

Jurisprejudice: Acknowledging the Factor of Race in The Legal System, A Discussion on Wrongful Conviction

By Giovanni Toussaint

Introduction

Fifteen, twenty-five, ten, fourteen, five, thirty-five. Any person may notice this array of digits and may not know what to make of it, essentially appearing as a display of subjectivity. To a specific group of individuals these numbers hold profound significance. This series of numbers represents something taken away from them, time, years from their lives. Many people see time as the most valuable thing a human being has, our lives are finite after all. Depending on an individual's perception of the concept, one of the most egregious actions that could deprive a person of time is the wrongful arrest and conviction of the accused. Consider George Junius Stinney Jr, The Central Park Five, James Bain, and Alan Crotzer, all of whom were charged with crimes they had never committed. Through what some have viewed as the systemic racism of the judiciary, these black men, along with many others were robbed, robbed of their personal freedoms, opportunities, experiences, inalienable rights, and their very lives "Grand Theft Negro," if you will.

A system that continuously oppresses a marginalized group is contradictory in itself and does not represent a foundation in justice. This is an issue that some would say possibly imperils society, one that could negatively affect the life of any single denizen of the United States. In an academic journal article entitled, *The Criminal Costs of Wrongful Convictions: Can we reduce crime by protecting the innocent?*, Robert J.

Nobrris¹ elaborated on an investigation of a set of cases in which DNA was used to exonerate the innocent and identify the guilty. The information identified 109 true perpetrators, 102 of whom committed additional crimes. The investigators found a total of 337 additional offenses committed by true perpetrators, including 43 homicide-related crimes and 94 sex offenses.²

Evidently, the failure of the justice system to be more perceptive of the presence of racism when it comes to the judicial process has consequences. Many of these wrongfully convicted men had responsibilities as brothers, fathers, siblings, uncles, nephews, and husbands. In an article entitled, *Race, Wrongful Convictions, and Texas: An analysis of the impact of Juror and Defendant Ethnicity on Wrongful convictions*, William Howard-Waddingham³ mentions some data recorded by the *National Registry of Exoneration*.⁴ This data showed that from the 1,900 recorded exonerations, African Americans comprised 47% of those exonerations, despite the fact that African Americans at that time only accounted for 13% of the American population. Another finding by the Registry, according to Waddingham,⁵ is that since 1989,

¹ Robert Norris, Jennifer Weintraub, James Acker, Allison Redlich, Catherine Bonventre, *The Criminal Costs of Wrongful Convictions: Can we reduce crime by protecting the innocent?*, *Criminology & Public Policy* at 22 (Sept. 2, 2019), <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12463>.

² Id.

³ William Howard-Waddingham, *Race, Wrongful Convictions, and Texas: An analysis of the impact of Juror and Defendant Ethnicity on Wrongful convictions*, THE YOUNG RESEARCHER, Vol.2, No.1, Royal St. George's College (2018), http://www.theyoungresearcher.com/papers/TYR_V2_N1_2.pdf.

⁴ *The National Registry of Exonerations* is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

⁵ Norris, et al., *supra* note 1

2,354 people are known to have been exonerated throughout the United States. Most exonerations (1,502 or 63.6%) are “wrong-person” cases in which innocent individuals were convicted of crimes committed by someone else, compared to “no-crime” cases, in which an innocent person was convicted of a crime that was never committed.⁶

Those within the Black community may have the mindset that what they look like has resulted in them being subjected to the victimization of racial profiling. Black Americans may believe that they are often targeted based upon a general prejudicial criminal archetype, and that those odds stacked against them have not worked in the favor of the black man or woman in America. Through the indoctrination and social conditioning of society over generations, the possibility that this pattern has affected the black community could be true. The monolithic perception of what and who a black person is when viewed through the myopic view of those from outside the black diaspora, and paired with the tendency to not view black people as multidimensional individuals, is one of the root issues from which other systemic problems arise. This mindset may have been what has led black men to being relegated to the dregs of society within our prisons.

Within the justice system, race should always be considered as a causal factor. Racism is built into the very foundation of America.⁷ Apathy and willful ignorance towards individuals hurting under the oppression of racism does these defendants an injustice. Within the public defense system, the only constitutional provision that people of color have is their right to a defense, the ratification of the Sixth Amendment allows such a privilege. The correlation between wrongful conviction and systemic

⁶ Id.

⁷ *A History of Slavery in the United States*, National Geographic, <https://www.nationalgeographic.org/interactive/slavery-united-states/>.

racism is clearly displayed in the failure of our justice system time and time again. Those within the black community are of the belief that they are denied the same freedoms, rights, and privileges that many non-people of color are given within society. History shows us a clear bias against the black community that led to barriers being erected to deny opportunity access, in some cases even exclusion from democratic activities⁸, and included laws that led to housing discrimination.⁹ Not long-ago, Jim Crow laws, local and state laws that enforced racial segregation in the Southern United States,¹⁰ was the law of the land, and the very existence of it led to discrimination within the education system, lack of access to some of the amenities enjoyed by whites, and in some cases it led to lack of access to housing, or public transportation. These enacted public laws just go to show that laws and the justice system aren't infallible.¹¹

The mistakes from our history in the U.S. indicate a need to evaluate our laws and the systems they create more closely, for the qualities of fairness and justice for all. By allowing the stereotypical construction of Black Americans from our past, we perpetuate racial prejudices in the legal system, and we perpetuate our mistakes and create a situation where the

⁸ Danyelle Solomon, Connor Maxwell & Abril Castro, *Systematic Inequality and American Democracy*, Center for American Progress, 2019, <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/>.

⁹ Danyelle Solomon, Connor Maxwell & Abril Castro, *Systemic Inequality: Displacement, Exclusion, And Segregation - Center For American Progress*, CENTER FOR AMERICAN PROGRESS (2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>.

¹⁰ Melvin Urofsky, *Jim Crow Law*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Jim-Crow-law>.

¹¹ Id.

Black community has higher hurdles to overcome than the majority of U.S. citizens. Implicit racial biases have often been used to enable wrongful convictions. Stated in an academic journal from the University of Michigan law school, according to the National Registry of Exonerations,

- “Judging from exonerations, innocent black people are about seven times more likely to be convicted of murder than innocent white people. In similar findings, a black prisoner serving time for sexual assault is three and-a-half times more likely to be innocent than a white sexual assault convict. The major cause for this huge racial disparity appears to be the high danger of mistaken eyewitness identification by white victims in violent crimes with black assailants. The best national evidence on drug use shows that African Americans and whites use illegal drugs at about the same rate. Nonetheless, African Americans are about five times as likely to go to prison for drug possession as whites and judging from exonerations, innocent black people are about 12 times more likely to be convicted of drug crimes than innocent white people.”¹²

Constantly attempting to assimilate in order to survive is a common practice for the black person in America. Skin color dictates the very lives of black people. Being followed in a store, fearing the men and women in blue, and feeling as if diligence must be heightened wherever they go is integrated in the black culture within America.

¹² Samuel R. Gross, Maurice Possley, & Klara Stephens, *Race and Wrongful Convictions in the United States*, The National Registry of Exonerations, Newkirk Center for Science and Society (2017), MICH. L., <https://repository.law.umich.edu/other/122/>.

This article hopes to shed light on what seems to be an overlooked issue, the very concept that the justice system continuously fails to properly defend against the systemic racism that affects the judicial process, leading to black men being the leading demographic among the wrongfully convicted. This article is segmented into three sections. *Section one* will provide an overview into the judicial process of alleged criminals leading up to possible conviction, including a deeper look into the players within the system and outside the courtroom and how they contribute to this growing issue. *Section two* includes an anecdotal display of several cases in order to detail the failures of the justice system when it comes to the unethical profiling of black men and boys. *Section three's* focus is on looking towards the future. It will discuss some legislative and statutory options in relation to wrongful conviction cases and the jurisprudence of that system. This section will also elaborate on the urgency of this issue and how imperative it is the justice system immediately address this issue.

Section I

Prosecutors and Crime Victims

Far too often, the judicial actors in regard to the conviction process are overlooked. It is a mistake to fail to consider the influence the judiciary has within the conviction process and to try to understand implicit and explicit bias in their actions and decisions. Three roles that affect the fate of alleged criminals that are wrongfully convicted are the victims, prosecutors, and judges. In an article entitled, *Prosecutors and Victims: Why Wrongful Convictions matter*,¹³ elaborates on an often overlooked

¹³ Jeanne Bishop & Mark Osler, *Prosecutors and Victims: Why Wrongful Convictions matter*, JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, Vol. 105, Issue 4, p1031-1047, (2015),

variable. The academic journal discusses the idea of convictions focusing almost entirely on the wrongfully convicted and the negligence of two important constituencies, that being prosecutors and crime victims. Along with judges, prosecutors and victims have unique connections and can be allies in arriving at wrongful convictions.¹⁴ Prosecutors are deeply committed to justice and to the outcomes of their cases; they can help identify and correct wrongful convictions and introduce policies to avoid wrongful convictions in the first place. Crime victims provide imperative information when it comes to the judicial conviction process. A prosecutor's conviction is one of their strongest assets but also one of the strongest hinderances when it comes to the exoneration of a wrongfully incarcerated black man or black youths.¹⁵ The academic journal suggests that the adamance of the prosecutors in proving their case makes it difficult to ask prosecutors to admit that "they were wrong."¹⁶ When imploring prosecutors to work with wrongful conviction investigators, fundamentally we are asking them to change their minds and see things differently. From a moral standpoint, it is just and fair to ask, because the integrity of convictions will play a role in their relationships with future voters, jurors, and witnesses who the prosecutors will need to believe and support their efforts. Exculpatory evidence might be hidden by a prosecutor motivated by pride. Repercussions of wrongful convictions could result in the true perpetrators being free to commit other crimes and possibly harm others, or it might be the addition of guilt added to the victims and the suffering of the innocent, or it could result in costly exoneration compensation.¹⁷

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7576&context=jclc>.

¹⁴ Id. at 1031.

¹⁵ Id.

¹⁶ Id. at 1033.

¹⁷ Id. at 1044.

The Criminal Law & Criminology journal article by Bishop and Osler, takes a step by step look at the complicated interaction between prosecutors, crime victims, and bad outcomes.¹⁸ The lives of accused black men are ultimately in the hands of the system, and many times the wrongly accused as little to no power to refute the wrongful accusations. That is why certain judicial actors' roles within the conviction process holds such insurmountable weight. The journal compares being a prosecutor and a surgeon, noting that, “. . . the slightest slip-up can lead to death or to a lesser but still terrible wrong; the lengthy incarceration of an innocent person.”¹⁹ The journal implores the reader to consider the full scope of a case before too harshly condemning a prosecutor's commitment, while realizing their inherent influence.²⁰

This process is easily broken up into five parts.²¹

- (1) The journey of a prosecutor often starts with a proposal from an investigator, similarly in a way a sales pitch is presented. A commitment to a case is a commitment to an investigator. The dynamic between the two can be influenced by the relative ages and experience of the prosecutor and investigator.
- (2) From there, the prosecutor takes the case to the grand jury consisting of about 23 people, if accepted the named defendant should face trial, conviction, and punishment.
- (3) The prosecutor must deal with the defense attorney who is ultimately trying to negotiate with a prosecutor to drop the case or convince them of a plea bargain. This essentially includes the

¹⁸ Id. at 1032.

¹⁹ Id. at 1034.

²⁰ Id. at 1035.

²¹ Id.

defendant agreeing to plead guilty or no contest to a charge or charges in exchange for something from the government, like dismissal of other charges and potential leniency in punishment.

- (4) After that is the trial. The prosecutor will argue to the jury, facing them and pointing at the defendant while describing their wrongs. The prosecutor in those moments show no uncertainty; they are staking their own word on the outcome that they are urging jurors to create.
- (5) Finally, sentencing comes into play. The prosecutor will describe the precise punishment that should be met. The prosecutor is to stand in front of the condemned and communicate in public, what should happen to them, how many years of their life should be taken away and how the extinguishment of freedom or life should take place.

Sometimes prosecutors can be too committed, which in some instances can lead to concealing evidence that acts against their case, and other times it results in a refusal to accept that a convicted man is innocent, even when he has been cleared by DNA evidence. This lack of integrity is likely to lead to wrongful convictions.²²

Another contributing factor for wrongful convictions is perception which is everything in the judicial system, including the perception of victims which can play a pivotal role in the fate of the accused.²³ The article conveys the idea that no one chooses to be a crime victim. People are often victims of chance, and after experiencing a criminal act, victims are often in a vulnerable position as they move through the conviction process. They may recount the occurrence with a lack of information.

²² Id.

²³ Id at 1040.

Victims also seem to take a passive role in investigations. Many of these victims are in the hope or belief that the government is working hard to find and bring to justice the perpetrator who committed a crime against them.²⁴

Another crucial player in the judicial system are the judges. Through the eyes of a novice with little to no judicial background knowledge, they may think a judge is omniscient and represent the final word.²⁵ This academic journal article by Alexandra Derwin starts off with the concept of the term *voir dire*.²⁶ This is a legal phrase for a variety of procedures connected with jury trials. It originally referred to an oath taken by jurors to tell the truth. Some of these procedures include a preliminary examination of a witness or a juror by a judge or counsel. The failure of a judge to properly conduct a *voir dire* to ensure an expert is sufficiently qualified to give evidence in a particular area may give rise to a wrongful conviction, particularly regarding the plight of the black man or woman due to the thought process of the black community and how they think many people within society being possibly influenced by implicit racial biases. The article states that the trial judges' function is that of the gatekeepers of evidence.²⁷ They often find themselves in the role of determining whether evidence may be admitted into court and considered by the trier of fact, which is a person, or group of persons, who determines facts in a legal proceeding, usually a trial.²⁸ To determine a fact is to decide, from the evidence, whether something existed, or some event occurred. The gatekeeper function of a judge is an essential

²⁴ Id. at 1041.

²⁵ Alexandra Derwin, *The Judicial Admission of Faulty Scientific Expert Evidence Informing Wrongful Convictions*, W. J. OF LEGAL STUD., Vol. 8, Iss. 2, p19, (2018), <https://ojs.lib.uwo.ca/index.php/uwojls/article/view/5724>.

²⁶ Id.

²⁷ Id.

²⁸ Id.

component of our justice system. Today a judge's gatekeeping role is particularly important within the domain of expert opinion. "The outcomes and the foils of a favorable verdict for a wrongly convicted defendant increasingly rely on complex forensic science, and expert opinion has taken a vital role in the administration of justice."²⁹ 'Evidence' can be subjective and when it is, it is dangerous because it might be influenced by perceptions and pre-decided tendencies. A common perception within the black community is that they might seemingly 'fit the bill' of being a common criminal in our court system. The fate of a life lies directly in a judge or juries' discernment.

Judges' Discernment

In an article entitled, *Trial Judges-Gatekeepers or Usurpers? Can The Trial Judge Critically Assess The Admissibility Of Expert Testimony Without Invading The Jury's Province To Evaluate The Credibility And Weight of The Testimony*, author Edward J. Imwinkelried elaborates on the power that Judges hold over evidence and testimony.³⁰ Although the jury has the primary authority to decide the factual questions on the merits of the case, another type of factual issue often arises at trial, questions that qualify the admissibility of evidence. Suppose, for example, that at trial, the proponent offers testimony about an out-of-court statement under the common-law excited utterance hearsay exception.³¹ "The judge determines the admissibility of proffered evidence. When the item of proffered evidence is an alleged excited utterance, the trial judge must decide whether the declarant was in a state

²⁹ Id.

³⁰ Edward J. Imwinkelried, *Trial Judges-Gatekeepers or Usurpers? Can The Trial Judge Critically Assess The Admissibility Of Expert Testimony Without Invading The Jury's Province To Evaluate The Credibility And Weight of The Testimony*, 84 MARQ. L. REV. 1 (2000), <http://scholarship.law.marquette.edu/mulr/vol84/iss1/2>.

³¹ Id. at 2

of nervous excitement at the time of the statement.”³² That question is factual in nature, the resolution of the question requires the trial judge to decide whether, at a particular date and time, the declarant was in a certain frame of mind. Or suppose that the opponent objects to the introduction of testimony about an out-of-court statement on the ground that the statement was a confidential spousal communication and thus privileged at common law. In order to decide whether to accept or reject that objection, the judge must decide whether the declarant spouse intended the revelation to remain secret. Once again, the decision turns on a factual determination: the judge must attempt to reconstruct history and decide whether, at the time of the revelation, the declarant had the requisite state of mind. The trial judge not only enjoys the power to make these factual determinations under the common law; the judge’s power has also been organized by the Federal Rules of Evidence.³³ In pertinent part, Federal Rule of Evidence 104(a) reads: (a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). Rule 104(b) adds: (b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.³⁴

³² *Id.*

³³ Rule 104, Preliminary Questions, Federal Rules of Evidence, Legal Information Institute, https://www.law.cornell.edu/rules/fre/rule_104.

³⁴ Federal Rules of Evidence, LII / Legal Information Institute (1975), <https://www.law.cornell.edu/rules/fre>.

Section II

The Central Park 5

All across the nation people of color find themselves in a vulnerable state, held at the mercy of the justice system. This portion of the journal provides anecdotal evidence of several cases where the justice system uses unethical profiling of black men and boys. The first case covers the tragic loss suffered by the Central Park Five at the hands of the State of New York. The documentary, *The Central Park 5*,³⁵ covers the infamous Central Park jogger case. This documentary dove deeply into the failures of the justice system and social landscape that disenfranchised the very lives of 5 young black and brown boys, on the night of April 19th, 1989, when a jogger was brutally beaten and raped in New York City's Central Park. Reporter and columnist for the New York Times Jim Dwyer, looking back felt a lot of people did not do their jobs. People such as police, prosecutors, and defense lawyers. He noted that, "Some people saw New York as the capital of racial violence."³⁶ Dwyer wishes he had been more skeptical as a journalist looking back at the jogger case. Antron McCray, Raymond Santana, Kevin Richardson, Korey Wise, and Yusef Salaam were residents of Harlem in 1989. Richardson, Wise, and Salaam lived in the same building. New York in the late 1980's was a divided city, a "social moat".³⁷

There were enormous amounts of wealth coming into the city out of the rise of the financial industries. This surge occurred around the same time that a whole other side of the city was plagued by drug gangsters and crack, which increased crime. A seemingly permanently locked

³⁵ Ken Burns, Sarah Burns, David McMahon, *The Central Park 5*, PBS, <https://www.pbs.org/kenburns/the-central-park-five>.

³⁶ Id.

³⁷ Id.

underclass was in place. Ed Koch the former mayor of New York City made a point to address the fact that around 1984 crack was on the rise. Craig Steven Wilder, a historian said that “all of a sudden teenagers had a lot of guns and money when the crack war happened. The people who suffered the most with the rise of criminality, gangsters, drug wars, were actually the people we blame. Most of the homicides were young, poor, and working class black and brown kids,” said Wilder.³⁸

The dominant social message was, ‘no one cared if you lived or died’ and Reverend Calvin Butts III is quoted in the documentary as feeling that the black community was under assault.³⁹ Reverend Butts said something he referred to as a popular phrase at the time, “The most endangered species in America was the black man.”⁴⁰

According to the story,

- Wednesday April 19th, 1989 was known to be a like any other night. There was a holiday coming up; there was no school. Raymond Santana Sr. sent his son to the park that night, because he thought it would be too dangerous at the corner, according to his remarks about his long-lasting guilt for this decision. On 110th Street and Madison, there was a ‘mob of kids.’ Santana, Richardson, Wise, Salaam, McCray, and more than 25 other teenage boys entered Central Park together. Kids were horsing around, throwing rocks at cars up the main road, some harassed a couple, some were picking on a bicyclist, and others even assaulted a homeless man.
- When police arrived, the teens scattered. Teenagers were then beaten and detained aggressively by law enforcement. In addition

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

to Kevin Richardson and Raymond Santana, three other teenagers were also detained that night. At around 11:00 p.m. parents were eventually called, after a long stretch of detainment and guardian contacting.

- The jogger was discovered at about 1:30 A.M. by passersby in the underbrush in the northern regions of the park. She was taken to the metropolitan hospital where they discovered her skull was fractured, she had lost a good deal of her body fluids and was virtually dead.
- The kids detained in police custody were about to be released when a detective who seemingly realized the gravity of the situation called the precinct and asked that they hold them. Initially the jogger case was going to be handled by the Central Park precinct, the jogger's status at near death caused law enforcement to treat this case as a homicide investigation. These types of cases at the time were handled by homicide squads, Manhattan North in particular. The squad was known as a prestigious group of detectives, with a sense a pride and confidence in their tenure. Two prosecutors, Linda Fairstein and Elizabeth Lederer were a part of the investigation. They operated not only as prosecutors, but investigators.
- The public initial insight on the case was headline news. An unidentified white woman found raped in northern Central Park. Craig Steven Wilder, a historian said, "I think virtually every ethnic and racial group in New York has these moments where your heart just sort of stops and your stomach turns, and you think to yourself.... Oh, please don't let it be us!"⁴¹
- At first, the five kids were together, then they were put in rooms separately. Different cops kept coming in, back and forth.

⁴¹ Id.

According to Santana, who gave personal statements for the documentary, questions such as what happened to the lady were raised. “What Lady?” Santana remembers saying. Santana recalls a barrage of questions with belligerent intent. What did you do? Who were you with? Who did you come with? Dwyer stated, “Detectives are trying to piece together a narrative of what happened, and they are trying to make it fit what they know happened.”⁴² A white woman found almost dead, a group of young black and brown kids harassing and assaulting people the same night. The sociocultural landscape at the time and still possibly to this day would make this argument plausible.

- While it makes sense from a subjective standpoint, there was no proof whatsoever. Detectives Humberto Arroyo and Carlos Gonzalez vehemently interrogated Richardson and Santana. In the documentary, both members of the Five recalled the hateful words directed towards them. “This is the scumbag here that did it”, Arroyo said to Santana. According to Richardson, Gonzalez apparently said this to him, “You want to spend 25 to life on Rikers Island? You want to go to jail for rape? Because they don’t like guys that rape women.”⁴³ Saul Kassin, a social psychologist interviewed in the documentary said, “All hell is breaking loose in Central Park that night and there are gangs of kids running around making mischief.”⁴⁴ This mindset might explain police and investigator’s mindset when choosing to bring these kids in to interrogate them in such an aggressive way. The authorities seemed to truly believe that the culprit or culprits were present. Detectives were not limited in using draconian methods.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

- While Kevin Richardson, Raymond Santana and the others were being interrogated, police rounded up several more teenagers for questioning. Thursday 12:00 p.m., Antron McCray was berated with physical and verbal forms of confrontation at the precinct. Kassin made this observation on human behavior, “Confrontation followed by denial, followed by, ‘you’re a liar’, I want to hear the truth can go on for hours. And the goal there is to break the suspect down into a state of despair, to a state of helplessness so that the suspect gets worn down and is looking for a way out.”⁴⁵ Throughout the coerced confession, the detective told Raymond that it has to be believable. McCray’s father was convinced at some point to align with the police. Antron remembers his father telling him to tell them what they want to hear. “In those days there were probably six murders a day. In the newsrooms people didn’t always pay attention to whatever grizzly event to the day it happened, this one was different,” said Dwyer from the New York Times.⁴⁶
- Kassin had made note of the conditions the boys were subjected to. “These boys were in custody and under varying degrees of interrogation for a range of fourteen to thirty hours. And when you are stressed, when you are tired, and when you are a juvenile and not fully matured and developed, you’re thinking right now I just want this to stop.”⁴⁷ Yusef Salaam’s interrogation was interrupted by his mother, Sharon. He did not give the police a statement. After detectives took written statements from the other four, prosecutor Elizabeth Lederer began to record their confessions on videotape. Korey Wise recounted words spoken to him by Detective Nugent. He had told Wise to tell a story, he

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

would be in the room to make sure he did it. McCray's parents were present during questioning and were there when he was advised of his rights. The family did not consult with an attorney. Michael Joseph, a defense lawyer tried to provide a rationale for this issue. "Why would a parent not say at that moment, we want to consult with an attorney. The reason is, because of the setting and because of the way they're being treated by the police, because of being overwhelmed by the situation it doesn't even register in their morals," said Joseph.⁴⁸

- The demeaning treatment by the authorities was evident by Wise's statement on his feelings during interrogation. "16 and I felt like I was 12", said Wise.⁴⁹ Even after being coerced into a confession, when asked by Lederer if his 'truth' was voluntary, forced, exerted, and willful, he had denied being coerced by detectives. Kory said he was a kid who just wanted to survive. To those involved within law enforcement and the media, these kids were suspects in a horrendous crime. Fourteen and fifteen-year-olds who 'blazed a nighttime trail of terror.'⁵⁰ The teens referred to their nighttime activities as them just *wilin* [while-n]. This word is an African American colloquial slang term used as a mean of saying someone is acting crazy, acting stupid, and acting up, a person who is acting in a foolish manner indicative of one's disregard for acceptable public behavior; appearing to behave as a 'wild' person. Police and the media, many of whom were most likely not members of the black community were unfamiliar with the term. Ignorance, most specifically willful ignorance begets danger and misfortune. They ran with the term and dubbed it as the kids were "just out wilding." The term was processed as a new

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

teenage slang for rampaging in wolf packs. A statement about that night referenced a group running in a ‘pack’ of more than twenty-five youths. Manhattan D.A. Robert Morgenthau spoke out publicly to announce indictments of six of the eight suspects charged with the most serious crimes. None of the other teenagers who had been interrogated had implicated themselves in the rape of the jogger.

- The one person identified by the majority of the public as the only victim was Trisha Meili. She was a twenty-eight-year-old investment banker who worked on Wall Street and lived on the upper east side. The mainstream press did not publish her name. Two black-run weekly newspapers, *The Amsterdam New* and *The City Sun* did. They argued that the juvenile suspects were given no such protection. Four of the Central Park Five were sent to Spafford Juvenile Detention Center and Korey Wise was sent to Rikers Island, an adult facility. The story of the Jogger Case and the Five had enraged many New Yorkers, startled others, and started a renewed discussion of an under policed city with crime out of control. Mayor Ed Koch said this will be a test of the system, “People want to see how the criminal justice system works or if it works.”⁵¹ Donald Trump’s visceral disdain for these young boys and what they had supposedly done led to him actively working against them. He took out a full-page ad in four New York City newspapers with the headline, ‘Bring Back The Death Penalty. Bring Back Our Police!’⁵² Natalie Byfield from the *Daily News* seemingly found this extreme reaction inconceivable, “They were children, they were children. Bringing

⁵¹ *Id.*

⁵² Donald J. Trump, *Bring Back The Death Penalty. Bring Back Our Police!*, DAILY NEWS, May 1, 1989, <http://apps.frontline.org/clinton-trump-keys-to-their-characters/pdf/trump-newspaper.pdf>.

up the death penalty in the context of a case in which you were discussing children.... Was outrageous to me,” said Byfield. Michael Warren attorney at law believed there to be a double standard at play and said, “I think that if she had been a young woman who had been found in an alley in Bedford-Stuyvesant, if she had been found in any of the darker enclaves in this city or state. Donald Trump wouldn’t have spoken. He wouldn’t have even whispered a word.” Byfield from the Daily News makes note of the discrepancies when it comes to rape cases. “Interracial rapes were covered differently and there was another major rape in the city at the time. This was the woman who was raped in Brooklyn and thrown off a roof top.”⁵³

- Many in the black community went along with the confessions. Many of them may have been frightened by their own children. During this period of time people were pushed around, raped, burglarized, pocketbook snatched, and harassed on the subways often by young black men. McCray, Richardson, and Salaam were freed on bail. Santana’s and Wise’s families could not raise enough money, so they remained in jail. The authorities released a chronology, which is an arrangement of events of what the “wilding” was all about to the press. The police had complete control of the narrative. There are quite a few variables that are not explained. The supposed suspects were south of the area where the crime was committed at around twenty after nine, and they were with a group of teens. The Central Park Five do not know where, how, or when the crime took place according to the video. These kids just know that it happened. Linda Fairstein and Elizabeth Lederer formed a strong conviction that these boys were guilty. Saul Kassin, social psychologist said, “The contradictory details are just that. There’re details but they don’t

⁵³ Burns, et al., *supra* note 35

fundamentally change our belief in their guilt. However, DNA prints that were tested failed to ID the jogger's attackers. The Prosecution is willing to continue with their current route and make the argument to the jury that just because we didn't get everything, it's highly unlikely that a sixth perpetrator who somehow mysteriously doesn't appear prior to the confessions is at fault.⁵⁴ That same summer, a serial rapist named Matias Reyes, had been terrorizing the Upper East side. He was arrested August 5th, 1989. Tips from the public concerning the "East side rapist," were recorded in the daily news, but were ignored. One of the police officers working the case and also working on one of the rapes that Reyes had been accused of had the DNA markers from Reyes in both files. Antron McCray, Yusef Salaam and Raymond Santana were tried in June of 1990. Although the victim had no memory of the attack, prosecutors had her testify hopefully to make an emotional impression.

- Michael Joseph. Upon Joseph's initial meet with McCray he was surprised that he was the exact opposite of how he was portrayed in the media. Bobby Burns, Yusef Salaam's attorney was originally a divorce lawyer. At one point in time Yusef Salaam remembers looking over at him and thought he may have been sleeping. Contributing to the guilty verdict was the apathy of the defense attorneys, confessions, and lies led. Ronald Gold, who was Juror No.5, felt as though the confessions seemed genuine, not rehearsed or made up. During deliberations, the other jurors blamed Gold for wanting to take time on the case. He fought to consider the discrepancies between three statements. The others didn't care as much if they confessed, they confessed. Gold would soon succumb to group think and went along with the guilty verdict. Perspective from the viewpoint of disproportionate levels

⁵⁴ Id.

of violence compared to other demographics. The first three youths were charged with gang rape, brutal assault, and robbery. Antron McCray, Yusef Salaam, and Raymond Santana were each found guilty on seven counts including the rape and assault of Trisha Meili and the assault on two men that night. Due to the fact that they were juveniles, the three were sentenced to 5 to 10 years, the maximum allowed by law. Richardson's lawyer Howard Diller did not go with the defense of coercion. He argued that Richardson was present but did not take part. Kevin Richardson was found guilty of eight counts including the rape and attempted murder of Trisha Meili and was sentenced to five to ten years. Korey Wise's lawyer, Colin Moore, did go with the coercion defense. Wise was convicted of three counts including the sexual abuse but not rape of Trisha Meili because he was sixteen, so he was sentenced as an adult to five to fifteen years. According to Mayor Koch's 'test of the system' people felt the system had passed the test. In 1988 Raymond Santana was arrested for dealing drugs.

- Reverting back to Matias, the serial rapists, even during his initial questioning, Matias never once mentioned his connection to the Central Park Jogger case. It wasn't until he met Korey Wise in prison that he even considered owning up to this particular crime. Matias and Korey first came into contact with each other at Rikers Island jail, where they got into a scuffle over a TV. Then, more than a decade later, they were in the same prison, the Auburn Correctional Facility. It was noted that he may have found religion, but something compelled him after this second meeting to go to the police with the truth. And in 2002, he admitted to being the lone attacker in the Central Park Jogger case.
- In a confession tape acquired by the *New York Daily News*, Matias said, "I know it's hard for people to understand, after 12

years why a person would actually come forward to take responsibility for a crime. I've asked myself that question. At first, I was afraid, but at the end of the day I felt it was definitely the right thing to do."⁵⁵ Matias Reyes' DNA was tested and matched. He knew minute details that only the assailant would know; black clothing items, sneakers, a Walkman, discarded keys. He had an M.O consistent with his other crimes. Although the Central Park Five were exonerated, they had spent years of their lives incarcerated for a crime they had not committed. To this day, the supervising prosecutor of the Central Park Five case, Linda Fairstein still adamantly believes that the interrogation and trial methods used under her watch in the Central Park Jogger case were fair and lawful. And despite all evidence pointing to the contrary, she stands by her conviction that Antron, Kevin, Yusef, Raymond, and Korey participated in the 1989 attack: "I think Reyes ran with that pack of kids," Linda told *The New Yorker* in 2002.⁵⁶

George Junius Stinney, Jr.

The story of George Junius Stinney, Jr. is one of death by electric chair. Stinney was brought into the execution room around noon. He was a rather small child, 5' 1" and 98 lbs. so the straps on the chair didn't fit and he had to be tied to the chair. When the current started, he shook violently causing the face mask to fall off.⁵⁷ Not a fate many people would likely want. Stinney was alone, young, naive, and unexpected. When you are a young black boy in America, especially in the 40's the odds may seem as if they are stacked against you. This was the fate that

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ *The electric chair*, Capitalpunishmentuk.org (2020), <http://www.capitalpunishmentuk.org/chair.html>.

a 14-year old African American boy named George Junius Stinney Jr. had to face just by being born a certain color. He was the youngest person to be executed in the United States in the 20th century. Stinney died on June 16th, 1944 after being wrongfully conviction of the murder of two white girls seventy-six years ago. His conviction was overturned in 2014. A South Carolina Judge named Carmen Mullen ruled the boy did not have a fair trial. In the academic journal article entitled, *The Pre-Furman Juvenile Death Penalty in South Carolina: Young Black Life was Cheap*, the story is told of two young girls, Betty June Binnicker age eleven, and Mary Emma Thames age seven, whose bodies were found in a ditch after school on the afternoon of March 23rd, 1944.⁵⁸ They were discovered on the African American side of the town of Acolu, South Carolina, Stinney's hometown. The girls had failed to return home the night before. The black youth was taken in for questioning after police discovered he had been the last person to have seen the two young girls. After being taken into custody through coercion and promises of ice cream, he confessed to the double homicide within hours of his apprehension.⁵⁹

Stinney was tried for murder on April 24th, 1944. African Americans were not allowed in court at the time, so an all-white male-jury was selected along with a defense attorney who did little to nothing to aid his case.⁶⁰ Prior to trial, George spent eighty-one days in detention without the possibility of seeing his parents for the last time. He was imprisoned alone in his cell 80 kilometers from his hometown Aculo. His hearing of the facts was done alone without the presence of his parents or a lawyer.

⁵⁸ Sheri Lynn Johnson, John H. Blume, and Hannah L. Freedman, *The Pre-Furman Juvenile Death Penalty in South Carolina: Young Black Life was Cheap*, 68 S. C. L. REV. 331, 2017, <https://scholarship.law.cornell.edu/facpub/1502/>.

⁵⁹ Id.

⁶⁰ *George Junius Stinney Jr.*, Murderpedia, the encyclopedia of murderers (2020), <https://murderpedia.org/male.S/s/stinney-george.htm>.

The trial took place at the Clarendon County Courthouse. Jury selection began at 10 am, ending just after noon, and the trial commenced at 2:30 pm. Stinney's court appointed lawyer was 30-year-old Charles Plowden, who had political aspirations. Plowden did not cross-examine witnesses, his defense was reported to consist of the claim that Stinney was too young to be held responsible for the crimes. However the law in South Carolina at the time regarded anyone over the age of 14 as an adult. Closing arguments concluded at 4:30 pm, the jury retired just before 5 pm and deliberated for 10 minutes, returning a guilty verdict with no recommendation for mercy. Stinney was sentenced to death in the electric chair. When asked about appeals, Plowden replied that there would be no appeal, as the Stinney family had no money to pay for a continuation.⁶¹ The trial concluded that same day with Judge P.H. Stoll presiding. Appearing on behalf of the state was solicitor Frank McLeod, who presented evidence from law enforcement that the Defendant confessed to the crime. While law enforcement testified that a confession occurred, no written confession exists in the record today. The capital murder trial lasted one day. After ten minutes of deliberation by the jury of twelve, the defendant was found guilty of the murder of Betty and Mary and was sentenced to death the same day with no stay of execution on June 16th, 1944.⁶²

James Bain

James Bain a black Florida native spent more time in prison for a crime he did not commit than any other American exonerated through DNA evidence.⁶³ In 1974, at the age of 19, Bain was convicted of rape and

⁶¹ *Juan Blanco*, *Murderpedia*, the encyclopedia of murderers (2020), <https://murderpedia.org/male.T/t/tcaiu.htm>.

⁶² *Id.*

⁶³ *James Basin*, *The National Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3008>.

kidnapping. He was released in 2009 at the age of fifty-four after serving a total of thirty-five years in prison. His story begins with the victim of a rape on the evening of March 4th, 1974. The victim was a nine-year-old boy sleeping at his home in Lake Wales, Florida, and he was dragged to a baseball field and raped. The victim told police that his assailant appeared to have been seventeen or eighteen years old and had a mustache and bushy sideburns. According to the victim, the man had said his name was Jim or Jimmy.⁶⁴

The victim's uncle thought that this description sounded a lot like Jimmy Bain. Police showed the victim five or six photographs of potential suspects and he chose the one of Bain. However, of the photographs in the lineup, only Bain and one other man had sideburns. The police questioned Bain at his home at around midnight on March 5th, 1974. Bain claimed that he had been at home watching television at the time of the attack, an alibi that was supported by Bain's sister. Nevertheless, the police arrested him. According to FBI analysis presented at the trial, the rapist did leave semen on the victim's underwear. The trial occurred, however, before DNA testing was available. Though Bain could not be definitively tied to the semen, he could be matched to its blood group. An FBI analyst testified that the semen on the underwear from three separate stains was of blood group B. Bain was an AB secretor, which should have excluded him. Instead, the analyst claimed Bain's blood group had a weak A and thus he could not be excluded from having deposited the semen. This was not supported by testing when an expert for the defense testified that Bain's group actually had a strong A, and therefore he could be definitely excluded.⁶⁵

⁶⁴ *James Bain*, The Innocence Project, <https://www.innocenceproject.org/cases/james-bain/>.

⁶⁵ *Id.*

Despite the conflicting serological evidence and Bain's alibi, Bain was convicted of rape, kidnapping, and burglary and sentenced to life in prison.⁶⁶ The prosecution's case rested largely on the victim's identification of Bain in the photo lineup. A 2001 Florida statute made it possible for certain cases to be reopened for DNA testing. Upon hearing this, Bain presented four handwritten motions for the DNA evidence in his case to be tested. In all, the case came before the court five times and was denied all five times. With the aid of the Innocence Project of the Florida and Tenth Judicial Circuit Public Defender Bob Young, Bain was finally granted access to post-conviction DNA testing. The state sent DNA found on the victim's underwear to the DNA Diagnostic Center. The testing excluded Bain as the source of the DNA. The Polk County State Attorney, Jerry Hill then joined the defense in a motion to declare Bain innocent, and on December 17th, 2009 a judge signed the order releasing Bain from prison after thirty-five years. As soon as Bain was released, he used a cell phone for the first time to call his mother. Bain received one point seven million dollars from the state in reparation.⁶⁷

⁶⁶ Id.

⁶⁷ Id.

Section III:

The Innocence Project on DNA Exonerations in the United States⁶⁸

- **1989:** The first DNA exoneration took place
- **367** DNA exonerees to date
- **37:** States where exonerations have been won
- **14:** Average number of years served
- **5,097.5:** Total number of years served
- **26.5:** Average age at the time of wrongful conviction
- **42.8:** Average age at exoneration
- **21 of 367** people served time on death row
- **41 of 367** pled guilty to crimes they did not commit
- **17%:** Involved informants
- **267:** DNA exonerees compensated
- **189:** DNA exonerations worked on by the Innocence Project
- **162:** Actual assailants identified. Those actual perpetrators went on to be convicted of 152 additional violent crimes, including 82 sexual assaults, 35 murders, and 35 other violent crimes while the innocent sat behind bars for their earlier offenses.

⁶⁸ *DNA Exonerations in the United States*, The Innocence Project,
<https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>.

MISIDENTIFICATION	FALSE CONFESSIONS	SCIENCE AND DNA
69%: Involved eyewitness misidentification	28%: involved false confessions	44%: Involved misapplication of forensic science
35% of these misidentification cases involved an in-person lineup	49% of the false confessors were 21 years old or younger at the time of arrest	
52% involved a misidentification from a photo array	33% of the false confessors were 18 years old or younger at the time of arrest	
7% involved a misidentification from a mugshot book	10% of the false confessors had mental health or mental capacity issues	
15% involved a misidentification from a show-up procedure		
5% involved a misidentification from a one-on-one photo procedure		

<p>27% involved a misidentification through the use of a composite sketch</p>		
<p>11% involved a voice misidentification</p>		
<p>2% involved a misidentification through hypnosis</p>		
<p>54% involved an in-court misidentification</p>		
<p>29% involved a misidentification through some other procedure (e.g., mistakenly “recognizing” someone on the street and reporting them to law enforcement)</p>		
<p>79% of the misidentification cases involved multiple procedures</p>		
<p>85% of the misidentification cases involved a</p>		

misidentification by a surviving victim		
42% involved a cross-racial misidentification		
32% involved multiple misidentifications of the same person by different witnesses 18% involved a failure to identify the exoneree in at least one procedure		

▪ **Demographics of the 367 DNA exonerees to date⁶⁹**

African American	Caucasian	Latinx	Asian American	Native American	Self-identified "Other"
225 (61%)	110 (30%)	28 (8%)	2 (1%)	1 (<1%)	1 (<1%)

⁶⁹ Id.

A comparison between the National Registry of Exonerations' demographic data on wrongful convictions⁷⁰ and the Innocence Project⁷¹ shows that not much has changed. African Americans seem to make up a large percentage of those who have been wrongfully convicted within a set of data. This constant withstands the test of time. Why is this so? Clearly it is quite a complex topic to discuss and many extemporaneous factors come into play. However, this phenomenon is truly rooted in implicit racial biases and prejudices. Robert J. Norris analyzes the examination of criminal offenses by true perpetrators after innocent people are arrested and convicted for their crimes. He focuses on wrongful convictions and crime control, giving particular attention to the issues of framing, public opinion, and policymaking ways in which the issue can be communicated to the public.⁷²

Media coverage of the topic of wrongful convictions is important. And combined with the development of more exonerations due to new DNA testing, the growth of the International Innocence Network, and the immediacy of the topic, the path for the advancement of the Innocence Movement as a major issue in justice issues has been able to take root in public opinion.

The concept of framing might be the very thing that tips the judicial scales to a more just system. Framing has been described as the process by which people develop a particular conceptualization or they reorient their thinking about an issue. In the Howard-Waddingham article,⁷³ the

⁷⁰ *The National Registry of Exonerations* is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

⁷¹ *DNA Exonerations in the United States*, *supra* note 68.

⁷² Norris, et al., *supra* note 1.

⁷³ Howard-Waddingham, *supra* note 3

study analyzed by the author explored how different states are impacted by wrongful convictions, how different races are represented in Texas exonerations, and the connection between juror and defendant ethnicity.

According to the Innocence Project in 2008, Texas ranked number one nationally for the greatest number of cases overturned by DNA evidence. In 2017, Texas passed House Bill 34, that will hopefully decrease the likelihood of future wrongful convictions. The Texas Bill will, “. . . enhance transparency and accuracy in the criminal justice system by regulating the use of jailhouse informants, requiring police to record all custodial interrogations for suspects in serious felony cases, strengthening the use of eyewitness identification best practices and tasking the Texas Forensic Science Commission to study drug field test kits and crime scene investigations.”⁷⁴ Results remain to be seen as to whether these new regulations will influence wrongful convictions, especially for African American men. This bill does not seem to account for the factor of racism as a variable. Regardless, some members of law enforcement seem to consider the repercussions of inadequate and corrupt police services that result in wrongful convictions as an appropriate focal point in correcting past mistakes.

A story in the New York Times entitled, *How the Central Park 5 Case Looms Over the Tessa Majors Murder*, details a certain degree of prudent apprehension on the part of the police.⁷⁵ The story concerns a thirteen-year-old African American boy who is suspected of the homicide of an eighteen-year-old, first semester Bernard College student. The murder

⁷⁴ Julia Lucivero, *Texas Governor signs Landmark Comprehensive Legislation to Prevent Wrongful Convictions*, The Innocence Project (June 15, 2017), <https://www.innocenceproject.org/texasgovernorsignslandmarkbill/>.

⁷⁵ Ashley Southall & Jim Dwyer, *How the Central Park 5 Case Looms Over the Tessa Majors Murder*, N.Y. TIMES (Dec. 21, 2019), <https://www.nytimes.com/2019/12/20/nyregion/tessa-majors-central-park-five.html>.

occurred just outside Morningside Park in Manhattan. This case is reminiscent of the Central Park Five case. Both cases involved a young white woman attacked in a park and an even younger teenage suspect of color. Authorities proceeded with caution in terms of the investigation and made sure they followed protocol. According to the authors of the piece, “In the three decades since the Central Park case, exonerations through DNA evidence have shown that some people, particularly vulnerable teenagers, confess to crimes they have not committed, and that racial bias is often at the root of wrongful convictions.”⁷⁶ Socially conscious processes and consideration of history need to be implemented more when it comes to the legal system. Less misidentifications would most likely result from this.

Conclusion

Whatever state in the nation a person may find themselves in, a conversation needs to be started. This article is supposed to provide insight on the suffering of a community due to the failures of the justice system. The processes, the stories, the ongoing path are all important components. As of this moment, there are people paying for the crimes committed by another. Just because they are not seen doesn't mean that they do not matter. It is the nation's duty to give attention to this unfortunate predicament. We truly need a system that works better for all inhabitants of this nation. Even though it is not currently visible now, over time, there is a chance to get to a better place filled with justice and hopefully reach an era of legal sympathy and understanding.

⁷⁶ Id.