

AS PERTAINS TO THE CRIMINAL JUSTICE SYSTEM, IS HINDSIGHT 20/20?

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I. INTRODUCTION

The American legal system is said to be founded on the presumption that one is innocent until proven guilty.¹ Nonetheless, we have effortlessly returned to a time reminiscent of the day Emmett Till was lynched to death.² The Fourteenth Amendment of the United States Constitution states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;... nor deny to any person within its jurisdiction the equal protection of the laws.”³ Yet, without saying a word to defend yourself, public opinion forges your culpability. Your inexorable crime being the color of your skin. Comparatively, skin color, like religion and ethnicity, is not a crime nor a sin where one should be persecuted, but from slavery to the Holocaust to the Salem Witch trials,⁴ the criminal justice system is contingent upon upholding a system where those of color are classified as the inferior race.

As Machiavelli said, “Whoever wishes to foresee the future must consult the past; for human events ever resemble those of preceding times.”⁵ This is particularly relevant when it comes to criminal law and criminal procedure. There are two cases that illustrate it.

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¹ TCR Staff, *Has the Justice System Abandoned the Presumption of Innocence*, THE CRIME REPORT (July 31, 2018), <https://thecrimereport.org/2018/07/31/has-the-justice-system-sidelined-the-presumption-of-innocence/>.

² Michael Ray, *Emmett Till*, ENCYCLOPEDIA BRITANNICA (Jan. 5, 2021), <https://www.britannica.com/biography/Emmett-Till>.

³ U.S. CONST. Amend. XIV.

⁴ Riley Loomis, *Salem Witch Trials vs. The Holocaust*, PREZI (Nov. 17, 2013), <https://prezi.com/bb2jd3aujlyx/salem-witch-trials-vs-the-holocaust/>.

⁵ Nick Montfort, *The Questionable History of the Future*, THE PARIS REVIEW (Jan. 25, 2018), <https://www.theparisreview.org/blog/2018/01/25/questionable-history-future/>.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

The first case involved the brutal beating of Trisha Meili.⁶ Trisha was a twenty-eight-year-old Caucasian woman.⁷ At the time, Trisha was working as an investment banker.⁸ On April 19, 1989, Trisha decided to go for a jog in Central Park.⁹ During her jog, Trisha was hit in the back of her head with a tree branch. "Bleeding from the head, [Trisha] was then dragged off the road to the north, through a grassy area, and then into the woods that began forty feet from the road."¹⁰ After, Trisha was raped and beaten with a rock.¹¹ Trisha was then tied up with her own shirt and left to die.¹² Thankfully two pedestrians found Trisha.¹³ But unfortunately, Trisha woke up from her coma with no memory of the attack.¹⁴ This was such a vicious attack that it was talked about everywhere. Five black boys – Kevin Richardson, Antron McCray, Yusef Salaam, Raymond Santana, and Korey Wise – ranging from 13 to 16 years old, were held responsible and convicted.¹⁵ Donald Trump used his influence by taking a full-page ad in four New York newspapers, demanding that these five youths be sentenced to death.¹⁶ As a result of police misconduct, prosecutorial misconduct, the scrutiny of the media, and public pressure, by August 1990 each teen was convicted of a crime they had not committed.¹⁷ They came to be known as the Central Park Five.¹⁸

The second case involves the brutal beating of Tessa Majors.¹⁹ Tessa was an eighteen-year-old Caucasian woman.²⁰ At the time, Tessa was attending Barnard College.²¹ It was her first semester as a

⁶ This case is commonly known as the Central Park Five.

⁷ Emma Dibdin, *The 5 Most Important Facts to Know About the Central Park Five Case, 30 Years Later*, THE OPRAH MAGAZINE (Sep. 20, 2019), <https://www.oprahmag.com/entertainment/tv-movies/a27181100/central-park-five-case-facts-summary/>.

⁸ Gina Tron, *Where Is Trisha Meili, The Central Park Jogger, Now?*, OXYGEN (May 31, 2019), <https://www.oxygen.com/martinis-murder/where-is-trisha-meili-the-central-park-jogger-now>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Dibdin, *supra* note 7.

¹⁶ Alyssa Choiniere, *Central Park Five & Donald Trump: 5 Fast Facts You Need to Know*, HEAVY (Aug. 21, 2020), <https://heavy.com/entertainment/2020/08/central-park-five-donald-trump/>.

¹⁷ Dibdin, *supra* note 7.

¹⁸ The Central Park Five were later renamed The Exonerated Five.

¹⁹ This case is commonly known as the Morningside Park.

²⁰ *Id.*

²¹ Madeleine Carlisle & Mahita Gajanan, *A Barnard Student's Stabbing Death Has Rattled NYC, a 13-Year-Old Is in Custody and a 14-Year-Old Has Been Located. Here's What to Know*, TIME (Jan. 3, 2020), <https://time.com/5750299/tessa-majors-stabbing-barnard/>.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

freshman.²² On December 11, 2019, Tessa was taking an evening jog through Morningside Park in New York City.²³ During her jog, Tessa was attacked and robbed.²⁴ Tessa was found, unconscious, by a security guard with multiple stab wounds.²⁵ Tessa was then taken to the hospital where she was pronounced dead.²⁶ This was such a vicious attack that it shook the school and the New York City community.²⁷ Three black boys – Zyairr Davis, Rashaun Weaver, and Luciano Lewis – ranging from 13 to 14 years old are being held responsible.²⁸ Zyairr was charged as a juvenile and sentenced to 18 months in custody after pleading guilty to the robbery that led to Tessa’s death.²⁹ Rashaun and Luciano are being charged as adults for the robbery and murder of Tessa.³⁰ The trial is still ongoing.³¹

These cases are similar, but they are also different. We need to look at the Central Park Five to learn from our mistakes. Although the vicious murder of Trisha was atrocious, so was the crime to the five boys convicted for the murder they did not commit. A society can only transcend when it reflects on the past.³² For “[t]hose who cannot learn from history are doomed to repeat it.”³³ It is often said, hindsight is 20/20³⁴; after thirty years since the infamous “Central Park Five,”³⁵ have we as a society learned from our past transgressions, or are we doomed to repeat them?

²² *Id.*

²³ Marlene Lenthag, *NYPD detective ‘with a history of misconduct’ who interrogated 13-year-old murder suspect in Tessa Majors case is grilled in court over whether he coerced the confession*, DAILYMAIL (Feb. 27, 2020), <https://www.dailymail.co.uk/news/article-8052953/NYPD-detective-got-confession-Tessa-Majors-murder-history-misconduct.html>.

²⁴ Carlisle & Gajanan, *supra* note 21.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Aaron Katersky & Emily Shapiro, *Tessa Majors killing: Teen charged as juvenile sentenced to 18 months*, ABC NEWS (June 15, 2020), <https://abcnews.go.com/US/tessa-majors-killing-teen-charged-juvenile-set-sentenced/story?id=71253633>.

²⁹ Eyewitness News, *Friday marks one year since brutal murder of Barnard College freshman Tessa Majors*, ABC 7 NEW YORK (Dec. 11, 2020), <https://abc7ny.com/tessa-majors-tess-murder-barnard-college/8703568/>.

³⁰ *Id.*

³¹ *Id.*

³² *Does Literature Shape or Reflect Culture*, WEEBLY, <https://literature-affects-culture.weebly.com/historical-literature.html>, (last visited Mar. 11, 2021).

³³ Nicholas Clairmont, *“Those Who Do Not Learn History Are Doomed To Repeat It.” Really?*, BIG THINK (July 31, 2013), <https://bigthink.com/the-proverbial-skeptic/those-who-do-not-learn-history-doomed-to-repeat-it-really>.

³⁴ *What Does Hindsight is 20/20 Mean?*, WRITING EXPLAINED, <https://writingexplained.org/idiom-dictionary/hindsight-is-20-20>, (last visited Mar. 11, 2021).

³⁵ Jim Dwyer & Kevin Flynn, *New Light on Jogger’s Rape Calls Evidence into Question*, N.Y. TIMES (Dec. 1, 2002).

II. ARREST OF SUSPECTS

Typically, police are the first contact a defendant has with the criminal justice system.³⁶ Police make the arrests, handle the investigations, collect the evidence, conduct the interrogations, and make the initial conclusions in the form of criminal charges concerning the guilt or innocence of a defendant.³⁷

Central Park Five occurred during the time when about 30 young people gathered on the north side of Central Park in New York City for a “night of trouble.”³⁸ In response to the misconduct, the New York City Police Department (hereinafter “NYPD”) responded to numerous 911 calls it received by sending multiple police officers to canvas the area in search of the group.³⁹ The group subsequently dispersed in every direction.⁴⁰ The police detained and arrested approximately twenty-four teenage boys.⁴¹ Among those arrested were Raymond and Kevin, both 14 years old.⁴² The following day Yusef, 15 years old, Antron, 15 years old, and Kharey, 16 years old, were also taken into custody.⁴³

Conversely, the arrests relating to Morningside Park happened differently. Police were at the crime scene when they spotted 13-year-old Zyairr near the scene wearing clothes that matched the description of Tessa’s attacker.⁴⁴ When Officer Randy Ramos-Luna caught Zyairr, the officer had him empty his pockets and hand over his backpack.⁴⁵ A knife was found in the backpack, but Zyairr claimed he was holding it for a friend.⁴⁶ Zyairr was then arrested for trespassing and possession of a weapon.⁴⁷

³⁶ GEOFFREY P. ALPERT & ROGER P. DUNHAM, FORCE FACTOR: MEASURING POLICE USE OF FORCE RELATIVE TO SUSPECT RESISTANCE 11 (Police Executive Research Forum 1997).

³⁷ *Id.*

³⁸ Dwyer & Flynn, *supra* note 35.

³⁹ Affirm. in Response to Mot. to Vacate J. of Conviction, N.Y. v. Wise, et. al., No. 4762/89, <http://big.assets.huffingtonpost.com/wise.pdf>.

⁴⁰ *Id.*

⁴¹ *Id.* at 12.

⁴² *Id.* at 4.

⁴³ *Id.* at 5.

⁴⁴ Lisa Miller, *The Stabbing in Morningside Park*, INTELLIGENCER (Mar. 16, 2020), <https://nymag.com/intelligencer/2020/03/tessa-majors-murder-morningside-park.html>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

The arrest of 14-year old Rashaun occurred in an unusual manner.⁴⁸ First, since the police could not find Rashaun, they released a photo of him and urged the public to assist them in apprehending Rashaun.⁴⁹ However, his name and other identifying information were not released.⁵⁰ This manhunt lasted for two weeks.⁵¹ Rashaun was later found at the home of a family member with an injury to his hand, consistent with a bite mark.⁵² Rashaun was brought in for questioning and released after a few hours.⁵³ It took the police another two months to gather more evidence against Rashaun to properly arrest him.⁵⁴ Meanwhile, 14-year-old Luciano voluntarily surrendered to the police on February 19, 2020.⁵⁵

III. INTERROGATION OF MINORS

Police officers habitually speed through the *Miranda* rights and like a patient who nods his head in acknowledgment of his physician's instructions, an arrestee mechanically "affirms" he comprehends his rights how they have been stated. How can a child, not having yet fully develop both physiologically and emotionally, understand the "rights" how they have been stated when the average adult has difficulties understanding them?

The Central Park Five suspects were isolated and bombarded with questions by detectives in the enclosed intimidating interrogation room.⁵⁶ The boys were not given the opportunity to call their parents, nor were they offered an attorney to represent their interests.⁵⁷ Initially, each teen walked into the interrogation stating that they did

⁴⁸ Kimiko de Freytas-Tamura, *The Tessa Majors Case: What We Know About the 14-Year-Old Charged With Murder*, N.Y. TIMES (Feb. 16, 2020), <https://www.nytimes.com/2020/02/16/nyregion/tesa-majors-barnard-arrest.html>.

⁴⁹ *Id.*

⁵⁰ Myles Miller, *Defense Asks Judge to Release Teen in Barnard Murder Case from Juvenile Detention*, NBC N.Y. (Jan. 2, 2020), <https://www.nbcnewyork.com/news/local/judge-to-rule-if-teens-statement-to-cops-can-be-used-in-barnard-freshman-murder-case/2253560/>.

⁵¹ *Id.*

⁵² Freytas-Tamura, *supra* note 48.

⁵³ Miller, *supra* note 50.

⁵⁴ Freytas-Tamura, *supra* note 48.

⁵⁵ Molly Crane-Newman, *NYC detective who interrogated 13-year-old murder suspect in Tessa Majors case has a checkered history on force, beat female inmate: lawyers*, N.Y. DAILY NEWS (Feb. 25, 2020), <https://www.nydailynews.com/new-york/manhattan/ny-detective-interrogate-13-year-old-tesa-majors-20200225-xxvljmqd3rebrnv43lplzscim4-story.html>.

⁵⁶ SARAH BURNS, *THE CENTRAL PARK FIVE: THE UNTOLD STORY BEHIND ONE OF NEW YORK CITY'S MOST INFAMOUS CRIMES* 15 (N.Y. Vintage Books 2012).

⁵⁷ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

not rape anyone.⁵⁸ However, after 30 hours of prolonged and a iniquitous interrogation these boys began to succumb to those society uphold as protectors.⁵⁹ The innocence of these children slowly dissipated as they would soon learn that the system presumed to have been created to protect you would only do so if you have the right skin color.

Kevin was deprived of food, drink, and sleep during his interrogation.⁶⁰ Dissatisfied with Kevin's answers, the detectives yelled and spat on him.⁶¹ In their desired need to show Kevin that they hold all the power, the detectives then gave Kevin a pen and paper and coached him on what he was to write.⁶²

Raymond followed the same fate. The officer denied Raymond's father's request to see his son.⁶³ Having to go to work, Raymond's father left his mother at the station but that was no easy feat as Raymond's grandmother spoke very little English.⁶⁴ The detective moved her away and did not ask for her consent to be alone with Raymond.⁶⁵ They began calling Raymond numerous derogatory terms such as "scum bag," and to further their abuse of power, multiple detectives stood close to Raymond's face screaming.⁶⁶

As for Antron, his mother and father were in the room, but his mother was asked to leave the room.⁶⁷ Antron continued to insist he had nothing to do with the attack.⁶⁸ But then the detectives screamed at Antron and called him a liar.⁶⁹ After relentless questioning, Antron's father instructed Antron to lie because he believed Antron was being offered immunity.⁷⁰ As for Yusef, his mother was able to interrupt the interrogation.⁷¹ He was the only one that did not sign any statements

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ KEN BURNS: THE CENTRAL PARK FIVE (PBS 2013); History.com Editors, *The Central Park Five*, HISTORY (Sep. 23, 2019), <https://www.history.com/topics/1980s/central-park-five>.

⁶¹ KEN BURNS: THE CENTRAL PARK FIVE (PBS 2013).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Ronald Sullivan, *Youth's Father Says He Urged Park-Rape Lie*, N.Y. TIMES (July 28, 1990), <https://www.nytimes.com/1990/07/28/nyregion/youth-s-father-says-he-urged-park-rape-lie.html>.

⁷¹ Aaron Bady, *The Danger of Knowing One Thing About the Central Park Five*, THE WEEK (June 20, 2019), <https://theweek.com/articles/847842/danger-knowing-thing-about-central-park-five>.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

or create a taped confession.⁷² Yet, the detectives still made him fearful as if he was going to get killed by the officers.⁷³

As for Korey, he voluntarily went down to the precinct when his friend Yusef was picked up.⁷⁴ Korey wanted to be there for moral support.⁷⁵ However, Korey suffered from hearing problems and learning difficulties.⁷⁶ Also, because Korey was over the age of 15, a parent or guardian was not required for questioning.⁷⁷ Unaware that he was going to be questioned, the detectives brought Korey in a room and was told that he and Yusef will go free if Korey gave them a story.⁷⁸ The detectives also got in Korey's face, grabbed it and spat in it.⁷⁹ Conveniently, the beginning of the interrogations of these children were not recorded, until after they had "already confessed."⁸⁰

In contrast, the cops investigating the Morningside Park treaded carefully because of the earlier Central Park Five. Such carefulness may have been, at least in part, by the recent exonerations of the five men who were wrongfully convicted as children. The cops made sure that a lawyer or legal guardian was present when the teens were questioned.⁸¹ Despite the debate that a legal guardian may be insufficient in such proceedings, the presumption is that an adult of average intelligence should be able to understand the *Miranda* rights.⁸² As regards to Zyairr, his uncle Roosevelt, who has been his legal guardian since 2016 after the death of Zayirr's mother, was present.⁸³ Nonetheless, Roosevelt was unaware that he could have stopped the interrogation if he requested an attorney or refused to answer the questions.⁸⁴ The detective also told Zyairr that there was video footage of the park and other evidence that placed him and his

⁷² Sullivan, *supra* note 70.

⁷³ KEN BURNS: THE CENTRAL PARK FIVE (PBS 2013).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Alfred Joyner, *Who is Korey Wise? Tragic Victim from Central Park Five Series 'When They See Us' Spent 12 Years Behind Bars*, NEWSWEEK (June 5, 2019), <https://www.newsweek.com/who-korey-wise-tragic-victim-central-park-five-series-when-they-see-us-spent-12-years-behind-1442265>.

⁷⁷ *Id.*

⁷⁸ KEN BURNS: THE CENTRAL PARK FIVE (PBS 2013).

⁷⁹ *Id.*

⁸⁰ Joyner, *supra* note 76.

⁸¹ Crane-Newman, *supra* note 55.

⁸² Lorelei Laird, *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, AMERICAN BAR ASSOCIATION (Aug. 1, 2016), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/.

⁸³ Miller, *supra* note 44.

⁸⁴ Lenthang, *supra* note 23.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

friends at the crime scene.⁸⁵ Thereafter, within two hours a narrative was devised and Zyairr not only incriminated himself but he also implicated his two friends.⁸⁶

IV. UNDERSTANDING THE MIND OF A TEENAGER

The brain of a teenager is not completely developed until s/he reaches the age of twenty-five years old.⁸⁷ Comparatively, teenagers may not fully comprehend their actions until the teen reaches full psychological development, which is quite different than the mindset of an adult. “In fact, recent research has found that . . . Adults think with the prefrontal cortex, the brain’s rational part. This is the part of the brain that responds to situations with good judgment and an awareness of long-term consequences. Teens process information with the amygdala. This is the emotional part.”⁸⁸ Until the brain is fully developed both children and teenagers are unable to correctly respond when placed in a highly stressful situation.⁸⁹ Hence the reason, “. . . why when teens have overwhelming emotional input” they are incapable of explaining their reasoning, let alone their feelings.⁹⁰ As an illustration, “. . . think of the teenage brain as an entertainment center that hasn’t been fully hooked up.”⁹¹ Before being connected you have loose wires, separate speakers, a DVD player, and a television.⁹² The loose wires have not been connected, the speakers are not yet working with the DVD player, which has not been formatted to coordinate with the television and there is no remote.⁹³ Moreover, “[a]dult brains are also better wired to notice errors in decision-making. . . Before 80 milliseconds had passed, adult brains had noticed the blunder, but teenage brains [did not] notice any slip-up.”⁹⁴

⁸⁵ *Id.*

⁸⁶ Miller, *supra* note 44.

⁸⁷ *Understanding the Teen Brain*, STANFORD CHILDREN’S HEALTH, <https://www.stanfordchildrens.org/en/topic/default?id=understanding-the-teen-brain-1-3051>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Molly Edmonds, *Are teenage brains really different from adult brains?*, HOW STUFF WORKS, <https://science.howstuffworks.com/life/inside-the-mind/human-brain/teenage-brain1.htm>, (last visited Mar. 3, 2021).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

Teenagers cannot vote in the United States until reaching the age of 18 years old nor can they legally purchase cigarettes. Additionally, for the most part teens are not permitted to enter a contract, or marry, before reaching the age of majority, and yet teenagers not having reached the age of majority are expected to be capable of waiving their right to remain silent and to seek counsel.

V. FALSE CONFESSIONS

A defendant's confession cannot be entered as evidence when it violates their constitutional protections such as their right to be silent. The Fourth⁹⁵, Fifth⁹⁶, Sixth⁹⁷, Eighth⁹⁸ and Fourteenth⁹⁹ Amendments of the Constitution provide constitutional protections to defendants throughout the arrest process and afterwards. However, police can engage in various sophisticated techniques to extract confessions from suspected criminals and alleged witnesses to crimes.¹⁰⁰ These techniques range from physical coercion to mental and emotional coercion which investigators employ to persuade suspects to "tell the truth" during an investigation.¹⁰¹

The teens in the Central Park Five not only incriminated themselves but the others with their confessions.¹⁰² However, their confessions were coerced and coached by the police.¹⁰³ "Every child reported that they were deprived of their right to representation by counsel, the police violated the Miranda Act by not advising them of their right to be silent, and that their confessions were coerced by NYPD detectives through threats and actual physical violence during the interrogations."¹⁰⁴ The only evidence against the teens were the

⁹⁵ U.S. CONST. Amend. IV.

⁹⁶ U.S. CONST. Amend. V.

⁹⁷ U.S. CONST. Amend. VI.

⁹⁸ U.S. CONST. Amend. VIII.

⁹⁹ U.S. CONST. Amend. XIV.

¹⁰⁰ FRED E. INBAU, JOHN E. REID & JOSEPH P. BUCKLEY, *CRIMINAL INTERROGATION AND CONFESSIONS* (3d ed. 1986).

¹⁰¹ *Id.*

¹⁰² Affirm. in Response to Mot. to Vacate J. of Conviction, *N.Y. v. Wise, et. al.*, No. 4762/89, <http://big.assets.huffingtonpost.com/wise.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 10-11.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

recorded confessions.¹⁰⁵ Each teen recanted their confession two weeks later.¹⁰⁶ And they all pleaded “Not Guilty” at their arraignment.¹⁰⁷

Comparatively, in Morningside Park, although Zyairr had his uncle, Roosevelt, present during the interrogation, Roosevelt had never been in a police precinct before¹⁰⁸ and thus, innocently believed that a detective would not be deceitful.¹⁰⁹ He also did not know he could stop the interrogation at any time.¹¹⁰ Yet, Detective Acevedo testified that he was taught to lie and be deceiving through police training.¹¹¹ Zyairr then implicated himself and his two friends.¹¹²

VI. FORENSIC & EVIDENCE

In most cases, evidence is not available. There may not be enough evidence to provide an accurate test or evidence may be mishandled, which can prevent the defense from performing its own tests. Regardless of the tantamount of evidence, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. The Brady Doctrine¹¹³ also calls for all evidence in possession of the government to be disclosed if there is a likelihood that it can help a criminal defendant appear innocent to a judge or jury.¹¹⁴ In *Kyles v Whitley*, the Supreme Court held that it does not matter whether the prosecution considers evidence to be exculpatory, it all must be disclosed.¹¹⁵ Surprisingly, one of the leading causes a defendant is falsely accused or falsely convicted is misconduct.¹¹⁶

The evidence in Central Park Five did not connect any of the accused teens to the rape and assault of Trisha.¹¹⁷ Nevertheless, all the

¹⁰⁵ *Id.* at 5-9.

¹⁰⁶ *Id.* at 10-11.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ Miller, *supra* note 44.

¹⁰⁹ Lenthang, *supra* note 23.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Jessica Brand, *The Epidemic of Brady Violations: Explained*, THE APPEAL (Apr. 25, 2018), <https://theappeal.org/the-epidemic-of-brady-violations-explained-94a38ad3c800/>.

¹¹⁴ H. Patrick Furman, *Wrongful Convictions and the Accuracy of the Criminal Justice System*, 32 THE COLORADO LAWYER 11 (Sept. 2003).

¹¹⁵ Gross, Samuel, et. al., *Race And Wrongful Convictions In The United States*, NATIONAL REGISTRY OF EXONERATIONS (Mar. 7, 2017).

¹¹⁶ Chris Smith, *Central Park Revisited*. N.Y. MAGAZINE (Oct. 21, 2002), https://nymag.com/nymetro/news/crimelaw/features/n_7836/index.html.

¹¹⁷ Crane-Newman, *supra* note 55.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

evidence collected at the crime scene was produced at trial.¹¹⁸ The evidence consisted of blood sample, hair strand, and article of clothing.¹¹⁹ Such DNA testing results were hidden from the defendants' attorneys.¹²⁰ Yet, no expert witness concluded that the biological evidence from the crime scene matched the accused teens.¹²¹ "In fact, the DNA profile derived from the semen on the sock conclusively excluded all five of the boys accused."¹²² But that did not stop the District Attorney Lederer from attempting to convince the jury that the DNA evidence was consistent to the teens' guilt.¹²³ In this case, the accused were not guilty beyond a reasonable doubt.¹²⁴ But that did not stop their convictions.¹²⁵

On the other hand, there is evidence at play in Morningside Park that connects the suspects to the crime. The 911 call described the suspect as someone wearing a green jacket, like Zyairr.¹²⁶ There was also a surveillance video that tied the teens to the murder, through their sneakers and clothing.¹²⁷ A witness also heard a male voice demanding items and a few moments later he heard a female voice scream.¹²⁸ Also, an uncharged phone, closed knife and a woman's hat was found at the crime scene.¹²⁹ It is also claimed that they found DNA under Tessa's fingernail that matches Rashaun's DNA.¹³⁰ Police also has Rashaun admitting that he "hit [Tessa] with a knife" on audio recording.¹³¹ However, Detective Acevedo's reputation is being questioned by the Legal Aid Society, who represents Zyairr. Detective

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Gabrielle Chung, *18-Year-Old Barnard College Student Dead After Fatal Stabbing Blocks Away From Campus*, PEOPLE (Dec. 2020), <https://people.com/crime/barnard-college-student-dead-fatal-stabbing-new-york-city-park/>.

¹²⁷ Ruth Weissmann & Bruce Golding, *Teen gives cops chilling account of Tessa Majors' murder in court video*, N.Y. POST (Feb. 20, 2020), <https://nypost.com/2020/02/20/teen-gives-cops-chilling-account-of-tessa-majors-murder-in-court-video/>.

¹²⁸ Jonathan Dienst, Marc Santia & Myles Miller, *Third Teen Suspect in Tessa Majors Case Turns Himself In, Pleads Not Guilty to Murder*, NBC N.Y. (Feb. 20, 2020), <https://www.nbcnewyork.com/news/local/third-teen-suspect-in-tessa-majors-case-turns-himself-in-sources/2293782/>.

¹²⁹ Chung, *supra* note 126.

¹³⁰ Freytas-Tamura, *supra* note 48.

¹³¹ Dienst, Santia & Miller, *supra* note 128.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

Acevedo was accused of false arrests¹³², withholding exculpatory evidence, and fabricating accusations more than a dozen of times.¹³³ However, he was never found guilty on any accusation.¹³⁴

VII. GUILTY BY PUBLIC OPINION

The world underwent many drastic changes in 1989, such as the fall of the Berlin wall which marked the beginning of the end of the Cold War, communist ruling ending in several countries, and the creation of the world wide web, and the launching of the very first GPS satellite.¹³⁵ “For millions around the world, the events of 1989 seemed to open a road into an unknown but hope-filled future.”¹³⁶ Albeit the Fourteenth Amendment, which provides equal protection under the law¹³⁷, the power to influence people worldwide is vast.¹³⁸ However, it was the streets of New York City which illustrated the becoming of a battlefield between the haves and the have-nots, where “[c]rime ran the streets. . . On an average day in 1989, New York suffered five murders, nine rapes, and 194 aggravated assaults.”¹³⁹ Three monumental events occurred during 1989, the Central Park Five being one which exposed, “. . . the knotted ligaments of race, justice, crime, and power.”¹⁴⁰

Interestingly, on the night of April 19, 1989 there were two reported rapes, and yet only one of them was flashed over every television screen and newspaper reporting in the nation. In addition to the rape and attack of Trisha, an African American woman was raped in the neighboring Brooklyn.¹⁴¹ Nonetheless, it was the Central Park Five that was referred by former NYC mayor Ed Koch as, “the crime of

¹³² Crane-Newman, *supra* note 55.

¹³³ Lenthang, *supra* note 23.

¹³⁴ *Id.*

¹³⁵ Garrett McGrath, Love/Hate: New York, Race, and 1989, THE WILSON QUARTERLY, <https://www.wilsonquarterly.com/quarterly/summer-2014-1989-and-the-making-of-our-modern-world/lovehate-new-york-race-and-1989/>, (last visted Mar. 11, 2021).

¹³⁶ *Id.*

¹³⁷ U.S. CONST. Amend. XIV, §1.

¹³⁸ SPIDER-MAN (Columbia Pictures 2002).

¹³⁹ McGrath, *supra* note 135.

¹⁴⁰ *Id.* On April 19, Trish a white female was assaulted and raped during a nighttime jog through Central Park. On August 23, a 16-year-old African American male was shot to death after being attacked by a crush of white youths in Brooklyn. On November 7, the city of New York elected its first African American mayor.

¹⁴¹ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

the century.”¹⁴² The sensationalism of the Central Park Five resulted from powerful New Yorkers who needed someone to blame. “. . . They found what they were looking for in five young men whose names became synonymous with the city’s fear.”¹⁴³ Even Donald Trump took full ads against the five accused teens.¹⁴⁴ The ads were in *The New York Times*, *The Daily News*, *The New York Post* and *New York Newsday*.¹⁴⁵ Trump used his influence to push for the death penalty.¹⁴⁶ According to the media, these children Antron, Kevin, Yusef, Raymond and Korey, were, “. . . violent, nihilistic teens. They were accused of being a part of a larger group of around 30 teenagers who were ‘wilding’ – ‘street slang for going berserk,’ as one *New York Daily News* headline defined it. . . The press called the boys a ‘wolf pack,’ and accused them of a dozen assaults in the park before their attack on Meili.”¹⁴⁷ Conversely, three weeks later a gang of about 30 white youths shot and killed the defenseless Yusef Hawkins, a black 16-year-old, however, no one ever referred to this gang as a “wolf pack” or a “wilding.”¹⁴⁸

Nonetheless, the public did not care that these were children who were coerced into false confessions. The Central Park Five (who were later exonerated), “. . . was prosecuted quickly and – in the minds of scared city residents – the police did their jobs. They had put the right people away.”¹⁴⁹ Former NYC mayor Ed Koch stated, “‘putting the criminal justice system on trial,’ then there is no question: beyond any reasonable doubt, the prosecution, the police, and the press had failed the city.”¹⁵⁰ This commentary, however, was too little too late. Perhaps nothing more than a ploy as Koch, a three-term mayor seeking reelection, felt the need to be on the right side of history as he was running against David Dinkins, an African American, in the

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Eyewitness News, *13-year-old boy arrested in murder of Barnard College student Tessa Majors*, WABC-TV N.Y. (Dec. 13, 2019), <https://abc7ny.com/5751275/>.

¹⁴⁵ Choiniere, *supra* note 16.

¹⁴⁶ *Id.*

¹⁴⁷ McGrath, *supra* note 135.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* On June 14, 1989, two months after the attack of Trish and while the world was focusing on the five innocent children, Matias Reyes raped and murdered a pregnant mother of three. Subsequently in May 2002, Matias Reyes was later connected to the attack and rape of Trish Meili. In December 2002, the convictions of the Central Park Five were overturned.

¹⁵⁰ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

primary of the Democratic party for mayor of New York City.¹⁵¹ Dinkins then had to go against Rudy Giuliani, “the charismatic federal prosecutor known for his enormously high conviction rate and success against high-profile criminals.”¹⁵² Both Dinkins and Giuliani used the Central Park Five to make their point. These men predicated on five children in their need to obtain the mayoral seat. It did not matter whether these boys were innocent, as long as the public saw that Dinkins and Giuliani felt the concern of the city.¹⁵³ Dinkins accused the Central Park Five of “urban terrorism.”¹⁵⁴ According to Dinkins the city was “‘under siege,’ and that harsh penalties needed to be doled out immediately.”¹⁵⁵

After ten days of deliberation, on August 18, 1990, these five innocent children; 14-year-old Raymond, 14-year-old Kevin, 15-year-old Antron, 15-year-old Yusef, and 16-year-old Korey were wrongfully convicted.¹⁵⁶

Despite there not being outside influence, those involved in the Morningside Park investigation have assured the public that proper steps were being taken. For instance, Commissioner Dermot Shea constantly tweeted updates on the case.¹⁵⁷ There was also a news conference where Commissioner Shea stated, “We can say we are confident that we have the person in custody who stabbed her.”¹⁵⁸ Furthermore, in December Representative Alexandria Ocasio-Cortez voiced during a Town Hall in Queens, that the Morning side case was tragic on multiple levels.¹⁵⁹ Rep. Ocasio-Cortez also expressed her belief that the, “tragedy occurred potentially because of a broken home, intergenerational poverty, and a lack of opportunity.”¹⁶⁰ Recognizing the events of the Central Park Five and its similarities to the Morningside case, Mayor Bill de Blasio also added that he was

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Affirm. in Response to Mot. to Vacate J. of Conviction, *N.Y. v. Wise, et. al.*, No. 4762/89, <http://big.assets.huffingtonpost.com/wise.pdf>.

¹⁵⁷ Choiniere, *supra* note 16.

¹⁵⁸ Freytas-Tamura, *supra* note 48.

¹⁵⁹ Asia Ewart, *Alexandria Ocasio-Cortez Sees More Than One Tragedy In The Death Of Tessa Majors*, REFINERY29 (Feb. 24, 2020), <https://www.refinery29.com/en-us/2020/02/9457546/aoc-tessa-majors-murder-suspects-teen-violence>.

¹⁶⁰ *Id.*

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

confident that Tessa Majors' killers would be brought to justice quickly.¹⁶¹

VIII. CONCLUSION

The now Exonerated Five is one of the many cases where the defendants were wrongfully accused. It is crucial to the progress of our society that we continue to speak about the wrongful conviction of Kevin Richardson, Antron McCray, Yusef Salaam, Raymond Santana, and Korey Wise. For to forget the horrendous tragedy of these children would for certain result in a repeat of amplified injustice. These five children were used to fit society's preconceptions, and thereby exposing the huge imperfections of the criminal justice system."¹⁶²

From the beginning of a child's life, there is a general belief that the police is there to help you and the criminal justice system is the stage for right versus wrong. Yet, the system then turns and faults the child because of the color of his/her skin. Who are we, as a society, when we can shatter the natural innocence of a child without remorse? We are not born judging someone by the color of his/her skin. It is the monstrous individuals who rape children of their innocence and scorch any potential resemblance of childhood in the name of justice that should be convicted. The worst part of scarring someone, especially a child, is when the aggressor turns and faults the victim for being afraid of authority or revealing the hurt resulting from that breach of trust.

When the choice is made between who to sacrifice in the court of public opinion, it is the child of color who is strapped to be stoned. As oppose to a white child who is immediately rehabilitated in the media. When it is a white child it is said that the "child" committed the heinous act because of mental illness. However, if it's a child of color then it is quickly reasoned, "he was no good from the start," or "look at his family dynamic." Mental illness is never allowed near the child of color as that would potentially lead to a defense.

It is "easy" to win against a child, like taking candy from a baby, but isn't that known as bullying. Thus, it is our responsibility as legal professionals, law students and law enforcement to enact laws that aims to protect children from the monsters. As it is far easier to cultivate children into productive, trusting, and responsible adults

¹⁶¹ Eyewitness News, *supra* note 144.

¹⁶² McGrath, *supra* note 135.

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

then having to repair the broken. For instance, once a dam is broken all the reinforcements and repairs will never return the dam to its initial strength.

Eventually, the case of the Exonerated Five was reviewed thirteen years after being wrongfully convicted.¹⁶³ On December 19, 2002, the convictions were vacated.¹⁶⁴ but by that time, the formative years of these children had already passed. Kevin who was convicted at the age of 14, having been paroled after being incarcerated for five and a half years, was 27 years old when he was exonerated.¹⁶⁵ Antron who was convicted at the age of 15, served six years in prison before being paroled.¹⁶⁶ Antron was exonerated was 28 years old when he was exonerated.¹⁶⁷ Yusef, convicted at 15 years old, was incarcerated for six years and eight months, and was eventually exonerated at 28 years old.¹⁶⁸ Raymond was convicted at 14 years old and was paroled after being incarcerated for almost six years, was exonerated at 27 years old.¹⁶⁹ Lastly, Korey, the oldest of the Exonerated Five was convicted at 16 years old. Korey was incarcerated for almost thirteen years in various state prisons.¹⁷⁰ Korey was finally released upon being exonerated in 2002 at the age of 30 years old.¹⁷¹

The system conformed to the purpose it was intended.¹⁷² Although, after their exonerations, the truth of the “broken

¹⁶³ Yusef Salaam, Kevin Richardson & Raymond Santana, *We are the ‘Exonerated 5.’ What Happened to Us Isn’t Past, It’s Present*, N.Y. TIMES (Jan. 4, 2021), <https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions.html>.

¹⁶⁴ *Id.*

¹⁶⁵ *Kevin Richardson*, INNOCENCE PROJECT, <https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions.html>, (last visited Mar. 11, 2021).

¹⁶⁶ *Antron McCray*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/Antron-McCray/>, (last visited Mar. 11, 2021).

¹⁶⁷ *Id.*

¹⁶⁸ *Yusef Salaam*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/Yusef-Salaam/>, (last visited Mar. 11, 2021).

¹⁶⁹ *Raymond Santana*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/Raymond-Santana/>, (last visited Mar. 11, 2021).

¹⁷⁰ *Korey Wise*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/Korey-Wise/>, (last visited Mar. 11, 2021).

¹⁷¹ *Id.*

¹⁷² See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 89 (2010), where the author states: “The real point here, however, is not that innocent people are locked up. That has been true since penitentiaries first opened in America.” *Also see*, DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (2008). The author states: “Black people are the magical faces at the bottom of society’s well. Even the poorest whites, those who must live their lives only a few levels above, gain their self-esteem by gazing down on us. . . Only by working together is escape possible. Over time, many reach out, but most simply watch, mesmerized into maintain their unspoken commitment to keeping us where we are, at whatever cost to them or to us.”

Journal of Race, Gender, and Ethnicity
Volume 9 – May 2020

system” came to light, by then the childhood of these children had already been ravaged. These five children—Yusef, Kevin, Antron, Raymond, and Korey—were broken by a system they were led to believe was there to protect them, which then left them alone to deal with the injustices that they suffered and all because they were black and brown children. Even after being exonerated the effect that an entire society, of which the media and public figures like Donald Trump, villainized these children and sought for their demised.¹⁷³ How can any person feel safe in such a society, let alone a child? Those precious teenage experiences such as first dates, school dances, and graduation, are forever gone. Trisha may not have died due to the act she suffered on April 19, 1989, but five children—Yusef, 15, Kevin, 14, Antron, 15, Raymond, 14, and Korey, 16—were slaughtered when their formative years, innocence and childhood were stolen from them.

Beginning in October of 2019, New York State changed the age of criminal responsibility to eighteen (also known as “Raise the Age”).¹⁷⁴ Children under 18 years old who have committed a felony are prosecuted in the Youth part as either an adolescent offender or a juvenile offender.¹⁷⁵ The Youth part, which is similar to Family Court, provides offenders with rehabilitative services through local probation departments.¹⁷⁶

¹⁷³ See subheading VII.

¹⁷⁴ N.Y. Penal Law § 30.00 (1).

¹⁷⁵ N.Y. Crim. Law and Procedure C.P.L. § 722. An “adolescent offender” is a 16-year-old or 17-year-old who commits any felony. A “juvenile offender” is a 13-year-old, 14-year-old or 15-year-old who commits certain violent felonies. The Youth Part is a criminal court independent of Family Court and all other criminal courts and is presided over by trained Family Court Judges.

¹⁷⁶ N.Y.C.P.L. § 722.