

Addressing Race in the Criminal Justice System: The Role of Experts in Sentencing – the Advent of Cultural Assessments

March 27 , 2017

Who is Robert Wright?

- RSW Private Practitioner - Direct Practice and Forensics
- Served two terms on NS's Advisory Committee on Provincial Judicial Appointments
- Served several years on NSBS Racial Equity Committee



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The Expert Witness

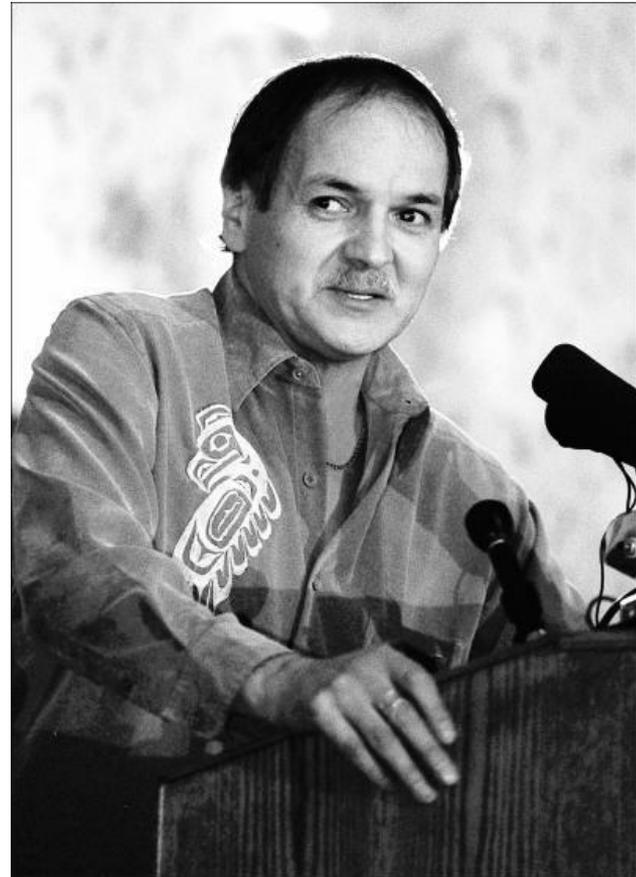
- Experts provide opinions on matters outside the experience of the trier of fact
- Test is low – more knowledge than members of general public; acquired through education, training, study, observation, experience
- Expert evidence must be:
 - Provided by qualified individual
 - Considered reliable
 - Offered by someone with opportunity to observe current matter

The “ANS Race Expert” as Witness

- Understands ANS as a distinct people
- Understands how history of ANS results in systemic phenomenon and individual experiences
- Provides demonstrably informed, reliable analysis
- The “race expert” should be clear about bias but free of prejudice

Context for CA: Racism in Criminal Justice System - 1989

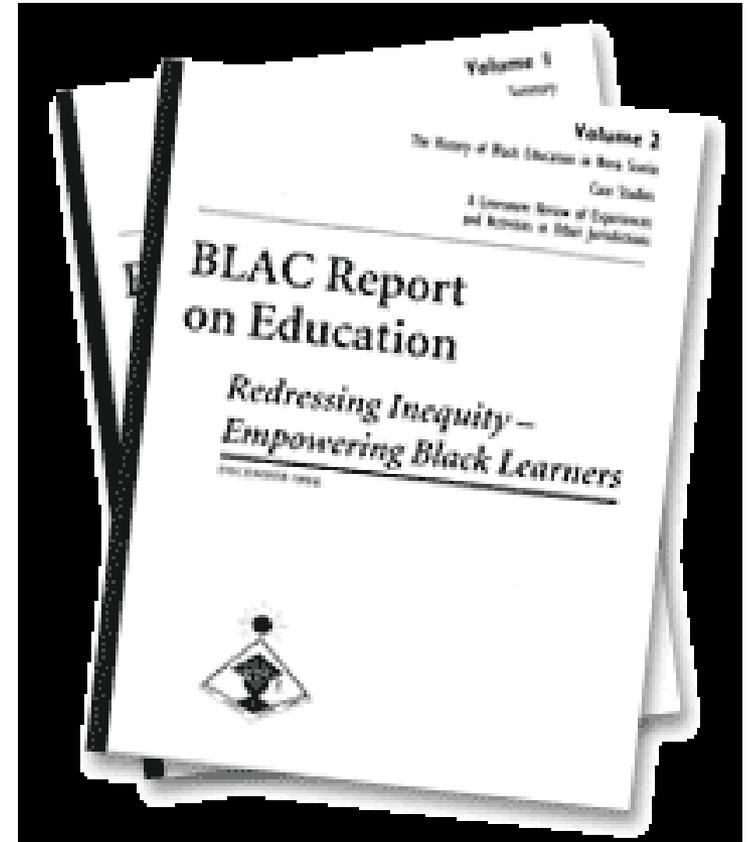
- Marshall Inquiry (Royal Commission) established clearly - racism and discrimination exist in the criminal justice system
- Makes 82 recommendations aimed at reforming systems



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Context for CA: Racism in Education - 1994

- Explores history of ANS in Education
- Establishes systemic racism in education
- Links the “deplorable” socio-economic conditions in Nova Scotia’s Black communities to this history.



Context for CA: OCI 2013 report

- Summer 2011 Canadian Human Rights Commission discussed mental health needs of African Canadians in federal corrections
- OCI studies the matter and highlights Black Inmate Experience in its 2013 report

A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries

In the 2011-12 Annual Report, the Office committed to a review of the experiences and outcomes of Black inmates in federal custody. A case study was completed over a 4-month period (November 2012 – February 2013) which included a literature review, data analysis and qualitative interviews with Black Inmate Committees, Black inmates, CSC personnel, Audmax (an organization currently on contract with CSC to provide ethno-cultural services in the Ontario region) and community volunteers. Site visits were also conducted in institutions in the Ontario, Quebec and Atlantic region, recognizing that the majority of federally sentenced Black inmates (86%) are incarcerated in these regions.

The Chair of the Black Inmate Committee at each institution was contacted informing them of the case study and requesting their participation and assistance in consulting with members of

the Committee to identify issues to bring forward as part of the case study. Notices were also posted on all ranges informing all Black inmates of the study and the opportunity to voluntarily participate. The Chair of the Black Inmate Committee was interviewed at each institution. Voluntary interviews were also conducted with interested Black inmates in one of three ways: individually, in small groups (2-3 participants) or in larger focus groups (15-20 participants). In total, 73 Black inmates (30 women and 43 men), were interviewed. Interviews were also conducted with 24 CSC personnel representing a variety of positions (e.g. Wardens, Correctional Officers, Program Managers), 2 community volunteers and Audmax. In addition, the OCI contracted with the Afrikan Canadian Prisoner Advocacy Coalition (ACPAC) to provide a literature review, expertise and analysis of Black Canadians in conflict with the law⁷.

Context for CA: Racism in Mental Health Service Delivery

- 2009 Mental Health Commission of Canada Task Group on Diversity Publishes paper “Issues and Options”
- 2012 Nova Scotia releases “Together We Can” Mental Health and Addiction Strategy: Both acknowledges poor service to ANS and other IRER groups



The Diversity Task Group Report:

Issues and Options for Improving Mental Health Services for Immigrant, Refugee, Ethno-cultural and Racialized Groups – A Summary

Context for CA: Formal recognition of racial indignity of police encounters



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RACE MATTERS

Black men fleeing the police is reasonable, Massachusetts court rules



**KENYA
DOWNS**

Digital
reporter/producer.

BY KENYA DOWNS *September 22, 2016 at 1:10 PM EDT*

A Massachusetts court rules that a history of racial bias in police searches makes it reasonable for black men to flee. Photo by Matthew Palmer/Getty Images

When black men flee to avoid an encounter with police, they're not being suspicious. That's according to a [recent ruling](#) by the Massachusetts Supreme Judicial Court. As

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Context for CA: DSM-V CFI

Figure. Flow of Cultural Formulation Interview domains for cultural assessment



- CFI, developed over decades, legitimizes the idea of cultural issues as a substantive concern in assessment and provides a logical framework for cultural formulation

Context for CA: Sentencing Principles

- “718.2 A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions, other than imprisonment, that are reasonable in the **circumstances** and consistent with the harm done to victims or to the community should be considered for **all** offenders, with particular attention to the **circumstances** of Aboriginal offenders.”
- This section was amended to specifically address Aboriginal over-representation within the criminal justice system c.1996. Gladue Sentencing Principles, refined in Ipeelee, have emerged. Well utilized in Nova Scotia.

Culture Assessment Conceived – Gladue

- The Gladue decision and reports come from 718.2(e), sometimes referred to as “aboriginal sentencing guidelines”. They provide the court with a documentation of the “circumstances”.
- Given the similarity of African Canadian experience under correctional supervision, and that 718.2(e) applies to **all** offenders, CA are constructed to present their “circumstances”.

Culture Assessment Constructed – Sentencing Principles

- Built on legacy of Gladue, Cultural Assessments involve 4 levels of consideration:
 - What is known about African Canadian experience generally and as it relates to crime and justice;
 - How does the individual's experience with culture and crime play out;
 - How does this knowledge inform the services and resources that could facilitate rehabilitation and reintegration for this offender?
 - May also comment on or contextualize other reports

R.v.X. Assessment and Examination

- Commissioned by Nova Scotia Legal Aid lawyer, Christa Thompson
- Completed after review of documents, interview and collaterals
- Report submitted
- One and a half day examination for qualification as expert
- Another day and a half of testifying
- The Section 34 Assessments
- Criminally sophisticated or cultural mask
- Criminally instrumental or social violence
- Premeditated or impetuous

The Judgement – R. v. X.

[198]. . . . I have asked myself what the evidence of Robert Wright contributes . . . ? I find it raises significant questions about the assessment of “X” as a criminally-entrenched, sophisticated youth. It provides a more textured, multi-dimensional framework for understanding “X”, his background and his behaviours. . . . Mr. Wright’s evidence gives me a lens through which to view “X” in determining this application.

Boy gets 3 years in custody for 2013 shooting

THE CHRONICLE HERALD

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A 17-year-old boy has been given a three-year sentence in a provincial youth facility for the attempted murder of another teen outside the North Preston Community Centre.

Halifax youth court Judge Anne Derrick sentenced the North Preston teenager, whose identity is protected, to the maximum penalty allowed for a young offender, rejecting the Crown’s application for an adult sentence.

“I find that when (the offender) shot (the victim) he was not a hardened, criminally sophisticated teenager who had the makings of an effective mercenary,” Derrick said Friday. “He was a vulnerable young person with a reduced capacity for moral judgment.”

and their grandfathers are brothers. They had known each other since they were very young, but their relationship began deteriorating by elementary school and their arguments and fights began escalating.

On April 15, 2013, at about 5 p.m., the victim was talking to a friend on the outdoor basketball court when the offender, then 16, came out of woods with his face partially covered and shot him with a high-powered hunting rifle.

The victim was shot in the stomach and seriously injured but has made a full recovery.

At the time of the shooting, the offender “was an immature, dependent 16-year-old caught up in the dysfunctional dynamics of his community,” Derrick said.

In deciding not to sentence him as an adult, Derrick weighed the sometimes conflicting evidence of different experts who assessed the accused, as well as evidence

Culture Assessment Implemented – Cases to Date

- R.v. N.O.P. – Nov. 2013: Adult, submitted, not tested
- R.v.X. – July 2014: Youth, submitted, tested, useful
- R.v. E.S. – Nov. 2015: Youth, submitted, not tested
- R.v.K.G – Summer 2016: Adult, submitted, tested *
 - (Lana MacLean)
- R.v.J.W.A.M – October 2016: Adult, submitted, pending

Cultural Assessment Emerging Content

- The Nature of an CA
- A Note about the assessor
- Preparation and formulation
- African Nova Scotians and crime
- Criminally affected ANS communities
- Drug endangered children
- Race and MI, eg. FASD, PTSD
- Mixed race ANS
- Racial analysis of crime
- Contextualizing psychometrics and conclusions from other assessments
- Answering specific questions
- Introducing relevant literature

Culture Assessments – Emerging Themes

- Historical geographical isolation, systemic educational disadvantage, economic marginalisation
- Systemic, criminal recruitment and racialize criminal patterns
- Community displacement through relocation or gentrification
- Modern economic collapse & increased demand for education
- Particular patterns of violence and crime (incl. Black on Black*)
- Community and individual experiences of racialized violence and trauma
- Tragic family of origin issues intensified by racial location
- V64.2 Target of Adverse Discrimination . . . Sometimes by police

The Future of Cultural Assessments

- Need support for public and professional discussion and scholarship beyond cost of completing assessments
- Cost limits access – need for a funding pool
- Assert need for clinical level analysis vs. compilation of “what is known”
- Certification or training of Qualified Practitioners
- Locating “expertise” within an African Nova Scotian Justice Infrastructure – need for an Institute
- Will CA ever be an artifact of the days before courts understood and accepted cultural context as necessary component of standard assessments and reports?

The Broader Conversation

- **Confronting Race and Racism in the Criminal Justice System, March 27, 2017. LAO and R.A.C.E - Toronto**
 - <https://www.eventbrite.ca/e/confronting-race-and-racism-in-the-criminal-justice-system-tickets-32271234130?aff=es2>
- **Race and Justice: R. v. X. and the Advent of Cultural Assessments, February, 9, 2017. Calliste Lecture, Acadia.**
- **Race and Justice: R. v. X. and the Advent of Cultural Assessments, October 25, 2016. Wellesly Institute and CAMH, Toronto.**

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