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“The Wrongful Conviction of Black Men.”

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Submitted By
Tierra Benfield

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Introduction.

Blackstone's ratio states: "It is better that ten guilty persons escape than one innocent suffer."¹ Blackstone's ratio is significant because it established beyond a reasonable doubt as the burden of proof in criminal law cases. Despite adopting this principle into law, the prevalence of wrongful convictions remains evident in modern society.

Although wrongful convictions, in general, are a gross miscarriage of justice, they assume a higher level of wrongdoing when we focus on the intersectionality of race and gender. Within the scope of existing literature on wrongful convictions, many do not explore this level of intersectionality. Thus, my research question for this paper asks, '*How do the experiences of wrongful convictions differ between Black men and other demographics and what factors contribute to this disparity?*'

Our criminal justice system has been historically flawed with racism, and the overwhelming number of Black men wrongfully convicted is an upsetting result of this systemic issue. According to the National Registry of Exonerations, of the 3,200 known US cases of wrongful conviction, 53% of the exonerees were Black.² In Canada, research has been done on wrongful convictions, but is very scarce regarding intersectionality. In a Parliament research publication by Robert Mason, the number of wrongful convictions in Canada is undocumented due to the difficulty of establishing innocence by an individual. However, Mason contends that racial bias and unreliable eyewitnesses are the two most pressing factors in wrongful conviction cases today.³

¹ Blackstone, S. (1753). *Commentaries on the Laws of England in Four Books*, vol. 2. J. B. Lippincott.

² National Registry of Exonerations. (2022). "Race and Wrongful Convictions in the United States."

³ Mason, R. K. (2020). "Wrongful Convictions in Canada." *Library of Parliament*.

Exploring this legal issue further through a lens of intersectionality helps bring flaws ingrained within the system to the forefront. Also, my paper can help spark important discussion about the reforms needed to limit the amount of wrongful conviction cases involving Black men.

This paper will argue that the disproportionate occurrence of wrongful convictions among Black men is primarily due to racial bias, along with factors such as cross-racial misidentifications / own-race bias, and ineffective counsel. First, this paper will discuss the issue of societal racial bias against Black men using the Central Park Five case. Second, this paper will discuss cross-racial identification, own-race bias, and the Ronald Cotton case to discuss how inherent racial bias is prevalent in the cause of cross-racial misidentifications. Lastly, this paper will address socioeconomic status to showcase how inadequate financial resources can inhibit an individual's access to suitable legal representation. This factor is crucial to a discussion of wrongful conviction because justice is hard to attain for those who do not have the money to withstand and navigate the legal process.

Racial Bias.

The criminal justice system is a reflection of our societal attitudes and behaviour, and issues like racism manifest through different aspects of our system. According to Banaji et al. (2021), "...racial biases persist over time and manifest in (a) institutional structures, (b) societal structures, (c) individual mental structures, and (d) everyday interaction patterns.⁴" Moreover, these biases are particularly dangerous within the context of the system because they can either function with or without intention.⁵ Moreover, these biases are dangerous within the context of the system because they can either function with or without intention. An individual's

⁴ Banaji, M. R., Fiske, S. T., & Massey, D. S. (2021). Systemic racism..." p. 82.

⁵ Banaji, M. R., Fiske, S. T., & Massey, D. S. (2021). Systemic racism..." p. 82

unintentional practice of racial bias in a case can have implications on wrongfully accused Black men because it contributes to unfair treatment and infringes on their right to be presumed innocent before guilt beyond a reasonable doubt.⁶ By assessing cases, such as the Central Park Five, and considering the Black male experience within the system, we can conclude that these four biases infuse themselves within the fabric of the criminal justice system.

The Black male experience within the system has drawn increased scrutiny, particularly in the wake of the Black Lives Matter Movement. Originating in 2013, with the hashtag #BlackLivesMatter on social media, the movement aimed to educate the masses about racial discrimination against Black people following the death of Trayvon Martin. From 2013 to 2020, Black men collectively became the poster child of systemic reform and racial discrimination.

Banaji et al.'s (2021) analysis of racial bias and its causes extends beyond theoretical discussion. For years, mainstream media and crime reporting have contributed to the social perception and racial bias against Black men. In a study by Fine & Weis (1998), they examine the media's biased portrayal of crime to find that crime media reporting is biased toward race and gender, often portraying Black people as predators and White people as victims, reinforcing racial stereotypes.⁷ Thus, this study confirms the inadvertent impact of racial bias against Black men, as shown through the biased portrayal of crime stories, in media, involving Black men.⁸

Additionally, the media's influence on public perceptions of Black men and racial injustice is evidenced when looking at the Central Park Five case. The 2019 release of the Netflix mini-series, *When They See Us*, as a media text has helped define the public perceptions and discourse on racial injustice and bias against Black men.⁹ Also, it has brought renewed attention

⁶ Charterpedia. (2023). "2. The Presumption of Innocence." *Government of Canada*

⁷ Fine, M., & Weis, L. (1998). "Crime Stories: A Critical Look Through Race, Ethnicity, and Gender."

⁸ Fine, M., & Weis, L. (1998). "Crime Stories: A Critical Look Through Race, Ethnicity, and Gender."

⁹ Beck, B. (2019). "No City for Young Boys."

to the case and reminded the public that racial injustice and calls for reform did not start with the Black Lives Matter movement.

Racial Bias Against the Central Park Five.

In 1989, the Central Park Five, a group of five Black teens, fell victim to wrongful convictions after being falsely accused of assaulting and raping a White woman who was jogging through Central Park.¹⁰ After hours of intense questioning, the boys were accused of the crime despite inconsistent confessions, exclusion of DNA evidence, and lack of any other evidence connecting them to the crime scene.¹¹ The case was instantaneously picked up by mainstream media whose negative portrayal of the boys, coupled with public frenzy, contributed to their pre-trial convictions. Based on the findings previously discussed by Fine & Weis (1998), we can infer that the negative framing of this case was influenced by a pattern of racial bias in media, which solely reports on crimes that fit the narrative they attempt to push. I believe that stories which portray Black men as the perpetrators gain faster and more exaggerated media coverage even without the facts of the case being known. Stratton (2015) supports my view, suggesting that the media was interested in the Central Park Five case because the story features a White female victim and a Black male attacker.¹² However, Lichter et al. (1989) found that no media coverage was overtly racist, and 80% of coverage denied race had any relevance to the attack.¹³ Despite Lichter et al.'s finding I believe the media coverage of this case exemplifies racial bias not due to what was said, but rather how it was *framed* by the media.

¹⁰ Beck, B. (2019). "No City for Young Boys...."

¹¹ Innocence Staff. (2019). "Central Park Five Tragedy Reframed in Netflix Series "When They See Us""

¹² Stratton, G. (2015). "Transforming the Central Park Jogger into the Central Park Five...." p. 282

¹³ Lichter, L. S., et al. (1989). "The New York News Media and the Central Park Rape." p. 1

According to Lichter et al., the boys were described using negative language 390 times, and 185 of the descriptions were animalistic, using descriptions such as wolf pack, herd and wilding.¹⁴ For example, in an editorial by the New York Times, it was asked, “How could apparently well-adjusted youngsters turn so savage a wolf pack?”¹⁵ The depiction of the boys as wolves dehumanized them, painting a picture of guilt even before the facts of the case were known. In addition to this article, Pat Buchanan released a column in the 1989 issue of the New York Times which stated, “If the eldest of that wolf pack were tried, convicted and hanged in Central Park, by June 1, and the 13- and 14-year-olds were stripped, horsewhipped, and sent to prison... the park might soon be safe again for women.”¹⁶ Buchanan's call for punishment is reminiscent of historically outdated public brutalization against Black men who faced wrongful accusations of assaulting White women.¹⁷ When reading Buchanan's column, his threat reminded me of the case of Emmett Till, a 14-year-old Black boy who was abducted and lynched in Mississippi for allegedly whistling at a White woman.

Overall, Ava Duvernay's *When They See Us* is an efficient media text because it helped awaken public concern and amplified the voices of Black people who were avidly protesting against racial injustices in the US.¹⁸ However, despite the effectiveness of the series, I believe it will take time and deep reflection for society to fully grasp the detrimental impact of racism and racial bias within the system—specifically regarding wrongful convictions. This need for reflection might be challenging to obtain because some may struggle to connect with issues that do not disproportionately affect their demographic. Although many non-Black people beautifully

¹⁴ Lichter, et al. (1989). “The New York News Media and the Central Park Rape.” p. 10

¹⁵ Dwyer, J. (2019). “The True Story of How a City in Fear Brutalized the Central Park”

¹⁶ Dwyer, J. (2019). “The True Story of How a City in Fear Brutalized the Central Park”

¹⁷ Dwyer, J. (2019). “The True Story of How a City in Fear Brutalized the Central Park”

¹⁸ Beck, B. (2019). “No City for Young Boys....” p. 204

have marched in solidarity with the Black community during the BLM protests, I argue that achieving systemic change requires a blank slate since racial bias is so inherent and can be traced back to the Slavery era. Unfortunately, the deeply ingrained nature of systemic racism makes it difficult to envision a future where racial bias is not present in some form within the system.

In a magazine interview with Oprah Winfrey, Trisha Meilli, the victim in the Central Park Five case, states she testified despite not knowing the details of the attack. When asked why, she expressed her anger at the time about the incident, her desire for justice, and her need to be an active participant in the legal process.¹⁹ Despite the testimony coming from valid reasons, her cross-racial misidentification of the boys inadvertently perpetuated more racial bias against them and ultimately resulted in their wrongful convictions.

Racial Bias in Cross-Racial Misidentification.

According to Innocence Canada, eyewitness identification error is the leading cause of known wrongful convictions.²⁰ Despite its value for law enforcement and in court, the validity of eyewitness testimony has been questioned in literature because it reflects on a decision made by human observers based on things seen and remembered.²¹ To date, nearly 350 people have been exonerated due to DNA evidence and in 70% of these cases, misidentification by one or more eyewitnesses contributed significantly as evidence for conviction.²² The phenomenon of eyewitness identification largely contributes to a discussion of wrongful conviction because key legal actors who are unaware of its invalidity continue to give undue weight to this evidence.²³

¹⁹ Winfrey, O. (2002, April) "Oprah Talks to the Central Park Jogger." *O, The Oprah Magazine*.

²⁰ Innocence Canada. (2022). "Causes of wrongful convictions."

²¹ Albright, T. D. (2017) "Why eyewitnesses fail." p. 7760

²² Albright, T. D. (2017). "Why eyewitnesses fail." p. 7761

²³ Flevaris, T., & Chapman, E. (2015). "Cross-Racial Misidentification..." p. 864

The own-race bias, or cross-race effect, adds an additional barrier to eyewitness testimony, as it heightens the risk of wrongful conviction in a case. The own-race bias is an occurrence across cultural and racial groups where unfamiliar faces from other races are remembered poorly in comparison to own-race faces.²⁴ Furthermore, experimental research suggests eyewitnesses trying to identify a stranger are over 50% more likely to make a misidentification when the defendant and witness are of different races.²⁵ I argue that cross-racial misidentification is also a systemic issue heavily rooted in racial bias, primarily due to the inherent psychological occurrence of own-race bias. The own-race bias is due to the fact we use our existing body of knowledge and experience to filter what we perceive, attend to, and use in memory reconstruction.²⁶ When encountering individuals we are not frequently exposed to, we may try to reconstruct their faces in our minds through reinforced cultural stereotypes.²⁷ Although the racial bias evident in these recollections is typically unintentional, its impact is heightened in cases where cross-racial identifications have been used to wrongfully convict Black men.

Ronald Cotton & Cross-Racial Misidentification.

The case of Ronald Cotton serves as a valuable example of how overreliance on eyewitness identification can result in wrongful convictions. In 1995, Cotton was exonerated after spending over ten years in prison for the burglary and rape of Jennifer Thompson-Cannino. As cited by the Innocence Project,

²⁴ Wong, H. K., et al. (2020). "The Own-Race Bias for Face Recognition in a Multicultural Society." p. 209

²⁵ Flevaris, T., & Chapman, E. (2015). "Cross-Racial Misidentification..." p. 865

²⁶ Lacy, J. W., & Stark, C. E. L. (2014). "The Neuroscience of Memory: Implications for the Courtroom"

²⁷ Wong, H. K., et al. (2020). "The Own-Race Bias for Face Recognition in a Multicultural Society." p. 210

“The evidence at trial included a flashlight found in Cotton’s home that resembled one used by the assailant and rubber from Cotton’s shoe that was consistent with rubber found at one of the crime scenes, but overwhelmingly the evidence rested on the identification and the flawed eyewitness identification procedures used by police at the time.”²⁸

The overreliance on Thompson-Cannino’s eyewitness identification, in this case, did not consider the influence of own-race bias. Further, the defence’s delayed disclosure of evidence exacerbated the reliance on her testimony because the prosecution did not have a substantial case against Cotton without it. It was only after his conviction and countless appeals that the Burlington Police Department turned over all evidence to the defence.²⁹ Amongst the evidence provided was Cotton’s semen for DNA testing. Although the delayed disclosure of this key evidence played a pivotal role in Cotton’s case, it also brings to the forefront the systemic issue of ineffective counsel. The Innocence Project does not detail the type of legal representation Cotton received—public defence or not. But, the issue of ineffective counsel showcases itself in this case as another contributing factor in the wrongful convictions of Black men. Also, this sets the tone for a look at the intersection between ineffective counsel and socioeconomic status.

Ineffective Counsel & Socioeconomic Status

The likelihood of wrongful conviction increases when an individual does not have the financial ability to attain the best representation for their case. It is well-known that individuals belonging to the lower class rely on public defence more than any other socioeconomic group. The issue with a reliance on public defence is that these lawyers are too overworked to provide a

²⁸ Innocence Project. (n.d.) “Ronald Cotton.”

²⁹ Innocence Project. (n.d.) “Ronald Cotton.”

quality defence.³⁰ Additionally, public defenders are unlikely to properly challenge a case with hired investigators and expert witnesses—key components of a good defence.³¹ According to a report by the American Bar Association, the funding for a public defender would need to increase threefold to meet the standard of effective counsel promised by the Constitution.³²

I believe that socioeconomics and race coincide. In a Statistics Canada report on socioeconomics, they found that the weekly earnings of men in four of the ten designated visible minority categories were significantly lower than those of White people, with the most prominent differences observed among Black and Latinx people.³³ This report helps draw a conclusion that on average the lower average income of Black men, in comparison to other demographics, is a major barrier to their ability to hire adequate representation for their cases. Overall, the inability to obtain effective and affordable legal services has a disproportionate impact on low-income and other disadvantaged groups precisely because of their lack of individual economic resources.³⁴

De Lima et al. (2019) also discuss socioeconomics and its interconnection with the conviction of Black men. The authors of this article argue that belonging to a lower social class facilitates the conviction of ‘Black targets’ which occurs because information about social class dissimulates racial bias.³⁵ Further, De Lima et al. conducted three studies, the results of which suggest that social class negatively affects judgements of ‘Black targets’ because judgements

³⁰ Van Brunt, A. “Poor people rely on public defenders who are too overworked to defend them.”

³¹ American Bar Association. “The Oregon Project.”

³² American Bar Association. “The Oregon Project.”

³³ Qiu, T., & Schellenberg, G. (2022). “The Weekly Earnings of Canadian-born Individuals in Designated Visible Minority and White Categories in the Mid-2010s”

³⁴ OECD Headquarters, Paris. (2015). “Equal Access to Justice.”

³⁵ De Lima, T. J. S, et al. (2019). “Black People are Convicted More for Being Black than for Being Poor....” [abstract]

based on lower class mitigates the racist motivation of discrimination.³⁶ Also, the evidence provided by this source shows that when the ‘racial and class anti-prejudice norm’ makes race and class prominent, individuals discriminate against the lower-class ‘Black target’ to a greater extent in both individual and cultural judgments.³⁷

The conclusions from De Lime et al. (2019) bring my discussion of wrongful conviction full circle with the first argument of this paper. In the wrongful conviction of Black men, racial bias is the primary factor in the disproportionality when comparing Black men to other racial groups.

Conclusion.

Ergo, this paper has efficaciously shown how racial bias, along with cross-racial misidentifications, own-bias, and ineffective counsel, are factors that contribute to the disproportionate wrongful convictions of Black men, compared to other demographics. Over the years, many have called for systemic reform in response to the racial injustice Black men face. Following the 2020 Black Lives Matter movement, these calls to action became more rampant because they pushed the Black male experience to the forefront of mainstream media. At the time, cases like the Central Park Five and Ronald Cotton were discussed and fostered a lot of discussion on how to reform the factors that contribute to these wrongful convictions.

A lot of ideas have been proposed, but based on my research and personal opinion this is what I propose. First, since racial bias is so inherent a recommendation is hard to pinpoint on a systemic and individual level. However, I do suggest that people become more open-minded and

³⁶ De Lima, T. J. S, et al. (2019). “Black People are Convicted More for Being Black than for Being Poor....” [abstract]

³⁷ De Lima, T. J. S, et al. (2019). “Black People are Convicted More for Being Black than for Being Poor....” p.

understanding toward issues that do not directly affect them. If we all took the time to listen to others when they speak on issues like systemic racism, then we would see a change in how the system approaches the issue. Also, less racial bias would be seen in these cases because we would be more understanding of each other, and view each other outside of media narratives and stereotypes. Second, regarding cross-racial misidentification and own-race bias, I suggest more education for key actors on the phenomena of own-race bias. I believe educating the facilitators of our system on the bias will inadvertently result in fewer wrongful convictions based on cross-racial identification because they will place less reliance on these identifications in cases where the victim and accused are of different races. When less reliance is placed on cross-racial identifications, more effort will be made to seek factual evidence like DNA. Lastly, to combat the factor of ineffective counsel I think more funding needs to be allocated toward public defenders. Also, more hiring needs to be done to offset the workload these lawyers currently have. The *Charter* expresses that everyone has the right to effective counsel, and it is important for the service provided by a public defender to reflect this right. Black men are already susceptible to the barriers of racial bias and cross-misidentification, so at the very least, they should be able to have a lawyer who can effectively argue their case.

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Note: All scholarly sources used are highlighted.

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