

TESTIMONY

Before

The Council of the City of New York

Sponsored by:

Committee on Governmental Operations

Proposed Res. No. 81-A - Resolution calling on the City of New York to acknowledge the years of suffering of all those involved in the Central Park Jogger case, including both the five men whose convictions were vacated and the jogger herself, by settling this matter out of court as expeditiously as possible in order to avoid a continuation of this painful, lengthy and costly legal proceeding that will only cause further anguish for all parties involved.

February 12, 2013

City Hall
New York, New York

Submitted by:

The Legal Aid Society
199 Water Street
New York, NY 10038

Presented by:

Steven Banks, Attorney-in-Chief

Good afternoon. I am Steven Banks, Attorney-in-Chief of The Legal Aid Society. I submit this testimony on behalf of The Legal Aid Society and thank the Committee on Governmental Operations for inviting our comments on the proposed resolution to settle the Central Park Five case. We appreciate your attention to this important issue.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. From offices in all five boroughs in New York City, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life – housing, health care, food and subsistence income or self sufficiency; and the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as troubled young people facing charges of misconduct.

During the last year, our Criminal Practice handled some 220,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. Through that work we have learned about the dangers of false confessions. In addition to individual representation, we have also participated in some of the key reform efforts to prevent the recurrence of false confessions and wrongful convictions, such as the New York

State Bar Association's Task Force on Wrongful Convictions¹ and the New York State Justice Task Force.² These efforts were implemented to examine false confessions, identify their causes and correct some of the worst practices from the cases, such as the Central Park Five case, that result in wrongful convictions.

1. The Facts

On April 19, 1989, Patricia Meili, a young white investment banker who was jogging in Central Park, was brutally attacked. The young woman was beaten senseless, raped and left for dead. Soon after the commission of the crime, based solely on police-induced confessions taken within 72 hours of the crime, five African-American and Latino teenagers, Yusef Salaam (age 15), Antron McCray (age 14), Raymond Santana (age 14), Kevin Richardson (age 14), and Kharey Wise (age 16) were arrested. The charges included rape, assault and attempted murder. The incident horrified the City and the assault and the following trials were given widespread press coverage.

In four of the five cases, confessions were videotaped and presented to the juries at trial. The tapes showed only the confessions and did not cover the 14 ½ to 30 hours of interrogation that preceded them. The tapes were presented as compelling evidence as the teenagers described in vivid detail how the jogger was attacked and the roles that each of them supposedly played. Portions of the confessions were played on television. Two different juries relied on them to convict the five young defendants.

¹ See New York State Bar Association, *Final Report of the New York State Bar Association's Task force on Wrongful Convictions*, April 4, 2009.

² See, New York State Justice Task Force, *Recommendations Regarding Electronic Recording of Custodial Interrogations; Recommendations Regarding Electronic Recording of Custodial Interrogations, Recommendations Regarding Post-Conviction Access to DNA Testing and Databank Comparisons*, January 2012.

From the start, there were facts that were inconsistent with the confessions. The accounts given by the five teenagers were materially inconsistent with each other. Each identified someone else as the perpetrator of the rape. They also differed from some of the known facts of the crime. Following the initial interrogations, each of the defendants asserted that the confessions were false. In addition, there were no physical traces of the defendants at the crime scene and there were no traces of the crime scene on them, which were very unusual facts for such a horrific and brutal crime.³ The strength of the videotaped confessions, however, overwhelmed all other doubt.

Thirteen years later, in January of 2002, Matian Reyes, who was in prison for three rapes and for a murder committed after the jogger attack, voluntarily gave a confession that was independently corroborated by DNA evidence. His semen was found on the victim's body and socks. The DNA evidence had excluded the young men as the source of the semen in 1989. In response to the new confession, the District Attorney's Office opened an investigation into the credibility of the statements.

On November 1, 2002, Police Commissioner Raymond Kelly announced the establishment of a second investigation, the Armstrong Commission, led by former Assistant District Attorney and Assistant United States attorney Michael Armstrong. The Commission was appointed by the NYPD to evaluate the propriety of the police conduct in the case.

In December 2002, Justice Charles Tejada of the New York State Supreme Court, upon the consent of the New York County District Attorney's office, reversed the

³ For a detailed description of the crime and the investigation see McCray et al. v. City of New York et al., S.D.N.Y. 2007 WL 4352748. The decision dismissed some of the claims against the City and the individual defendants in the pending civil damages action, but allowed others to proceed to trial.

convictions and granted the now grown men a new trial.⁴ After a thorough investigation, which examined the physical evidence in the case, the similarity of this crime with others committed by Mr. Reyes and the new DNA match, the District Attorney's Office concluded that the defendants should never have been accused of the crime.

A month later the NYPD's Commission reported that the NYPD properly interrogated the young men, that it was unlikely that Reyes committed the attack on his own, and that the group of young defendants also participated in the attacks. The NYPD publicly contradicted the findings of the District Attorney's investigation and refused to admit that its interrogations had convicted five innocent teenagers.

Following the decision not to retry the criminal case, a series of civil damages actions were filed against the City of New York and a group of individual defendants.

2. The Case Should Be Settled

The Legal Aid Society strongly agrees that the Central Park Five case should conclude with a fair settlement for the five wrongly convicted young men. The City should, as expeditiously as possible, avoid a continuation of this costly, unnecessary and painful legal proceeding. Further pain from this tragic chapter in our City's history will be an inevitable result from a continuation of the litigation. A settlement is not only good for the parties, it is also in the best interests of the City, not so that we can put it behind us and forget about it, but because such a resolution may finally allow us to begin to really understand and acknowledge some of the painful lessons of the Central Park Five case.

⁴ People v. Wise, 752 N.Y.S.2d 837 (2002).

The Central Park Five case raises fundamental questions about our ability to administer justice in a fair and impartial way. How could the criminal justice system convict five innocent young men of this horrible crime? What role did race play in those wrongful convictions? How did various segments of the media participate in and encourage this unjust result? It is crucial that we confront these and many other questions raised by the case in an honest way if we are ever going to prevent a recurrence of these events.

Outside of New York City there is little doubt about the Central Park case. In the academic literature about wrongful convictions and modern police interrogations it is described as “an infamous case” and “a shocking tale of five false confessions resulting from a single investigation.”⁵ The New York State Bar Association has included the case against these five young men among the 53 cases it studied in trying to identify the causes of wrongful convictions and ways to prevent their recurrence in the future.⁶ The case provided an incentive for the formation of the New York State Justice Task Force.⁷ The Central Park Five case is also the subject of a recent book⁸ and movie.⁹

The rest of the world has begun to come to terms with the tragic lessons of the Central Park Five case. It is time for New York City to also do so and settle this case.

⁵ Saul M. Kassin, *A Critical Appraisal of Modern Police Interrogations*. In T. Williamson (Ed.), *Investigative interviewing: Rights, research, regulation* (pp.207-228). Devon, UK: Willan Publishing pp. 207-208.

⁶ New York State Bar Association, *Final Report of the New York State Bar Association’s Task force on Wrongful Convictions*, April 4, 2009.

⁷ New York State Justice Task Force, *Recommendations Regarding Electronic Recording of Custodial Interrogations, Recommendations Regarding Post-Conviction Access to DNA Testing and Databank comparisons*, January 2012.

⁸ Sarah Burns, *The Central Park Five: The Untold Story Behind One of New York’s Most Infamous Crimes*, Vintage Books, 2011.

⁹ *The Central Park Five*, Written, Produced and Directed by Sarah Burns, David McMahon and Ken Burns, 2012.

3. Recommendations For The Criminal Justice System

In part because of the widespread publicity that was devoted to the Central Park Five case and the fact that there have been numerous other examples of false confessions that led to wrongful convictions, we now know more about the factors that lead to a false confession and the ways to prevent them. We must act on this knowledge and enact the necessary reforms. We know that false confessions play a significant role leading to a wrongful conviction. More than 40 percent of wrongful convictions in New York State proven by post-conviction DNA testing were the result of false confessions.¹⁰ New York State has had more documented and proven false confessions than any State except Illinois.¹¹

Drawing on the lessons of this case, The Legal Aid Society supports the following recommendations which are intended to prevent a recurrence of false confessions.

A. Interrogations Must Be Electronically Recorded¹²

Electronic recording is the reform that is most universally recommended by those who have studied the patterns of false confessions, and the Governor has proposed to enact this crucial reform during this State legislative session. False confessions are often believed because they contain a good deal of accurate information about the crime scene. As the Central Park Five case illustrates, once the confession is given it is often impossible to tell whether the confession is true or not. A common element of false confessions is that the suspect has learned crime scene

¹⁰ The Innocence Project, *Facts on Post-Conviction DNA Exonerations*, http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php.

¹¹ Steven A. Drizin & Richard A. Leo, *The Problem of false Confessions in the Post-DNA World*, 82 N.C.L.Rev. 891, 946 (March 2004).

¹² The recommendations presented here generally follow the those presented by the New York State Justice Task Force, *Recommendations Regarding Electronic Recording of Custodial Interrogations*, January 2012, <http://www.nyjusticetaskforce.com/ElectronicRecordingOfCustodialInterrogations.pdf>.

details, either intentionally or inadvertently, from the police who did the questioning. The after-the-fact descriptions of the interrogations of Central Park Five show that fact after fact was given to them through police questioning. Recording helps identify false confessions because it can show at what point information about the crime is provided to the suspect. It provides transparency as to what occurred during the interrogation by providing an objective record as to what occurred.

B. Recording Cannot Be Optional

As the Governor has proposed, recording must be mandatory and not optional. It is too essential in identifying false confessions and preventing wrongful convictions to allow only an optional or voluntary change in practice. Funding to support the recording of custodial interrogations is also essential.

C. There Must Be Consequences For The Failure to Record.

The interrogation of anyone who is in custody in connection with a serious crime must be recorded. The failure to record any interrogation should be considered a factor in determining whether the statement should be admitted at trial. Any unrecorded custodial statement should be presumed to be inadmissible unless the police can show good cause as to why it could not be recorded. If good cause does not exist it should be excluded. Even if good cause is shown and an unrecorded statement is admitted at trial, a cautionary statement about the failure to follow the rule that requires recording should be read to the jury.

D. The Recent NYPD Recording Program Is Insufficient

On September 19, 2012, the NYPD announced a new policy that follows the recommendation of the Justice Task Force.¹³ The NYPD would voluntarily begin recording interrogations involving murder, assault and sex crimes. The recording equipment was purchased with money from the New York City Police Foundation.

We think this new policy is a step in the right direction. But this new policy is a purely voluntary program and it is still too early to assess what consequences will result when the police fail to follow it and do not record an interrogation that it supposed to be recorded. We are aware of several recent cases in which there was a failure to record the interrogation. In any case, as indicated above, as the Central Park Five case demonstrates, mandatory recording is essential

E. Vulnerable Populations Need Special Protection

Research into the patterns of false confessions shows that they occur in identifiable patterns, particularly among vulnerable populations. Younger people are often less able to cope with interrogative pressure than are older individuals.¹⁴ Individuals with low intelligence have an impaired ability to understand questions and evaluate the consequences of given answers. Mental disorders and other psychological vulnerabilities also make a suspect more vulnerable to the coercive tactics used in an interrogation under the method that is prevalent in the United States.¹⁵ Longer

¹³ New York Daily News, *NYPD Commissioner Raymond Kelly says cops will videotape all post-arrest questioning to avoid 'false' confessions*, September 19, 2012.

¹⁴ Gisli H. Gudjonsson, *Interrogation and False Confession among Adolescents Seven European Countries*, 15 *Psych. Crim. & L.* 711 (2009).

¹⁵ Gisli H. Gudjonsson, *Psychological Vulnerabilities During Police Interviews. Why Are They Important?* 15 *Legal and Criminological Psych.* 161 (2010).

interrogations, particularly among these vulnerable populations, tend to produce more false confessions.

Everyone in the criminal justice system, from the investigating police officer to the Judge who hears the trial, has to be aware of the reality of false confessions. Better safeguards against false confessions must be implemented, particularly for those who are most vulnerable. The very aggressive tactics most police departments use should not be utilized in these cases. For these vulnerable populations, extraordinary efforts must be made to record the confession and any confession that is not recorded should not be admitted into evidence. Particular attention should be paid to whether or not the *Miranda* warning is understood. It is worth noting that in the United Kingdom an “appropriate adult” – a person outside of the usual police group – is appointed to ensure that an interview is conducted properly.

In United States, we have long considered a confession to be admissible if it is voluntary, a standard which is usually met if the most coercive tactics are not used. A lesson from the many false confession cases which have occurred, particularly those produced from the vulnerable populations, is that it would make far more sense to evaluate whether the confession is reliable. If everyone in the system works towards the goal of producing “reliability” we would have far fewer false confessions.

We thank you for this opportunity to testify, we are available if you have any questions or concerns.

THE COUNCIL
THE CITY OF NEW YORK

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I represent: Comptroller

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Name: Senator Bill Perkins

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I represent: Central Park 5 Constituents of

Address: 30th District, NYS Senate

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Name: Roger WAREHAM

Address: 394 Putnam Avenue, Beechville NY

I represent: Kevin Richardson, R. Santora, A. McCree

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Name: Leonora Wengraf

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I represent: Campaign to End the Death

Address: Penalty

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I represent: SALAMA Family

Address: _____

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Name: Craig Schley

Address: 24 234 West 173 St.

I represent: @ VOTE People + Neighbor

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Name: Joseph Jazz Hayden

Address: 15 Rutherford Pl. n y ny

I represent: Campaign to end prison for New Crow

Address: Riverside Church Prison Ministry

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Name: Debra Goodman

Address: 310 West End Ave.

I represent: Self

Address: _____

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Name: Steve Banks

Address: 199 Water Street NY NY 10038

I represent: The Legd Ad Society

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I represent: _____

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