Opinion

Persistent Myths in the Central Park Jogger Case

Time for a reality check as New York prepares to award the defendants $40 million.

By
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New York Mayor Bill de Blasio, fulfilling a campaign promise, has ordered city lawyers to abandon the defense of a multimillion-dollar lawsuit brought by five defendants in the so-called Central Park jogger case. The lawsuit will be settled for a reported $40 million. But some erroneous public impressions have been created about the case that need correcting.

The defendants were convicted in 1990 for participating, with 30 or 35 other 14- to 16-year-olds, in a series of attacks in Central Park on the evening of April 19, 1989. The convictions were based largely on the defendants' own statements to the police. By far the most serious of the assaults was the horrific, bloody rape and near-murder of a 29-year-old female jogger, who survived, but without any memory of what had happened. The defendants served prison sentences from six to 13 years.

Their convictions were vacated in 2002 when Matias Reyes, an imprisoned serial rapist and killer, volunteered that he had raped the jogger, a claim confirmed by DNA tests, and that he had done it alone, a claim resting solely on his credibility.

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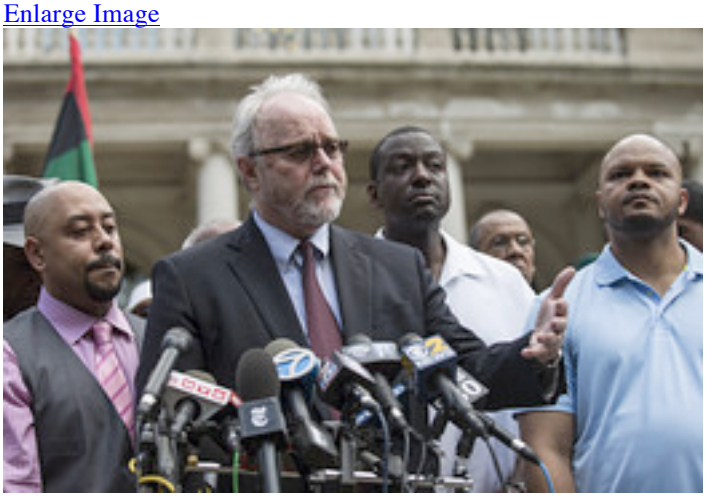

Three of the 'Central Park Five' at a press conference with their lawyer, center, in June. Getty Images

In the lawsuit against the city that followed, police and prosecutors honored a court request not to discuss the case publicly. The defendants—now civil plaintiffs—launched a high-powered publicity campaign that has persuaded many that they were completely innocent, that they had been coerced and fed false stories by the police, and that they have been exonerated. None of these contentions is accurate.

• *Complete innocence*. The defendants were convicted not only for attacking the jogger, but for assaulting others as well. The other victims included a man beaten into unconsciousness with a pipe. No evidence contradicts these convictions. For the most part they were confirmed by the defendants and have never been specifically denied.

Two crime scenes exist relating to the attack on the jogger. This supports the theory that while the defendants did not participate in the rape, they were involved, to some degree, in a preceding and less-serious attack on the woman. They now deny any involvement in any such attack. Their original incriminating statements, while generally descriptive of what seems to have occurred at the first crime scene, lack crucial details of the second—such as the huge amount of blood, and that the jogger was found tied up in her own T-shirt.

• *Coerced stories*. The defendants' current claim that they were told by police interrogators what to say is undermined by the absence, in their statements at the time, of lurid details of the second crime scene. Several teams of cops questioned 37 possible suspects and dozens of other witnesses over a period of more than two days. Even if they could have coordinated a false story—and even if they could have been foolish enough to "feed" such a story to suspects when the victim might wake up any moment to contradict it—they certainly would not have neglected to include the distinctive features of the attack in the version they allegedly coerced the defendants into using.

There is no evidence that police or prosecutors coerced the defendants or fed them stories. Trial judge Thomas Galligan held an extensive, six-week pretrial hearing on the precise issue of whether the defendants' statements were improperly obtained. His 116-page opinion stated that with one minor exception, regarding a peripheral remark, they were not.

Four of the five defendants at the pretrial hearing made no allegation that they had been coerced or told what to say. The court rejected the fifth defendant's charges that he was coerced and fed a story. The claims by all of the defendants that confessions were extracted under police pressure came only after they consulted civil attorneys.

In 2002 Police Commissioner Raymond Kelly appointed a panel (of which I was a member) to look into this matter. The panel criticized some aspects of the handling of the case but found that no police or prosecutorial misconduct had occurred in detaining or interrogating the defendants. Similarly, the Manhattan District Attorney's Office, which consented to vacating the defendants' convictions, nevertheless found that no police or prosecutorial misbehavior occurred in their detention or questioning. Then-Manhattan District Attorney Robert Morgenthau has consistently so stated, as did his office's supervisory personnel in sworn testimony before the City Council in 2003.

• *Exoneration*. The 2002 court order vacating the defendants' convictions did not exonerate them. They were granted new trials, at which they could present "newly discovered

evidence," consisting solely of the uncorroborated claim of a psychotic killer/rapist that he acted all by himself. This claim could then be subjected to cross examination. But the defendants had served their sentences, no trials were held, and the killer's claim was never tested.

The panel's report to Police Commissioner Kelly in 2003 suggested that it was "probable" that the defendants participated only in a preliminary "hit and run" attack on the jogger, similar to the other assaults for which they had been convicted. If that theory is correct, it seems clear that they served excessive prison terms. Others, pleading guilty to such offenses occurring on the same night, served two to three years, not six or 13.

Perhaps it is fair, though not required as a matter of law, to compensate the defendants for their extra prison time. But some thought should also be given to the blameless police officers and assistant district attorneys who, as a result of a well-orchestrated publicity campaign, have been subjected to public vilification, anonymous death threats and petitions calling for them to be fired.

The public outcry has been fueled by a documentary, "The Central Park Five," produced by acclaimed filmmaker Ken Burns and his daughter, Sarah. The film's genesis was her college thesis and makes no pretense of objectivity. It is a montage of interview clips of the five defendants, backed by their supporters, urging that they are innocent of all wrongdoing and that their incriminating statements were the result of police misconduct.

There is no mention of Judge Galligan's exhaustive opinion, or the lengthy hearing on which it was based, rejecting claims of official misconduct. Nor is reference made to the report of our panel; of the sworn testimony of D.A. Morgenthau's officials; of my own unused, half-day taped interview in Mr. Burns's studio; or of any other voice seriously presenting views either critical of the defendants or supportive of the police.

Mr. de Blasio has directed the payment of many millions of dollars in order to be fair to the defendants. He should also be fair to the police and prosecutors who work for the city he leads. The document settling the case should unequivocally state the truth—that the defendants were not abused or fed false information. And the mayor should firmly acknowledge those facts himself, in public.

Mr. Armstrong is of counsel at McLaughlin & Stern. He has served as Queens County district attorney and chief counsel to the Knapp Commission investigating corruption in the New York City Police Department.