stated that the death of slavery reshaped ideas about appropriate sexual conduct and opened up more opportunities for black women to fight back against the sexual abuse that had become a norm under slavery.<sup>256</sup>

“Reconstruction in many ways offered black women their rights, but little means to exercise those legal privileges. It afforded women a voice, but denied African Americans a form within which to speak and be heard without reprisals.”<sup>257</sup> Although Clinton was speaking of Reconstruction, the cases of Lee and Lauer illustrate her point starkly. Rebecca Smith and Martha Tabor could testify against their white attackers in a court of law, but by raising their voices, they opened themselves to vicious mockery.

Union courts-martial are a resource ripe for further study. I was only able to investigate a small sample of the cases that the National Archives contains. I have no doubt that further investigation would reveal more cases of black women who had been abused failing to receive justice, as even the relatively small number of cases I was able to look at revealed that quite clearly. A comprehensive study of the way that black women were treated by the Union military establishment would reveal much about racial attitudes and racial hierarchy in the Union Army during a time that it was ostensibly devoted to emancipation.

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<sup>256</sup> Catherine Clinton, “Reconstructing Freedwomen,” *Divided Houses: Gender and the Civil War* (Oxford, Oxford University Press, 1992), 318.

<sup>257</sup> *Ibid.*



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