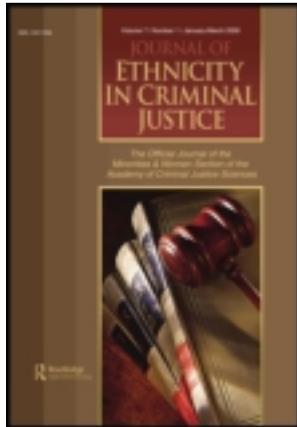


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Publisher: Routledge

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Journal of Ethnicity in Criminal Justice

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/wecj20>

African Americans Wrongly Convicted of Sexual Assault Against Whites: Eyewitness Error and Other Case Features

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To cite this article: Matthew B. Johnson, Shakina Griffith & Carlene Y. Barnaby (2013) African Americans Wrongly Convicted of Sexual Assault Against Whites: Eyewitness Error and Other Case Features, *Journal of Ethnicity in Criminal Justice*, 11:4, 277-294

To link to this article: <http://dx.doi.org/10.1080/15377938.2013.813285>

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African Americans Wrongly Convicted of Sexual Assault Against Whites: Eyewitness Error and Other Case Features

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A total of 35 African American men who were wrongly convicted of sexual assault against Whites were identified through review of journalist, scholarly, Web-based, and published legal decisions. Most of the cases occurred during the 1982–1992 decade and involved postconviction DNA exonerations. Consistent with the literature on wrongful convictions, erroneous eyewitness identification by the assault victim was a major source of error. Other factors that contributed to the wrongful convictions were coerced false confessions, all-White juries, discounted alibis, misconduct by

Submitted September 2011; resubmitted March 2012; accepted November 2012.

This article is derived from an independent study project that Shakina Griffith completed under the supervision of Professor Matthew B. Johnson during the spring of 2011. We express our thanks to Jannette Domingo, Dean of Graduate Studies at John Jay College of Criminal Justice, for her support in arranging the project. The article is dedicated to Nate Walker, who was wrongfully convicted of a sexual assault against a White woman and was exonerated through the efforts of Centurion Ministries and others. Nate Walker fought his wrongful conviction in many ways. After his exoneration and release, he told his story of injustice to lobby for the abolition of the New Jersey death penalty. The New Jersey death penalty was abolished in 2007. Nate Walker passed away on February 28, 2010. In addition to Nate Walker, other exonerees who lobbied against the New Jersey death penalty were David Shephard, James Landano, Byron Halsey, Larry Petersen, and Kurt Bloodsworth. We also express our thanks for the valuable research assistance provided by Victoria Aderin and Stephanie Cunningham.

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officials, flawed expert testimony, and bue-and-cry circumstances. The construction of the image of the Black sexual predator as well as the challenges presented by cross-racial identification also are discussed.

KEYTERMS *Eyewitness error, race, rape, wrongful conviction*

INTRODUCTION

Commenting on wrongful convictions, Gross, Jacoby, Matheson, Montgomery, and Patel (2005) stated, "Of all the problems that plague the American system of criminal justice, few are as incendiary as the relationship between race and rape" (p. 548). The discussion that follows is focused on this intersection, which has resulted in some of the more infamous criminal trials in U.S. history. Notable are the high-profile Scottsboro (Kinshasa, 1997) and Central Park Jogger (Johnson, 2005; Sullivan, 1992) cases, which involved false allegations that African American men sexually assaulted White women.

The United States has a uniquely complicated history in terms of race and sexual violence. Under the racially based slave system that existed in many U.S. states until the Civil War, African American women lacked legal protection from the sexual exploits of White men (McGuire, 2010; Sommerville, 2004). In many parts of the nation, this lack of legal protection continued well into the 20th century (McGuire, 2010). During the post-Reconstruction period, mob violence and lynching of African Americans emerged as a form of racial subordination (Allen, Als, Lewis, & Litwack, 2000; McGuire, 2010; Paterson, 1998; Sommerville, 2004).

These fatal assaults were not confined to the old southern slave states and continued into the 20th century. African American journalist Ida B. Wells led the anti-lynching campaign as well as lectured extensively abroad (Gore, 2005; Royster, 1997; Wells, 1970). Her investigative journalism exposed lynching as retaliatory violence against African American economic and social advancement rather than for the purported purpose of protecting White women from sexual assaults by Blacks. Wells herself was threatened with death, and her office was burned following the 1892 publication of her editorial that revealed the actual motive behind the lynching of three African American businessmen in Memphis, Tennessee (Gore, 2005; Wells, 1970).

The defenders of lynching consistently pointed to the need to protect White women from Black predators (Royster, 1997; Wells, 1970). In this regard, Sommerville (2004) stated, "The view that black men were innately barbaric and libidinous" was part of the "rape myth" or "rape complex" common, but not limited, to the American South (p. 224). Sommerville also described how the notion of the Black sexual predator was constructed and promoted by novelists, politicians, and pseudoscience to justify the violent subordination of African Americans.

Researchers have studied wrongful convictions for generations (Borchard, 1932; Gould & Leo, 2010; Gross et al., 2005). The literature recognizes that eyewitness error and false confessions are two principal contributors to wrongful conviction. Other recognized contributors are flawed scientific testimony; misconduct by officials; ineffective defense counsel; discounted alibis; inadequate/erroneous investigation; hue-and-cry circumstances (press and public pressure that prompts a hasty and imprecise investigation); and false testimony, often by witnesses who were compensated (incentivized) by the prosecution. There is a consensus among researchers that when a wrongful conviction occurs, a combination of several factors is operative. The over-representation of African-Americans among post conviction exonerates has been noted by Free and Ruesink (2012), Gross et al. (2005), and Murty and Vyas (2010). Garrett (2011) reported 155 (62%) of the first 250 US DNA exonerations involved Black defendants.

In the 1990s, with the advent of DNA applications to criminal investigation, a new era emerged (Scheck, Neufeld, & Dwyer, 2001). Scheck et al. (2001) described the scientific innovations that resulted in reliable DNA evidence. DNA identification has special relevance to rape prosecutions because human sexual residues are often part of the available evidence. Prior to the DNA era, blood typing (also called *serological analysis*) was the predominant scientific method relevant to sexual assault investigation. However, unlike DNA, blood typing does not result in specific identification.

The “Scottsboro Case”

One of the most widely publicized criminal trials in U.S. history was the Scottsboro case (Goodman, 1994; Linder, 2000). In 1931, nine African American males were arrested and charged with the rape of two White women. The defendants ranged in age from 12 to 19. As the rape charges circulated through Scottsboro, Alabama, a lynch mob assembled near the jail. In three cursory trials over the course of 2 days, eight of the nine defendants (the exception being the 12-year-old) were convicted and sentenced to death. However, the U.S. Supreme Court reversed all of the convictions, noting that the right to counsel had not been protected (*Powell v. Alabama*, 1932).

During the second set of trials, the younger of the two women testified that there had been no rape or sexual contact but that she had agreed with the accusation at the insistence of the older woman. Despite this testimony, the defendants were again convicted and sentenced to death. The verdicts were reversed again by the U.S. Supreme Court based on the systematic exclusion of Blacks from the jury pool (*Norris v. Alabama*, 1935).

Ultimately, the rape allegations of the two women proved to be unreliable, as demonstrated by investigative evidence and testimony. The racial

bias at trial is illustrated by the instruction issued by Judge Callahan: “There is a very strong presumption under the law that she [a White woman] would not and did not yield voluntarily to intercourse with the defendant, a Negro” (Sommerville, 2004, p. 217). This type of blatant racial prejudice is no longer expressed (openly) by trial judges, but whether racially discriminatory factors operated in more recent wrongful convictions is a question in the review that follows.

THE CASES

A total of 35 cases of African Americans wrongly convicted of sexual assault against Whites (1964 to the present) were identified. Drawing from the available case data, we identified factors that contributed to the wrongful convictions. Although this is by no means a systematically derived sample, it does represent a substantial series of cases worthy of review. Although our methods do not allow for comparisons to be made between African Americans wrongly convicted of sexual assaults against Whites and the broader group of all wrongful convictions in sex offense cases, there is value in identifying features that are apparent in these cross-racial cases. Our review is limited to cases of court-adjudicated guilt that later resulted in a reversal and/or exoneration. In our focus on wrongful conviction in sexual assault cases, we recognize the parallel problem of failure to convict guilty offenders. Our review does not diminish the seriousness of sexual assault charges but rather emphasizes the risk of wrongful conviction that coexists with the risk of failure to convict the actual offender.

Faulty Eyewitness Identification

In their review of research on wrongful conviction, Gould and Leo (2010) observed, “[A] common pattern of error is when a white woman is raped by an African American or Hispanic man and unintentionally identifies an innocent person as the perpetrator” (p. 856). Among the 35 cases reported here, there are 22 defendants whose wrongful convictions were associated with eyewitness error. Although mistaken eyewitness identification is the single largest contributor to wrongful convictions (Gould & Leo, 2010; Gross et al., 2005; Scheck et al., 2001), there are typically other contributing factors. The 22 defendants whose wrongful convictions were associated with erroneous eyewitness identification are presented in Table 1.

Researchers have differentiated estimator from system sources of error in eyewitness identification (Fulero & Wrightsman, 2009; Gaulkin, 2010). Estimator variables are sources of error related to the witness and the circumstances of the identification (e.g., visual ability, distance, lighting, duration of observation, stress, weapons focus, cross-racial identification). System variables, also referred to as *preventable sources of error*, involve how the police

TABLE 1 Eyewitness Error Cases ($N = 22$)

Defendant	State	Year ^a	Wrongful Conviction Risk(s) ^b	Exoneration Type
Marvin Anderson	VA	1982; 1982	1-s; 2; 3	DNA
Calvin Johnson, Jr.	GA	1983; 1983	1; 2; 4	DNA
Timothy Cole	TX	1985; 1986	1-s; 2; 3; 4; 5; 7; 10	DNA
Darryl Hunt	NC	1984; 1984	1; 2; 5; 9	DNA
Nathaniel Walker	NJ	1974; 1976	1; 4; 6	Blood type
Donte Booker	OH	1986; 1987	1; 3	Blood type
Harold Buntin	IN	1984; 1986	1; 3; 7	DNA
Ronald Cotton	NC	1984; 1985	1	DNA
Billy Wardell	IL	1986; 1988	1; 3; 7	DNA
Donald Reynolds	IL	1986; 1988	1; 3; 7	DNA
Bernard Webster	MD	1983; 1984	1; 4; 7	DNA
Anthony Michael Green	OH	1988; 1988	1; 7	DNA
James Waller	TX	1982; 1983	1; 4	DNA
David Shephard	NJ	1983; 1984	1-s; 4	DNA
Johnnie Lindsey	TX	1981; 1983	1-s; 3; 7	DNA
Albert Johnson	CA	1992; 1992	1-s	DNA
Thomas Doswell	PA	1986; 1986	1-s	DNA
Larry Mayes	IN	1980; 1982	1-s	DNA
Herman Atkins	CA	1986; 1988	1-s; 3; 7	DNA
McKinley Cromedy	NJ	1992; 1993	1	DNA
James Tillman	CT	1988; 1989	1	DNA
Larry Fuller	TX	1981; 1981	1-s; 3; 5	DNA

^aYear refers to the year of the offense and the year of first conviction. ^bIn 22 cases, eyewitness error was a crucial factor. Eyewitness error (1) is noted where reported, and where there is report of system factors, it is noted as 1-s. Other wrongful conviction risks: (2) all-White jury, (3) weapons focus, (4) discounted alibi, (5) official misconduct, (6) ineffective defense, (7) flawed science, (8) false confession, (9) incentivized witness, and (10) hue and cry.

interview and interact with witnesses (i.e., instructions, procedures, and feedback provided during line-ups, show-ups, and photo identifications), which can affect the reliability of the identification as well as inflate the witness's confidence in an identification. In some cases, the role of estimator versus system sources of error is difficult to disentangle. When suspects were falsely identified in show-ups, it is not clear to what degree the error was solely that of the victim (estimator) or whether it was related to the suggestiveness (inadvertent or intentional) of the show-up procedure (system).

David Shephard was wrongfully convicted of rape and related counts in 1984 (Buck, 2004; Innocence Project, n.d.a; Wang, 2007). He was charged with the abduction and rape of a White woman. At the time of his arrest, Shephard was employed at the Newark (New Jersey) International Airport. He worked the night shift, and two detectives approached him as he was leaving work one morning. He agreed to accompany the officers to the precinct for questioning about a stolen car. However, he was subjected to multiple hours of questioning about a sexual assault. Shephard maintained his innocence. He did not know, however, that officers had surreptitiously brought a rape victim to his job and that she had identified him (Buck, 2004).

During this pre-DNA period, Shephard shared the common blood type with a semen sample from the crime scene.

At trial, Shephard's mother testified as to his whereabouts at the time of the offense, but the rape victim's positive identification of Shephard led his public defender and the judge to advise him to accept a plea bargain. He refused, was found guilty, and was sentenced to 30 years. Although Shephard entered prison without a high school degree, he became an effective jailhouse lawyer. He eventually wrote his own briefs, in which he argued for DNA testing of the biological evidence from his case (personal interview, D. Shephard, March 29, 2006). After his petition was granted and the testing completed, he was subsequently cleared. Shephard was released in 1994. His struggle to reconstruct his life is described in *Actual Innocence* (Scheck et al., 2001). Shephard later became the founding president of the Northeast Council of the Wrongfully Convicted (Wang, 2007), a peer support group. He also was active in the successful campaign to abolish the death penalty in New Jersey.

In other cases, the system sources of error are clearly apparent. Improper presentation of a photo spread led to the wrongful conviction of Thomas Doswell (Conti, 2005; Innocence Project, n.d.c). A White female employee of a Pittsburgh medical care facility was raped by a Black man during an early morning in March 1986. The assailant directed her to the cafeteria, locked the door, and attacked her. A coworker intervened, and the assailant fled and was not captured. Later that day, the victim was presented with a photo spread that included Doswell's picture. Doswell's was the only photo among the eight presented that was marked with the letter *R*. The victim chose Doswell's photo.

At trial, the defense sought to have the identification thrown out because of the obvious bias. However, the trial judge ruled against the defense. Doswell had been a suspect in a prior rape case, and thus his photo was marked. Doswell was convicted and sentenced to 13 to 26 years and remained in prison for 18 years. He would have been eligible for parole, but he refused to admit guilt. He filed for appellate relief, but his appeals were rejected. His initial request for DNA testing was denied in 1999. A subsequent request was granted, which led to DNA testing and the establishment of his innocence. He was released in August of 2005 and awarded a \$3.8 million settlement in 2009 (Brandolph, 2009).

Another clear and tragic case of system error was that of Timothy Cole. In 1985, a White Texas Tech student was abducted, robbed, and raped by an African American man who forced his way into her car with a knife. After she reported the assault a rape kit was taken (Innocence Project, n.d.d). The victim reported that the assailant smoked cigarettes during the assault. The police suspected a serial offender because there had been four other sexual assaults in the campus area. Cole became a suspect after speaking to a female detective near the scene of the offense, 2 weeks after the assault. In the photo

spread presented to the victim, Cole's was the only color photo and the only frontal photo. According to police, the victim immediately identified Cole. The victim again identified Cole in a live line-up, although victims of similar recent sexual assaults did not.

At trial, the victim testified. In addition, the prosecution called a forensic analyst, who provided less than scientific testimony that the pubic hairs recovered were similar to Cole's. Cole's brother and friends testified in support of his alibi. The defense also presented evidence that Cole was asthmatic and did not smoke cigarettes. In addition, the defense sought to present evidence of sexual assaults continuing months after Cole's arrest as well as fingerprints from earlier sexual assaults that did not match Cole's. The judge did not allow this testimony before the all-White jury. In 1986, Cole was convicted and given a 25-year sentence. His initial appeals were rejected.

In 1995, a twice-convicted Texas sex offender (Jerry Wayne Johnson, serving a 99-year sentence) sent letters to prosecutors in which he stated that he had committed the sexual assault that had led to Cole's conviction. However, the 10-year statute of limitations had expired on the offense. There was no response to the letters. The press reported that the prosecution had been aware that Johnson was a suspect but failed to show his photo to the victim. "They used racial stereotypes to sway (the victim) and to convince the all-white jury to disregard Cole's black witnesses" ("Answering Injustice," 2009, p. 16A).

In 1999, Timothy Cole died in prison from an asthma attack, unaware that Johnson had confessed to the crime. A year after Cole's death, Johnson wrote to a supervising judge but no action was taken. In time, Cole's family and the Texas Innocence Project learned of Johnson's confession. A motion was filed to test the DNA, the current prosecution cooperated, and the findings cleared Cole and implicated Johnson. Cole was posthumously exonerated in 2009. The victim of the assault became an activist, raising awareness about eyewitness error and wrongful convictions. She reported that the police and prosecutors influenced her by denigrating Cole's character (McGonigle, 2008).

Another remarkable feature among certain eyewitness error cases is the same misidentification occurring multiple times (Innocence Project, 2009). This occurred in the Calvin Johnson, Jr., case (as well as in the Bernard Webster, James Waller, and Herman Atkins cases that are part of our series). Johnson was a college graduate from Atlanta (Scheck et al., 2001; Tucker, 1999) but had a criminal record that stemmed from a burglary conviction. He was released from prison in 1982 after serving 14 months. Consequently, in 1983, when a White woman was raped during a burglary, Johnson's photo was in the spread shown to the victim, and she identified him. Even though the victim subsequently chose someone else in a live line-up, Johnson was indicted.

At trial, Johnson faced an all-White jury. In addition to the victim's testimony, a White female neighbor also chose, from a spread, Johnson's photo as someone who tried to enter her apartment. In addition, a third White woman picked Johnson out of a line-up as the man who raped her, with similar offense characteristics, in the same vicinity. Johnson presented three alibi witnesses who were close friends and family members. Furthermore, the defense called a crime lab expert who testified that the African American hair recovered from the victim's bed sheet did not originate with the defendant. Nevertheless, Johnson was convicted and sentenced to life in prison. Scheck et al. (2001) commented, "The black alibi witnesses had been rejected and the white identification witnesses accepted" (p. 271).

In Georgia, a life sentence meant that Johnson could apply for parole in 7 years. Like Doswell, Johnson was unwilling to admit guilt to qualify for the sex offender treatment program and thus set up parole eligibility. By 1994, Johnson had learned about DNA and with the help of a prisoners' legal aid service filed a motion for a new trial and DNA testing. After he won the support of the prosecutors, the laboratory testing was dragged out over a period of 5 years because of the emergence of several administrative, technical, and legal obstacles prior to his June 1999 exoneration and release.

All of the misidentification cases in our series involve cross-racial identification. Despite an intuitive understanding of the challenges presented by cross-racial identification, as well as the substantial research that supports the effect (Brigham, Bennett, Meissner, & Mitchell, 2006; Smith & Stinson, 2008), many courts have been reluctant to acknowledge the need for safeguards. In *State v. Cromedy* (1999) the New Jersey Supreme Court noted there was no other evidence that linked the defendant to the offense, and the trial judge denied of the defense motion for a special cross-racial identification caution, in granting Cromedy a new trial. Subsequent DNA testing in preparation for the retrial ruled out Cromedy as the rapist.

Before we turn to the wrongful convictions attributable to sources other than misidentification, it is important to emphasize the role of the risk factors that coexist with misidentification. Among the case illustrations presented so far, we have observed all-White juries (Johnson and Cole), discounted alibis (Shephard, Cole, and Johnson), flawed/misleading expert testimony (Cole), hue-and-cry pressure (Cole), and alleged official misconduct (Cole). Thus, even in cases that involved cross-racial identification risk, mistaken identification was not the sole factor that contributed to the wrongful conviction (see Table 1).

Coerced False Confession

Our series includes 13 defendants whose wrongful convictions were attributable to sources other than erroneous witness identification (see

TABLE 2 Other Than Eyewitness Error Cases ($N = 13$)

Defendant	State	Year ^a	Wrongful Conviction Risk(s) ^b	Exoneration Type
Jarrett Adams	WS	1998; 2000	2; 6	Appellate review
Clarence Lee Brandley	TX	1980; 1981	2; 5; 10	Appellate review
Larry Ollins	IL	1986; 1988	8; 7; 9; 10	DNA
Calvin Ollins	IL	1986; 1988	8; 7; 9; 10	DNA
Omar Saunders	IL	1986; 1988	8; 7; 9; 10	DNA
Marcellius Bradford	IL	1986; 1988	8; 7; 9; 10	DNA
Gregory (Juvenile)	NY	1964; 1964	8	Appellate review
Gerald (Juvenile)	NY	1964; 1964	8	Appellate review
Yusef Salaam	NY	1989; 1990	8; 10	DNA
Kevin Richardson	NY	1989; 1990	8; 10	DNA
Antron McCray	NY	1989; 1990	8; 10	DNA
Kharey Wise	NY	1989; 1990	8; 10	DNA
Robert Miller	OK	1986; 1988	2; 5	DNA

^aYear refers to the year of the offense and the year of first conviction. ^bIn 13 cases, eyewitness error (1) was not a factor. Other wrongful conviction risks: (2) all-White jury, (3) weapons focus, (4) discounted alibi, (5) official misconduct, (6) ineffective defense, (7) flawed science, (8) false confession, (9) incentivized witness, and (10) hue and cry.

Table 2). A total of 12 defendants were named in four cases in which the victim's death or severe incapacitation ruled out identification. In addition, coerced false confession accounted for 10 of the 13 defendants: four African American defendants named in the Central Park Jogger case (Johnson, 2005; Ryan, 2002); Chicago defendants Ollins, Ollins, Saunders, and Bradford (Drizin & Leo, 2004; Northwestern Law, n.d.b; Pierre, 2001); and two 12-year-old Brooklyn juveniles (*In the Matters of Gregory W. and Gerald S.*, 1966). Nine of the 10 coerced false confession wrongful convictions involved juvenile defendants. As with the misidentification cases, the false confession cases included additional factors that contributed to wrongful conviction.

In 1966, the New York State Court of Appeals reversed the trial and appellate court adjudications of two 12-year-old Black youths who had been sentenced for a murder and sexual assaults of "aged domestics" (*In the Matters of Gregory W. and Gerald S.*, 1966). One woman survived the attack and reported that she could not identify the assailant because her face had been covered with a pillowcase. However, by the voice and strength exhibited, she believed that the perpetrator was Black and in his late teens or early 20s. Two weeks later, after being questioned about an unrelated offense, Gregory W. was questioned by officers who were investigating the rape and murder. All-night questioning led to the defendant's incriminating statement. His parents were in the precinct but not in the room where the interrogation occurred.

The following day, the interrogating officer learned that Gregory had been in a locked ward at Kings County Hospital at the time of the offense. The officer then returned to the center where Gregory was held and obtained

a supplemental confession from the youth that he had escaped from the hospital, traveled to the crime scene, committed the offense, and returned to the locked ward without being noticed by the staff (even though the timing and distance made this highly unlikely). With this admission, the trial and appellate court found Gregory (and his codefendant) responsible for the offenses. The ruling was subsequently reversed by the state's highest court.

Two cases with remarkable parallels led to the wrongful conviction of eight African Americans (seven juveniles and one 18-year-old). Both cases occurred in the late 1980s in northern metropolitan areas where high-status White women (a medical student and an investment banker) were raped and so severely assaulted that perpetrator identifications could not be made. In both cases, police coerced false confessions from African American youths, which resulted in convictions and lengthy prison terms.

In the 1986 Chicago case, the police faced considerable press and public pressure when there were no arrests following a fatal assault on a medical student (Drizin & Leo, 2004; Northwestern Law, n.d.b.; "Three Illinois Men Freed," 2001). Consultation with Federal Bureau of Investigation profiler Robert Ressler led to the theory that teen offenders had abducted, raped, and killed the victim. Prolonged interrogation of three teen suspects (Calvin Ollins, Omar Saunders, and Marcellius Bradford) who had juvenile offense records (Drizin & Leo, 2004) led to 17-year-old Bradford accepting a plea to lesser charges in exchange for testimony against Omar Saunders, Calvin Ollins, and Calvin's cousin Larry Ollins. This coerced false confession, combined with the testimony of two other prosecution witnesses who testified in exchange for considerations in their unrelated criminal cases and flawed testimony from crime lab analyst Pamela Fish provided ample evidence to win trial convictions in 1988. Fish is facing civil suits that allege that she provided false testimony for the prosecution in several cases (Mills, McRoberts, & Possley, 2004). DNA testing in 2001 cleared the four defendants and led to the actual offenders. In 2007, the Chicago City Council approved settlement awards that totaled more than \$10 million for the four exonerees (Spielman, 2007).

The 1989 Central Park Jogger case has noted parallels with the Chicago case. Press sources characterized the Central Park Jogger case as one of New York City's most horrible crimes (Perrotta, 2002). Four African American teens and one Latino teen were charged with a rape and near fatal attack on a White investment banker. Although there was no physical evidence that linked the youths to the offenses, they were interrogated for hours, but there was no record of the interrogation tactics that preceded the confessions.

Eventually, four of the five defendants provided written and videotaped incriminating statements. The statements were not confessions; rather, the suspects implicated others in an assault that they purportedly witnessed or facilitated (Johnson, 2005; Ryan, 2002). This evidence, aided by flawed expert testimony (Ryan, 2002), the acting in concert theory of the prosecution,

and the hue-and-cry atmosphere that engulfed New York City prior to the trials, was sufficient to win convictions in two trials in 1990. An indicator of and contributor to the public passion surrounding the offense was Donald Trump's purchase of \$80,000 worth of newspaper ads that called for the reinstatement of the New York State death penalty in the aftermath of the crime (Sullivan, 1992).

Although multiple appeals were filed, none of the defendants was awarded appellate relief. In 2002, New York State inmate Matias Reyes reported that he had acted alone in the April 19, 1989, attack on the jogger. Reyes was serving time for murder, rapes, and robberies that he had committed during the 4 months following the attack on the Central Park Jogger. These were all attacks on White women in the same vicinity of Manhattan as the Central Park Jogger attack. In addition to Reyes's admission, his DNA matched samples recovered from the crime scene, and there was other evidence that indicated that he was the sole perpetrator (Ryan, 2002). Attorneys for the defendants filed motions for postconviction relief. The Manhattan District Attorney's Office issued a comprehensive report (Ryan, 2002) that concurred with the motions filed on behalf of the defendants. Ryan (2002) noted that the defendants' confessions, "differed from one another on the specific details of virtually every major aspect of the crime" (para. 86). Thus, the court vacated the convictions, and civil damage awards are still pending.

All-White Juries

In three remaining cases (as well as the Calvin Johnson, Jr., and Timothy Cole cases), all-White juries convicted innocent African American defendants. In the Miller and Brandley cases, the assault victims were deceased and thus could not offer identifications. Miller never admitted committing assaults on elderly women, but the prosecution argued that he knew crime details that could only be known by the perpetrator, "guilty knowledge" (Innocence Project, n.d.b; Scheck et al., 2001). Even though similar attacks continued in the Oklahoma City neighborhood after his arrest, Miller was convicted. When postconviction DNA testing ruled out Miller as the source of recovered semen, the prosecution asserted that Miller must have acted with an accomplice. The postconviction investigation, however, suggested that the prosecution had withheld evidence supporting Miller's innocence. Miller was granted a new trial, but the prosecution decided not to try him. He was released after serving 10 years in prison.

Brandley, a school janitor, was convicted of the rape and murder of a 16-year-old White Texas student in 1981. Parker, Dewees, and Radelet (2001) reported that hue-and-cry pressure, police misconduct (missing evidence), and obvious racial bias were apparent in the prosecution. When appellate relief failed, a Centurion Ministries investigation found an eyewitness who

supported Brandley's innocence. Then, a 1987 *60 Minutes* news segment was followed by a stay of execution, and Brandley's conviction was overturned. He was, however, denied compensation because the reversal was on due process grounds and thus did not sufficiently establish his innocence.

In the Adams wrongful conviction (Esposito, 2010; Northwestern Law, n.d.a), the postconviction investigation and appellate review indicated that no rape had occurred. Adams, a 17-year-old college student, and a codefendant had been tried together, whereas a third defendant had a separate trial. Following Adams's conviction, the charges against the third defendant were dismissed after exculpatory evidence (discovered during his second trial) indicated that whatever sexual contact had occurred was consensual. An appeal on Adams's behalf that charged ineffective defense representation in pursuing the exculpatory evidence resulted in a reversal of Adams's conviction, and the prosecution dropped the charges. Each of these three cases had an all-White jury as well as indications of misconduct of officials and ineffective defense representation.

DISCUSSION

The 35 wrongful convictions of African Americans for sexual assaults against Whites raise questions about the integrity and efficiency of criminal prosecutions. In their comprehensive report, Gross et al. (2005) characterized wrongful convictions as "accidents . . . caused by a mix of carelessness, misconduct, and bad luck" (p. 542). Moran (2007) was less generous and noted that more than half of wrongful convictions were "willful, malicious prosecutions by criminal justice personnel" (para. 3).

Although intent is difficult to establish, certain features characterize our series of cases. Witness misidentification, coerced false confessions, and all-White juries were the primary contributors to the wrongful convictions seen in these cases. Based on such cases, it has been suggested that African American defendants face special vulnerability to wrongful conviction (Free & Ruesink, 2012; Garrett, 2011) and that vulnerability is likely increased in cases with White victims. The lack of reliability of eyewitness identification apparent in these cases, coupled with the increased likelihood of error associated with cross-racial identification, underscores the risk associated with relying on eyewitness identification as evidence of guilt, especially in cross-racial stranger assault cases.

As noted previously, there is a considerable body of research, drawn from laboratory and field studies, that indicates various estimator and system sources of eyewitness misidentification (Gaulkin, 2010). These data indicate that approximately one third of witness identifications in actual cases are erroneous (Innocence Project, 2009). Furthermore, the phenomenon of multiple eyewitness misidentification, apparent in the Calvin Johnson, Jr.,

Bernard Webster, James Waller, and Herman Atkins cases and found in the high-profile exonerations of Fernando Bermudez (*People v. Bermudez*, 2009) and Kurt Bloodsworth (Innocence Project, 2009), undermine confidence even when there are corroborating reports from other eyewitnesses.

Some legal and law enforcement authorities have recognized these challenges and sought to provide remedies (Innocence Project, 2009). Social science research indicates that reforms such as conducting line-ups by investigators blind to the identity of the suspect, sequentially presenting photos in spreads to reduce a relative-judgment process, clarifying that the perpetrator may not be in the line-up or photo spread, providing a cross-racial identification caution, videotaping the identification process, recording the witnesses' estimates of confidence, and prohibiting feedback following an identification can reduce system sources of error. Estimator sources of error, such as cross-racial identification, weapons focus, and stress, warrant recognition and attention. In rape and sexual assault cases, the stress and trauma suffered by victims should not be underestimated. Unfortunately, this stress and trauma can impair perception and visual memory.

There is a substantial body of research on police-coerced confessions (Drizin & Leo, 2004; Johnson & Drucker, 2009; Kassin et al., 2010; Kassin & Gudjonsson, 2004) and wrongful convictions. Gross et al. (2005) commented that Black juveniles, as compared to White ones, appear to be at increased risk for coercive interrogation, which was suggested in these cases. A consensus reform is to videotape all custodial questioning, not merely the culminating confession. Although laws that mandate the electronic recording of custodial interrogation now exist in several states (Sullivan, 2009), there remains opposition to the requirement by considerable segments of the law enforcement community (Zalman, 2006). Thus, further research and advocacy are warranted.

Several additional risk factors identified in our series of cases warrant attention: all-White juries, invalid scientific testimony, discounted alibis, and incentivized witnesses. Data indicate that the racial composition of juries affects decision making and that deliberations are limited in all-White juries (Sommers, 2006). Garrett and Neufeld (2009) reported on 72 forensic analysts from 25 states who provided invalid scientific testimony for the prosecution. There also is accumulating research on the process and impact of discounting alibis (Burke & Marion, 2012; Hosch, Culhane, Jolly, Chavez, & Shaw, 2011) and the substantial role of incentivized witnesses (Free & Ruesink, 2012; Garrett, 2011) in wrongful convictions.

Most of the cases reported here occurred during the 1982–1992 decade, following the introduction of postconviction DNA testing. Subsequently, DNA testing has been increasingly conducted pretrial (Drizin & Leo, 2004), which may result in a decreased occurrence of confirmed wrongful convictions in future years. With the aid of DNA evidence, a tremendous amount has been learned regarding operative factors (eyewitness error, false

confessions, flawed scientific testimony, discounted alibis, misconduct by officials) in wrongful conviction. This knowledge will be critical in preventing or identifying wrongful convictions in the future.

Our analysis involved a review of confirmed cases of African Americans who were wrongfully convicted of sexual assaults against Whites and an examination of the factors associated with the wrongful convictions. Our findings, coupled with the cited literature, suggest that African Americans face unique vulnerability related to cross-racial identifications, all-White juries, and interrogation practice. We regard this as a tentative conclusion, however, pending review and analysis of the broader picture of wrongful convictions in sexual assaults that contrast all race/ethnic configurations of defendants and victims. Stated differently, our analysis disaggregated the subset of Black defendant/White victim cases from the larger group of all wrongful convictions in sexual assault cases. Further research is warranted to assess the comparative role of various risk factors among a more diverse sample of wrongful convictions.

Although our review found no indications of the blatant racial bias apparent in the Scottsboro case (i.e., the lynch mob outside the courthouse, the effective denial of counsel, the systematic exclusion of Blacks from the jury pool, and the racist jury charge), concern remains about racially discriminatory factors that operated in these more recent wrongful convictions. As noted in the Introduction, the United States has a unique history of racial violence and subordination, and rape and rape allegations are a significant part of that history. The history includes lynch mobs who operated outside of the law as well as judicially sanctioned subordination, as seen in the 1931 Scottsboro case. In this regard, it is noteworthy that, from 1930 to 1968, of the 455 people executed for rape in the United States, 91% were African American (Bureau of Prisons, 1969). Further study of race and wrongful conviction, particularly in regard to sexual assaults charges, can contribute to identifying and remediating inequities and bias in the U.S. criminal justice and judicial systems.

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