

The 2017 Dr. Agnes Calliste African Heritage Lecture

Race & Justice:
R. v. X. and the Advent of Cultural Assessment

February 9, 2017

Robert S. Wright, MSW, RSW

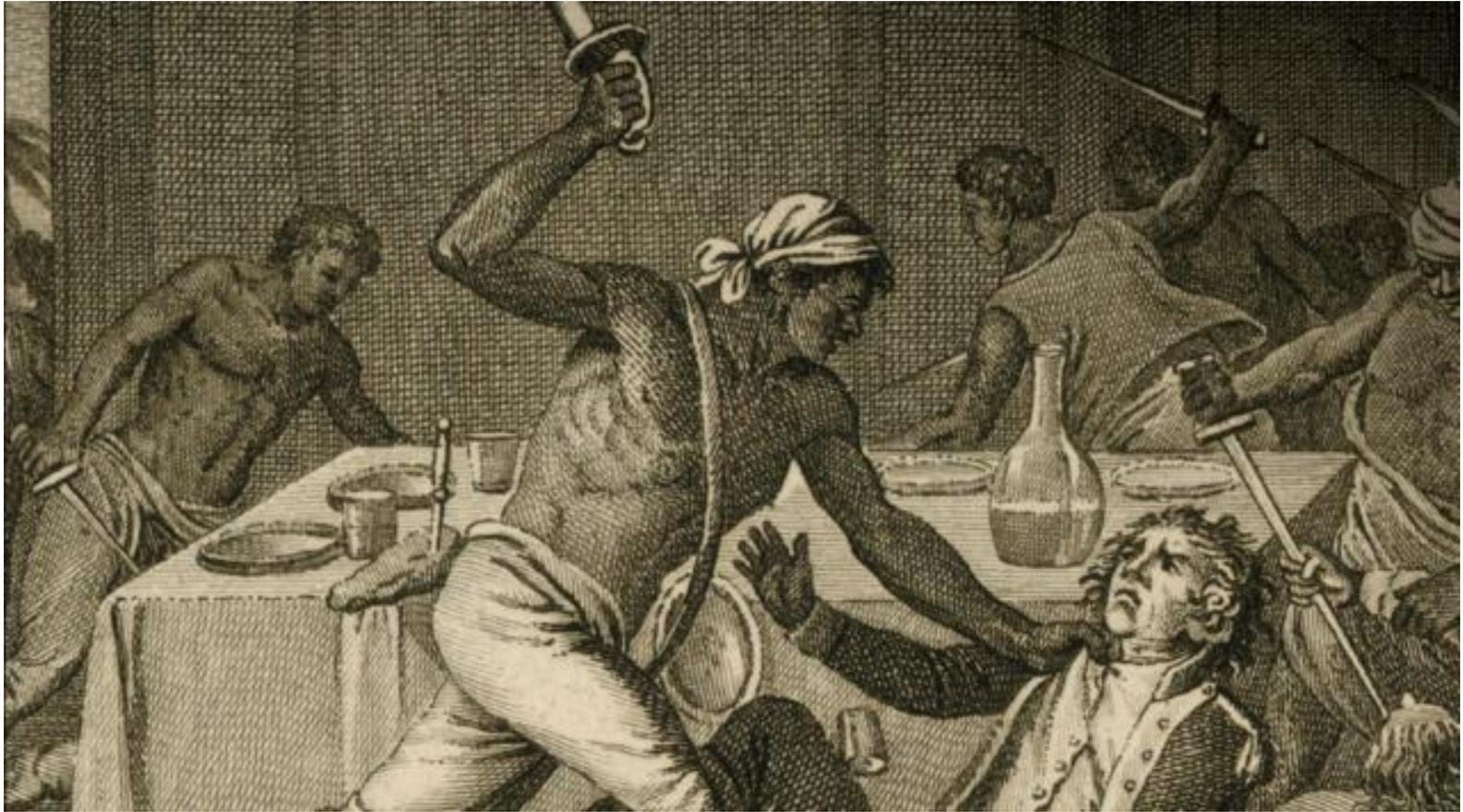
Who is Robert Wright?

- RSW Private Practitioner - Direct Practice and Forensics
- Former E.D., C&YS
- Former E.D., FCSCC
- Former Race Relations Coordinator of DDSB
- Consultant ANSMHAI
- Post-Grad Studies in Social Work & Sociology – Race, Identity, Power



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Resistance



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Resistance



Legal Foundations

Dum Diversas – 1452

Papal Bull authorizing Portugal to
conquer and enslave Saracens and
North Africans

Barbados Slave Code – 1661

Codified British North American
slave trade in the Carribean
And



Hx of African Substance Patterns

- Precolonial, culturally bounded, ritualized use:
 - Fireside use by nomadic traders
 - Hospitality shown to honored guests
 - Religious and ritualistic use
- Qat, Cannabis, fermented beverages, and a range of hallucinagens

European Trade Triangle



Sugar, Rum and People

- African persons stolen, shipped to America to farm sugar (and other crops)
- Sugar (and other crops) sent to Europe to be distilled and refined
- Foreign intoxicants (distilled alcohols) and trade goods shipped to Africa, disrupt local economy and cultural patterns of substance use
- Alcohol used as a mollifying agent to pacify enslaved Africans in America
- Entrenchment of culturally disrupted patterns of substance use among African Americans

Emancipation's Influence

- Classes of African Americans emerge
 - Rural poor – those who remain in subsistence farming
 - Urban poor – establish the foundations of inner city ghettos
 - Working class – largely urban, later form the foundation of the Black middle class

Early American Drug Attitudes

- By the late 1800's, perhaps influenced by prevalent use of morphine during civil war . . .
- Drugs – morphine, cocaine, cannabis – gain increasing popularity

Great Awakening – Temperance

- Religious revivals in late 1700's and mid 1800's create push back against growing drug prevalence
- Temperance movement created the foundation for the policy of prohibition
- Prohibition in US 1920-1933, in Canada 1918-1920's

Illegality of Substances

- Prohibition pushed urban drug and alcohol use underground
- Many speak easies and gin joints were established in African American ghettos
- White ethnic criminal organizations systematically recruit African American persons to traffic in narcotics

Cultural Paradox of Substance Use

- Growing prevalence of drug use and trafficking in White community detracts from social and economic engagement
- Despite devastating effects of drugs in ANS communities, substance trafficking provides significant economic input to historically, socially and economically excluded peoples

R. v. X.

Well reviewed in
Jon Tattrie's 4
part piece:
Colour of Justice

Judge Anne
Derrick's
decision is
available in full
online

The screenshot shows the CBC News website interface. At the top, there are navigation links for TV, RADIO, NEWS, SPORTS, MUSIC, ARTS, LOCAL, and MORE. A search bar is located on the right. Below the navigation is a banner for CBCnews Nova Scotia featuring four people's faces. A 'LIVE' indicator for CBC Radio One is also present. The main navigation bar includes Home, World, Canada, Politics, Business, Health, Entertainment, Technology & Science, and Video. The article title is 'IN DEPTH | Colour of Justice Part 1: The Crime' with a sub-headline 'They were coming after me. I'm protecting myself'. The author is Jon Tattrie, CBC News, and the article was posted on Mar 09, 2015. A photo shows a police car and a van at a crime scene with yellow tape. A sidebar on the right offers social media links and an advertisement for Porter's 10th birthday savings. A 'Listen' button is visible at the bottom left of the article content.

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IN DEPTH | Colour of Justice Part 1: The Crime

'They were coming after me. I'm protecting myself'

By Jon Tattrie, CBC News Posted: Mar 09, 2015 6:11 AM AT | Last Updated: Mar 10, 2015 1:02 PM AT

This basketball court was the scene of an April 15, 2013, shooting in North Preston. (CBC)

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Listen

Race a factor in sentencing
7:35

Nova Scotia Judge Anne Derrick recently had to make a potentially groundbreaking decision. A young man (called X in court documents) stood convicted of the attempted murder of another teenager (called Y). Should the fact that X is African Nova Scotian be a mitigating factor when she decided to sentence X as an adult, or as a youth?

The Case – R. v. X.

April 2013. X, a 16-year-old boy, shot Y, his 15-year-old cousin on the court at their local rec centre. The bullet perforated Y's bowel and chipped his spine. Amid the screaming, X ran away.



The Prosecution – R. v. X.

Prosecutor previously tried a youth who received an adult sentence. Three Psych reports found X. to be a sophisticated criminal.

Prosecutor sought life sentence.



The Defence – R. v. X.

Defence argued that “Section 34” assessments were incomplete.

Didn’t factor in what is known about race and justice.

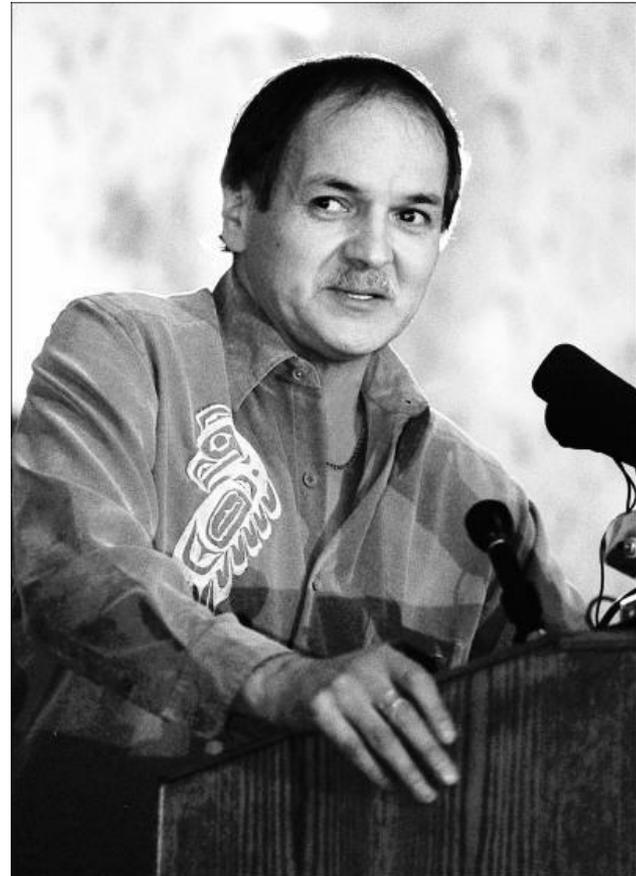
Commissioned the Cultural Assessment.



LEGAL AID
NOVA SCOTIA

Nova Scotia Context for CA: Racism in Criminal Justice System - 1989

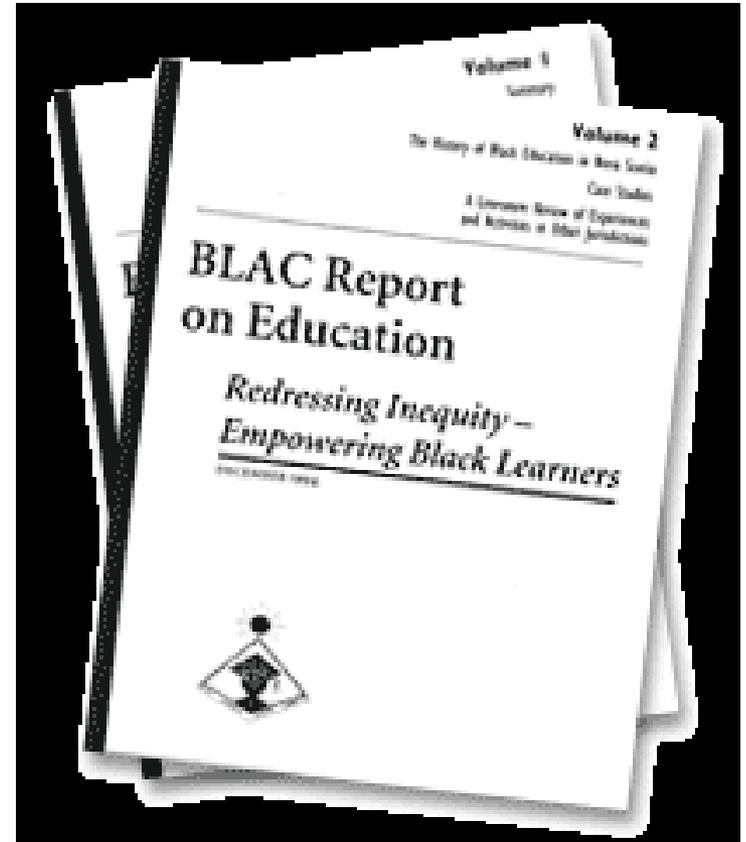
- Established clearly racism and discrimination in the criminal justice system
- Makes 82 recommendations aimed at reforming systems
- OCI's 2013 report documents overrepresentation and differential treatment of African Canadian inmates



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Nova Scotia Context for CA: Racism in Education - 1994

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



DSM-V CFI (DSM-IV-TR – 2000)

Figure. Flow of Cultural Formulation Interview domains for cultural assessment



- CFI, developed over decades, provides a logical framework for cultural formulation
- Establishes the necessity of understanding clients' cultural narratives

Nova Scotia 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: Acknowledges poor service to ANS and other cultural groups



The Diversity Task Group Report:

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

Nova Scotia 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.

Culture Assessment Conceived – 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 address Aboriginal over-representation within the criminal justice system c.1996

Culture Assessment Conceived – Gladue

- The Gladue decision and Gladue reports come from 718.2(e), sometimes referred to as “aboriginal sentencing guidelines”. The reports were designed to provide the court with a documentation of the “circumstances” to be considered.
- Given the similar overrepresentation of African Canadians under correctional supervision, and that 718.2(e) applied to **all** offenders, it was left then to simply construct a format for presenting the “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] X” has put this evidence forward 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. And it suggests that “X”’s character and maturity are still in a formative stage. Mr. Wright encountered a significantly conflicted young person, still located in his loving, pro-social family, who is struggling with his identity in the context of a criminally-impacted community that has incubated mistrust, rivalries, and violence.

Boy gets 3 years in custody for 2013 shooting

THE CHRONICLE HERALD

newsroom@herald.ca

@chronicleherald

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, pending
- R.v.J.W.A.M – October 2016: Adult, submitted, pending

Culture Assessments – Emerging Themes

- Historical, geographical isolation
- Historical, systemic educational disadvantage
- Historical economic marginalisation, poverty
- Systemic, criminal recruitment
- 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 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

- Needed to expand jurisprudence re: race and justice for African Canadians
- Often contextualizing recognized expert clinical evidence
- Need to be conducted by the most qualified practitioners
- Need to be collected and archived to be available for research and social policy ends
- Should later be an artifact of the days before courts understood and accepted as standard cultural context

RACE MATTERS

Black men fleeing the police is reasonable, Massachusetts court rules


KENYA DOWNS

Digital reporter/producer, Race Matters and education

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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 [WBUR's Zeninjor Enwemeka reports](#), the high court ruled that a documented "pattern of racial profiling of black males in the city of Boston," makes an instinctive reaction to flee reasonable.



3322



EMAIL

[T]he court noted that state law gives individuals the right to not speak to police and even walk away if they aren't charged with anything. The court said when an individual does flee, the action doesn't necessarily mean the person is guilty. And when it comes to black men, the BPD and ACLU reports "documenting a pattern of racial profiling of black males in the city of Boston" must be taken into consideration, the court said.

"We do not eliminate flight as a factor in the reasonable suspicion analysis whenever a black male is the subject of an investigatory stop. However, in such circumstances, flight is not necessarily probative of a suspect's state of mind or consciousness of guilt. Rather, the finding that black males in Boston are disproportionately and repeatedly targeted for FIO [Field Interrogation and Observation] encounters suggests a reason for flight totally unrelated to consciousness of guilt. Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity. Given this reality for black males in the city of Boston, a judge should, in appropriate cases, consider the report's findings in weighing flight as a factor in the reasonable suspicion calculus."

 Check out the full report over at [WBUR](#).

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Q & A



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Differential Cultural Experience

Differential MH and Behavioural Concerns

