RAPE:
THE LEGISLATION OF RACIAL AND SEXUAL MORALITY IN 19TH CENTURY VIRGINIA

AN "A" PAPER PRESENTED TO:
PROFESSOR WENDY WILLIAMS AND
PROFESSOR RICHARD CHUSED

In partial fullfillment for the Gender and the Law Seminar

DIANE RUSSELL
20 FEBRUARY 1992
Southern whites have always been obsessed with black male sexuality and white womanhood. Rape has a historical legacy of being seen not only as a sexual violation, but also as a racial violation. In the case of interracial rape, black men were treated more harshly than any other racial group. White men were not punished at all for raping black women, and black men were punished more severely than were white men who raped white women. White men came to see interracial rape as a direct assault on their domination and control over blacks and over white women.

White legislators did not deem interracial rape of a black woman by a white man as worthy of any special legislation. Indeed, laws were passed specifically targeting black men for raping white women, but not for men—black or white—who raped black women.

On the other hand, a body of anti-rape law developed that singled out white women for protection. Anti-rape statutes that specifically targeted black men who raped white women served two purposes. First, the statutes were used to maintain white "racial purity." Second, they were used as a systematic exercise of violent power by a government for the purpose of keeping African people in total subordination to white people. Thus, anti-rape statutes were a necessary component of an intricate scheme used to protect the existing forms of social organization.

This paper examines two anti-rape statutes that targeted black men in early nineteenth century Virginia. An 1823 statute specified that attempted rape of a white woman by a free negro was punishable by death; an 1825 statute was the first statute that dealt with consent as a defense for free negroes and mulattoes
accused of raping white women.\textsuperscript{5}

The paper is divided into five sections. The first section examines the early legislation of racial purity. This section explores laws whose purpose was the prohibition of race intermixture. I believe the background is useful to establish the climate in which the 1823 and 1825 anti-rape statutes developed. The second section tackles pre-1823 rape law in Virginia starting with the colonial period. The third section discusses the 1823 and 1825 rape laws while examining how they changed prior law. The fourth section is dedicated to the enforcement of these statutes. Case law and petitions written to the Governor of Virginia during the time period are the primary source of the section. This paper examines cases between the years 1823-1833 because "the decade constitutes the peak of official white concern about sexual assault by slaves between the 17th century and the end of slavery."\textsuperscript{6} Finally, the fifth section is dedicated to the demise of the 1823 and 1825 anti-rape statutes.

I. EARLY LEGISLATION OF RACIAL PURITY

Virginia has a history of taking sexual crimes very seriously. When the colony was established, sexual crimes made up half of the capital crimes.\textsuperscript{7} From the time blacks were brought to Virginia, laws were passed to prevent the intermixture of the races. These laws included interracial marriage, sex, and rape. The first recorded step taken in the matter of race intermixture was in 1630, when it was ordered "that Hugh Davis be soundly whipped before on
assemblage of Negroes and others for abusing himself to the dishonor of God and the shame of Christians by defiling his body in lying with a Negro, which fault he is to acknowledge next Sabbath Day."  

As a deterrent to intermarriage and/or inter-racial sex, the Virginia act of 1662 was passed, declaring that:

Whereas some doubts have arisen whether a child got by an Englishman upon a negro should be free or slave, be it therefore enacted by this present grand assembly, that all children in this country shall be bound or free according to the condition of the mother, and if any Christian shall commit fornication with a negro man or woman, he or she so offending shall pay a fine double the fine imposed by the previous act.  

This law is significant because it seems to be a response to the growing number of bastard mulattoes that came out of the union between white males and black females.  

According to the statute, the offspring of this union were slaves since children born from a white man/black woman union took on the status of the mother. Note, however, that the purpose of this act was primarily punitive. It was designed to prevent race mixture rather than to create slaves. The "spurious issue", the offspring between blacks and whites, was at all times abhorred. This law hardly served as a deterrent.  

In 1682, an act was passed declaring that the conversion of the slave to Christianity would not liberate him from slavery. According to the statute, a Christian servant "who and whose parentage and native country are not Christian at the time of their first purchase ... by some Christian" could be sold as a slave,
notwithstanding his conversion to Christianity before importation.\textsuperscript{15} The nominal test for slavery became original heathenism. The effect of this law was to enslave more blacks since practically no Africans were born of Christian parentage nor had they come from Christian lands.\textsuperscript{16}

The fact that not even Christianity would not liberate the slave shows the growth of the belief that Blacks were an "abject being to be kept separate from the white race."\textsuperscript{17} The conversion of blacks was opposed because of the belief that the equal association of the races in religious matters "made blacks dissatisfied and made them aspire to other forms of associations."\textsuperscript{18} These feared "other forms of association" were probably interracial sex, marriage, and freedom.

There are several reasons why whites opposed the intermixture of races. Ballagh suggests natural race prejudices of the Englishman were brought over with him from England.\textsuperscript{19} However, when Blacks were first brought to the United States, white slave masters assigned black slaves and white indentured servants the same tasks and treated them with equal contempt.\textsuperscript{20} Rather than race prejudice, however, this similar treatment between poor whites and blacks seems like class prejudice.

Johnston believes white legislators opposed the intermixture of races because the influential Virginia planters wanted to develop an attitude of race superiority between poor whites and blacks.\textsuperscript{21} The relationship between indentured servants and slaves was close and they were both treated badly by their masters.\textsuperscript{22} There was a fear among the planters that at some future time, poor whites would
lead mulattoes and blacks in revolt against the established order. Thus, it was absolutely necessary to legislate race superiority to divide a potentially subversive bloc of oppressed blacks and whites.

A third reason to keep the races separate was fueled by the need to preserve slavery as an economic institution. If the races intermixed, several problems could arise. White planters were scared that some white slave holders would free their mulatto children. For example, in Halifax, Virginia a Reverend James Fowles by will set free and gave lands to his slaves Molly and John. Many years later when the individuals petitioned to be permitted to remain in the state, an individual testified that the Reverend "was confessedly, both their master and natural father." In his travels of America, Toquevville noted:

I happened to meet with an old man in the south of the Union who had lived in illicit intercourse with one of his own negroes and had had several children by her who were born the slaves of their father. He had indeed frequently thought of bequeathing to them at least their freedom, but years had elapsed without his being able to surmount the legal obstacles to their emancipation and in the meanwhile his old age was come and he was about to die. He pictured to himself his sons dragged from market to market and passing from the authority of a parent to the rod of a stranger until these horrid anticipations worked his expiring imagination into a phrensy.

Also, if the races intermixed, there was the possibility that the mulatto offspring of a free white mother could be set free because a mulatto child took the status of the mother. This would have interrupted the flow of black slave labor and economic loss would
have resulted for the Virginia planter.

In order for slavery to exist, Blacks had to be easily identifiable. Because the possession of white skin was a presumption of freedom, it would become increasingly difficult to identify who was black if the races intermixed. A traveler in Maryland noted:

there were female slaves, who are now become white by their mixture. There are at this time many beautiful girls, many of whom are as fair as any living ... and whose posterity must remain in the same degraded condition.27

Elliot recognized the difficulty in distinguishing the races when he noted "a very bright mulatto, would be taken for a white boy if not closely examined;"28 "his hair is black and straight;"29 "he has straight hair and a complexion so nearly white that a stranger would suppose there was no negro blood in him.30 The effect race intermixture had on slave institutions is evident from a letter written to a local Kentucky newspaper:

A laudable indignation was universally manifested among our citizens, and even among the blacks, on Saturday last, by the exposure of a woman and two children for sale at public auction at the front of our principal tavern. This woman and children were as white as any of our citizens, indeed we scarcely ever saw a child with a fairer or clearer complexion than the younger one. That they were not slaves we do not pretend to say; but there was something so revolting to the feelings, at the sight of this woman and children exposed to sale by their young master, it excited such an association of ideas in the minds of every one; it brought to the recollection so forcibly the morality of slaveholding states -- that not a person was found to make an offer for them. The legal maxim of par. seg. vent. has made them slaves for life and the same maxim will make the offspring of
these children slaves. Who can think of this and not shudder? Can there not be, some limitation, some bounds fixed to the principle? We trust we shall not see a second attempt to sell them in this town.31

Because an identifiable black person was absolutely necessary for slavery to function efficiently, nothing could interfere. If blacks were difficult to identify, a problem posed by race intermixture, slavery could not function efficiently because it was difficult to identify the black subordinate.32 It was so important to discern blacks from whites that race experts developed to determine who was white:

The effect of intermixture of the different races of people is surely a matter of science, and it may be learned by observation and study. Nor does it require a distinguished comparative anatomist to detect the admixture of the African or Indian with the pure blood of the white race. Any person of ordinary intelligence, who for a sufficient length of time, will devote his attention to the subject, will be able to discover, with utmost unerring certainty, the adulteration of the Caucasian with the Negro or Indian blood ... Mr. Lyell, in common with tourists less eminent, but, on this subject, not less misinformed, has somewhere stated that the negroes in America are undergoing a manifest improvement in their physical type. He has no doubt, that they will in time, show a development in skill and intellect quite equal to the whites. This unscientific assertion is disproved by the cranial measurements of Dr. Morton. After admitting some physical improvement on account of the increased comforts with which the negroes(sic) are here supplied, the authors add, one or two generations of domestic culture effect all the improvements of which the negro organism is susceptible. We possess thousands of the second generation, and many more negro families of the eighth or tenth generation, in the United States, and (where unadulterated with white blood) they are identical in physical and intellectual characteristics. No one in this country pretends to distinguish the native son of a Negro from his great-grandchild (except through occasional and ever apparent admixture of white or Indian blood) while it requires
the keen and experienced eye of such a comparative anatomist as Agassiz to detect structural peculiarities in a few African born slaves. The improvements among American born slaves noticed by Mr. Lyell, in his progress from the South to the North, are solely due to those ultra ecclesiastical amalgamations, which, in their illegitimate consequences, have deteriorated the white element in direct proportion that they are said to have improved the black... We believe that it would often require an eye rendered keen, by observation and practice, to detect, with an approach to certainty, the existence of anything less than one-fourth of African blood in the subject... He may... be a person... who has only a sixteenth of African blood in his veins. The ability to discover the infusion of so small a quantity of negro blood in one, claiming the privilege of a white man, must be a matter of science, and, therefore admitting the testimony of an expert, and we think that the witness, Pritchett, proved, in the present case, that he possessed the necessary qualifications, to testify as such.  

By the late 1600s, "negro bastards had increased significantly and the offense of race mingling had extended even to white women." Thus arose a new difficulty in the clear probability of a class of free mulattoes, but the manner in which the question was disposed of shows conclusively that prevention of an 'abominable mixture' and not enslavement was the end view. In 1691, the Virginia General Assembly passed an act which declared:

... and for the prevention of that abominable mixture and spurious issue which may hereafter increase in this dominion with English, or white women, as well as by their unlawful accompanying with one another. Be, it enacted... that for the time to come whatsoever English or white man or woman being free shall intermarry with a Negro, mulatto, or Indian man or woman, bound or free shall intermarry with a Negro, mulatto, or Indian man or woman, bound or free shall within three months thereafter be banished and removed from the dominion forever... and be it further enacted... that if any English or white woman shall have a bastard child by a negro or mulatto, she shall pay the sum of fifteen pounds sterling, within one month
after the child is born, to the wardens of the parish, where she shall be delivered of such child, and in default of such payment, she shall be taken into possession of the said church wardens and disposed of for five years ... and such bastard child shall be bound out as a servant by the said church wardens until he or she shall attain the age of thirty years.36

The sentiments of Virginia legislators were clearly revealed in the wording of some laws: "abusing himself to the dishonor of God and the shame of Christians by defiling his body in lying with a Negro37;" "abominable mixture38;" "spurious issue."39

II. PRE-1823 RAPE LAW

In this separatist climate, it is not surprising to see the emergence of anti-rape statutes that targeted blacks who attempted to rape white women. In 1769, a statute was passed which declared:

If any slave shall attempt to ravish a white woman, and be thereof lawfully convicted, he shall be adjudged a felon, and may be punished with castration. If any slave sentenced to such punishment, shall die through the negligence of any surgeon, or other person undertaking his dismemberment or cure, the owner of such slave shall have the same remedy against such surgeon, or other person, for the loss so sustained, as if this act had never passed.40

The indictment had to aver the woman on whom the attempt was made was a white woman.41 If the averment was omitted, the judgement was arrested.42 Interestingly, the statute established a cause of action for slave owners against surgeons if the slave died from
this "dismemberment or cure."\textsuperscript{43}

In 1792, the penalty for a free man raping a woman was death.\textsuperscript{44} Usually, statutes that did not specify race usually meant whites.\textsuperscript{45} However, we can assume this statute included free blacks since there are no corresponding laws that apply to blacks -- slave or free. Also, it would not make sense that the death penalty applied to free whites for rape and not to free blacks.

By 1796, the death penalty was abolished for free persons for all crimes except for murder.\textsuperscript{46} Persons convicted of rape were sentenced to confinement for a period not less than ten years, nor more than twenty-one years.\textsuperscript{47} It is unclear whether this 1796 statute applied to free blacks in light of the fact that the 1792 statute, which proscribed death for rape, must have applied to free blacks. I could find no laws which punished free blacks or slaves for raping white women during this time period. I also could find no statutes that punished white men or free blacks for attempted rape during this time period.

The emergence of anti-rape statutes that targeted black men who raped white women is not surprising given the social and economic climate of the era. Whites perceived rape of white women by blacks as resistance to slavery, but only in relationship to their perception that such rape was a danger to the safety of the white woman and the honor of the white woman and white mar.\textsuperscript{48} Because whites regarded interracial rape as an intolerable attack against slavery and white supremacy,\textsuperscript{49} a systematic scheme developed whose purpose was to debase blacks and maintain white purity.\textsuperscript{50} Anti-rape statutes that targeted black men were a main
component of that scheme.

III. 1823 and 1825 ANTI-RAPE STATUTES

A. 1823

Pre-1823, the penalty for a free black who attempted to rape a white woman was unclear. It is unclear whether free blacks were treated as slaves and castrated under the 1769 statute for attempted rape or included in the class of free men who were imprisoned for rape under the 1796 statute. Moreover, during this period, there are no statutes that punish white men for attempted rape. Finally, the punishment for slaves who raped white women was unclear.

An 1823 statute attempted to clear up these confusions, widening the gulf in treatment of black and white men accused of rape. On February 14, 1823, the General Assembly passed a statute declaring that:

If any slave, free negro or mulatto, shall attempt to ravish a white woman, married, maid or other, such offender, his aiders and abettors, shall be adjudged guilty of felony, and suffer death as in other cases of felony by hanging by the neck; any law custom or usage, to the contrary notwithstanding.

Interestingly, free blacks are expressly included in this statute. By implication, if free blacks and slaves could receive the death penalty for attempted rape, they could receive the death penalty for a completed rape.
Social and economic considerations made it necessary to group free blacks charged with crimes with slaves. Society was controlled by and for the governing agriculturalists. Even the best and richest Virginia plantation owners had their economic difficulties. Each year the lands were becoming more and more exhausted. Prices declined; debts accumulated; and young men left the state. The poor white workman hated blacks as an economic rival; for blacks, slave or free, monopolized much of the labor of the state. Virginia legislators, particularly concerned with a growing free black population, passed severe laws to restrict and monitor the movement of free blacks.

In 1819, the Virginia General Assembly had passed a law that every emancipated slave forfeited his freedom by staying in the state more than one year after emancipation. No free negroes were allowed to enter the state and vessel owners bringing free negroes into Virginia were subject to a $333.33 fine. Finally, every free negro was registered in the books of the Clerk of the Parish where he belonged. The Register contained a minute description of the negro, a copy of which was carried with him, and which he was required to produce at any time. Other southern states adopted similar statutes.

In 1831 a group of white mechanics of Culpeper county asked the state to pass a law "forbidding any Negro to be apprenticed to a trade." In the same year white mechanics of the city of Petersburg petitioned the legislature that a law be passed forbidding any Negro to pursue a trade without the supervision of a white overseer. In 1851 white mechanics of the city of
Norfolk asked the state to stop all free Negroes from working at any trade. This petition declares that such a policy will "destroy jealousy between slave holders and non-slaveholders" and if not enacted "non-slaveholders will finally demand the expulsion of all slaves."  

As time went on and restrictions on free blacks increased, there is some evidence that they were thrown in jail and held in confinement many months because of the inability to prove that their "free papers" were authentic. Suspicions against free Blacks increased with the passing years, and it became constantly more difficult for them to maintain their liberty. Provisions were made whereby freedmen without visible means of support might be forced again into slavery. An effort was made to change the law in suits for freedom, whereby the expense of the trial would be placed on the Negro.

There is some evidence that many efforts were made to prevent free blacks from engaging in certain forms of trade because of the general belief that the slaves sold stolen goods to the freedmen. A petition coming from Powhatan county asks that restriction be placed on the amount of grain sold by free Negroes. The inhabitants of Charles City county wished to stop Negroes from serving as millers. The people of Loudoun county wished to stop them from using market carts. Citizens of Charlotte county asked that free Negroes be stopped from owning, possession, or raising stock, horses, or hogs.

Free blacks were unwelcome in Southern states for several reasons. First, white slave holders were afraid that free blacks
would encourage slaves to revolt and seek freedom. Second, high unemployment in the white community and scarce jobs made free negroes an economic threat. Free blacks were "substituting themselves in many labors and occupations which, in the end, it would have been more advantageous to have performed by the white and native population of the state." Third, newspapers added to the hysteria by reporting that an increasing number of free negroes, who were convicts and paupers, were collecting in large towns. Finally, there was a growing sentiment that free negroes were an "indolent, disorderly, and corrupt population."

In this hostile environment, it is not surprising to see the emergence of severe laws that targeted free blacks. Even though blacks had attained their freedom, anti-rape statutes that punished free blacks differently than whites had the effect of maintaining white supremacy. Furthermore, implicit in anti-rape statutes was a powerful message -- even if free, blacks would still be treated as a subordinate race.

B. 1825

An 1825 statute acknowledged the role of consent in voluntary sexual relations between free black men and white women while answering the question of the penalty for free blacks who committed rape:

Be it enacted by the General Assembly, that if any free negro or mulatto do ravish a white woman, married, maid, or other, where she did not consent before nor after; or shall ravish a white woman,
married, maid, or other, with force, although she consent after; the person so offending shall be adjudged a felon and shall suffer death as in the case of felony, without benefit of clergy; any law, custom, or usage to the contrary not withstanding. 82

Interestingly, the 1825 statute does not speak to slaves who raped white women. However, this law must have applied to slaves. It would make no sense that a slave would be hung for an attempted rape and not for a completed rape.

Even though the penalty for attempted rape and completed rape of a white woman was death for all black perpetrators, the 1825 statute did not contemplate consensual sexual relations between slaves and white women. That is consent between a slave and a white woman was irrelevant because the 1825 statute applied only to free blacks and mulattoes.

This statute reflects an understanding that white women simply would never consent to having sex with a slave. In a warped sense, even if she had voluntary sex with a slave she asserted her dominion over him because he was property. That is, the power distribution was not disturbed. Also, slave holders probably did not want to jeopardize their property if a white woman might voluntarily have sex with a slave. After all, what white woman would consent publicly to having sex with a slave? In the minds of powerful slaveholders, valuable property would be lost.

The statute seems to say that sexual intercourse between a free black man and a white woman could never be consensual unless the woman publicly declared -- either in court or in the presence of a prosecutor-- her consent before or after intercourse.
Furthermore, if force was used and the white woman testified declaring her consent afterwards, the black man would still be put to death.

This statute placed an incredible amount of power in the hands of white women who could literally condemn a man to death with her claim of rape, especially if she held a grudge against him. At the same time, it might have rendered some white women powerless since they were placed in the situation of choosing between protecting their reputation or saving a man's life.

The statute was a good way to rid Virginia of the growing number of free negroes that was becoming a threat to Virginians as discussed previously. Few southern white women would announce publicly that they had voluntary sexual relations with a free black man or mulatto. The consequences of such a public declaration were devastating. Natural fears of the physical consequences, together with the forces of law and strong public opinion must have limited such public declarations.

Even if a white woman had testified that she was raped by a free black man, there are a surprising number of cases where white citizens would testify on behalf of the black man. These citizens would testify the woman encouraged and consented to the sexual intercourse.

The difference in the way blacks and whites accused of rape were treated are quite obvious and telling. It is apparent that white legislators were not so much concerned about the actual act of rape. The black male crossing the racial boundaries was more of a violation than the crime of rape itself. For, while black men
were prosecuted for the rape of white women, neither black nor white men were not prosecuted for the rape of black women. 86

Even though I could find no cases where white men were prosecuted for raping black or mulatto women, interracial rapes of this nature must have occurred. 87 A white Virginia minister recognized the "temptations" of the black female when he wrote:

Vice to a most shameful extent is proved by the rapid increase of mulattoes. How many have fallen before this temptation! So many that it has almost ceased to be a temptation to fall! Oh, how many parents may trace the impiety, licentiousness, and shame of their prodigal sons to temptations found in female slaves in their own or neighbors households. 88

One reason for the lack of case law was that the judicial process was extremely hostile to non-whites who wished to vindicate their rights. In fact, non-whites could not testify against whites in court. 89 Even if Black women could testify against white men in court, it is very unlikely black women could get a conviction. Convicting a white man on a black woman's word would destroy the racial and gender hierarchy that had to remain if slavery was to exist at all. It could be perceived by white men that black women were attempting to cut the chains that held them to the black/female sphere of the social, political and economical hierarchy. If a white man were convicted based on the testimony of a black woman, this would mean a black woman had a voice, equal to that of a white man. This was an impossibility. The Southern Black woman was born with two strikes against her -- she was black and she was a woman. Not only was she the property of white men
based on her gender, but also because of her color. The fact that
the testifier was black and a woman reduced her credibility. In
this light, it would be difficult for a white male judge or a white
male jury to convict a white man based on a Black woman's
testimony.

The statutes demonstrate an emerging fear, obsession, and
paranoia with black male sexuality and white womanhood. The
statutes were part of a lengthy Virginia history whose purpose was
not only to maintain white racial purity but also to keep African
people in total subordination to white people. Laws that punished
blacks more harshly than whites who committed the same crime
reinforced the notion that blacks were savages who had to be tamed.\textsuperscript{90}

The white legislators' obsession with keeping black males away
from white females created three distinct legal issues: whether or
not there was a rape, whether or not the victim was white, and
whether or not the perpetrator was non-white.\textsuperscript{91}

IV. ENFORCEMENT

The first black man charged under this 1823 statute was
Alexander, the property of Ambrose Coleman.\textsuperscript{92} Alexander was
charged with the attempted rape of Jane Long.\textsuperscript{93} This attempted
rape brought him death by hanging. His owner was reimbursed $350
for the loss of his property.\textsuperscript{94}

Even though owners were reimbursed for their property loss,
this money had to be deficient in the eyes of the owner. Efforts
made on behalf of slaves by owners seemed fueled by economic concern rather than the welfare of the slave.

On May 30, 1825, Walter Smith wrote a letter on behalf of Moses, one of Smith's slaves sentenced to be hung for the attempted rape of Anna Wilson:

He is stout...looking yellow about 24 years of age and would command a good price, and I expect what he has gone through will be sufficient warning to him never to attempt the likes again, was it in his power, I cou'd have got my neighbor to have sign'd a petition in his behalf, but confining in your humanity, have made this communication myself...95

Smith's letter reflects a prevailing interest in preserving the value of his property. So concerned was Smith that he paid counsel to represent Moses.96

In many of the petitions, it was not uncommon to see that white citizens would charge that the alleged victim encouraged or consented to the sexual intercourse. Some citizens might even have testified on behalf of slaves at the behest of an owner who wanted to protect his property. In Race Relations in Virginia and Miscegenation in the South, James Hugo Johnston reproduces such petitions:

To the honorable the Governor and Council of the Commonwealth of Virginia --

Your petitioners with all due deference state that at a court of Oyer and Terminer, held for King and Queen County, on Monday the 9th of May, 1803, for the trial of Carter a negro man slave belonging to William Boyd, charged for a rape on the body of Catherine Brinal, of which said court your subscribers were sitting as members, it
appeared by the testimony of the said Catherine, that Carter did commit the said offense -- from the whole of the evidence your subscribers felt themselves bound by law to pass sentence of death upon the said Carter. Yet for reasons, hereinafter mentioned the court aforesaid are of the opinion that the said Carter is a proper object of mercy -- to wit-- From the testimony of Philip Sears and Kauffman Watts it appeared that the said Catherine Brinal was a woman of the worst fame, that her character was that of the most abandoned in as much as she (being a white woman) has three mulatto children, which by her own confession were begotten by different negro men; that from report she had permitted the said Carter to have peaceable sexual intercourse with her, before the time of his forcing her. Your petitioners farther state that the said Carter, by the testimony of William and Robert Boyer, was a negro of tolerable good character, not inclined to be riotous but rather of a peaceable disposition."

The record in the case of Tasco Thompson, a free black condemned under the 1825 statute, includes the following document:

The executive of Virginia, having requested to be informed of the reasons which induced the jury who passed upon the case of Tasco Thompson, now under sentence of death for an attempt to commit a rape upon the body of Mary Jane Stevens, to recommend the said Tasco Thompson to mercy. I, the undersigned, Sam H. Davis, foreman of the jury, in compliance with the request, give the following verified by oath.

1st. The exceedingly disreputable character of the family of the said Stevens. It consisted of the mother and herself, with a younger sister, a small girl. It was notorious that the mother had long entertained negroes, and that all her associations, with one or two exception were with blacks. All the evidence went to shew that she visited no white families save the one or two referred to, who were upon her own level. In a word she was below the level of the ordinary grade of free negroes.

2nd. Although the evidence of Mary Jane Stevens
was direct, and apparently artless, and sustained by a girl of about eleven years old, who was present at the attempted rape, yet it was clearly proved that long settled malice had existed against the prisoner in the bosom of another witness (the mother of the girl of eleven years) who was looked upon as one of the getters up of the prosecution and who was proved to have declared before the offense that she would have the prisoner hung if it took her seven years.

3d. ...There is no doubt that he repaired to the house of Mrs. Stevens in the belief that she would cheerfully submit to his embraces, as she doubtless had often done before, but finding her absent he probably supposed his embraces would be equally agreeable to her daughter, and in making the attempt the jury considered the offence as differing only in name from a similar attempt that the law was made to preserve the distinction which should exist between our two kinds of population, and to protect the whites in the possession of their superiority; but here the whites had yielded their claims to the protection of the law by their voluntary associations with those whom the law distinguishes as their inferiors.

4th. As a prosecution would not have a claim in the case if the female concerned had been a colored girl, so the jury though it hard to convict the prisoner for an offence not greater in enormity than had the prosecutrix been colored; but her maker had given her a white skin, and they had no discretion. They could only convict him capitally and urge the recommendation which they did.³⁸

An odd situation is described in the case of Henry Hunt who had been convicted for a rape committed upon a certain Sydney Jordan in 1827. Investigators found that Sydney Jordan "acknowledged that she had been delivered on Friday before of a child, of which one Nicholas Vick another free negro was the father, that she had frequent criminal intercourse with the said Nicholas Vick and also with Henry Hunt; and that on the night laid
in the indictment against the said Hunt, she did have criminal connection with the said Vick.⁹⁹

When Amy Baker accused Lewis, a slave of raping her in 1829, neighbors rushed to testify against Baker because she was not considered a respectable woman.¹⁰⁰ Alexander Pritchett testified that she was not a credible witness because he saw four negro men at her home on one occasion and three negro men at her home on another occasion.¹⁰¹

Gabriel, a slave, was convicted of attempting to rape Rosanna Green, an eleven year old white girl in 1829.¹⁰² At least seven people testified Green was of bad character. Neighbors claimed that Green had "behaved badly with a black boy in the neighborhood," "was not virtuous," and "had intercourse with a negro boy in the neighborhood six years old."¹⁰³ Her own stepfather, the owner of the slave, even testified Green was "a girl of bad character, as a black guard."¹⁰⁴

These petitions are interesting for various reasons. First, they reveal that the normal legal procedure for interracial rape cases was to condemn the black man first and petition for his life after the fact. This demonstrates that even if a jury found a black man technically guilty, they would recommend mercy from the governor because the particular white woman was not worth protecting. Second, a white woman's credibility in the courtroom was diminished if she associated with blacks¹⁰⁵, if any one in her family associated with blacks¹⁰⁶, if her friends associated with blacks¹⁰⁷, if she had sexual intercourse with blacks¹⁰⁸, or if she delivered a baby whose father was black.¹⁰⁹ Third, they reflect an
unnerving notion that consensual sex with a black man meant not only that you had consented to sex with all men of the race, but also that members of your family had consented to sex with all black men. Fourth, the petitions illustrate a property concept in being white. Whites could forfeit their claim to superiority and thus special anti-rape legislation aimed at protecting "whiteness" if they voluntarily associated with blacks. The white woman who associated with blacks was no more than a black woman, who received minimal protection under the law.

A fascinating petition was written on behalf of a slave in 1832. William, a slave, was sentenced to death for the rape of a young white girl. The girl lived with Mr. and Mrs. Cash, who were not her parents. The petitioner wrote two letters on behalf of William because he had doubts that William committed the crime.

The petitioner wrote that he thought Mr. Cash and the girl had sexual intercourse, and that the charge was brought against William to prevent the discovery of Cash's guilt; that Mrs. Cash acted angrily and violently towards the girl who was raped because Mrs. Cash suspected her husband was having sex with the girl; that everyone in the neighborhood knew of the sexual relations between Mr. Cash and the girl.

The idea of sending an obviously innocent man to his death must have been too cruel -- even if the man was black. The petitioner wrote he came forward out of a sense of obligation to society and to the cause of humanity. According to the petitioner:
If capital punishment is permitted to take place in cases where proof is not clear and evidence suspected, the lives of the virtuous and good will be at the mercy of any miscreant who may choose to swear that away -- the peace and safety of society would be endangered and the great end of all criminal legislation frustrated.\textsuperscript{118}

Even though the petitioner thought William was innocent, and that his life should be spared, the petitioner recommended transportation for the slave.\textsuperscript{119}

VI. DEMISE OF THE LAWS

The 1823 statute was retained as long as there was a slave code.\textsuperscript{120} However, in 1849, the Virginia General Assembly amended the 1823 and 1825 statutes with respect to free blacks. A new law was passed declaring:

If a free negro commit any offence, mentioned in the fifteenth or sixteenth section of chapter one hundred and ninety-one, or attempt by force or fraud to have carnal knowledge of a white female he shall be punished, at the discretion of the jury, either with death, or by confinement in the penitentiary not less than five nor more than twenty years.\textsuperscript{121}

1849 Va. Code ch. 191 §15 read:

If any white person carnally know a female of the age of twelve years or more, against her will, by force, or carnally know a female child under that age, he shall be confined in the penitentiary not less than ten nor more than twenty years.
According to §16:

If any white person take away or detain, against her will, a white female, with intent to marry or defile her, or cause her to be married or defiled by another person, or take from any person, having lawful charge of her, a female child under twelve years of age, for the purpose of prostitution or concubinage, he shall be confined in the penitentiary not less than three nor more than ten years.

It is interesting that the Virginia General Assembly would treat free blacks as free whites given Governor Smith's 1846 assertion that "our criminal statistics ... demonstrate the moral degradation of the free negro, the hoplessness of his reform, the mischievous influence of his associations." If the reformation of free blacks was hopeless, why not treat them as slaves? These laws were re-enacted in 1860.

Six years after the re-enactment of this law, the General Assembly repealed all laws in relation to slaves and slavery by a vote of 20 ayes and 7 noes. The 1823 and 1825 statutes which targeted free blacks and slaves who raped or attempted to rape white women were repealed. On February 9, 1866 the General Assembly declared:

Be it enacted by the General Assembly, That the fifteenth and sixteenth sections of chapter one hundred and ninety-one of the Code of Virginia for eighteen hundred and sixty is hereby amended and re-enacted so as to read as follows:

§15. If any person carnally know a female of the age of twelve years or more; against her will, by force, or carnally know a female child under that age, he shall be, at the discretion of the jury, punished by
death, or confined in the penitentiary for not less than ten nor more than twenty years.

§16. If any person take away or detain, against her will, a female, with intent to marry or defile her, or cause her to be married or defiled by another person, or take from any person having lawful charge of her, a female child under twelve years of age, for the purpose of prostitution of concubinage, he shall be confined in the penitentiary not less than three nor more than ten years.\textsuperscript{125}

\section*{VII. CONCLUSION}

The 1823 and 1825 statutes were not primarily concerned with the protection of women. Black women were not protected from rape under the law\textsuperscript{126} and in the words of Sam Davis, the foreman of the jury in the \textit{Tasco Thompson} case, the primary function of anti-rape statutes "was made to preserve the distinction which should exist between our two kinds of population, and to protect the whites in the possession of their superiority."\textsuperscript{127} The "extra" protection that white women received under the law seems to be a by-product of the statutes. The primary function of the anti-rape statutes was the protection of white racial purity and the maintainance of white superiority. The myth that black men are particularly prone to rape white women was an especially important part of the mythology that sustained the reign of Jim Crow laws.\textsuperscript{128} It is no accident that lynchings that were used to enforce white dominance targeted black males who were accused of raping white women.\textsuperscript{129}
extensive death penalty study surveyed eleven Southern states' death penalty sentences for the crime of rape for the years 1945-1965. This study produced overwhelming evidence that black defendants with white victims were executed in disproportionate numbers.¹³⁰

Even though anti-rape statutes were couched in neutral terms and no longer facially targetted blacks who raped white women, in application, they would serve the same function as the 1823 and 1825 statutes -- the maintainence of white purity and keeping African people in total subordination to white people.

2. Id.

3. See PHILIP SCHWARTZ, TWICE CONDEMNED 156 (1988) ("No 18th century Virginia court whose records have survived ever convicted a slave of raping another slave or a white man of raping a female slave"); WILLIAM GOODELL, AMERICAN SLAVE CODE 86 (1853) ("rape committed on a female slave is an offense not recognized by law"); VIDE WELD, SLAVERY AS IT IS 15 (in GOODELL at 86) ("forced concubinage of slave women with their masters and overseers, often coerced by the lash, constitutes another class of facts, equally undeniable"); JAMES JOHNSTON, RACE RELATIONS IN VIRGINIA AND MISCEGENATION IN THE SOUTH 190 (1970) ("Under the slave institutions handed down from the colonial period, so far as the Negro man and the white woman were concerned, the Negro man was to be kept away from the white woman, but law and public sentiment were insufficient to deny the white man the use of the Negro woman").

4. The statute reads:

If any slave, free negro or mulatto shall attempt to ravish a white woman, married, maid or other, such offender, his aiders and abettors, shall be adjudged guilty of felony and suffer death as in other cases of felony, by hanging by the neck; any law, custom or usage, to the contrary notwithstanding. 1824 Va. Acts ch. 158 §4.
5. According to 1825 Va. Acts ch. 23 at 22:

If any free negro or mulatto do ravish a white woman, married, maid or other, where she did not consent before nor after; or shall ravish a white woman, married, maid or other, with force, although she consent after; the person so offending shall be adjudged a felon and shall suffer death, as in case of felony, without benefit of clergy; any law, custom, or usage to the contrary notwithstanding.


It is curious why this decade marked the peak of official white concern about sexual assault by blacks. Neither the legislative journals of the Virginia General Assembly nor newspaper accounts during the era provide a clue. However, the 1823 and 1825 statutes reflect a general hardening of racial lines that started in the early 1800s. See HIGGINBOTTOM, supra note 1 at 2009.

The hardening of racial lines may have been a response to an explosion in the population of free blacks during the decade of 1820-1830. Between 1820-1830, the free black population increased by 10,474. JOHN H. RUSSELL, FREE NEGRO IN VIRGINIA 1619-1865 at 80 (1913). From 1830-1840 the increase in that class of the population was only 2500. Id. Crime may have increased during this era because of the increase in the free black population or white legislators perceived that crime would increase.

7. ARTHUR P. SCOTT, CRIMINAL LAW IN COLONIAL VIRGINIA 44 (1930).

8. WILLIAM W. HENING, Statutes at Large, ch. I, 146 (Richmond 1823).

9. Id. ch. II at 280.

10. See infra note 13.

11. JAMES C. BALLAGH, HISTORY OF SLAVERY IN VIRGINIA 44 (1902).

12. Id.

13. See PETER KALM, TRAVELS IN NORTH AMERICA at 502-503 (1772) (pointing out that the existence in the colonies of large numbers of mulattoes proved that the laws were easily evaded or enforced with great laxity.)

14. 2 LAWS OF VA. 490, 491 Act I (Hening 1823) (enacted 1682).

15. Id.

16. BALLAGH, supra note 11 at 49.

17. JOHNSTON, supra note 3 at 185.

18. Id. at 185 n.82.
19. BALLAGH, supra note 11 at 72-73 (1902).

20. JEFFREY BRACKETT, THE NEGRO IN MARYLAND at 33-34 (1889). But see WILLIAM EDDIS, LETTERS FROM AMERICA, HISTORICAL AND DESCRIPTIVE (1782) in JOHNSTON, supra note 3 at 184 (noting that "masters were often milder in their treatment of Negro slaves since it was always to their interest to prolong their lives, and that white servitude, being for a limited period, resulted in harsher treatment").

21. JOHNSTON, supra note 3 at 186.

22. But see EDDIS in JOHNSTON, supra note 20 at 184 (noting that slaves were treated milder than indentured servants because slave owners had an interest in preserving the life of their slave, whose servitude was for life).

23. Id. See also, DANIEL HORSMANDEN, THE NEW YORK CONSPIRACY, OR A HISTORY OF THE NEGRO PLOT at 116-120 (1810) (warning that disaster might be expected to come to other colonies if association between Negroes and poor whites were permitted) (in JOHNSTON supra note 3 at 184).

24. Executive Papers, Archives of Virginia, Letters Received, Nov. 4, 1793 (Halifax) (hereinafter Archives of Virginia, Letters Received will be omitted and the document will be identified by date).

25. Id.

26. ALEXIS DE TOCQUEVILLE, AMERICAN INSTITUTIONS AND THEIR INFLUENCE 384 (1855).

27. JOHN SMYTH, TOUR IN THE UNITED STATES OF AMERICA 181 (1784).

28. CHARLES ELLIOT, SINFULNESS OF SLAVERY IN THE UNITED STATES 65 (1857).

29. Id.

30. Id.

31. NILES REGISTER, June 9, 1821 (Louisville, Kentucky).

32. See infra note 90.

33. State v. Jacobs, 51 N.C. 284 (1859) (1 Jones Eq.).

34. BALLAGH supra note 11 at 44.

35. Id. at 44-45.
36. WILLIAM HENING, Statutes at Large, ch. 3 at 86-88 (1823) (enacted 1691).

37. WILLIAM HENING ch. I at 146 (1823) (enacted 1630).

38. WILLIAM HENING ch. III at 86-88 (1823) (enacted 1691).

39. Id. (enacted 1691).


42. Id.


44. According to 1792 Laws of Virginia ch. 65 at 178 (Shepherd):

If any man, for and after the commencement of this act, do ravish a woman married, maid, or other, where she did not consent before nor after; or shall ravish a woman married, maid, or other with force, although she consent after, the person so offending shall be adjudged a felon and shall suffer death as in case of felony, without the benefit of clergy.

45. HIGGINBOTHAM, supra note 1 at 2008.

46. According to 1796 Laws of Virginia ch. 2 at 5 (Shepherd):

No crime whatsoever committed by any free person against this commonwealth, (except murder of the first degree) shall be punished with death within the same.

47. See 1796 Laws of Virginia ch. 2, vol. 2 at 6 (Shepherd):

Every person duly convicted of the crime of rape, or as being accessory thereto before the fact, shall be sentenced to undergo a similar confinement, for a period of time not less than ten years, nor more than twenty-one years, under the same conditions as are herein after directed.

48. SCHWARTZ supra note 3 at 210.
49. *Id.*

50. See GOODELL, supra note 3 at 86 ("in Virginia, by the R.C. (1819) there are 71 offenses for which the penalty is death when committed by slaves, and imprisonment when committed by whites") (quoting JAY'S INQUIRY at 134).


52. See 2 Laws of Va. ch.2 at 6 (1796)(Shephard).

53. 1823 Va. Acts ch. 34, §3. It is unclear why white legislators changed the 1769 law. Neither the legislative journals of the Virginia General Assembly nor newspapers during the era provide a clue. But see supra note 6 (discussing possible reasons for the change).

54. JOHNSTON, supra note 3 at 57.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. An 1820 census reported 603,050 whites; 425,153 slaves; 36,879 free blacks; and 250 others. Richmond Enquirer, Nov. 20, 1821.

60. Richmond Enquirer, June 26, 1821.

61. *Id.*

62. *Id.*

63. *Id.*

64. In Georgia, free negroes were taxed $20 or faced expulsion from the state; South Carolina adopted a statute that expelled all negroes emancipated after March 1, 1821; an Ohio statute mandated that all free negroes must have $500 in security so they will lead quiet and peaceable lives, and free negroes had to promise they would never in any manner become chargeable; Washington, D.C. passed an April 14, 1821 ordinance requiring all free negroes to report annually to the Mayor's office, showing certificates of freedom. Free negroes in Washington promised to behave in a sober and orderly manner and to never become chargeable. *Id.*

65. Petition 9789, Culpeper, Dec. 9, 1831 in JOHNSTON, supra note 3 at 58.
66. Petition 9860, Dinwiddie, Dec. 20, 1831 in JOHNSTON, supra note 3 at 58.

67. Petition 177707, Norfolk, Nov. 12, 1851 in JOHNSTON, supra note 3 at 58.

68. Id.

69. Id. at 61 n. 64.

70. Id. at 61.

71. Id. at 61 n. 64.

72. Id. at 61 n. 65.

73. Id. at 59.

74. Petition 12113, Powhatan in JOHNSTON supra note 3 at 59 n. 53; see also petitions 1141, 12932, 13700, 14003, 14163. in JOHNSTON at 59 n. 53.

75. Petition 9960, Charles City, Dec. 27, 1831 in JOHNSTON at 59 n. 54.

76. Petition 12575, Loudoun, Jan. 13, 1836 in JOHNSTON at 59 n. 55.

77. Petition 12657, Fairfax, April 6, 1839 in JOHNSTON at 59 n. 56; Petition 11125, Prince William, March 2, 1839 in JOHNSTON at 59 n. 56.

78. See JOHNSTON supra note 3 at 127-162.


80. Id. See also, JOHNSTON supra note 3 at 61 (At the same time a constant agitation on the part of the colonizationists propagated the doctrine that all free Negroes were worthless and dangerous and had to be sent out of the state.)

81. JOHNSTON supra note 3 at 61.

82. 1824 Va. Acts ch. 23 at 22 (1825). It is unclear why the 1825 legislation passed imposing the death penalty on free blacks after the 1823 legislation imposing the death penalty on free blacks and slaves for attempted rape. Neither the legislative journals of the Virginia General Assembly nor newspaper accounts during the era provide a clue. But see supra note 6 (discussing possible reasons why the change occurred).
83. See supra notes 54-81 and accompanying text.

84. JOHNSTON, supra note 3 at 257.

85. See infra notes 97-118.

86. See supra note 3.

87. Id.

88. JOHN PAXTON, LETTERS ON SLAVERY, ADDRESSED TO THE CUMBERLAND CONGREGATION 129-30 (1833) in JOHNSTON supra note 3 at 218.

89.3 Laws of Va. ch. 19, §31 (Hening 1823)(enacted 1705) (Popish recusants convict, negroes, mulattoes and Indian servants, and others, not being christians, shall be deemed and taken to be persons incapable in law, to be witnesses in any cases whatsoever). However, by 1732, another act clarified that Negroes could not testify against Whites, even though they were Christians because of their "base and corrupt natures." 4 Laws of Va. ch. 7, §5 (Hening 1820)(enacted 1732).

90. See SCHWARTZ, supra note 3 at 155 (noting that at the core of white fears of the "black rapist" is the legend of the violent "black savage"); WINTHROP D. JORDAN, WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812 at 32-40 (1968) (noting that common perception of slaves as "animals" and "beasts" led whites to conclude that slaves were unusually libidinous and unrestrained in their sexual behaviour).

91. The Virginia legislature frequently changed the legal definition of race, which was defined in terms of a specific proportion of white and non-white ancestry. See 3 Laws of Va. ch. 4 at 250, 252 (Hening 1823)(enacted 1705) (defining some mixtures as white and others as mulatto; mulattoes were the child of an Indian, or the child, grandchild, or great grandchild of a Negro); 12 Laws of Va. ch. 78 at 184 (Hening 1823)(enacted 1785; effective 1787) (defining a mulatto as one with one-fourth part or more of negro blood); 1910 Va. Acts 581 ch. 357 §9 (defining a colored person as an individual with as little as one-sixteenth Negro ancestry); 1924 Va. Acts ch. 371 §3 (declaring that any Negro blood at all meant one was not legally white); 1930 Va. Acts ch. 85, 96-97 (declaring that any Negro blood at all meant one was not legally white). Virginia and North Carolina were the only two colonies that created precise statutory definitions of race. Jordan, American Chiaroscuro: The Status and Definition of Mulattoes in the British Colonies, 19 WM. & MARY Q. 183, 186 (1962).

92. Executive Papers, June 4, 1823.

93. Id.
94. Id. To promote the suppression of crime, Virginia provided by law that owners of slaves capitally punished should be compensated by the public at appraised valuations. PHILLIPS ULRICH, Slave Crimes in Virginia, 20 AMERICAN HISTORICAL REVIEW 336 (1915).


96. Id. (Walter Smith paid two counsels $5 to represent Moses). See also Executive Papers, March, 24 1827 (Thomas Satehill paid counsel $10 to represent his slave, Arthur).

97. JOHNSTON supra note 3 at 260 (quoting Executive Papers, May 9, 1803).

98. Id. at 262-263 (quoting Executive Papers, Oct. 18, 1833.)

99. Id. at 263 (quoting Executive Papers, June 15, 1827).

100. Executive Papers, May 30, 1829.

101. Id.

102. Executive Papers June 20, 1829.

103. Id.

104. Id.

105. See supra note 98. See also supra note 101 (victim unbelievable under oath because 4 black men were at her home on one occasion and 3 black men were at her home on another occasion).

106. See supra note 98 (the mother had long entertained, and all her associations, with one or two exceptions, were with blacks).

107. Id. (the white families known by the victim were "on her own level" because they too associated with blacks).

108. See supra note 103 (11 year old victim not credible because she had intercourse with a 6 year old boy).

109. See supra note 97 (victim not credible because she has three mulatto children begotten by different black men); supra note 98 (because victim delivered a child who had a black father, her credibility was diminished).

110. See supra, note 98 (victim consented to sex with accused because her mother had sexual intercourse with the accused).

111. Id. (whites had yielded their claims to the protection of the law by their voluntary associations with those whom the law distinguishes as their inferiors).
112. Id.

113. Executive Papers, July 12, 1832. See Appendix 2.

114. Id.

115. Id.

116. Id.

117. Id.

118. Id.

119. Id.

120. SCHWARTZ supra note 3 at 206.

121. 1849 Va. Code ch. 200, tit. 54, §1. It is unclear what fueled this change in law. Neither the legislative journals of the Virginia General Assembly nor newspaper accounts during the era provide a clue. However, a decrease in the population of free blacks between 1830-1840 may have decreased criminal activity during the era or whites may have perceived that there would be less crime with fewer blacks in Virginia. See supra note 6. Also, interest groups like abolitionists may have pressured legislators to amend the law as the Civil War drew nearer.


123. See supra notes 6 and 121.

124. I found this quote in the legislative journals of the Virginia General Assembly, but I have since mislabeled the cite. Virginia legislators were extremely slow in repealing the laws that related to slavery, however. This repeal came two years after the Emancipation Proclamation of 1864.


126. See supra note 3.

127. Quoted in JOHNSTON supra note 3 at 263.

128. See DERRICK BELL, RACE, RACISM AND AMERICAN LAW 64 (1980).

129. See NAACP, THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889-1918 at 8 (1969); I.B. WELLS-BARNETT, ON LYNCHINGS: SOUTHERN HORRORS; A RED RECORD; MOB RULE IN NEW ORLEANS 1 (1969); R. GINZBURG, ONE HUNDRED YEARS OF LYNCHINGS (1988).
Virginia Blacks Condemned to Die for Rape, (1823 - 1833)

<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
<th>Geographic Location</th>
<th>Verdict</th>
<th>Name, Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1823</td>
<td>June 4, Orange</td>
<td>AR</td>
<td></td>
<td>Alexander, slave</td>
</tr>
<tr>
<td></td>
<td>June 9, Campell</td>
<td>R</td>
<td></td>
<td>Charles, slave</td>
</tr>
<tr>
<td></td>
<td>Aug. 11, Chesterfield</td>
<td>?</td>
<td></td>
<td>Spencer, slave</td>
</tr>
<tr>
<td></td>
<td>Nov. 3, Henrico</td>
<td>AR</td>
<td></td>
<td>Thomas, slave</td>
</tr>
<tr>
<td>1824</td>
<td>Sept 23, Culpeper</td>
<td>R</td>
<td></td>
<td>Lawrence, slave</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AR</td>
<td></td>
<td>Dick, slave</td>
</tr>
<tr>
<td>1825</td>
<td>May 8, Monongolia</td>
<td>AR</td>
<td></td>
<td>Moses, slave</td>
</tr>
<tr>
<td>1826</td>
<td>Aug. 26, Chesterfield</td>
<td>AR</td>
<td></td>
<td>William Coy, free</td>
</tr>
<tr>
<td></td>
<td>Aug. 28, Montgomery</td>
<td>AR</td>
<td></td>
<td>James, slave</td>
</tr>
<tr>
<td>1827</td>
<td>March 21, Northampton</td>
<td>AR</td>
<td></td>
<td>Arthur, slave</td>
</tr>
<tr>
<td></td>
<td>June 15, Southampton</td>
<td>R</td>
<td></td>
<td>Henry Hunt, free</td>
</tr>
<tr>
<td></td>
<td>June 16, Halifax</td>
<td>R</td>
<td></td>
<td>Buck, alias Billy, slave</td>
</tr>
<tr>
<td></td>
<td>Dec. 11, Loudoun</td>
<td>?</td>
<td></td>
<td>Ben, slave</td>
</tr>
<tr>
<td>1828</td>
<td>May 2, Cumberland</td>
<td>?</td>
<td></td>
<td>Sam, slave</td>
</tr>
<tr>
<td></td>
<td>July 22, Louisa</td>
<td>?</td>
<td></td>
<td>Jeffry, slave</td>
</tr>
<tr>
<td>1829</td>
<td>May 28, Patrick</td>
<td>?</td>
<td></td>
<td>Gabriel, slave</td>
</tr>
<tr>
<td></td>
<td>May 30, Mecklenburg</td>
<td>R</td>
<td></td>
<td>Lewis, slave</td>
</tr>
<tr>
<td></td>
<td>June 20, Wythe</td>
<td>AR</td>
<td></td>
<td>Gabriel, slave</td>
</tr>
<tr>
<td></td>
<td>Sept. 29, Shenandoah</td>
<td>?</td>
<td></td>
<td>Joseph, slave</td>
</tr>
<tr>
<td>1830</td>
<td>May 3, Franklin</td>
<td>?</td>
<td></td>
<td>Henry, slave</td>
</tr>
<tr>
<td></td>
<td>May 30, Henry</td>
<td>?</td>
<td></td>
<td>Patrick, slave</td>
</tr>
<tr>
<td>1831</td>
<td>May 21, Loudoun</td>
<td>?</td>
<td></td>
<td>Dick, slave</td>
</tr>
<tr>
<td></td>
<td>Sept. 26, Westmoreland</td>
<td>?</td>
<td></td>
<td>Dick, slave</td>
</tr>
<tr>
<td></td>
<td>June 10, Caroline</td>
<td>?</td>
<td></td>
<td>Abram, slave</td>
</tr>
<tr>
<td>1832</td>
<td>May 14, Stafford</td>
<td>R</td>
<td></td>
<td>William, slave</td>
</tr>
<tr>
<td></td>
<td>July 9, Henry</td>
<td>?</td>
<td></td>
<td>George, slave</td>
</tr>
<tr>
<td></td>
<td>Aug. 23, Prince Edward</td>
<td>R</td>
<td></td>
<td>John, slave</td>
</tr>
<tr>
<td></td>
<td>Dec. ?, Rockbridge</td>
<td>AR</td>
<td></td>
<td>Feilds, free</td>
</tr>
<tr>
<td>1833</td>
<td>Jan. 17, Chesterfield</td>
<td>R</td>
<td></td>
<td>Bob, slave</td>
</tr>
<tr>
<td></td>
<td>April 27, Frederick</td>
<td>AR</td>
<td></td>
<td>Ben, slave</td>
</tr>
<tr>
<td></td>
<td>Oct. 18, Frederick</td>
<td>AR</td>
<td></td>
<td>Thompson, free</td>
</tr>
</tbody>
</table>

AR= Attempted Rape  R=RAPE
My dear Sir,

In a former letter to you, having refe-
rence to the case of the boy William
Ward, under sentence of death, I stated my view
of the testimony exhibited in support of the prose-
cution—I stated facts which I thought were cal-
esated to produce strong doubts of its soundness &
compliance with truth, thinking from hence that
I had been shown out that something had as yet
loomed behind the curtains, which might probably come
to the light. I strongly recommended a respect for
the purpose of avoiding the discovery of time—
Such discovery, I think, have been made, and a
sense of the obligation which I owe to Society, to the
cause of humanity, induces me, to communicate
this you, to the Executive, such information as I
possess before this case is finally acted upon.

In my former letter I remark of
the extreme reluctance of the girl, to make
any disclosure, to Mrs. Cask (although so import-
nantly requested); nothing could be obtained;
but some evasive answers. The state of things was
on—when as I think—about the third day Mrs.
Cask threw out the heavy threats, which first
and then turned into a confession, that in
substance with her evidence, given in on the
trial—in when making this statement, I was
conspicuous of the fact, that a criminal intent
course between the girl & Cask was suspected
and that the charge brought against the boy was
an artificial
was sent to a Committee of Cask, to prevent the
 discovery of Cask's guilt—I deemed it prudent
however at that time to omit the mention of the subject mentioned to me, in as much, as the information
I then possessed, was based, upon mere report. Well
but erroneous of its truth - But here, may I be
permitted to ask, how are we to account for the
deportment of Mrs. Cash towards the girl, on that
day, and some after the deed was said to have been
perpetrated - the mere circumstance of delay, or
a suspicion that some injury had been done to
the child, is quite insufficient for the purpose. All
this anger & violence, the greedy threats directed
against the girl are plain fo of easy interpretation
of we consider Mrs. Cash on that occasion, to have
acted under a belief, that a Criminal Convience
fear was going on between her husband & the
Girl - This charge is now made, and is a common
talk in the neighborhood where she and reside, in
other parts of the County. I come now to the other
$\ldots$
red in the presence of the Gentlemen just refer to
as I am informed by one of them that the girl is
a depraved debased creature and that it
would be wrong to hang her in a case upon such
evidence. She further stated on this occasion
that the girl, when the time for the boy's execution
drew near, discovered great ingenuity of mind
and said she did not see him hung for a hundred
dollars, and moreover expressed herself doubtful
whether the boy (Mr. was the individual) who had
violated her person—soon after this, two of the
Gentlemen proceeded to the house of the girl's
Father, where the affair was—to know if the girl
would make a statement concerning with the one
recently made in their presence by Mr. but wishing
if she did so, to make an effort to obtain a
full pardon for the boy—In this however they said
this was what they probably expected; for
nothing requires a more than ordinary stretching
of credulity to imagine that the boy would have made
a confession which would, connected with the
murder and

In conclusion, the circumstances to
her into consideration; the bad character of all
the parties & the boy, the circumstance of the
girl's testimony being extorted by fear, the story
ground there is of belief to believe in the
existence of the criminal intimacy of Cash with the
bird, and that the charge ag. the boy grew out of an
artful story fabricated by Cash, to screen himself
from detection. Make out as it will most respectable
state a very strong case for the exercise of the fear
clawing power, to favor it to a certain extent at least.
I humbly respectfully recommend, a commutation of punishment—transferring, for the sake of peace,
conclusion with the evilspring of a sentence, in which
I know I should have your concurrence, but that also of the
Sentiment in which a superior Associate is united, in discharging
a duty of pertaining to the executive department of our Gov-
ernment. That capital punishments be the caution
impressed— that if they are permitted to take place
in cases where the proof is not clear and the evidence
is suspected, the lives of the Good & Virtuous will be

The mercy of many miscreant, who may choose to incautiously— the peace & safety of society would be endangered,
and the great end of all Criminal Legislation, pres-
ted. I wish, that hope, that the rigor of the law will
not be enforced in this case, where—as I conceived, the
wrong seems to require it. Most respectfully. J.H. Logan.