© taufiq | stock.adobe.com

Black Innocence and White Accusers:

Why Black Men Need Expert Testimony About False Accusations by White Women to Get a Fair Trial

> *"It is a real calamity, in this country, for any man, guilty or not guilty, to be accused of crime, but it is an incomparably greater calamity for any colored man to be so accused."*
>
> **— Frederick Douglass, speaking to an audience that included President Ulysses S. Grant**

A man and woman met at a conference, exchanged numbers, and quickly started casually sexting. A month of hot and heavy messages, videos, and photos culminated in a sloppy one-night stand in a Manhattan hotel room. Minutes later, she texted him begging for more, referencing *Game of Thrones* to depict the scintillating tryst. Over the next few months, there was more sexting, she sent more videos, wanted more sex, and wanted to be his girlfriend. He said no. So, she stalked him. She continued to try to see him and even wrote and performed a rap song bemoaning his rejection, rhyming that they could have been Beyonce and Jay-Z if he had just given her a chance. He did not give in. Three years later, she claimed he raped her in the Manhattan hotel room. She is white. He is Black.

Trial

Despite the mountain of evidence establishing his innocence and dissolving her credibility (the texts, photos, videos, and rap song were just a start), a prosecutor charged him with rape and tried to throw him in prison for five years to life. How did the prosecutor attempt to nullify the actual evidence in the case? By the common and accepted practice of parading into the courtroom a "rape myth" expert. This expert knew nothing about the case, the evidence, or the people involved, but the expert testified to the jury that (1) there are common, widely held myths about how rape victims behave, and (2) actually *all* behavior (especially the accuser's) is consistent with being a rape victim. Essentially, the rape myth expert told the jury that they (the jurors) have subconscious, deeply held beliefs that interfere with their ability to assess the credibility of the accuser accurately. Holding up this expert like a magic talisman, the prosecutor tried to wave away the evidence and argued that the accuser *was* credible, just as the expert said.

Luckily, the jury acquitted this Black man. But by then, the damage was irreversible: years of his life were lost to this false rape charge, and his entire impressive career fell swiftly to the sword of immediate cancellation. (The woman simply went home and carried on with her life.)

Rape Myths

The concept of "rape myths" was first developed in the 1970s and was then formally defined in 1980 as "prejudicial, stereotyped, or false beliefs about rape, rape vic-

BY PRIYA CHAUDHRY AND AWAIS ARSHAD

tims, and rapists."[1] Rape myths have also been defined as "attitudes and beliefs that are generally false, but are widely and persistently held, that serve to deny and justify male sexual aggression against women."[2] Although defense lawyers routinely attempt to exclude rape myth experts, these efforts often fail because courts generally permit such testimony under the rationale that it provides jurors with critical context for behaviors by alleged victims that might otherwise appear counterintuitive. Courts have repeatedly held that expert testimony regarding rape trauma syndrome may be admitted to explain phenomena such as delayed reporting, lack of visible physical injuries, or seemingly compliant behavior by alleged victims.[3] This judicial tendency to admit "rape myth" experts leaves defense counsel with a significant challenge: the prosecution often wields these experts as tools to bolster the accuser's credibility, allowing the expert to suggest that jurors' deeply held biases could impair their ability to evaluate the accuser's credibility fairly. The expert becomes a rhetorical shield for the prosecution, enabling prosecutors to sidestep inconsistencies in the accuser's story by reframing the inconsistencies as *consistent with* "victim behavior." Because outright exclusion of rape myth expert testimony proves difficult, defense lawyers routinely find themselves in a position where they must instead focus on neutralizing the testimony through rigorous cross-examination or calling their own experts to counter the narrative presented by the prosecution.[4]

It is ironic that for decades the legal system has embraced the concept of rape myths when it comes to bolstering the credibility of accusers, meanwhile ignoring a deeper, more dangerous rape myth that has poisoned society for centuries: that Black men are inherently violent and hypersexual.[5] These stereotypes are deeply rooted in America's history and have been perpetuated through cultural propaganda, such as the infamous 1915 film *The Birth of a Nation*. The film, which was screened at the White House and praised by President Woodrow Wilson, glorified the Ku Klux Klan as saviors of white womanhood and portrayed Black men as predatory threats. In one pivotal and deeply racist scene, a white woman leaps to her death to avoid being assaulted by a Black man, solidifying the myth that Black men are inherently dangerous and white women are inherently victims — a narrative that has since been weaponized in courtrooms and beyond.

History

Worse still, this harsh truth is often ignored: When white women lie about being raped by Black men, they are believed *and* face no consequence for having lied. The history of white women falsely accusing Black men of rape has been captured in film adaptations of iconic novels,[6] extensively documented in academic scholarship,[7] preserved in Negro spiritual songs,[8] recounted in countless media stories,[9] and formally recorded by the federal government, particularly when such false accusations led to brutal, retaliatory killings.[10]

Thus, white women's manipulation of the legal system through false accusations has consistently allowed these narratives to prevail, often to mask their own consensual indiscretions. For instance, in 1906, Mabel Risley, a white woman, falsely accused Joseph Thomas, a Black man, of rape. Despite weak evidence, Thomas was convicted.[11] Years later, Risley admitted, "What is the difference if he is not the man; it is one less ni**er in the world if they hang him."

Another example is the 1943 Samuel Legions case. According to the prosecution, the fact that the alleged victim, a white woman, admitted to authorities she had sexual relations with the defendant, a Black man, was enough to prove she did not consent: "No person who was the author of her own shame would be so callous as to freely tell others about such an experience with a Negro man."[12] In certain instances, the coordinated action of an entire white community — not merely an individual — deliberately weaponized rape accusations to collectively exile an unpopular Black man.[13]

These accusations, firmly rooted in the fertile soil of centuries of racism, are readily believed by a legal system predisposed to see Black men as guilty. The Scottsboro Boys trial in 1931,[14] the brutal lynching of Emmett Till in 1955,[15] and the Central Park Five[16] are not mere historical footnotes; they are emblematic of a grim reality in which racial stereotypes are weaponized by white accusers, consistently leading to devastating consequences. It is not that white women are more likely to lie, but *when* they lie, they are *believed*. Long before "Believe Women" entered the vernacular,[17] "Believe White Women" invisibly and dangerously permeated every courtroom awaiting Black men on trial. Almost 200 years after the ceremonial end of slavery, Black men remain shackled with the presumption of guilt, particularly when accused by a white woman.

These biases are not relics of the past; they are woven into the fabric of society, continuously shaping the legal system and perpetuating injustice. Black men remain disproportionately policed, arrested, detained, prosecuted, convicted, incarcerated, sentenced, denied parole, and condemned to death row.[18]

The disproportionality is worse when the accuser is white.[19] Whether it is a woman in Michigan falsely claiming that a group of Black men kidnapped, beat, and raped her;[20] another white woman claiming a Black man kidnapped her 3-year-old and 14-month-old sons (whom she actually killed);[21] the infamous Amanda Knox accusing a Black man of the heinous murder she was initially convicted of;[22] or even a white man claiming that Black men stabbed his wife to death (the white man actually killed her),[23] in each instance, the initial story was believable because of the insidious troubling belief that a Black man is capable of such a thing. People believe the stories because they have always been told, "This is what Black men do." False allegations have meant lifetimes of imprisonment, lynchings, and, as the Innocence Project estimates, dozens of wrongful executions.[24]

Expert Testimony

Given this centuries-long condition in which the scales of justice tip dangerously against Black men, how can defense attorneys ensure a fair trial for them? One solution is for defense counsel to offer expert testimony on Presumed Black Guilt (PBG), particularly when the accuser is white. This idea sits firmly on the well-accepted practice of allowing expert testimony that directly attacks the credibility of a witness. For example, courts welcome experts on the impact of weapons on eyewitness testimony (the witness becomes less likely to correctly identify the assailant) and the phenomenon of cross-racial misidentification (members of one race are more likely to misidentify members of a different race). And this idea is a mere tiptoe from the "rape myth" experts.

Indeed, piling a rape myth expert atop the extant historic racial bias perilously tilts the scales against Black defendants, denuding them of a presumption of innocence. But a PBG expert could counter the damning impact of a rape myth expert. First, the PBG expert would explain the history, sociology, and psychology of racial bias against Black men and the statistics on wrongful convictions of Black men based on false testimony by white women. For example, according to the Na-

tional Registry of Exonerations, Black men were wrongfully convicted of raping white women in *half* of all sexual assault exonerations,[25] and a Black person incarcerated for sexual assault is three-and-a-half times more likely to be innocent than a white person convicted of sexual assault.[26] In addition, in a Department of Justice study of sex assault exonerees, where there was a white accuser, 57% of exonerees were Black and 37% were white.[27]

Second, the PBG expert would educate the jury on the fact that they (jurors) have been subconsciously programmed to believe a Black man is violent or a rapist *and* to believe it more readily when a white woman says it. Put another way, the PBG expert would tip the scales of justice back to where jurors *can* presume the Black man is innocent, *not* assume the white accuser is credible, and instead demand real evidence and proof beyond a reasonable doubt of the crime — which is what the Constitution requires of jurors anyway.

Defense counsel would have to convince the court that a PBG expert passes the relevant expert testimony standard. In U.S. state courts, two general standards presently govern the admissibility of expert testimony: the *Frye* standard and the *Daubert* standard.[28]

The *Frye* standard requires that expert testimony be based on principles that have achieved general acceptance within the relevant scientific community.[29] Without a doubt, the underlying research supporting the PBG expert's testimony satisfies this requirement. As discussed above, the long-established body of empirical studies on racial bias in criminal trials — including wrongful convictions, harsher sentencing patterns, and juror bias — has been extensively researched, peer-reviewed, and widely accepted across disciplines like criminology, social psychology, and legal studies. Historical data further reinforces these findings. For example, between 1930 and 1972, 89% of the men executed for rape in this country were Black.[30] Another study found strong evidence that Black men convicted of raping white women continue to receive disproportionately harsh penalties.[31] Given this overwhelming body of research, the general acceptance requirement of *Frye* is indisputably met.

In *Daubert v. Merrell Dow Pharm., Inc.*, the Supreme Court held that the *Frye* standard was superseded by Federal Rule of Evidence 702, which governs expert testimony. The Court promulgated a new standard for admission of scientific expert testimony, focusing on relevance and reliability.[32] Unlike the rigid general acceptance test in *Frye*, *Daubert* provides a more flexible standard that allows courts to evaluate the validity of expert reasoning and methodology based on non-exhaustive factors, such as testability, peer review, error rates, research controls, and acceptance within the expert community.[33] The PBG expert's testimony clearly meets these criteria: The body of research on racial bias in juror decision-making has been empirically tested and replicated across multiple disciplines, including criminology, psychology, and legal studies. Peer-reviewed studies have consistently demonstrated that jurors are more likely to convict Black defendants accused by white women — a conclusion supported by extensive statistical and historical data. This research is neither new nor controversial; it has been published in leading journals and scrutinized through replication studies. Thus, the PBG expert testimony satisfies both the *Frye* and *Daubert* standards — meeting the general acceptance requirement under *Frye* and fulfilling the criteria of reliability, testability, and peer-reviewed scientific validation under *Daubert*.

Because racial biases are deeply ingrained and demonstrably impact trial outcomes, the defense should call a PBG expert in all rape cases involving a Black defendant, regardless of whether the prosecution calls a rape myth expert. Doing so would not shift the burden of proof but instead undergird it. That is, the presumption of innocence means jurors may not assume any witness or accuser is telling the truth, and some would even argue that the presumption of innocence in a rape case means the jury must presume the accuser is lying. Therefore, the government must *convince* the jurors, with evidence, that the accuser should be believed. Given the pervasive role of racial bias in rape prosecutions, the need for the PBG expert is essential to safeguard the fundamental right to a fair trial.

Conclusion

Racial bias has no place in a justice system that purports to be fair and impartial. Yet, these insidious biases — whether manifested through juror prejudice, prosecutorial misconduct, or the societal stereotypes that pervade U.S. culture — continue to undermine the principle of justice for all. Without a PBG expert, Black men, particularly when accused by white women, are systematically denied the fair trials to which they are constitutionally entitled. The presumption of innocence is too easily overshadowed by deep-seated prejudices and the kryptonite power of "white tears" that distort the facts and warp the scales of justice. This is not just about achieving fairer outcomes; it is about upholding the integrity of the legal system. Without a PBG expert, the promise of justice remains a hollow one for Black men who continue to face a rigged system. Caring about justice means removing the thick thumb of racial bias from the scale, making room for the fair trial that every person deserves.

© 2025, National Association of Criminal Defense Lawyers. All rights reserved.

Notes

1. Martha R. Burt, *Cultural Myths and Supports for Rape*, 38(2) J. Personality & Social Psychol. 217 (1980).

2. Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths: In Review*, in 18(2) Psychol. Women Quarterly 134 (1994).

3. People v. Taylor, 75 N.Y.2d 277, 292-293 (1990) (holding that "expert testimony" regarding rape trauma syndrome may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand. For example, such testimony may be admissible "to dispel misconceptions that jurors might possess regarding the ordinary responses of rape victims in the first hours after their attack," or to explain why a victim who knows the perpetrator may delay reporting out of fear); (People v. Spicola, 16 N.Y.3d 441, 465 (2011), *cert. denied,* 565 U.S. 942 (2011) (holding that where there was a risk that the jury would be "puzzled" by some of the behaviors of the complainants during and after their sexual encounters with defendant, it was appropriate to admit "evidence of psychological syndromes" that would eliminate that confusion).

4. Another method for defense counsel to mitigate the prejudicial impact of rape myth expert testimony is to use *voir dire* to identify and strike jurors with racial biases, particularly those who hold preconceived notions about Black men and crime. By probing potential jurors on historical bias, implicit bias, and racial stereotypes, attorneys can deselect those predisposed to unfairly judging Black defendants or unfairly crediting white accusers. However, jury deselection alone does not usually prove to be an effective safeguard, hence the high conviction rate of innocent Black defendants.

5. Cynthia Chestnut, *Study of Internalized Stereotypes Among African American Couples*, Drexel University, 88 (2009).

6. Harper Lee, To Kill a Mockingbird

(1960). Harper Lee's book was awarded a Pulitzer Prize in 1961, and the next year was made into an Academy Award-winning film.

7. *See generally* Tracey O. Patton & Julie S. Yuly, *Any Four Black Men Will Do: Rape, Race, and the Ultimate Scapegoat*, 37 J. Black Stud. 859 (2007); Quaylan Allen & Henry S. Metcalf, *Up to No Good: The Intersection of Race, Gender, and Fear of Black Men in US Society*, in Historicizing Fear: Ignorance, Vilification, and Othering 19 (Travis D. Boyce & Winsome M. Chunnu eds., 2019); Justin L. Mann, *What's Your Emergency?: White Women and the Policing of Public Space*, 44 Feminist Stud. 766 (2018).

8. Acclaimed African American singer Billie Holiday performed her song "Strange Fruit" in 1939, which was originally written as a "protest poem, exposing American racism, particularly the lynching of African Americans." See Strange Fruit, Billie Holiday (Feb. 19, 2025, 10:04 AM), https://billieholiday.com/signa-turesong/strange-fruit/ (providing the song and its accompanying lyrics).

9. One of the best news accounts of the multitude of white women who have blamed Black men (and women) for crimes is best captured by Nsenga K. Burton, a professor of Journalism and Mass Communication at the University of Georgia, Athens. For the individual stories, *see* Nsenga K. Burton, *White Women and 'Blame a Black Man' Syndrome*, The Root (Feb. 19, 2025, 10:04 AM) https://www.theroot.com/white-women-and-blame-a-black-man-syndrome-1790889717; Eric Shorey, *White Woman Who Falsely Accused Black Men of Rape Reportedly Rolls Eyes During Sentencing*, Oxygen (Feb. 19, 2025, 10:04 AM) https://www.oxygen.com/crime-time/nikki-yovino-who-falsely-accused-black-men-of-rape-rolls-eyes-during-sentencing (providing a news story of a white woman who falsely accused two Black men of rape to garner sympathy).

10. *See generally Emmett Till*, FBI, https://www.fbi.gov/history/famous-cases/emmett-till (providing a link to the FBI's file on Emmett Till) (last visited Feb. 19, 2025).

11. Thomas, alias Wright, v. Commonwealth, 106 Va. 855 (1907).

12. Brief on Behalf of the Commonwealth at 8, Legions v. Commonwealth, 181 Va. 89 (1943).

13. Reply to Commonwealth's Attorney's motion to have Henry L. Taylor sent to Western State Hospital for observation, Commonwealth v. Henry Taylor, (Cir. Ct. of Westmoreland Cnty., Va. 1932) (Court Papers, 1932 File).

14. Powell v. Alabama, 287 U.S. 45 (1932).

15. *See Emmett Till*, FBI (last visited Feb. 19, 2025), https://www.fbi.gov/history/famous-cases/emmett-till (providing a link to the FBI's file on Emmett Till). The murder of 14-year-old Emmett Till, by Roy Bryant and his half-brother J.W. Milam, is the most well-known case of a Black man killed because of a false reporting of a crime by a white woman. Allegedly, Till whistled at Roy Bryant's wife, Carolyn, and was kidnapped, beaten, shot in the head, and had a large metal fan tied to his neck with barb wire, and thrown in the Tallahatchie River. Not only were Bryant and Milam never convicted for the crime, but there has also never been one single piece of proof that Till violated the white supremacist custom that he was killed for — perhaps making his murder the most famous case of a Black man falsely accused of a crime by a white woman.

16. *See* Sarah Burns, The Central Park Five: The Untold Story Behind One of New York City's Most Infamous Crimes (2012).

17. Kimberly K. Ferzan, *#BelieveWomen and the Presumption of Innocence: Clarifying the Questions for Law and Life*, U. Pa. Faculty Scholarship 2720 (2021).

18. Becky Pettit & Carmen Gutierrez, *Mass Incarceration and Racial Inequality*, 77 Am. J. Econ. & Sociol. 1153 (2018).

19. Kitty Klein & Blanche Creech, *Race, Rape and Bias: Distortion of Prior Odds and Meaning Changes*, 3 Basic & Applied Soc. Psychology 21 (1982).

20. Angela B. Helm, *Mich. Woman Who Lied, Saying 4 Black Men Kidnapped, Raped Her, Gets Year in Jail*, The Root (Feb. 13, 2025, 10:04 AM), http://www.theroot.com/mich-woman-who-lied-saying-4-black-men-kidnapped-rap-1790857261.

21. Elizabeth Chuck, *Susan Smith, Mother Who Killed Kids: 'Something Went Very Wrong That Night,'* NBC News (Feb. 13, 2025, 10:04 AM), https://www.nbcnews.com/news/us-news/susan-smith-mother-who-killed-kids-something-went-very-wrong-n397051.

22. Mark Townsend & Daniel Boffey, *Amanda Knox Is Free Because She's Rich and American, Says Patrick Lumumba*, The Guardian (Feb. 13, 2025, 10:04 AM), https://www.theguardian.com/us-news/2015/mar/28/amanda-knox-free-rich-american-patrick-lumumba-meredith-kercher-murder.

23. *Man Convicted in Killing He Accused Blacks of Committing*, N.Y. Times (Feb. 13, 2025, 10:04 AM), https://www.nytimes.com/1992/08/16/us/man-convicted-in-killing-he-accused-blacks-of-committing.html.

24. *Innocence and the Death Penalty*, Innocence Project (Mar. 21, 2022), https://innocenceproject.org/innocence-and-the-death-penalty/.

25. Samuel R. Gross et al., Race and Wrongful Convictions in the United States, Nat'l Registry of Exonerations 11-12 (2017).

26. *Id. at* 11.

27. *Id. at* 12.

28. Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923); Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 588-89 (1993).

29. *Frye*, 293 F. at 1014.

30. Marvin Wolfgang, *Racial Discrimination in the Death Sentence for Rape, in* Executions in America 109, 113 (William J. Bowers ed., 1974).

31. Gary D. LaFree, *The Effect of Sexual Stratification by Race on Official Reactions to Rape*, 45 Am. Soc. Rev. 842 (1980). *See generally* Jennifer Wriggins, *Rape, Racism, and the Law*, 6 Harv. Women's L.J. 103 (1983).

32. *Daubert*, 509 U.S. at 589-92.

33. *Id.* at 593-94. ■

About the Authors

Nationally recognized as a premier criminal trial lawyer, Priya Chaudhry has taught Trial Advocacy at the Harvard Law School. With over 50 jury trials in some of the nation's most high-profile cases, her accolades include *Chambers and Partners*, *Super Lawyers*, *The Hollywood Reporter*, and *Forbes*.

Priya Chaudhry
ChaudhryLaw PLLC
New York, NY
212-785-5550
Email priya@chaudhrylaw.com
Website www.chaudhrylaw.com

Awais Arshad is a criminal defense attorney at ChaudhryLaw, a Fulbright Scholar, and licensed to practice in multiple jurisdictions, including New York, England & Wales, and Pakistan. He has conducted numerous trials and has also worked as an appellate attorney.

Awais Arshad
ChaudhryLaw PLLC
New York, NY
212-785-5550
Email awais@chaudhrylaw.com
Website www.chaudhrylaw.com