We black folk, our history and our present being, are a mirror of all the manifold experiences of America. What we want, what we represent, what we endure is what America is. If we black folk perish, America will perish.

—Richard Wright, *Twelve Million Black Voices*

### Chapter 9

**A Survey of Black Rage Cases**

It is difficult to survey black rage cases because most of them have not been reported in the news or in legal literature. As the modern version of this defense was being shaped in the 1970s, the political perspective of the establishment press resulted in little interest in cases that did not involve famous lawyers or sensational events. The pre-Watergate media was not interested in young lawyers exposing societal racism in criminal trials. Even in today’s atmosphere, unless the case is considered “newsworthy” little is reported other than the facts of the crime and the ultimate disposition.

The legal process itself serves to hide the frequency of black rage defenses. An overwhelming percentage of all cases are disposed of without trial through the process of plea bargaining between district attorney and defense counsel. It is during this critical stage that social framework evidence can be presented to persuade the prosecutor to reduce charges or
recommend a reduced sentence. But these negotiations take place in private and their contents remain unknown to both the legal community and the general public.

If a black rage defense is successful at trial, the prosecution is forbidden from appealing by the double-jeopardy protection of the Constitution. And since there is no appellate opinion, the defense will rarely find its way into the legal research computer banks.

Since most black rage cases go unnoticed by the public and the legal community, it is incumbent on lawyers handling such cases to link up with groups of people attempting to change the legal culture. Legal organizations such as the National Conference of Black Lawyers, the National Lawyers Guild, and California Attorneys for Criminal Justice have promoted creative legal strategies through seminars and literature. In this manner the black rage defense is continuing to make inroads into the traditional legal system.

Fortunately, there are black rage cases for which the closing arguments, partial transcripts, and record of the surrounding circumstances are available. Analyzing a few of these cases will help us flesh out this defense, expose its strengths and weaknesses, and show its potential use for other races and ethnic groups.

Black rage defenses are state-of-mind defenses. They are not only applicable in self-defense and insanity cases, but also may be used to negate the specific mental state required for a first-degree murder or attempted murder charge. In a riot situation where a defendant injures someone and is charged with attempted murder, a traditional defense is to argue that the defendant did not have the “specific intent to kill.” In these situations attorneys have presented evidence of racial tension leading up to the riot in order to show that their clients were caught up in the violence, and that although they attacked people they did not intend to kill anyone. Therefore, they argue, the defendants may be guilty of assault but not attempted murder. The epitome of this type of case took place during the 1992 riot that rocked Los Angeles after the Rodney King verdicts. It involved the prosecution of a young African American man named Damian Williams for smashing a brick into the head of white truck driver Reginald Denny, an incident videotaped by a local news helicopter and shown on television in every city in America. The South-Central Los Angeles riots were black
rage in action. Williams was consumed by that anger and his defense team took on the task of making that rage understandable to a jury.

The fires of 1992 find their kindling in the economic hopelessness and political resignation that is daily reality for residents in South-Central. They were fueled by institutional racism and continual acts of police misconduct. In 1990 alone, the City of Los Angeles paid victims of police abuse over a million dollars. Those who did not believe the police were capable of systematic unconstitutional behavior were shocked on March 3, 1991, to see a videotape of policemen repeatedly clubbing and kicking Rodney King. Two weeks later, a fifteen-year-old African American girl, Latasha Harlins, was shot to death by a middle-aged Korean American woman grocer, Soon Ja Du, after a dispute in a South Los Angeles grocery store. In November 1991 Soon Ja Du, convicted of manslaughter, was given probation, community service, and a five thousand dollar fine. California State Senator Diane Watson responded to the extremely lenient sentence by saying, "This might be the time bomb that explodes." Two weeks later, Los Angeles police officers fatally shot a twenty-eight-year-old black man, Henry Peco, causing a standoff with more than a hundred residents of the Imperial Court housing project in Watts. Two months later, the trial of the four policemen charged with assaulting King began, after the case was moved from Los Angeles to the primarily white, conservative venue of Simi Valley.

On April 29, 1992, a jury devoid of African Americans returned a verdict of not guilty on all charges except one count of excessive force against officer Lawrence Powell. The verdict was announced on live television. More than two thousand people gathered for a peaceful rally at the First African Methodist Episcopal Church in South-Central. But other residents took to the streets. There was a small confrontation between police and angry people at the intersection of Florence and Normandie in South-Central. The police left and a mob furious at the not guilty verdicts poured into the area. White, Asian, and Latino motorists were pulled from their cars and beaten. Reginald Denny was driving his large truck through the intersection. Bricks were thrown into his windows. As he came to a stop he was pulled from the truck and beaten. A television helicopter videotaped the scene. Twenty-nine-year-old Henry Watson was seen with his foot on Denny's neck as he lay on the ground. Nineteen-year-old Damian
Williams was videotaped as he smashed a brick against Denny's head and strutted away in celebration. Denny managed to crawl back into his truck, where sympathetic blacks climbed into the cab of the vehicle to help him. One person held him in her arms while another man drove the truck to a hospital, saving Denny's life.

The riots swept through Los Angeles and nearby areas. Fifty-eight people were reported killed. There were more than two thousand injuries, more than seven thousand fires, $3 billion worth of damage, and 12,111 arrests. Though at least as many Latinos as blacks were arrested, the events were perceived nationally as a black riot. Many, if not most, of the participants were burning and looting out of economic envy and class rage, but there is no question that the injustice of the not guilty verdicts was the catalyst.

Williams and Watson were charged with the beatings of Denny and seven other motorists. Included in the charges were attempted murder and aggravated mayhem, both of which carry life imprisonment. A defense committee called "Free the LA Four" was formed for them and two other defendants. Williams was fortunate to obtain the services of an outstanding lawyer, Edi M. O. Faal. Faal was born in Gambia, West Africa, and trained at Middle Temple Inn of Court in London, where he became a barrister. A dignified-looking man in his late thirties, he was highly regarded among his peers for both his legal ability and his political acumen. His primary strategy was to show that any criminal acts Williams committed were a result of the unthinking emotion generated by the riot.

In early 1993 the four police officers who beat King were tried in federal court for violating his civil rights. Two were acquitted, but Officer Powell and Sergeant Stacey Koon were convicted. Facing a maximum of ten years and a $250,000 fine, they each received a thirty-month sentence. Two weeks later, Williams and Watson went to trial in front of a racially mixed jury consisting of four blacks, four Latinos, three whites, and one Asian.

Faal, with the aid of Wilma Shanks and David Lynn, attempted a two-pronged strategy that can be described as "he didn't do it, but if he did, he didn't do what the prosecutor is charging him with." Once in a while, a jury will accept this defense when they recognize that the defendant has committed a crime, but that the district attorney is guilty of overcharging. In Williams's case, Faal argued that Williams was mistakenly identified as the perpetrator. However, even if the jury believed that his client was the
perpetrator, he argued that they should still find him not guilty of the two most serious crimes because he did not specifically intend to kill or permanently disfigure Denny.

Faal delivered a six-hour closing argument over two days. He had to go over all the evidence regarding each of the people Williams had been charged with assaulting. The *Los Angeles Times* described his closing as one that combined "sarcasm, eloquence, indignation and wit." After putting forth the weak defense of mistaken identification, Faal began a persuasive discussion of the riot and how the collective frenzy of the group was responsible for his client's acts. His legal point was quite clear: in order to convict Williams of attempted murder and aggravated mayhem, the jury had to find premeditation and specific intent. Faal had presented as an expert witness a local sociologist named Armando Morales. Morales testified to the phenomenon of mob psychology, in which individuals are caught up in the "mass hysteria and mass convulsions" of the crowd. People act without reflection, without rationally considering what they are doing; they act impulsively, unpredictably. Faal tied Morales's testimony to the riot and put it all in the social context of a community's frustrated and indignant reaction to the not guilty verdicts of the four police officers.

We know that on April 29th, 1992, many people in many communities; Black, White, Hispanic, experienced tremendous disappointment from the verdicts that came down from Simi Valley. I'm talking about the acquittal of the police officers that were accused of beating Rodney King.

People near Florence and Normandie congregated to grieve together or to express their disappointments together. The police came, there was a slight confrontation, the police left. A mob developed. The mob, true to its name which is a mob, got into a frenzy. People started acting in manners that they would not act otherwise and that whole situation became the 1992 riots, the L.A. Riots.

People caught up in that frenzy were acting out their frustration, their anger, their disappointment. They were so consumed with emotions that they could not have rationally been entertaining the type of reflective thought which gives rise to specific intent to kill or to disfigure.

The defense was in the favorable situation of being able to contrast the injustice of the Simi Valley verdicts on assault charges against the police with the more serious charges of attempted murder and mayhem against their clients. Earl Broady, counsel for codefendant Watson, specifically told
the jury that the defendants were in court because four L.A. policemen had been found not guilty of beating Rodney King. This was strongly contested by prosecutor Janet Moore:

I say Mr. Faal and Mr. Broady are dead wrong. We are in court because of what these two men chose to do on April 29, 1992. They have no one else to blame but themselves.

They are here because they acted in a violent and unconscionable way. They are not here because we are holding them responsible for the entire Los Angeles riot.

Faal was sophisticated in his concluding words. Instead of referring specifically to the Simi Valley verdict he talked about “justice,” and he urged the racially mixed jury to rely on their personal experiences in coming to a fair result. His underlying theme was that the riot was caused by an injustice, and that by their verdict they could balance the scales of justice.

Ladies and gentlemen, before I conclude the closing argument that I am giving on behalf Mr. Damian Monroe Williams I have to remind you of a few things; number one, that justice does not exist in a vacuum. It's not a concept that you say justice and just put it in isolation.

Justice exists in the real world. The court has given you the law to evaluate and the law to apply, and you are to evaluate the facts of this case. And in evaluating the facts and coming to your determination as to what facts have been proven and what facts have not been proven, you are not relying on the law alone, you are relying on your common sense. You are relying on your personal experiences and you are relying on your sense of fairness and justice in evaluating the facts of this case.

At the end of Faal's closing argument, supporters in the courtroom stood and applauded, some even wept. As Faal left the courtroom, he was embraced. People appreciated that throughout the long trial he had consciously articulated the frustration and rage of the African American community.

The jury deliberated for more than two weeks. They acquitted Williams of attempted murder and aggravated mayhem, the two charges that carried life imprisonment. They also acquitted him of all the other felonies except one—simple mayhem. He was also convicted of four misdemeanor
assaults. Williams was sentenced to eight years in prison. As of 1995, he was in Pelican Bay—California’s notorious high-tech, maximum security prison where conditions are so bad that a federal judge held that it had violated the cruel and unusual punishment prohibitions of the Constitution.

Reginald Denny seemed to understand the social context of the crimes against him. He said, “Things could have been a lot worse. I mean the next step for me would have been death. But I’ve been given a chance, and so I’m gonna extend that courtesy towards some guys who obviously were a little bit confused.”

One woman, Cynthia Henry, who lived near the now infamous intersection, spoke for many people when she said, “I’m happy with the verdicts. I know that what they did was wrong, but it was in the heat of passion. I was watching what happened [in the King trial] on TV, and it hurt me to see that. But I could understand because I was angry too.”

In Williams’s trial racial and class politics surrounded the facts and informed the defense’s strategy. In many potential black rage cases, the relevance of race is not so immediately apparent. Two cases, a 1977 bank robbery and a 1988 murder, offer examples of lawyers attempting to uncover the racial issues in their cases. The different types of crimes involved in the two cases and the contrasting tactics of the lawyers provide insight into the use of black rage defenses. The first case is the *United States v. Robert Witherspoon.* Witherspoon was a thirty-seven-year-old African American who had no criminal record. In fact, less than two years before his arrest he had received a commendation from the police department for preventing an armed robbery. In April 1977, an unshaven and disheveled Witherspoon walked into Gibraltar Savings and Loan in San Francisco. He went up to the branch manager, pulled out a gray .22 caliber derringer, and said, “I want thirty or forty thousand dollars.” As they went to the bank vault, Witherspoon surprised the security guard and disarmed him. The manager gave Witherspoon two metal cans from the vault. Without looking inside the cans, Witherspoon exited out the side door and got into a white-and-red Lincoln. The manager easily got the license plate and phoned the FBI. Witherspoon drove aimlessly around San Francisco for an hour, until his car was stopped and ten armed federal agents arrested him. The two metal cans contained nine dollars.
Witherspoon hired attorney Doron Weinberg. After gaining his client's trust, Weinberg probed deeper into the reasons for this strange robbery. Robert Witherspoon's life unfolded in those interviews. He was the oldest of seven children of two hard-working parents who held out the American dream to their children. His father had worked his way up to director of the post office in San Francisco's largest African American neighborhood. His mother also worked at the post office until suffering a nervous breakdown. There was pressure on Robert to be a doctor, but he chose to become a businessman. He opened a record store, and by working sixteen to eighteen hours a day he was able to open a second store. He created jobs for two of his brothers and two of his cousins. His record stores financed two liquor stores and a gift shop. He was a model businessman in his community and a source of immense pride for his family. Then, in 1975, his main store burned down. For reasons Robert interpreted as racist, he had been underinsured. The insurance company only offered him sixteen thousand dollars for more than one hundred thousand dollars worth of inventory. Even after they settled on an amount, the company delayed payments. Banks would not loan him money for reasons that raised suspicions of racially discriminatory redlining. Unable to obtain adequate financing, his entire economic structure began to collapse. He developed a drinking problem and had to be hospitalized for a nervous condition. Still, he bounced back and maintained operation of the liquor store. By undercutting other stores he was able to rebuild the business. But the Alcoholic Beverage Control agency revoked his license under the Fair Trade Liquor Law, which required minimum prices—even though most white-owned liquor stores engaging in the same practices seemed to be having no problems with the government. Ironically, the Fair Trade Liquor Law was ruled unconstitutional soon after Robert robbed the Savings and Loan, too late to resuscitate his business.

As Weinberg listened to Robert's history and saw his sincere feelings of shame, dishonor, and depression, he recognized that the essence of the case was sympathetic. But how could he best put that story into a legal framework? Weinberg was aware of the black rage defense and saw its applicability to Witherspoon's case. He took a simple, direct approach, similar to the strategy in the Robinson bank robbery trial. He did not use any sociologist or political scientist to make a case for racism's impact, relying instead on the authenticity of the story told by the defendant and
his lay witnesses. He called only one expert to the stand, psychologist Daniel Goldstine, who diagnosed Robert as acting out of a transient situational disturbance. Goldstine, an intelligent, experienced psychologist, could communicate psychiatric theory in understandable terms, and his unpretentious manner was well received by the jury.

Weinberg’s theory of the case was that Witherspoon was not a criminal, so there had to be another explanation for why he had committed a criminal act. The answer was that he had broken under stress, exacerbated by positive racial expectations in a negative racial reality. The bank robbery was Witherspoon’s unconscious plea for help.

Weinberg began his summation by explaining the philosophy behind the law of insanity and relating it to his client. He then moved on to the facts and began to weave in the racial issues. One does not have to give a jury a lengthy lecture about racism. Witherspoon’s trial, like most criminal trials, took less than a week. Closing argument was therefore appropriately short, forty-five minutes to an hour. During that time Weinberg spent only five or ten minutes on race. He reiterated the testimony showing that Witherspoon had suffered from discriminatory treatment. And he tied the resulting financial failures to their devastating effect on Witherspoon’s psyche and pride, after his attempts as a black man to take part in the American dream.

By the end of 1976, and by the beginning of 1977, he had nothing. He was a disappointment to his family, a failure. And it was a humiliation of the kind that makes it difficult for him. I mean, it is difficult for him to present all of this to you, you are strangers. But it is unbearable for him to present it to his family, so much so he couldn’t even bear to have them in court with him.

That kind of humiliation is what you have to understand is the underlying basis; plus, plus this second aspect. And that is not just that he was a striving businessman, not just that he was a successful businessman for whom there is this collapse; but that he is a Black man. And I think that single fact is very important.

Dr. Goldstine was very sensitive when he talked about it. Dr. Cook ignored it completely.

A good lawyer is not afraid of taking risks. When you present an imaginative strategy like the black rage defense, you should not be afraid of trying tactics upon which the established bar might frown. Weinberg was
willing to try something out of the ordinary. He decided to speak directly to the women on the jury in an attempt to bridge the gulf between race and gender.

Of course, not all of you on the jury are black. But some of you, particularly the women among you who have chosen professions, I think will understand particularly. Although I think all of you will understand, what it means for someone from an essentially disadvantaged group, from a group that is not expected to be successful, from a group for which it is difficult in the extreme to be successful, to step out there, try to do it, to do it, to succeed, to be a big person, to be self-sufficient and self-reliant and to be recognized as that, and to then have that collapse, to then have that collapse in part precisely because you are a black person.

Weinberg finished his argument by returning to his opening theme. He moved closer to the jury box, made eye contact with the jurors, and was able to express his belief in his client's innocence.

This man is intelligent and capable. He is not a psychopath. He has no anti-social personality traits. He is not your common criminal.

What do you think he was doing there? What do you think he was doing there? Do you think he pulled off a purposeful bank robbery? Do you think he would have done it that way if it was purposeful? Of course not.

But you must conclude—whether you conclude that or not—you have got to conclude that the government has absolutely failed in making its proof beyond a reasonable doubt that he was sane. Absolutely failed without question, and therefore you have to acquit Robert.

You have to give him a chance to continue to put his life back together again.

Thank you.

Presiding over the trial was Chief Judge Robert Peckham, a liberal man with a kind heart. Peckham was moved by Witherspoon's plight and treated both the defendant and Dr. Goldstine with respect when they testified. When the judge instructed the jury, he repeatedly emphasized that the prosecution had the burden of proving guilt beyond a reasonable doubt. In retrospect, Weinberg felt that the judge's favorable attitude helped influence the jurors toward an acquittal. Indeed, the jury found Robert Witherspoon not guilty.

The Witherspoon case highlights a problem defendants now face in
federal court. Since the federal rule of insanity has been changed to the M'Naghten right-wrong test, it is much harder to win a psychiatric defense. In Witherspoon's case, the psychologist had specifically testified that the defendant did know the difference between right and wrong but because of the transient situational disturbance (TSD) could not control his behavior. Similarly, Steven Robinson, despite suffering from a TSD, knew the difference between right and wrong. Therefore, even though the judges and juries in both cases believed that these defendants were not criminals, that they suffered racial discrimination and deserved a second chance, under the present federal law they would not have been allowed to present this defense. Today, many men and women who deserve that second chance are precluded by an archaic and restrictive law foisted on the courts by a politically opportunist Congress.

The Witherspoon trial received no media attention. In contrast, the Lonnie Gilchrist, Jr., trial in 1989 was on the front page of the Boston Globe and was described in the American Bar Journal as a "black rage" defense. It was also the basis for an episode on the popular television show Law and Order that negatively portrayed the black rage defense. Gilchrist's case differed significantly from Witherspoon's, and those differences spotlight the varied tactics used under the rubric of black rage.4

Lonnie Gilchrist, Jr., a forty-one-year-old African American, was employed as a stockbroker at Merrill Lynch in Boston. The day after he was fired by his boss, a white man named George Cook, he returned to work seeming normal and rational. After completing a large bond transaction, talking to another stockbroker about suing Merrill Lynch, and taking care of personal business, he entered Cook's office and shot him five times. Cook, bleeding from his wounds, managed to run out of the office, where in full view of many employees Gilchrist pistol-whipped him in the head and continued kicking him as he lay on the ground. Steven Lively, an African American coemployee and former football star, tackled Gilchrist and restrained him in a bear hug.5 Cook died on the way to the hospital. Gilchrist was arrested. Nine hours after the shooting, while in police custody, he told a psychiatrist that Cook "was trying to destroy me, to suffocate me. He had his foot on my neck. I had to get him off. He was trying to suck my blood; Mr. Cook was screwing me for the last time. I wanted to hurt him. . . . He took away my manhood."

Gilchrist was defended by Norman Zalkind, an experienced criminal
lawyer who had done volunteer civil rights work with the Lawyers Constitutional Defense Committee in Mississippi in 1964, and in the ensuing years had built a well-respected law firm in Boston. In the Gilchrist case, his cocounsels were Robert Johnson, Jr., and Harvard law professor Charles Ogletree, who had a distinguished career as a public defender, private practitioner, and law professor.

The defense was insanity under Massachusetts law, which was the same as the federal rule during the Witherspoon case. The defense's diagnosis was that Gilchrist was suffering from a long-term paranoid personality disorder and committed the homicide during a brief reactive psychosis. As jury selection began the defense persuaded Judge John Irwin, Jr., to question each juror carefully and individually as to race prejudice. During the voir dire one prospective juror finally admitted that there had been talk at his job among the white employees that since the defendant was black, "he would get away with it." The juror said that he could not overcome his own racial prejudice and was excused. Ultimately, a jury of nine whites and three blacks was seated. Of the twelve jurors, nine were women.

As in all well-prepared insanity cases, the childhood and life history of the defendant was presented. Lonnie Gilchrist, Jr., grew up in the projects in the South End section of Boston. He was the oldest of seven, all of whom succeeded educationally. Zalkind described them as a "proud family, a family that's going to get themselves out of the disadvantages of poverty, of the projects."

Gilchrist's father was an alcoholic who beat his wife and the children. When Gilchrist was a teenager he took a baseball bat and, with the help of his brother, stopped his father from beating their mother. But the years had left scars and created a feeling of powerlessness that haunted him his whole life. Nevertheless, he did have numerous successes while growing up. He had a high IQ and was a good student and athlete at Brighton High School, where he had friends of all races. He graduated from the University of Massachusetts and earned a postgraduate degree from the prestigious Wharton School of Business. But for all his intelligence and education, he did not succeed in his career. After losing several jobs, he moved back into his little room at his mother's house in the projects. According to his friends and family and the psychiatrists who evaluated him, he was preoccupied with racism and blamed it for his work failures.
After he was hired at Merrill Lynch his pattern of failure continued, leading to his firing and to his homicidal detonation.

Gilchrist, like Witherspoon, had no criminal history. His lawyer, like Witherspoon's, told the jury that since Gilchrist was not a criminal, not an antisocial person, there had to be another explanation for his crime. The reason was mental illness. But unlike the Witherspoon, Robinson, and Johnson cases, the lawyers chose not to put the defendant on the stand. There are many cases in which it is better not to have the defendant testify. However, in an insanity defense this traditional tactical choice usually results in the trial becoming, as one law professor commented, "a debate among psychiatric witnesses." In Gilchrist's trial, the majority of the nine days of testimony was taken up by the defense's psychiatric experts. Altogether, five medical experts gave their opinions on Gilchrist's state of mind—three for the defense, two for the prosecution. The consequences of this tactic are visible in the closing arguments. The prosecutor, Ronald Moynihan, relentlessly attacked the entire concept of relying on experts.

And you as jurors have the right to consider the expert opinions, if you want to, or to not consider their opinions at all. You may decide individually and collectively whether or not you want to use their opinions to assist you in your analysis. Judge Irwin will instruct you at the end that you don't even have to do that at all. You can try this case and deliberate this case on the evidence—the evidence, the facts, and what the lay witnesses tell you; because you don't have to be a psychiatrist, with all of the fancy degrees, to determine whether or not a person is psychotic.

The defense usually wants to be in the position of telling the jurors to use their common sense and rely on their experiences. But here it was the prosecutor who was able to use such an argument effectively and also to play to the jurors' sense of their own importance.

You don't need all the degrees from Harvard and all the wonderful establishments that have been referred to here. . . . The psychiatrists aren't any smarter than you, and they don't have any more common sense that you. And they don't have any more common life experiences than you do, individually and collectively.

And that's why each and every one of you were hand-picked for this case.
You went through a very lengthy jury process. People were eliminated; you people were chosen, because of your common sense and because of your backgrounds; and because you're qualified and you're capable to be jurors in this case, based upon your own native intelligences.

In one of the best prosecution closing arguments I've ever read, Moynihan was able to poke hole after hole in the psychiatric testimony. Because the defense relied on that testimony as the heart of its case, it was badly damaged.

The defense also was weakened because it contained a serious contradiction. Racism was supposed to have been a contributing cause of the homicide, but Gilchrist was not shown to have been a victim of racial discrimination. He had gone to the best schools and had achieved a privileged economic position. His lawyer told the jury numerous times that Gilchrist's failures were not caused by racial discrimination, but rather by his own weaknesses. Defense counsel explained that his client's mental illness caused him to blame white people for his own shortcomings.

This is a very intelligent man. And he's starting to have problems; and he's blaming it on racism. He's obsessed with this racism. . . . Twenty years—the same conversation in the street—the target, the Man. You heard Steve Gilchrist talk about it. The Man. The Man. The Man. He's having problems at the Shawmut Bank; and he blames it on the Man.

But, he's ill, ladies and gentlemen; and his illness is getting worse.

Zalkind discussed an incident at a company called Digital in which Gilchrist stood up in a meeting and challenged people to fight him because he felt he was being treated unfairly. But once again there was no proven race prejudice. "Somebody with a paranoid illness, they can't see themselves. . . . Everything is racism. He claims everything at Digital is racism. There was no evidence of racism at Digital."

When Zalkind discussed the shooting of Cook, he frankly admitted that Cook was not a racist and that Gilchrist was "obsessing" about racism because he was a "sick human being, who has serious problems."

Outside the courtroom, lawyers and commentators discussed the case as if racism were the major theme, although inside the courtroom it was not. In media interviews, two well-respected psychiatrists, Price Cobbs and Alvin Poussaint, attempted to put the case in a broader perspective.
They pointed out that living in a racist society forces African Americans to question the motives behind the actions of all white people. Such constant cautiousness and pragmatic mistrust leads some people to develop a true mental illness marked by paranoia. This is a profound insight into the consequences of generalized racism, but this point was not made in the defense’s closing argument. There was no attempt to show how living in racist America had caused Gilchrist to become obsessed with racism and ultimately to explode at what he perceived as an attack on his black manhood. Instead, his attorney seemed to argue the opposite to the jury—that Gilchrist’s focus on race was not a result of his environment, but merely a product of his individual psyche: “He starts to dwell on blackness. Now we have some black jurors sitting before us. We have white jurors. And obviously there’s prejudice in life. Nobody can deny that. But this wasn’t the beginnings of prejudice. This was the beginnings of his paranoid illness.”

The problem with this defense is that it feeds into the stereotypes held by many white people that blacks charge racism whenever they fail. It also resonates with many black people who are critical of other blacks who cry racism just as the boy in the children’s story cried wolf. They feel that when the real wolf comes, when it is a case of real racism, no one will believe them because of people like Gilchrist.

After closing arguments the judge instructed the jurors that if they found that Gilchrist was not insane but was sufficiently mentally impaired, they could return a verdict of second-degree murder or manslaughter.

The jurors deliberated for five days and then told the court they were deadlocked. The judge sent them back to deliberate with an instruction that strongly encouraged them to come to a verdict. Four hours later they returned with a verdict of guilty of first-degree murder. Two of the white jurors wept as the verdict was read. An African American juror told the *Boston Globe* that she had no sympathy for Gilchrist “because he committed a crime. . . . I myself have felt angry about being discriminated against, but I don’t take it that far.” Her comment belies the mistaken perception, strengthened by the verdict in the O.J. Simpson criminal trial, that all African American jurors will acquit black defendants because of their race. Gilchrist was sentenced to life imprisonment without parole.

Gilchrist’s trial demonstrates the difference between a black rage case and a black rage *defense*. There are thousands of cases in which African
Americans commit crimes because of blind rage resulting, in part, from attempting to cope with a racist environment. But very few of them result in a black rage defense—a strategy rooted in the concrete racism suffered by the particular defendant. To succeed, a black rage defense must show a persuasive link between racial injustice and the criminal act. The defense team in Gilchrist's case must have determined that the link was missing. Therefore, they raised a conventional insanity defense. Given the facts of Gilchrist's case, one cannot fault their choice. But we should recognize that notwithstanding some of the media's description, the trial was not an example of a black rage defense. It was, as Zalkind clearly articulated in his closing argument, a case of a man whose mental illness took the form of racial paranoia. James Johnson also suffered from paranoia with strong racial aspects, but his experiences on a Mississippi plantation and in a Detroit auto plant provided the link between racial oppression and his mental illness. Therefore, his lawyers were able to present a successful defense. As the Gilchrist defense team understood, racial anger, by itself, is not a basis for a black rage defense.

Anger plays such an important role in black rage cases that the lawyers must be sensitive to how the client's feelings impact on the trial. A defendant is sometimes experiencing so much hostility that he or she will not open up to a lawyer unless the lawyer first reaches out. Often, unresolved anger bursts loose in the courtroom in ways that hurt the defendant. An instructive example of how a lawyer handling a black rage or black rage-type defense should communicate with the client can be found in the two trials of Inez García. Although García was not African American, we should remember that the black rage defense is both a specific defense for black men and women and a generic defense in which social reality is thrust into the courtroom.

Inez García's case began in 1974, the same year that Joan Little had become a national symbol of women fighting back against sexual violence and racial oppression. Little, a twenty-year-old African American, was acquitted of killing a white jailer who had sexually assaulted her in the Beaufort County Jail in North Carolina. The same year Little was defending herself, García was sexually assaulted in an alley in Soledad, California. The twenty-nine-year-old woman was dragged out of her apartment by two men. While one man weighing three hundred pounds hemmed her into a closed space the other raped her. Several minutes later the two men
phoned her apartment and told her that if she resisted next time, they would “do worse to her.” Scared for her life, she took her .22 caliber rifle and left the house. Half an hour later she came across her two assailants. She saw a knife in the hand of one of them, Jiménez, and immediately shot and killed him. The police did not believe she had been raped, and at trial the district attorney argued that the killing was in retribution for the previous beating of a friend of hers. García’s lawyer persuaded her to use a psychiatric defense instead of self-defense. García had shot Jiménez from approximately fifteen feet away and had shot him six times, facts that made a self-defense argument difficult. García, who had a history of some emotional problems, accepted the mental defense with her attorney’s firm commitment to make the rape central to the case. However, the judge did everything possible to keep the issue of rape out of the trial. During opening statements, when defense counsel began to discuss the police’s reluctance to investigate rape charges, the judge interrupted.

Judge: “Counsel, I cannot permit this. We are trying a woman for murder. There is no man on trial for rape, and the attitude of the police for rape and murder has nothing to do with the guilt or innocence of this woman.”

García: “But, your honor, that is the reason I killed this man.”

Judge: “We are not trying a cause, we are trying a woman, Mrs. García, and I am not going to make this courtroom a forum for a cause.”

As the trial proceeded, García became more and more infuriated at the judge’s rulings and comments. When the judge refused to allow the defense doctor to testify about the emotional trauma of rape because she had not conducted any “experiments” on rape, García exploded, leaping up from her seat and rushing towards the judge’s bench. “Why don’t you just find me guilty?” she yelled. “I killed the fucking guy because he raped me! That’s why I did it.” As the bailiff pulled her out of the courtroom the jury could hear her shouting, “Keep your hands off me, you pig!”

García’s attorney admitted he was as stunned as the jurors by the outburst. This was because he failed to understand the incredible anger García still felt about being raped. Furthermore, he was portraying her as a demure, shy, innocent woman. His own clouded lens kept him from seeing the strong, volcanic woman sitting next to him in the defendant’s chair.

Later in the trial, García’s rage again erupted. She was enduring a brutal cross-examination with no objection from her lawyer.
Q: “Why didn’t you tell the police about the rape?”
A: “Because you just don’t— I was ashamed to talk about it, that’s all.
Q: “Besides your face, were you hit anywhere else?”
A: “I don’t know. I was too nervous, and I was scared. All I knew is that I
didn’t want to get killed.”
Q: “After you say Luis ripped your blouse, you then said you just took your
clothes off yourself?”
A: “Yes, I did. I gave in. I took them off.”
Q: “What was the first thing you took off, do you remember? Were you wearing
a brassiere?”
A: “No, I don’t wear a brassiere.”
Q: “Did you take your panties off, too?”
A: “Yes, I did.”
Q: “Then what happen after that?”
A: “You want me to tell you what happened after that?”
Q: “Yes.”
A: “He fucked me! What else do you want me to tell you?”
Q: “What was Miguel doing while Luis, you say, was having sexual intercourse
with you?”
A: “He was watching me having sex with this creep, and he was enjoying
watching the other creep have sex with me!”
Q: “What did you do after you called your family?”
A: “I took my gun, I loaded it, and went out after them. If I would have had
to walk to Jiménez Camp I would have. Another thing I want to say, I am
not sorry that I did it. The only thing I am sorry about is that I missed
Luis.”

Why had her experienced lawyer not objected to the demeaning cross-
examination? I spoke to him that evening and learned that he felt the
examination was so ugly that it was swaying the jurors to García’s side. He
was ready for her to begin crying, which he thought would have cemented
the sympathy of the jury. But his stereotypical views of women had kept
him from understanding Inez García’s rage, and her shame and humilia-
tion had left her unable to share those feelings with him.

After her statements in court, there was no chance for an acquittal. The
jury of seven women and five men convicted García of second-degree
murder.

Inez García spent two years in prison before her conviction was re-
versed on appeal because of an improper jury instruction on how to measure reasonable doubt. In her retrial she was represented by radical feminist attorney Susan B. Jordan with the help of Ann Jennings and Linda Castro. Jordan was one of the first women criminal lawyers to come out of the feminist movement of the sixties. When she practiced with the People's Law Office, a leftist legal collective in Chicago, she was one of the only young women lawyers in the tough criminal courts, and she endured sexual harassment and unwanted advances from judges, other lawyers, and even the bailiffs. By the time she took García's case her ordeal had produced a lawyer with a fearless spirit and extraordinary technical skills. She was representing a woman who had never let herself cry about the rape, who had spent two years in prison, and who had unresolved anger about what she had suffered. These factors made García a difficult client who would threaten to fire her attorneys and then ask them to come back. Jordan hung in through the displaced fury. When García didn't want to take the stand because of the humiliation of her first experience, Jordan patiently explained the need for her to testify and promised to protect her dignity.

García's case had become a cause célèbre. A play based on the transcripts of the first trial had been produced, a defense committee was active, and García had spoken on behalf of rape victims. At the retrial, Jordan was able to do extensive voir dire regarding rape. After the trial, she wrote, "We addressed the prevailing myth that rape victims 'ask for it' head on. Despite García's sexy appearance, no woman should be subjected to sex against her will, and once raped, a victim is still entitled to respect, at the police station and in the courtroom." Jordan was also able to educate the jurors that rape is a crime of violence, not of sex. The prevailing view in the public's mind was that rape was a sex crime. In fact, California statutes did not even categorize rape as a "violent crime."

In the first trial, the tactic was to hide García's anger for fear that it would reinforce the prosecution's theory of a premeditated murder. The result was that the unresolved anger broke loose in detrimental ways. In the retrial, García's anger was put forth as a reasonable and normal reaction to her rape. Because her legal team had a better appreciation of her rage, García was able to cope with the trial pressures and was a persuasive witness on the stand. The strategy of self-defense made sense to the jurors

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who understood Garcia's reasonable fear as she was confronted by the two men who had raped her and had threatened her with more harm. The jury of ten men and two women found her not guilty.

Rage, whether it is felt on the streets of America's ghettos or the thirty-sixth floor of America's financial centers, will not go away. Fury resulting from discriminatory business practices, or from being sexually assaulted, remains a volatile part of our society. When people's wrath lands them in criminal court, it is the responsibility of the good advocate to understand both the social and the personal dimensions of such anger. Only then can the counselor gain the client's trust. Only then can the lawyer develop a strategy that exposes racism or sexism, protects the defendant's dignity, and creates an opportunity to win.