In the Public Interest

Volume 8 | Number 1

4-1-1988

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Jay Lippman

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THE ADMISSIBILITY OF EXPERT TESTIMONY ON INTERRACIAL CONFLICT IN NEW YORK STATE SELF-DEFENSE CASES

by Jay Lippman

I. INTRODUCTION

Should criminal trial judges allow expert testimony on the socio-psychological aspects of interracial conflict? A trial court admitted such testimony in People v. Longmire. In Longmire, a young black college student was indicted for the murder of a white youth and the attempted murder of another. Ronald Longmire claimed that these victims and four other white youths confronted him in his dormitory room and threatened to kill him. In self-defense he reached for an object, a knife. Longmire feared for his life. During the ensuing struggle over the knife two of the attackers were stabbed.

At trial, upon the motion of Longmire's attorney (Paul Cleary, Esq.), the trial court allowed expert testimony on interracial conflict. The jury acquitted Longmire of homicide and attempted homicide charges, apparently considering evidence of interracial conflict in its decision. The expert's testimony may have enabled Longmire to under- mine the prevalent societal perception of Blacks as "niggers with knives," who are guilty of all crimes for which they are charged because of race.

This article will examine Longmire closely and attempt to determine why a defendant like Longmire needs expert testimony on interracial conflict to secure a fair trial and exoneration. The legal basis for the admissibility of this evidence will then be discussed. Finally, it will be argued that in self-defense cases involving interracial conflict, a trial judge should allow evidence pertaining to interracial conflict from a black defendant's perspective, but not from a white defendant's position. This discussion will be applied to the celebrated Bernhard Goetz case in which a white man was acquitted of attempting to murder and assault four black youths who accosted him on a New York City subway train. As in Longmire's case, the initial reaction to the Goetz incident by most Americans was that a white man was the innocent victim of hostile and violent blacks.

There has been an increase of white mob violence against blacks and other minorities and racial prejudice seemingly runs rampant. Therefore the probability of a case similar to Longmire occurring again is high. Hence, a discussion of the use and admission of expert testimony on interracial confrontation is appropriate in order to vitiate prejudice and secure justice.

II. LONGMIRE

A. Case Facts

In the early morning hours of October 21, 1984, Ronald Longmire, a twenty-one year old student at State University of New York at Buffalo, was sobbing in his dormitory room. A female companion was with him. Suddenly, five to six white youths, friends of Boulware, entered the room. The group entered the small room ostensibly to retaliate against Longmire because of the fight. Scott Allen, the nineteen year old brother of Howard and Craig, entered Mr. Longmire's room with a tire iron, which Mr. Longmire did not see. One of the attackers was stabbed.

Jay Martin Lippman received his J.D. degree from the State University of New York at Buffalo in May of 1987 and has since been admitted to practice in New York State.
youths, Howard Allen, 21, approached Longmire and began to choke him with a "half-nelson" hold.14 Pushing and shoving ensued.15 Longmire reached for the steak knife.16 Howard Allen clamped his free hand on the hand of Longmire which contained the knife.17 As the two grappled over the knife, an intoxicated Craig Allen, 18, Howard's younger brother, and William Drmacich, 20, approached Longmire.18 Both were stabbed.19 Craig Allen received a fatal wound to the heart.20 Drmacich was cut in the abdominal area, and survived.21 Howard Allen would later testify at trial that Longmire angrily told him, "I could cut you, too, white meat!"22 Longmire was subsequently arrested and charged with several offenses including murder and attempted murder.23 On December 17, 1984, a Buffalo grand jury issued a six count indictment. Two of those counts accused Longmire of murder and attempted murder.24

Immediately after the incident the Buffalo media covered the case with an obvious slant toward the slain youth and against Longmire. The media sought reactions from the youth's parents and friends.25 These people claimed that the deceased was a model citizen who never looked for trouble.26

In contrast, the media mischaracterized Longmire as a college drop-out.27 The media failed to report that the University of Buffalo had banned Longmire from its campuses.28 Also, the media did not state that Longmire was just as, if not more, respected in his community as the dead youth was in his.29

B. Crucible
1. The trial
On February 10, 1986, Longmire's three and one-half week trial commenced in Erie County Supreme Court.30 An all-white jury was impaneled over the objections of defense attorney Paul G. Cleary.31 Essentially, the prosecution's theory of the case was that Longmire had the specific intent to kill his victims. The People attempted to characterize Longmire as an aggressive individual who intentionally stabbed the two youths.32 In fact, one of the white participants testified that Longmire challenged the deceased Craig Allen: "Take your best shot! You and me right here!"33 Another stated that Longmire lunged at the decedent with the steak knife.34

As expected, Longmire claimed that he acted in self-defense.35 He testified that he feared that the intruders were going to kill him. At least once, another member of the group threatened, "Let's kill his ass!" Longmire's reaching for the knife was a defensive measure to ward off his assailants.36

2. The quandry
Even though the facts gave rise to a plausible self-defense claim, Cleary (Longmire's attorney) was not confident that the jury would acquit Longmire. First, Longmire's jury was all white. Cleary was concerned that the jurors would not believe Longmire's story. This jury, imbued with white society's racist presumptions, might have viewed Longmire as a "typical, violent Black." Longmire's conduct was reconcilable with these stereotypes. It might have been very difficult for the jurors to believe that the youths were the initial aggressors given the assumption that "Blacks are more prone to violence than Whites."

Second, a Black killed a White. The white jurors might have been more sympathetic to one of their own (the slain Craig Allen) than to a Black (Longmire).

Third, this crime might have horrified the jury more so than a Black on Black confrontation or one in which a White kills a Black. Studies indicate that black defendants, especially those with white victims, tend to be acquitted less often and receive more severe sentences. Killers of Whites are sentenced to death more frequently than killers of Blacks. In fact, from 1982 to 1985 those jurisdictions studied did not execute a white for the slaying of a Black.37

The Longmire case was an "underdog" case. To win, Cleary had to overcome societal perceptions of crime. These perceptions operate in favor of white defendants and against black defendants — particularly those Blacks who commit crimes against Whites.38 The Buffalo media portrayed Craig Allen as a sympathetic white victim of a crime and Longmire as a violent black perpetrator, which was only a reflection of societal attitudes and perceptions.

Also, Cleary noted how the public responded to Bernhard Goetz's conduct. Without considering the evidence which undermines Goetz's self-defense claim, many Americans hail Goetz as a hero.39 He struck back against violence, as personified by his black attackers.40 If this was (and is) a prevalent attitude, then the odds for Longmire's acquittal were low.

What could Longmire do to avoid a wrongful conviction? How could Longmire convince his all-white jury that he was not "another nigger with a knife" but an individual who had a justifiable and reasonable fear for his life? Indeed, Longmire testified in his own defense and explained to the jury his fears. The jury had an opportunity to hear an intelligent, non-violent individual present his case. But, was Longmire's testimony enough?

3. Expert testimony on interracial conflict
With an eye toward the battered women cases in which the defendants use expert testimony to explain why women battered by their male victims kill in self-defense,41 Cleary and Longmire summoned an expert.42 The expert was Dr. Charles P. Ewing, a licensed psychologist and law professor at the State University of New York at Buffalo.43 Dr. Ewing testified that it was reasonable for Longmire to fear that his white attackers were about to kill or maim him.44 Longmire's life experience as a Black in a country with a well-documented history of white mob violence against Blacks gave rise to this reasonable belief. In addition to testifying on interracial conflict, Dr. Ewing testified
on two other socio-psychological phenomena.

One such phenomenon was the psychology of fear. This body of thought distinguishes between a fear-induced response to external stimuli and an aggression-induced response to the same stimuli. Dr. Ewing testified that Mr. Longmire’s act of self-defense was based on fear-induced response emanating from the interracial confrontation in Mr. Longmire’s living space.

The other area concerned psycho-physiological arousal. Dr. Ewing stated that the mind and body respond differently to the same external stimuli. Mr. Longmire testified that he had calmed down after the fight with his roommate and before the confrontation with his white assailants. However, although Mr. Longmire’s mind may have calmed down, his body may not have calmed down as quickly. This is because the body recovers slower than the mind after exposure to external stress. Thus, Mr. Longmire’s body was still more susceptible to arousal when the white youths entered his room. Directly referring to Professor Ewing’s testimony during his summation, Cleary asked the all-white jurors to consider the fear each of them would have experienced had they been accosted in their homes by a band of black youths.

4. The verdict

On March 4, 1986, the jury returned its verdict acquitting Longmire of all counts save for the one entailing the fight with his roommate. The jury exonerated Longmire of murder, attempted murder and all lesser included homicide convictions in Mr. Longmire’s living space.

But, to what extent did Dr. Ewing’s expert opinions influence the jury? Defense attorney Cleary had informal contact with three jurors within three months of the verdict date. These three all concurred that the expert’s testimony helped to convince the jury that Mr. Longmire’s conduct was justified and that the young Black was innocent. Apparently, Dr. Ewing’s expert testimony on interracial conflict from a Black’s perspective countered societal stereotypes perhaps held by the jurors and fostered by the prosecutor’s portrayal of Longmire. Such testimony helped to indeed undermine the notion that all Blacks have a natural predisposition to violence and do not fear for their lives. Also, this testimony articulated a sociopsychological experience of which the jury and even Longmire might not be aware.

However, there is no New York State precedent supporting the admissibility of expert evidence on interracial conflict from a Black’s perspective. Nationally, there is only one authority supporting admissibility. A New Mexico Court of Appeals decision ruled that a trial court erred in barring expert testimony on Blacks’ general fear of, and the particular black defendant’s own fear of the police. Therefore, the Longmire court broke new ground when it decided to admit Dr. Ewing’s testimony. Unfortunately, the court did not issue a legal opinion. Given the present racial climate in New York State, it is unfortunate that a prospective black self-defender in an interracial case will not have the benefit of a judicial opinion ruling for the admission of helpful and critical expert testimony. This article is an attempt to provide defense counsel with a legal basis from which to argue for the admissibility of this evidence. And, hopefully this will help future Paul Clearys to secure justice for their clients, the Ronald Longmires of New York State.

III. EXPERT TESTIMONY ON INTERRACIAL CONFLICT FROM A BLACK’S PERSPECTIVE

Expert testimony on interracial conflict from a Black’s perspective addresses two different mental states. The first is that of the black defendant who has learned to fear Whites. The second is that of the average American jury, dominated by Whites who stereotype Blacks as individuals naturally predisposed to violence. Such a jury may have an inherent bias in favor of Whites.

A. The black defendant’s state of mind

Research and observation establish that “white racism is and has been responsible for the physiological, sociological, and psychological genocide of third world people.” In the United States this racism has manifested itself in many forms ranging from random attacks on Blacks by such blatantly racist groups as the Ku Klux Klan, to more subtle discrimination in the job market. Over time Whites have attempted to prevent Blacks from attaining full equality with Whites. In the 1960s Whites countered black civil rights protests and marches against police brutality of Blacks with unjustifiable and unreasonable violence. A notion of White Supremacy survives.

Such degrading conduct and attitudes have shaped black attitudes toward and perceptions of Whites. Blacks have come to hate, fear, and mistrust Whites. These emotions are products of both past and present white treatment of Blacks.

In a case like Longmire’s in which Whites were the initial aggressors and a Black was the self-defender, white tormentors were physically and psychologically assaulting their historical victim. In such a case, the history of White mob violence against Blacks becomes all too real for Blacks. Blacks may fear for their lives or bodily safety not only because white youths pose a physical threat, but also because of fear shaped by history.

B. The jury’s state of mind

Unquestionably, perceptions play a role in the guilt determination process. Studies indicate that Whites, who predominantly sit on American juries, are more likely to attribute guilt to a black defendant. The “own race effect” plays a role in jury verdicts. Social scientists have noted that a juror is more likely to convict a defendant who is not a member of her race. A defendant who is a member
of the juror's race is more likely to be acquitted. This effect will operate in marginal evidence cases. Therefore, the average white jury in most cases, will acquit a white defendant and more readily convict a black one.

C. The subject of the expert's testimony

The expert, who may be a psychiatrist or a socialscientist, might discuss and articulate the black defendant's own fears of his white aggressors. The expert may testify on how history played a role in shaping the defendant's fearful state of mind. Also, the jury may learn why Blacks generally fear and mistrust Whites. In sum, the expert could present evidence which, if believed, could prove that the black defendant's conduct was reasonable and justifiable.

D. Why an expert?

Clearly, there are risks in resorting to expert testimony on interracial conflict from a Black's position. First, the jury might believe that testimony on this subject matter implies that there is a separate defense for Blacks. Blacks may have the right to kill Whites whether or not Blacks act in self-defense. Already bent on finding the black defendant guilty, the jury might not be willing to afford such a right to any black defendant, particularly to the black killer of a White.

Secondly, the jury might be generally suspicious of experts. The jury might feel that it is capable of reaching a verdict without the help of an expert. Implicitly, courts may be supporting this view when they disallow expert testimony on the battered woman syndrome. One of the reasons for inadmissibility is that such testimony invades the province of the jury. As fact-finders, jurors can assess the defendant's fear using their common sense and experience. Expert testimony prevents jurors from performing their role as fact-finders by removing from the jurors an assessment of guilt. In the battered woman cases this assessment involves the reasonableness of the woman's fear.

In roughly two-thirds of the battered women cases in which courts admitted expert testimony on the battered women syndrome, the women defendants were found guilty of homicide. According to Professor Ewing, such testimony does not guarantee acquittal, and in fact, may hurt the accused.

Despite these risks, there are benefits. The expert may be testifying on a socio-psychological phenomenon of which the black self-defender may be unaware. This defendant may not know that her fear of her white assailants may have been shaped by the history of racial discrimination in the United States. Or, if the defendant is aware, she may be unable to articulate the effect of this fear. The jurors may not believe the black defendant's own self-defense contention because of race. But, after hearing the expert's testimony, they may disregard their bias against Blacks. The expert evidence may demonstrate to the jurors that the accused's conduct was reasonable and justifiable.

The racial bias of the jury may preclude the jurors from reaching this conclusion without expert evidence.

Finally, expert testimony could furnish the jury with additional information about the defendant. Such information might include the effect of the history of racial oppression on the defendant's state of mind. With this information in hand, the jury would no longer consider the fate of a Black without understanding the palpable fear of white attackers. Studies indicate that the likelihood for acquittal would be greater in such cases if expert evidence was presented.

IV. THE ARGUMENTS FOR THE ADMISSIBILITY OF EXPERT TESTIMONY ON INTERRACIAL CONFLICT FROM A BLACK'S PERSPECTIVE

A. The New York State self-defense statute

Under what legal principles may a trial judge admit such testimony? First, the judge must consider the applicable New York State self-defense statute:

A person may not use deadly physical force upon another person [] unless:

(a) He reasonably believes that such other person is using or about to use deadly physical force. [emphasis added]

Under this statute, one of the critical elements is the reasonable belief of the defendants. This belief provides a clue as to the accused's state of mind during the attack. New York State's highest court, the New York State Court of Appeals, has ruled that the perceptions, the state of mind of the participants to the encounter, are critical to the claim of justification. Hence, the defendant's mental state is dispositive in a self-defense case and is an issue which the trier of fact must fully explore.

What standard is applied to determine the defender's mens rea? The New York State Court of Appeals has promulgated the standard to determine the self-defender's mental state and the reasonableness of her beliefs with respect to the self-defense statute. A jury must consider the circumstances facing the defender before she resorted to deadly force. Also, the finder of fact must weigh the accused's prior experiences and the physical attributes of the parties involved. The impact of these factors on the defendant's beliefs must then be examined. Finally, the jurors must consider "in light of all the 'circumstances,' if a reasonable person could have had those beliefs."

B. The admissibility arguments for expert testimony

1. Relevance

In People v. Goetz the Court of Appeals held that a jury must examine the defendant's prior experiences and
the physical characteristics of the persons involved to evaluate the accused's self-defense claim.69

In a Longmire-type case the expert would address two points. First, the expert would discuss how the defendant's experiences as a Black growing up in the country with a history of white violence against Blacks shaped her fearful mental state during the subject encounter. Secondly, the expert would testify that the physical characteristic of race significantly influenced this state of mind. Pursuant to the interracial confrontation theory, the fact that the accused is black and the attackers are white goes to the core of this concept.

This argument addresses the relevance issue.70 Relevance is one of the two basic theories of evidence.71

Under this theory, an attorney could argue that expert testimony on the defendant's state of mind relates to her fears and beliefs. Moreover, this evidence would demonstrate how the defendant's life experience as a persecuted American Black rendered reasonable her belief of impending death or serious bodily harm.

2. The admissibility of expert testimony on interracial conflict

a. State of mind expert testimony

The other basic theory is that of admissibility.72 Central to the admissibility question is People v. Cronin.73 Cronin held that expert testimony on the defendant's mental state is admissible.

Cronin was charged with burglary and other related offenses. During the commission of those offenses, Cronin was acting under the influence of valium and alcohol.74 At trial the prosecution claimed that the accused had the capacity to form the requisite states of mind for the subject offenses.75 The defense attempted to rebut this theory by submitting expert testimony. Such testimony would have shown whether Cronin could have formed the specific intent to commit these crimes. The Monroe County trial court ruled that the expert could testify on the general subject of combining alcohol and valium. The expert could not opine as to whether the defendant, while acting under the influence of these drugs, could have formed the requisite intent.76 The Appellate Division, (Second Department), New York State's intermediate appellate court, upheld the lower court's decision.77

But, the Court of Appeals reversed.78 Experts could testify on the ultimate factual issues in a case, and in Cronin that ultimate issue pertained to the defendant's ability to form the required mens rea.79 The Court held that "ultimate issue" testimony was permissible: "... so long as the facts cannot be stated or described to the jury in such a manner as to enable them to form an accurate judgment thereon, and no better evidence than such [expert] opinions is attainable."80 Although the jury could have understood how alcohol alone could have affected Cronin's state of mind, the jurors might not have been able to comprehend the impact of combining alcohol with a controlled substance such as valium.81 Such testimony was deemed beyond the jury's ordinary training and experience.82 Thus, the expert could testify on the ultimate issue: whether the defendant himself had the capacity to formulate the required mens rea. Such testimony would not usurp the jury's fact-finding mission.83 Additionally, the defendant was entitled to admission because the prosecution deemed Cronin's state of mind dispositive. It was unfair that the trial court barred Cronin's opinion evidence on the defendant's state of mind but permitted the People to broach the subject of Cronin's mental state.84

Using Cronin as the "centerpiece," the lawyer can readily address the requirements for the admissibility of the expert's testimony.

b. The requirements for admission

In a self-defense case there are three requirements for admission. First, the expert must testify on a socio-psychological phenomenon beyond the jury's ordinary training and intelligence.85 Second, the expert must testify in a non-normal justification case.86 Finally, the expert must discuss subject matter sufficiently developed to permit a reasonable opinion to be asserted by an expert.87

Courts throughout New York State have admitted expert evidence on various socio-psychological phenomena. Among such phenomena are the battered women syndrome,88 the stress and disorientation encountered by Laotian refugees in attempting to assimilate into American culture,89 eyewitness repression phenomena,90 and untimely disclosure of child sexual abuse.91

To gain admission, the profferer of the testimony must demonstrate that the evidence depends on technical knowledge or skill not within the range of ordinary training and intelligence.92 An expert "must explain an arcane subject, not otherwise readily comprehensible to a jury of lay persons."93

(1) The battered women cases

In these cases this arcane subject is the battered women syndrome.94 Courts cannot assume that the jury will understand why the battered woman fails to leave her tormentor.95 Such testimony counters the notion that the woman is a masochist who invites her abuse.96

(2) Laotian stress

In People v. Aphaylath the Court of Appeals held that a trial court committed reversible error when it excluded expert testimony on the stress and disorientation encountered by Laotian refugees in attempting to assimilate into American culture.97 Mr. Aphaylath became enraged when he saw his wife displaying affection to another man. Mr. Aphaylath killed her and was indicted for second degree murder. The defendant attempted to adduce expert evidence. The expert would have stated that when such affection is displayed in Laotian culture, the spurned
lover/husband feels enough shame to compel him to lose control. Aphaylath argued that this testimony was relevant to his contention that he killed because of an extreme emotional disturbance.\textsuperscript{48}

The Court of Appeals reversed the trial court's decision to exclude this testimony and the Appellate Division's (Fourth Department's) affirmance thereof. The bar had inimissibly hampered the defendant's ability to present adequately his defense.\textsuperscript{99} The Court followed the opinion of the Fourth Department's lone dissenter, Justice Schnep,\textsuperscript{100} Justice Schnep supported admission. He argued that such testimony is relevant and beyond the jury's training and experience.\textsuperscript{101}

c. Expert testimony on interracial conflict from a Black's perspective

In light of the battered women cases and Aphaylath, a defense attorney can make several arguments for admission. Some of these contentions parallel those made by the defendants in these two kinds of cases. First, the lawyer might turn to \textit{State v. Brown}.\textsuperscript{102} In \textit{Brown} the New Mexico Court of Appeals deemed admissible expert testimony on the black defendant's fear of the police. The defendant was charged with resisting arrest. The trial court barred such evidence. The expert would have testified that the black defendant would have most likely feared the police. Such fear rested on Albuquerque Blacks' perception that police are a threat to racial minorities. \textquoteleft \textquoteleft[T]he defendant's fear of the police was relevant to whether [the] defendant believed he was in imminent danger of bodily harm — an element of self-defense.'\textsuperscript{103}

In a Longmire-type case the expert would testify that the black defendant's fear of Whites was relevant to his belief that he was in immediate danger of bodily harm. This belief is a vital element under New York State law. In \textit{Goetz} the Court of Appeals held that a jury must apply the reasonable person standard to assess the defendant's self-defense claim. The jury would evaluate this claim by applying community standards. Therefore, an expert may be extremely necessary to the black self-defender because American society tends to perceive Blacks as incapable of living up to white standards. Denial of expert testimony to explain the black self-defender's conduct could unduly prejudice the black defendant.\textsuperscript{104} Hence, the trial court should admit expert testimony in accordance with self-defense law and \textit{Brown}'s teachings.

A Black's fear of Whites would be a socio-psychological phenomenon beyond the all-white jury's comprehension. Such a jury might be unable to grasp the meaning of fear as conditioned by the history of white racial violence against Blacks. And again, the white jurors would be likely to perceive any Black as violent.

Essentially, this argument hinges on the jury's racial composition. Would this contention change if one or more Blacks serve on a jury? Not necessarily. In the battered women cases trial courts have admitted opinion evidence on the battered woman syndrome despite the high likelihood that one or more women would sit on the juries in these cases. Expert testimony is allowed even though female jurors might understand male domination and brutality from a woman's perspective.

In Longmire's case, not one Black sat on the jury. In areas where there are few Blacks, the likelihood for the impaneling of an all-white jury is quite high.\textsuperscript{105} And, even if there are one or more black jurors, there would be no assurance that these Blacks would or even could understand that defendants like Longmire harbor a fear of hostile Whites. Moreover, without the aid of expert testimony there would be no guarantee that the black jurors could understand how Blacks' socio-psychological orientation in the United States produces this fear.

In fact, Ugwuegbu notes that in marginal evidence cases Blacks also are more inclined to ascribe guilt to Blacks than to Whites.\textsuperscript{106} Therefore, a black defendant may need an expert to overcome this ascription in cases wherein an all white, integrated or all black jury sits.\textsuperscript{107}

Both battered women cases and Longmire-type cases re-enact history. In the former, this history involves an abusive male who overpowers and "conquers" his female.\textsuperscript{108} Historically, white males in the United States have inflicted bodily and psychological harm on women and Blacks. Such harm has had an impact on the socio-psychological conditioning of both classes of victims.\textsuperscript{109} These victims have learned to fear their tormentors. Such fear may influence their responses to violence initiated by their white (male) tormentors.\textsuperscript{110}

In the battered women cases these facts constitute a sufficient basis for admission of expert testimony. Likewise, in Longmire-type cases, these facts operate and support an argument for admission. Expert testimony is needed to explain what kinds of historical forces may have impelled the defendants in these cases to attack and kill their aggressors. A jury must consider the physical attributes of all the participants in the respective cases and the defendants' life experiences and states of mind.\textsuperscript{111} In these two classes of cases race, sex, and history are factors which a jury must weigh. An expert can expound on these areas to facilitate such weighing.

In the battered women cases, trial courts have recognized the history of discrimination, admitting that woman's fear and the batterer's conduct are the product of our nation's history of sex discrimination and male domination of women.\textsuperscript{112} Expert testimony explains to the trier of fact how this history shapes the woman's fear of her abuser and consequent course of action.

If courts are willing to take judicial notice of the history of sex discrimination, they should also acknowledge the history of racial discrimination and white mob violence against Blacks. Hence, courts should admit an expert who can explain — much like her counterpart in the battered women cases — how the influence of such history on a black defendant's state of mind and subsequent conduct.
resulted from contact with the accused's assailants.

The admission of expert testimony on interracial conflict from a black defender's perspective is just as, if not more, compelling than the admission of an "Aphaylath-type" expert. American Blacks have faced stress inflicted by whites for a longer period of time than Laotians. White mob violence against Blacks is still widespread. During 1986 and 1987 there was an increase in the number of New York City racial bias incidents or, in the number of reports of these incidents. The United States Supreme Court has deemed Blacks a "suspect" class under the Fourteenth Amendment because of racial discrimination in this country. The Court has not afforded such status to Laotians. Thus, if the Court of Appeals is willing to allow expert evidence on stresses encountered by a non-suspect class, a trial court should admit such evidence addressing the stresses of a suspect class.

In Longmire the State made interracial conflict an issue. The prosecution adduced testimony that the defendant made racial remarks against a white attacker. One of the youths testified that Longmire told him: "I could cut you, too, white meat!" Essentially, the People portrayed a situation of the youths testified that Longmire told him: "I could cut you, too, white meat!" Essentially, the People portrayed a black youth who was hostile and acted violently toward Whites. This view could have confirmed the jurors' perception of Blacks as being violent and hostile toward Whites.

Barring expert evidence would unduly prejudice a Black defender. In Cronin the Court of Appeals held it unfair that a trial court allowed the State to present a picture of the defendant and excluded expert testimony to counter such a portrayal. Moreover, exclusion may prevent the defendant from adequately presenting her defense — also a concern of the Court.

3. The Section 60.55 obstacle and non-normal justification cases

If an attorney decides to call an expert to testify, she probably would want the expert to interview and examine the defendant. At trial, the expert may testify as to what the defendant said during his interview. The defendant's statements made to the expert could support the expert's scientific conclusions. However, these statements might be inadmissible under the New York Criminal Law [cited as "CPL"].

CPL Section 60.55 proscribes the admission of such statements unless they are made to a psychiatrist or licensed psychologist. More importantly, these remarks must pertain only to the defense of lack of criminal responsibility, by reason of mental disease or defect. At first blush it appears that expert testimony not addressing a mental disease or defect is impermissible.

In People v. Hamel, the Appellate Division, Third Department so construed Section 60.55. In fact, the Hamel Court held that a court must not only bar any out-of-court statements which the defendant has made to the expert, but also the expert testimony itself. Exclusion must be the rule in cases wherein the defendant fails to advance a claim of mental disease or defect.

How can the defendant overcome such an obstacle? Clearly, the defense attorney in an interracial self-defense case, is not claiming that a mental disease or defect compelled his client to defend himself by use of deadly force. Rather, the accused Black's life experience produced a fear for his physical safety. This fear leads the defendant to defend himself. Such a fearing state of mind and conduct were not the products of a mental disease or defect.

The racial-fear argument parallels that offered by defendants in battered women cases. In these cases, there is not a claim that the woman act under the influence of a mental disorder. The woman's defensive conduct is the product of a fear shaped by continuous physical, psychological, and emotional abuse.

In the battered women cases New York State trial courts have admitted expert testimony on the battered women syndrome, Section 60.55 notwithstanding. In admitting expert testimony on the syndrome, a Bronx County trial judge noted that admission is not predicated on the defendant asserting that a mental disorder led to the alleged criminal act. Circumventing the constraining language of Section 60.55 and Hamel, the judge implicitly held that if the defendant claims her case to be a "non-normal" justification case, expert testimony on arcane socio-psychological phenomena is admissible.

Precisely what constitutes a non-normal justification case is a bit unclear. Perhaps, such a case involves the operation of complex socio-psychological phenomena. If this is the definition of a non-normal justification case, then a Longmire-type defendant must prove to his trial court that his expert will testify on such phenomena. The fear conditioned by the defendant's black life experience may qualify.

4. The development of the study on interracial attitudes from black perspectives

At trial the black self-defender must show that his expert will testify on subject matter that is sufficiently developed to permit an expert opinion to be rendered. There is an extensive amount of literature and data addressing black perspectives on Whites. Additionally, here are numerous works on the history of racial discrimination in America and on interracial attitudes generally.

For example, in Black Rage, Grier and Cobbs detail how Blacks have come both to fear and hate Whites because of Whites' degradation of and infliction of violence on American Blacks. In Listen, White Man, I'm Bleeding, Crewsome graphically illustrates how Whites' prejudicial attitudes manifested themselves in the hunting, capturing, and torturing of a Black in the South during the late 1950s.

Numerous, and painfully graphic, these works present experiences and emotions with which only American Blacks and perhaps other American minority groups have grappled. These experiences are quite tangible and have
shaped black interracial attitudes.

In light of the research on these attitudes and the American black experience itself, an expert may reasonably opine that the defendant's fear was induced by a confrontation with hostile Whites, the historical tormentors of Blacks.

Finally, the expert must be substantially familiar with the arcane subject matter about which she is to testify. Knowledge can be accrued through the reading of numerous articles and books, or through the analysis of empirical data. Someone who teaches courses on the subject socio-psychological phenomena or has substantial clinical experience therewith would qualify.128

V. LIMITING THE ADMISSIBILITY OF EXPERT TESTIMONY ON INTERRacial CONFLICT IN SELF-DEFENSE CASES

If a trial judge is to admit expert testimony on interracial conflict, may a court allow such testimony in a case wherein the initial aggressors are black and the self-defender is white? The response is that a trial court may permit a defendant's expert to testify only in self-defense cases involving a white-on-black confrontation (Longmire-type scenario). Testimony in a case involving a black-on-white confrontation (Goetz-type scenario) should be excluded.

What are the inherent differences between Longmire-type and Goetz-type conflagrations? The differences lie in the nature of the conflict and public perceptions of and attitudes toward the players therein.

A. A Re-enactment of History

Interracial conflict of whites against blacks follows an historical pattern. Whites assume their historical role as persecutors. Blacks are the persecuted. Unlike the Longmire-type case, no re-enactment of history occurs in Goetz-type cases. There is no historical documentation of calculated and systematic black mob violence against Whites. Blacks have resorted to mob violence against Whites to counter or protest against racial oppression and to secure civil rights denied by discriminatory Whites.129

To counter this argument, one might assert that Blacks through their participation in violent crime, have assaulted White society; although Blacks are not discriminating against Whites, Blacks as a group are attacking Whites.130 Consequently, a White would have a justifiable fear for his life if confronted by Blacks.

However, this contention overlooks the fact that Blacks are at least six times more likely to bear the brunt of these assaults than Whites. Statistically, Blacks are more likely than whites to be the victims of violent crimes perpetrated by Blacks.131 If criminals do indeed assault society, they attack black society much more frequently than they attack white society. Only a black Bernhard Goetz attacked by Blacks could claim that his fear of being mugged emanated from a history of violence in the United States.132

Thus, Goetz would not have had a legal basis for arguing for the admissibility of expert testimony on interracial conflict. Such a basis would stem from a similarity of the Goetz case facts to those of cases involving battered women, on whose behalf courts admit expert testimony. Yet, in the Goetz case there is no such similarity, because Goetz did not involve a re-enactment of history. The absence of such a similarity eroded the legal basis for the admission of an expert in Goetz.

B. Public Perception of Longmire-type and Goetz-type Cases

Longmire-type and Goetz-type cases are distinguishable on other grounds. With respect to crime, Blacks and Whites are perceived differently: Blacks are perceived as wrong-doers and Whites are not. Further, Whites are thought to be the victims. Allport confirmed this perception when he examined blame ascription. In his famous study, Allport showed people a picture of a black male apparently confronting a white man on a subway train. The White held a razor at his side. The majority of black and white participants recalled that the black man brandished the razor.133

Although Allport conducted his study over thirty years ago, recent studies on guilt attribution and the own-race effect affirm Allport's findings.134 The public's reactions to Goetz and Longmire buttress this claim as well. In both cases, the initial prevailing assumptions were that the Blacks were culpable and the Whites were not. If both defendants sought to proffer expert testimony on interracial conflict, should the trial court admit such evidence in both cases?

Responding to this question, one might apply an Aphaylath admissibility argument. In Aphaylath, the Court of Appeals noted that the trial court's denial of expert testimony on Laotian stress may have unduly prejudiced Aphaylath. Exclusion may have foreclosed Aphaylath from presenting an adequate defense. With respect to the Longmire-type and Goetz-type cases, one might ask which type of defendant would, in fact, be unduly prejudiced if the respective trial courts were to exclude opinion evidence on interracial conflict. Of course it is the black defendant and not the white who would be prejudiced. Prior to the Goetz trial, the public hailed Goetz as a hero.135 The populace assumed that Goetz was in the right and that his victims were in the wrong.136 Goetz is a member of a class which the public does not readily link with crime. Goetz would not need to offer an expert to challenge any societal prejudices against him or his race. Also, a Goetz court's admission of expert testimony would essentially reaffirm society's false conceptions of Blacks, further undermining the public's faith in our courts.137

In contrast, the Goetz interpretation of Section 35.15 necessitates the admission of expert testimony for the black self-defender. The Court of Appeals promulgated an objective standard for juries to assess the accused's state of
mind. The jury must apply community standards to assess this mental state.\textsuperscript{138} A black self-defender would need an expert to explain to the jury that by resorting to deadly force, he complied with community standards. This is so because our society perceives Blacks as being unable to live up to predominantly white community standards.

The Longmire-type case arises against this backdrop and society's tendency to attribute wrong to Blacks. In this case, the black defendant has apparently conformed to his naturally violent stereotype and killed a white person. If the case is a marginal evidence one, the average American jury probably will assume the black defender to be guilty because of his race. Hence, the trial court would be unduly prejudicing the black defender by barring admission of expert testimony on interracial conflict. By presenting an expert, the defendant could counter these prejudices.

C. Fear and the Races

On January 8, 1987, the New York Times published a survey on the interracial attitudes and perceptions of New York City residents.\textsuperscript{139} The survey concluded that Whites are more likely to fear Blacks than Blacks are to fear Whites.\textsuperscript{140} Also, Blacks distrust Whites more than Whites distrust Blacks.\textsuperscript{141} In light of this survey and the aforementioned widely held stereotypes, the average American jury comprised largely of Whites would be (and was) able to comprehend the fear Goetz experienced as a result of his encounter with the four black youths on the subway train.\textsuperscript{142} Therefore, Goetz did not need an expert to explain to this jury what it probably believed and assumed: Whites fear Blacks and it was very plausible that Goetz feared for his life because of the youths' race.\textsuperscript{143}

Conversely, such a jury would probably assume that a Longmire-type defendant acted out of anger and aggression because of her race. The jury would find it very difficult to believe that any Black could be afraid of Whites. Therefore, a Longmire-type defender would need an expert to explain that the black defendant can fear Whites because of the latter's race. This fear is just as real as the fear Whites feel when they encounter Blacks.

D. What if Goetz was Black and his Attackers White?

Should the trial judge admit expert testimony on interracial conflict from the black Goetz's perspective? The answer is, "Yes!" The expert could not testify on the Black Goetz fear of crime because such testimony would cover subject matter within the range of the ordinary New York City juror's experience. However, the expert could discuss the black Goetz's fear of Whites because of history. On cross-examination, the prosecution could elicit any possible biases which the black Goetz may have harbored against Whites.

VI. CONCLUSION AND A LOOK TO THE FUTURE

In the United States, a black defendant must overcome substantial systematic and jury biases. This is especially true for a Black accused of a capital crime, particularly if the Black is charged with killing a White.

A self-defense claim might exculpate the black accused of killing a White. However, the defendant's own testimony might not be sufficient. The strength of the self-defense facts notwithstanding, the jury might be unwilling to believe the defendant because of her race. The prosecution might convince the jury that the defendant acted violently, simply by highlighting evidence in conformance with the jury's inherent racism and propensity to stereotype by virtue of race, gender and class.

To assure that the jury gives her a "fair shake," the defendant may desire to offer opinion evidence on interracial conflict from a Black's perspective. This testimony would enhance the defendant's testimony. By demonstrating that the defendant is capable of fear and by discussing the source of that fear, the expert could show that the defendant is not a violent stereotype. The defendant would become an individual fearful for her life because of her assailant's race, rather than a racist stereotype. The expert would show that the black defendant experiences a fear of Whites which is similar to that which a White experiences when faced with seemingly hostile Blacks.

Thus, by countering popular stereotypes of Blacks and by showing why Blacks fear Whites in interracial conflict, the expert would offer invaluable testimony. Without this testimony, instead of confirmed socio-scientific evidence operating, the prejudices of white America could prevail. This would deny the defendant her right to a trial free from prejudice.

The necessity for expert testimony on interracial conflict in self-defense cases is manifest. Within the last year, there has been an increase in the number of reported New York State bias crimes. The likelihood of a Longmire-type case transpiring is growing. Unless trial courts seriously consider the admission of expert testimony on interracial conflict from a Black's perspective, the likelihood that society's racial prejudice will prevail in a black defender's case is also great.

With New York State trial courts willing to admit expert testimony on the battered woman syndrome and on Laotian stress, the admission of the type of testimony discussed in this paper should follow. The analogy of a Longmire case to the battered women cases and to Aphaylath supports an admissibility argument for opinion evidence on interracial conflict.

In keeping with this, a Goetz-type defendant should not be allowed to summon an expert on interracial conflict. There is no legal basis for admitting an expert for such a defendant. There is no re-enactment of history in the Goetz scenario; thus, no parallel to the battered women cases exist. The white self-defender would not be unduly
prejudiced by non-admission because Whites are viewed as crime victims.

Furthermore, admission becomes all the more compelling because of the United States Supreme Court's Ohio v. Martin decision. In Martin the Court held that States may require that defendants prove self-defense. In New York State, the prosecution must disprove the defendant's self-defense claim beyond a reasonable doubt. According to the Court, the burden shift is not unconstitutional. In view of this ruling, a State may mandate that a defendant prove her self-defense case.

If New York State was to shift the burden of proving self-defense to the defendant, in a Longmire-type case the black defendant would need all the help she could get to counter the racial bias and to prove her self-defense case. Exclusion of helpful expert testimony on interracial conflict in Longmire-type cases would impermissibly hinder the presentation of an adequate defense by the one required to prove justification beyond a reasonable doubt.

Martin also renders less impervious the CPL Section 60.55 and Hamel restrictions. If New York were to shift the burden of proving self-defense to the defendant, it would be following its decision to shift the burden of proving insanity to the defendant. Under Section 60.55, with such a burden a defendant claiming lack of culpability because of a mental disease or defect may offer opinion evidence on her mental state at the time of the subject incident.

Therefore, it follows that both the self-defender, and her counterpart pleading insanity, who bear the burden of proving their exculpatory claims, should be entitled to the admission of expert testimony regarding their respective subject incidents. Perhaps New York State will sanction this entitlement by amending Section 60.55 and thereby permit experts to testify on a socio-psychological phenomena beyond the ken of the jury. This amendment would recognize case law favoring admission. In Longmire-type cases, this recognition would enable black self-defenders to overcome the prejudices which deny such defendants their constitutional right to a trial free from all prejudice.

NOTES

1. Indictment No. 84-1509. (Sup. Ct., Erie County, Erie County, New York).
8. Id., Feb. 25, 1986, supra note 6, at C1, cols. 4-5.
14. Id.
26. Id.
31. Id., Feb. 18, 1986, at B14, cols. 2-6. There were approximately five to six black jurors in Mr. Longmire's jury pool. Two were excluded for cause. Approximately four were dismissed through the exercise of State peremptory charges. 54 U.S.L.W. 4425 (1986), (No. 84-6263) (Prosecutor's exercise of peremptory challenges to exclude Blacks from a jury may raise a prima facie case of purposeful discrimination under the Equal Protection Clause of the Fourteenth Amendment) had not been decided yet.


See e.g., W. H. Grier & P. M. Cobbs, Black Rage (1968).

See Johnson, supra note 37, at 951.

[Emphasis added.] J. Katz, supra note 5 at 10.

See e.g., Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975) (The United States Supreme Court held that an employer failed to show the job relatedness of a pre-employment test. Few Blacks passed the test.)


W. H. Grier & P. M. Cobbs, supra note 51, at 149-150.

D.C.E. Ugwuegbu, Racial and Evidential Factors in Juror Attribution of Legal Responsibility, 15 J. of Exp. Soc. Psychol. 133, 134. See also Johnson, supra note 37, at 951.

Ugwuegbu, supra note 57, at 143; Johnson, supra note 37, at 951.


Ewing notes that from expert testimony on battered women jurors might infer that there is a separate "battered women's defense." The risk is that jurors might conclude that these women have the license to kill and may respond negatively to such expert testimony. Ewing, supra note 41, at 57.

Ewing, supra note 41, at 54, 55-58.

Ugwuegbu, supra note 57, at 143; Johnson, supra note 37 at 951.

If in marginal evidence cases jurors are more likely to attribute guilt because of the defendant's race, then race should become less of a factor in strong evidence cases. See Ugwuegbu, supra note 57, at 143.

New York Penal Law Section 35.15 subd. 2(a) (McKinney 1980). Section 35.15 does not impose a duty to retreat from a threatening situation in one's own home. The jury must consider whether the defendant had the duty to retreat if the defendant used deadly force to defend himself. Ronald Longmire did not have the duty to retreat because the incident transpired in Longmire's home — his dormitory room.


Id. at ______, ______ N.E.2d ______, 506 N.Y.S.2d at 29.

Id.

See generally Fed. R. Evid. 401; Fed. R. Evid. 402; see e.g. E. Green & C. Nesson, Problems, Cases, and Materials on Evidence at 1-3 (1983); Fisch, New York Evidence (2nd ed.) Section 3.

E. Green & C. Nesson, supra note 70; Fisch, supra note 70.

See Green & Nesson, supra note 70, at 2-3; Fed. R. Evid. 402.


60 N.Y.2d at ______, 458 N.E.2d at ______, 470 N.Y.S.2d at 110-111.

Id. at 433, 458 N.E.2d at ______, 470 N.Y.S.2d at 112.

60 N.Y.2d at ______, 458 N.E.2d at ______, 470 N.Y.S.2d at 111.

Id. at 433, 458 N.E.2d at ______, 470 N.Y.S.2d at 112.


60 N.Y.2d at 433, 458 N.E.2d at ______, 470 N.Y.S.2d at 112.

Id. See also Dougherty v. Milliken, 163 N.Y. 527, 533, 57 N.E. 757; DeLong v. County of Erie, 60 N.Y.2d 296, 457 N.E.2d 717, 469 N.Y.S. 611, quoted in Cronin, 60 N.Y.2d at ______, 458 N.E.2d at ______, 470 N.Y.S.2d at 111.

60 N.Y.2d at ______, 458 N.E.2d at ______, 470 N.Y.S.2d at 111-112.

Id. at ______, 458 N.E.2d at ______, 470 N.Y.S.2d at 112.


87. This rule was formulated in People v. Leone, 25 N.Y.2d 511, 307 N.Y.S.2d 430, 434 and discussed in Torres, 128 Misc.2d at 440, 488 N.Y.S.2d at 362-363.

88. See e.g. Torres and DeSamo.


90. The Court of Appeals affirmed without opinion a First Department decision upholding a trial court's decision to admit expert testimony on why a murder eyewitness failed initially to report to the police that she knew the identity of the killer. A psychiatrist, the expert testified that the witness repressed her crime perceptions. The expert did not testify that he believed the witness' testimony that she recognized the defendant as the killer. People v. Fisher, 73 A.D.2d 886, 424 N.Y.S.2d 197 (1980), affd 53 N.Y.2d 907, 423 N.E.2d 53, 440 N.Y.S.2d 630 (1981).


92. Dougherty, 163 N.Y. at 533, 57 N.E. at __; see also People v. Allweiss, 48 N.Y.2d 40, 396 N.E.2d 735, 421 N.Y.S.2d 341 (Cl. of App. 1979) and DeLong.

93. Fisher, 73 A.D.2d at __, 424 N.Y.S. at 199.

94. See Torres and Ewing, supra note 41, at 51-60.

95. See Ewing, supra note 41, at 57 and Torres.

96. See Ewing, supra note 41, at 57 and Torres.


98. 68 N.Y.2d at __ N.E.2d __, 510 N.Y.S.2d at 84.

99. Aphaylath.

100. 68 N.Y.2d at __ N.E.2d __, 510 N.Y.S.2d at 84.

101. 117 A.D.2d at __, 499 N.Y.S.2d at 824-825.


103. Id. at __; 573 P.2d at 675.

104. See New York Penal Law Section 35.15 subd. 2(a).

105. The Supreme Court's Batson test does not prevent the impaneling of an all-white jury. The Court does not require that the jury precisely reflect the composition of the defendant's community. Moreover, a prosecutor whose preemptories remove minorities may successfully rebut the defendant's prima facie claim of discrimination.

106. Ugwuegbu, supra note 57, at 143.

107. In contrast, Ugwuegbu notes that "black subjects, but not white subjects, showed a significant bias in favor of the own-race defendant in the strong evidence condition." Id.

It would appear that expert testimony on interracial conflict would be most beneficial to a black defendant tried by a heterogeneous or all-black jury. Such testimony would provide a jury with additional information about the defendant. The case would then become a strong evidence case. In strong evidence cases it appears that white jurors would still find a black defendant guilty. Even if the defendant offers expert evidence, it may be possible that an all-white or predominantly white jury would convict as a result its inherent bias against non white defendants. However, the introduction of expert evidence on interracial conflict from a black's perspective should minimally decrease the probability of conviction. This should occur in cases in which the expert helps the all-white or mostly white jury to overcome its biases against non-white defendants.

108. Ewing, supra note 44, at 73 (quoting Martin, Forward Conjugal Terrorism at iii (1982)). See also Interview of Professor Ewing, WBR Radio, Buffalo, New York (Mar. 23, 1987). Id.; see also State v. Wanrow, 88 Wash.2d 221, ____, 559 P.2d 548, 558.

109. See generally W. H. Grier & P. M. Cobbs, supra note 51. To appreciate in an interracial confrontation the black self-defender's fear as shaped by history, see Crewsome, They Corroded My Skin, In Listen White Man, I'm Bleeding, (P. Hirsch ed. 1969); see also Katz, supra note 5, at 7-21. Ewing observes that battering relationships involving women who kill may involve more white women than non-white women. Ewing, supra note 41, at 37; see also Katz, supra note 5, at 10.

110. Katz, supra note 5, passim; Grier & Cobbs, supra note 57, passim; Crewsome, supra note 109; Ewing, supra note 41, passim.

111. See Goetz, 68 N.Y.2d at ___, N.E.2d __, 506 N.Y.S.2d at 29.

112. In State v. Wanrow, 88 Wash.2d 221, 559 P.2d 648 (1977), the Supreme Court of Washington stated: "The respondent [Ms. Wanrow] was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's long and unfortunate history of sex discrimination." Id., 88 Wash.2d at ___, 559 P.2d at 559 (quoting Frontiero v. Richardson, 411 U.S. 677, 684 (1973).


115. Id., 60 N.Y.2d at ___, 458 N.E.2d at 470 N.Y.S.2d at 112.

116. The Court expressed this concern in Aphaylath, 68 N.Y.2d at ___, N.E.2d at ___, 510 N.Y.S.2d at 84.

117. New York CPL Section 60.55 (McKinney 1984).


119. Id., 96 A.D.2d at ___, 466 N.Y.S.2d at 750.

120. See Torres, 128 Misc.2d at ___, 488 N.Y.S.2d at 361-362; Ewing, supra note 41, at 51-60.

121. Ewing, supra note 41, passim.

122. Torres, 128 Misc.2d at ___, 488 N.Y.S.2d at 361-362.

123. Id., 128 Misc.2d at ___, 488 N.Y.S.2d at 359, 363.

124. Although Aphaylath claimed that he acted out of an extreme emotional disturbance, and did not claim that he acted in self-defense, the Court of Appeals ruled admissible expert testimony on subject matter unrelated to mental disease. As Torres noted, admissibility is predicated on whether the expert will testify on subject matter beyond the ken of the jury. Id., 128 Misc.2d at ___, 488 N.Y.S.2d at 363.


126. W. H. Grier and P. M. Cobbs, supra note 51, at 149-150.


128. Meiselman v. Crown Heights, 286 N.Y. 389, 34 N.E.2d 367 (1941) is the leading Court of Appeals case generally addressing the admissibility of expert testimony.


130. R. McNeely & C. Pope, supra notes 49 and 85, at 14, 37-40.


132. Mr. Goetz claims that he feared for his life because of his personal history and of the history of crime on the subways. Mr. Goetz was a crime victim prior to his subway shootings. New York Times, Apr. 26, 1987, at 38.


136. Ugwuegbu, supra note 57.
137. For a graphic view of how Blacks perceive the criminal justice system, one should read black responses to the verdicts in both the Goetz and Howard Beach cases. For example, a young Black stated after the Howard Beach verdict: “Those four punks killed Michael [Griffith, the victim] because he was a nigger. If I killed [one of the white youths] because he was a honky, don’t you think I would get murder?” Hamill, Outrage Because I Walked, Dec. 22, 1987, New York Newsday, at 4, col. 4.

With respect to the Goetz verdict, U.S. Congressman Floyd H. Flake writes:

Many would suggest that the Goetz decision not be considered on the basis of race. However, those same people would have to admit that if a Black man shot four white teen-agers because he thought they were going to rob him, there would be cries for the re-institution of the death penalty in New York State.”


138. According to Prosser, the purely objective test utilizes the reasonably prudent person, who is “a personification of a community ideal of reasonable behavior, determined by the jury's social judgment.” W. Prosser, The Law of Torts 174-175 (W. P. Keeton ed. 1984).


140. In the survey a smaller percentage of Blacks than Whites venture into New York City neighborhoods comprised of racially dissimilar people. Is this the product of fear? Id.

141. See also R. Jackson, We Have a Serious Problem that isn't Going Away, Sports Illustrated, May 11, 1987, at 41.


143. Id.

144. This was a 302 decision. 55 U.S.L.W. 4232 (1987).
