I shall hate you
Like a dart of singing steel
Shot through still air
At even-tide.
—Gwendolyn Bennett, "Hatred"

Chapter 7

To Use or Not to Use The Black Rage Defense

In most legal cases the lawyer has only one concern: the interests of the client. Unfortunately, the legal community has defined the interests of the client in the narrowest terms possible—the client's best interests equal winning the case. A broader view would include preserving the client's dignity and empowering her. This broader view is essential in a black rage defense, in which the client's painful personal history is revealed to the public.

Many cases go through the assembly line that passes for our criminal justice system, but very few of those cases send a message to the public. Most cases are isolated instances where the state punishes behavior that violates society's legal norms. But in black rage cases, the very nature of the defense sends a message to the public about race relations. Even in a nonpublicized case, the message will be heard by the jury, the judge, the court staff, the state, the families and friends, the institutions involved in the crime, the defendant, and the defense bar. In a highly publicized case like James Johnson's, the message will be heard throughout the country. Attorneys must be clear about the content of the messages they are deliv-

ering, because they are affecting the way people think about and act toward each other. The choice of whether or not to use the black rage defense is therefore both a political and a legal one.

Two cases can help provide us with guidelines on when to use a black rage defense. Both cases are ones in which this defense was rejected by the *clients.* The first case is *United States v. Robertson,* in which the defendant was convicted of second-degree murder and assault with intent to kill.[1] The second case involves Colin Ferguson, who was convicted of murdering six and wounding nineteen passengers on a Long Island commuter train. An analysis of these cases shows the pitfalls of a racial defense and points toward the situations that do merit use of a black rage strategy.

Thomas Robertson was raised in Washington, D.C., where as a young man he was arrested for a federal drug-related offense and sent to prison. At the prison he was described as "belligerent" and a "racial agitator." He assaulted two caseworkers and stabbed an inmate during a fight. He spent much of his time in maximum security and solitary confinement in six different prisons. Years later, in August 1971, Robertson got hurt in a fight at a Washington poolhall. A half-hour later he returned to the poolhall and shot a man he did not know in the shoulder. Running out of the poolhall he jumped into his car, went the wrong way on a one-way street, and crashed into some parked cars. He got out with his gun in his hand and talked briefly to the black people in the vehicle behind him. He then walked to where a man named Robert Aleshire was inspecting the damage done to his car. Aleshire was a white man who was active in the general struggle for social justice and was helping to develop strategies for improving the central city. Robertson walked up to Aleshire, whom he did not know, and without a word shot him three times at point-blank range. Robertson then ran down the street cursing "white sons-of-bitches." When he saw a police officer he shouted, "You are doing it; why can't I? Yes, I shot the white honkey son-of-a-bitch. What are you all going to do about it?"

Robertson was arrested and charged. At the preliminary examination he was ordered to be committed to a hospital for a psychiatric evaluation. At the hearing he made the following statement to the judge:

> I'm not going to get justice, I realize this perfectly. See, I'm one who is well versed in whiteness. . . . You won't get your white vengeance. . . . I have

> never been guilty of nothing but being born black in a white America—racist white America. . . . But, I am not going to let you think that I do not realize who I am and who you are. You are the beast and I am a man. You say I killed a man. I have killed no man in my whole life.

Robertson was examined by a court-appointed psychiatrist and also by a psychiatrist and psychologist requested by the defense. All three found him competent to stand trial. The two defense experts also concluded that at the time of the crimes he had been insane. The defense lawyer wanted to interpose an insanity defense, but Robertson absolutely refused. He went to trial and was convicted. What took place next is a somewhat confusing journey through the wonderland of criminal procedure, but it shows how the black rage insanity defense can erode a defendant's dignity.

Under the law applicable in the Washington, D.C., federal courts, a defendant with an insanity claim could have a bifurcated trial. The first trial determined whether or not he was guilty; the second determined whether or not he was insane at the time of the crime. If he was found to have been insane, then he was committed to a hospital for the criminally insane. Robertson adamantly denied that he was crazy and forbade his lawyer to ask for a second trial. However, if it was determined that there was enough evidence of insanity, then the judge was required, *on his own motion,* to convene the second trial. The judge held a hearing to determine whether a second trial was necessary in Robertson's case. This hearing allows us the opportunity to see four differing views of what clearly was a form of black rage. Looking first at the defendant, Thomas Robertson, we see a man who blamed society for causing him to kill. Robertson stated that he "was under a lot of pressure on that day. The tension was due to the circumstances of my birth." Robertson was described as extremely articulate, well read, and knowledgeable about the black power movement and the Black Muslims. He adopted the vocabulary of Malcolm X in distinguishing between the weakness of the "negro" and the manhood of the "black." In an essay written in jail entitled "In Search of an Identity in Racist White America," he described the difference thusly, "The negro has a limited degree of manhood. He can be one-third man. A Black Man is unlimited. I am *a* man. I am the man you think you are. This is a trial for my extinction. They don't want too many me's running around." Robert-

son had been greatly influenced by the writings of Algerian psychiatrist Frantz Fanon, who wrote about the mental illnesses suffered by black and brown people under the domination of white colonial countries. In *Wretched of the Earth* Fanon analyzed, quite profoundly, the causes of violence by Algerians against other Algerians, and also violence by Algerians against the French. Robertson attempted to use Fanon's insights to justify his acts, saying that "murder is no different than war. If a black man kills a white man, it is not a crime. It is getting oppression off his neck."

Robertson's essay and statements lead to the conclusion that he felt he had committed a political act. But the two psychiatrists testifying for the government had a far different view of his motivations. Both stated that Robertson had an "anti-social personality," that he was "grossly selfish, callous, irresponsible, impulsive and unable to feel guilt or to learn from experience and punishment." They relied in part on the staff report from Saint Elizabeth's Hospital, to which he was committed after the crime. In the report, Robertson's mother said that a few months before the crime he had "disrobed and for the better part of the night terrorized the family, but did not hurt them and made numerous statements of his manhood." After that frightening incident his brother had tried unsuccessfully to have him committed. The staff psychiatrist described this as an isolated incident, probably attributable to a drug reaction rather than a mental disease. The staff report also stated that many times at the hospital Robertson would quote from the "literature of black culture" as a means to "reinforce his manhood." The psychiatrists concluded that Robertson was not insane when he committed the homicide.

Since Robertson was refusing an insanity defense, he directed his lawyer not to contest the conclusions of the report, not to cross-examine the two psychiatrists, and not to call the two defense psychiatric experts to the stand. However, the judge, under his own authority, took the defense experts' reports into consideration. These experts, a psychologist and a psychiatrist, gave a third perspective on Robertson's behavior. They agreed with the government psychiatrist that he was obsessed with his sexual identity as a black man in a white society. They found that his crime was a result of "schizophrenia, schizo-affective type," that he was "delusional," and that he projected his pathological identity problems onto whites by blaming and hating them.

The fourth and final perspective came from the judge, a black man named Aubrey Robinson, who had a very different view from that of the psychiatrists. He felt that as a black man, a lawyer, and a judge of considerable experience, he understood Robertson, and that the crime was not a result of insanity. He disregarded the white doctors who had testified for the government, stating that Robertson lived in "a world they don't understand. It is a world that they are not a part of. It is a world that they only relate to through books." He acknowledged that Dr. Alyce Gullattee, the black defense psychiatrist, talked the "same language as this defendant" and knew the "defendant in a way that Dr. Marland and the other doctor will never know him." But he rejected her conclusion that Robertson suffered from a mental disease.

> He knows that I know that he is not crazy. . . . And he knows that I understand him—because I have dealt with Robertsons over the years, little Robertsons and big Robertsons.
>
> And I know everything about the condition of life that made him exactly what he is and what he is going to be. . . . The public at large will never understand. But there are people who do. Now, there is no basis for me to raise the insanity plea in this case, the insanity defense.
>
> Do you see what he is saying to his lawyers and what he is saying to the community? "I won't cop out."

The judge seems to be saying that the racist conditions of life that Robertson faced were one of the causes of his crime, and that the white public does not understand this tragedy. He, as a black man, understands the rage that caused Robertson to kill. He also understands the pride that caused Robertson to refuse an insanity defense. Judge Robinson may have been wrong about whether or not the defendant was suffering from a mental disease, but he certainly understood why Robertson could not plead insanity. The judge knew that an insanity trial would have exposed Robertson's life in excruciatingly painful ways to a jury. Questions of his sexual identity, his problems of not feeling confident and secure as a black man, and his treatment of his own mother and siblings would have been revealed and debated in the context of whether he was crazy. Robertson wanted a public discussion on the substance of his philosophy—that white oppression could only be stopped through violence. He wanted to argue that his killing of Aleshire was the sane act of a man at war. Robert-

son feared that a finding of insanity would signify a defect in his character and would impeach his philosophy. Therefore, he had to reject any attempt to raise a defense couched in terms of insanity.

At the sentencing hearing, the defense lawyer argued that Robertson needed help, not a long prison sentence. The judge's response showed his awareness of racism and his genuine regard for the defendant.

> Don't you understand Mr. Robertson doesn't want your help. He doesn't need it because the only help that can be offered is help that he completely rejected. That is what he is telling you. . . . He would make it on his terms in his good time. That is what he has said. That is what his life has said. . . . He has the capacity for insight. And he has a sensitivity, too, the likes of which few defendants have about his predicament, not just his personal predicament, but his predicament generally.

The judge went on to indicate that if Robertson's behavior in prison showed a change for the better he would reduce the sentence.

The case was appealed, and the Court of Appeals for the District of Columbia ordered that the trial court judge should supplement the record by conducting a full hearing on the issue of insanity. The opinion was written by Chief Judge David Bazelon. Judge Bazelon said that given the substantial indications of mental disease, the court should have appointed another lawyer as amicus curiae to act as the court's representative. That lawyer could have cross-examined the government psychiatrists and called witnesses in behalf of Robertson, in spite of the defendant's objections. Judge Bazelon was cognizant of the racially charged issues. He cited two books, including *Black Rage* by Grier and Cobbs, to support the contention that "white American psychiatry has its . . . racist stereotypes about the black psychiatric patient." He said that in the context of this case it was particularly important for the only black psychiatrist involved to testify in court. The case was sent back to Judge Robinson for further proceedings.

Robertson had a new attorney and consented to an insanity defense. However, once the jury was seated and voir dire began, Robertson could not go through with it and told the judge that he refused an insanity defense "for personal reasons of a quasi-political nature." He went on to state the following: "I still say I am not insane. So, I cannot in good faith

and honor of the United States Constitution pursue an insanity defense. . . . As a Black man, I made a stand . . . whether or not I am right in the eyes of the law."

Judge Robinson conducted a full hearing, listening to the testimony of Gullattee as well as numerous other psychiatrists, all of whom were cross-examined. Although they disagreed on the insanity issue, they all agreed that Robertson was competent to decide his own defense. The judge stated the defendant's "crimes arose in part out of protest . . . and [he] believes that exposition of the insanity issue would denigrate that protest." Taking all the testimony into consideration, relying on his own personal experiences, and giving great weight to Robertson's personal choice, the judge concluded that there was no basis for interjecting the insanity issue in the face of the defendant's opposition.[2] Robertson went back to prison to continue serving his original sentence for murder and assault with intent to kill.

What did Thomas Robertson mean when he said he rejected the insanity plea for "personal reasons of a quasi-political nature"? This is a man whom the judge described as having an unusual sensitivity and capacity for insight. Robertson had been in prison for almost six years from the time of the murder to the time he made the above statement. During that period it is possible that he more clearly understood the dual causes of his crime. On the one hand, he was responding to the domination of a white racist world, and on the other, he was being propelled by his private demons. He must have recognized that killing a stranger because that man had white skin was not an articulated political act. But also understanding the cumulative effects that racism had on him, he described it as "quasi-political."

Thomas Robertson's case lacked an important element that was present in the two successful cases that were discussed earlier: In James Johnson's and Steven Robinson's cases there was a context of political support around the defendants. The League of Revolutionary Black Workers and the Motor City Labor league helped build a defense committee for Johnson, and the Malcolm X School provided group support for Robinson. Also, both defendants had lawyers committed to exposing and explaining the quasi-political nature of their crimes. In Johnson's case, his lawyers clearly targeted the institutions of the Mississippi plantation and the De-

troit auto corporations. In Robinson's case, I spent hours with my client explaining the black rage defense and promising him that I would not allow the trial to degenerate into a debate between psychiatrists on whether or not he was crazy enough to be legally insane. One has to sit in court and actually watch a personality be peeled away layer by layer—exposing the sores and hidden demons—to appreciate how traumatic an insanity defense is for the defendant. Johnson and Robinson went into their trials confident that their dignity as black men would be respected and protected even in the framework of an insanity defense. Robertson did not have this faith. We do not know whether this was due to the lack of a defense committee or support group, the failure of his court-appointed attorneys, or his expressed distrust of the legal system. For whatever reasons, he made a reasonable choice. A black rage defense would have had little chance of succeeding, and if not done carefully it would have left him with no self-esteem and no sense of manhood, both of which he would need to survive the many years he would serve in prison.

The second case that helps us analyze when a black rage defense is appropriate is the heavily publicized and controversial Long Island commuter train massacre. On December 7, 1993, Colin Ferguson, a thirty-seven-year-old Jamaican immigrant, boarded a commuter train going from Manhattan to Long Island. After the train had crossed the border into suburban Long Island, he got out of his seat and put a bullet into the back of the head of a middle-aged man. Then he walked down the aisle firing his nine-millimeter semi-automatic pistol into passengers. He fired twenty-five bullets before three passengers were able to disarm him. He had killed six people and wounded nineteen. As he lay on the floor of the train he said, "Oh, my God, what have I done?"

Notes found on Ferguson and in his home showed a man obsessed with race and his religious mission. The previous year, he had written a letter expressing his sense of martyrdom: "I am not the Christ but will suffer death to the delight of many who are offended by the truth which I speak; for I have dared to challenge the integrity of a brutal and unjust system and in doing so have also offended the slaves of the system." A note found in his pocket after the arrest blamed racism for his action. He wrote that his "reasons for this [were] Adelphi University racism, EEOC racism, Workmen's Compensation Board, and racism of Governor

Cuomo's staff. . . . Additional reasons for this: Racism by Caucasians and Uncle Tom Negroes." He also blamed "Chinese racism," "so called civil rights leaders," "the sloppy running of the number 2 train," and "corrupt 'Black' attorneys who not only refused to help me but tried to steal my car." He said that he had "spared" New York City out of "respect for Mayor David Dinkins."

Due to a combination of factors, the Ferguson case exploded into the headlines. First of all, it was a mass, random killing. These types of shootings always receive extensive news coverage, usually sensational in nature. Second, it took place in New York, the media capital of the world. Third, unlike almost all previous mass slayings, which were perpetrated by white men, this one was done by a black man who specifically targeted white people. Indeed, much of the news coverage said Ferguson had shot only white people, although his victims included Asians and one black woman. The shooting evoked a fear that lies dormant in the white population, a fear that someday black people are going to turn on them in mass retribution for years of slavery and discrimination. Into this already feverish mix of race, fear, and media competition stepped attorney William Kunstler. Kunstler, who recently passed away at the age of seventy-six, was America's most recognizable radical lawyer. His long history of high-profile cases and his eloquence, brilliance, wit, and passionate commitment to social justice made him a favorite of the media. The fact that he practiced out of a New York office and was a master of sound bites increased his visibility with the press. He and his younger partner, Ronald Kuby, began to represent Ferguson.

At a press conference Kunstler said he was going to use a "black rage" defense. Later, Kunstler admitted that he was shocked by the level of outrage his comment had caused: "I never realized how sensitive those two words were. Many people, black and white took the position that we were saying that any black guy that had rage in his heart because of the treatment of blacks in this country could kill with impunity, which is not what we meant at all."[3]

Kunstler's words sparked a national debate over the legitimacy of such a defense. He appeared on national television and in national magazines. Psychiatrists, social welfare workers, counselors, police officers, lawyers, professors, columnists, and reporters all weighed in with their critiques.

The benefit was that this defense received an exposure and a recognition that were long overdue. The downside was that most of the debate was superficial and negative. Bell hooks described the "carnivalesque aura [that] surrounds the public debate around black rage" and harshly criticized Kunstler and Kuby. In *Killing Rage, Ending Racism,* she accused the two defense lawyers of using a defense that made *all* black rage pathological. That is, in her eyes, Kunstler and Kuby were saying that black rage is an illness—it is legal insanity. This denigrates the legitimate feelings of black anger at injustice.

In addition, white commentators repeatedly argued that the black rage defense was a misguided justification of group violence. In an exchange of letters to the editor in the *New York Times,* an outraged writer complained that the defense vindicated violence based on being a member of an oppressed group and therefore could be used to justify Jews killing Arabs, or Indians killing whites. Kunstler and Kuby responded:

> What we are mounting is a traditional insanity defense, long recognized in our law, with "black rage" triggering December's massacre. Our approach is similar to the utilization of the battered women's syndrome, the post-traumatic stress syndrome and the child abuse syndrome in other cases to negate criminal accountability. . . .
>
> Our suggestion to [those] others who misrepresent or distort, either deliberately or out of ignorance, is that they await the expert testimony to be presented by both sides at Mr. Ferguson's trial before springing to ill-formed conclusions. If . . . "freedom lies in acknowledging responsibility," it also lies in waiting for all the facts.

Kunstler and Kuby never meant to suggest that all black anger and rage is evidence of insanity. Unfortunately, no one heard the black rage defense in the complexity with which they would have presented it at a trial. It was never heard because their client wanted nothing to do with it and fired them. Ferguson wrote a letter to the judge in which he said, "I will represent myself *pro se,* henceforth at all future hearings. I again state that I have never accepted an insanity defense, and certainly not the so-called 'black rage' insanity defense." He refused to meet with the defense psychiatrist and accused his lawyers of conspiring against him.

Kunstler asked the judge to reconsider his ruling that Ferguson was

competent to stand trial, stating that the defendant had grown more delusional, paranoid, and obsessive, believed he received messages directly from God, and claimed he was not involved in the shooting on the train. However crazy Ferguson seemed, the court ruled that he satisfied the requirements of competency: (1) he understood the proceedings against him, and (2) he could assist in his own defense. Ferguson eventually represented himself, as was his constitutional right. The court appointed an attorney to aid him throughout the proceedings. At trial Ferguson denied that he had shot anyone, stating that an unidentified white man stole a pistol out of his bag as he slept on the train. Of course, the Nassau County jury found him guilty.

The day after the verdict—in a turnabout indicating Ferguson's mental instability—he asked Kunstler and Kuby to represent him on appeal. Kunstler said he would argue that Ferguson had been incompetent to stand trial, and that the trial showed that he could not mount a coherent defense. Kunstler went on to say that Ferguson understood that "black rage is no longer an issue" in the case, but that the issue of insanity would be the basis for the appeal.

The Ferguson case is a good example of why a black rage defense should not be used every time an angry, mentally unbalanced black person commits a crime. Many people, both black and white, initially viewed Ferguson's crime as a reaction to racial oppression. Given the American experience, this was not an unreasonable interpretation of the awful crime. However, as more facts came to light it became clear that Ferguson's case lacked an essential ingredient a trial lawyer looks for—the potential for empathy.

The first element a lawyer looks at in a black rage psychiatric defense is the nature of the crime. Colin Ferguson committed a violent act. His was not a crime against property, it was a mass murder. Although such an act suggests insanity, it also terrifies jurors and makes any chance of acquittal a longshot.

The second element to analyze is the object of the crime. Here, the shootings were essentially random. True, the victims were chosen primarily because they were white. But they were still random shootings in that none of the victims had any prior relationship with the defendant. In their letter to the editor, Kunstler and Kuby analogized their defense to the

battered woman defense and the child abuse defense. But those defenses are based on the defendant's striking out at the actual person who has harmed her. In fact, in those defenses the defendants have been physically and/or sexually abused by the person they attack. That logical and powerful nexus is missing in Ferguson's mass attack on people he did not know.

The third element to weigh is whether or not there is a *concrete* connection between the crime and racial oppression. In James Johnson's situation, the institutional racism of Chrysler Corporation manifested itself in concrete acts of discrimination against Johnson, and he responded by shooting people at the very workplace where he had suffered humiliation and injustice. Maybe Kunstler would have unearthed particular and persuasive instances of racial discrimination against Ferguson, but there did not seem to be any discussed in the media coverage. Some of the "reasons" Ferguson gave for the shootings, such as the racism of Adelphi University and the Workers' Compensation Board, were never backed up with facts. Even Kunstler was circumspect about the so-called discrimination, describing it as "real or imagined." It is a fact that America is a white-dominated society, and study after study has shown that African Americans are subjected to acts of disrespect and discrimination in ways and with a frequency that white people just do not fathom. But when a man kills six people and wounds nineteen others, a lawyer cannot expect to rely on the general racism of society to explain the act.

A fourth element in determining whether to use a black rage defense is the client's personal life. In the successful trial of Steven Robinson, we saw a man who refused to consider himself a victim, who refused welfare, who related well to people, and who tried over and over again to succeed before he temporarily cracked up and robbed a bank. Ferguson's background seems to be one in which he blamed his failures on everything and everyone but himself. One former landlady described him as follows: "Colin had a problem with people in general. I wouldn't call it black rage. He had a problem with people who could achieve things in life that he couldn't. . . . Other people's successes were his failures. I don't think it mattered if you were black or white." A coworker said he "just didn't like anybody" and that he called Mexicans "wetbacks," Asians "rice eaters," and a black woman dating a white man a "nigger-bitch." Ferguson's notes expressed his hatred of other people and his inability to accept responsibility for his

problems. A lawyer arguing for Ferguson might say that this hatred and blaming of others are evidence of his paranoia and insanity. Although that is true, it is not evidence of racial oppression. And it is certainly not the kind of client a jury or the public can identify with. Using a black rage defense for a man such as Ferguson sends a message that an individual has no responsibility for his criminal behavior. It is a superficial, wrong-headed, blame-everything-on-racism message. This is just the kind of message that blacks as well as whites reject.

Another negative factor in Ferguson's personal history was that he did not fit the model of a disadvantaged person struggling to survive in the face of racism. He was born into an upper-class family in Jamaica. His Cuban-born father, Von Herman Ferguson, was managing director of a multimillion-dollar pharmaceutical company. Ferguson went to one of the finest private high schools in Jamaica. After his father died in a car crash, Ferguson was unable to succeed at the pharmaceutical company. Feeling that his brother had received special treatment and that he had been cut out of the business, he left for the United States.

One basis for his black rage defense might have been the stress Jamaican immigrants feel when coming from a black society into a white-dominated society. A study by Jamaican psychiatrist Fredrick Hickling documented the unusually high incidence of schizophrenia found in Jamaicans who lived in the United States and Great Britain and concluded that "institutional racism" was a major factor in the illnesses. But since Ferguson rejected the insanity defense, the public only heard of Hickling's work in passing. The overwhelming perception was that because Ferguson came from a privileged background he had no justifiable cause to complain.

A fifth and crucial element is whether or not the client can testify. In Robinson's and Johnson's cases the clients agreed with the defense, were capable of testifying, and were able to elicit positive feelings from the jurors. In William Freeman's case, he had become so mentally deteriorated that he could not testify and may not have even understood what was taking place. Ferguson's paranoia and delusions made him an unlikely candidate to testify. Kunstler and Kuby therefore faced the unenviable task of putting forth a defense with political implications without the help of their client.

The end result was a client who was totally opposed to his lawyers'

strategy and antagonistic toward them. It is not unusual for paranoid defendants to project their fears onto their lawyers and to accuse the lawyers of railroading them or conspiring with the district attorney to convict them. Lawyers have even been physically attacked by defendants they are representing. These are problems dedicated attorneys must face when representing insane people. But if a client is too crazy to help the lawyers put together a black rage defense, this should be a neon warning sign that maybe this defense is inappropriate.

Reviewing the factors in Ferguson's case, we see a defendant who considered himself a victim, blamed everyone else for his failings, came from a highly privileged background, could not point to concrete, persuasive instances of racial discrimination, had shot twenty-five people who had no specific relationship to his suffering, and was hostile to an insanity plea. All the elements weighed in favor of not using a black rage defense. Such a defense would have failed in the courtroom. However, this critique should not imply agreement with the trial judge's decision to allow Ferguson, a demented soul, to represent himself. He was entitled to be defended by an attorney who could have raised a traditional insanity claim.

How the black rage defense and Ferguson's case played out in the court of public opinion is harder to assess. There were reports of African American students cheering speakers who favorably described Ferguson's action as an outburst against racism. Many commentators supported the idea of a black rage defense. A survey by the *National Law Journal* showed that 68 percent of blacks and 45 percent of whites believed that a "compelling" defense could be made based on the rage caused by racism. Other minorities were able to relate to the defense. For example, Sheridan Murphy, director of the Florida chapter of the American Indian Movement, was quoted as saying, "If things don't begin to turn around, I think we will see a lot more acts of black rage, Indian rage and Chicano rage in this country."[4]

But the negative comments and editorials outweighed the positive. The African American and Jamacian communities both seemed to be split, with many people fearing that the defense would play into stereotypes about their criminality and would be seen as justification by those who refused to take individual responsibility for their actions. The fact that much of the media was negative should not lead to the conclusion that

the defense was wrong. Any strategy that challenges established dogma will receive harsh criticism. But the fact that the African American community generally was not supportive of Ferguson is more problematic. This failure of support indicates a flaw in the defense. The black rage defense is supposed to educate and enlighten. It is a way of exposing racism and showing the terrible effects it has on the human psyche. If the facts of the crime and of the defendant's life blind people to the message that racial oppression is a catalyst to crime, then the defense is counterproductive.

Defending people who commit criminal acts is usually an unpopular undertaking. The strategy a lawyer employs in defending a person who has killed, whether it be James Johnson or Colin Ferguson, should not be determined by newspaper editorials or popularity polls. But the level of public support and the nature of criticism must be given serious consideration in deciding whether to use a black rage defense. In Johnson's case there was strong, visible, organized support in the black community and in the auto plants. This support reflected people's gut-level understanding of how racism had affected Johnson specifically. It also reflected the sophistication of the defense, which was able to open people's minds to the effects of race and class oppression. When the defense, prosecution, judge, and jury walked through the Eldon plant and saw autoworkers visibly express their support of Johnson, it confirmed for them the truth of his black rage defense. In contrast, there was no such truth in Ferguson's case.

There were two typical reactions to Ferguson's crime. Many thought he was just a crazy person who went berserk. Others believed he had planned to kill white people as a way of dealing with his hate and his own failures. Neither reaction saw racism as a significant causal factor. Although there was a certain level of sympathy in the black community, it did not translate into support.

Further impediments were caused by the media frenzy around the case, which made it difficult to communicate a meaningful black rage defense. As bell hooks noted, "A complex understanding of black rage will not emerge with this case as spectacle, it is already being designed to invalidate the reality of black response to racism." Most cases do not afford the opportunity to publicize the defense strategy. But an incident like the Long Island commuter train shootings creates pressure on the attorneys to enter

into a sick symbiotic relationship with the media in which the attorneys receive airtime and press coverage but must produce shallow sound bites and controversial statements. For example, Kuby was widely quoted as saying, "The more the white community fears African Americans, the better." This is a foolish trial strategy. A jury that fears the defendant in a black rage case is a jury that will convict. It is also a counterproductive political philosophy. An electorate that fears blacks will vote for "three strikes and you're out" laws, nonunanimous juries, and law-and-order public officials. A white community that fears African Americans will build prisons instead of schools. Maybe Kuby's quote was taken out of context, but that is the danger of playing the media game in the middle of a controversial case.

Lawyers should step back from the media furor. A lawyer must first establish a strong relationship with the client, one that wins over the client's confidence and allows the attorney to delve deeply into the client's life and unearth his or her authentic, lived experiences of racial oppression. Then the psychiatric expert can be brought in to examine the client and determine whether there is a sound psychological basis for the black rage defense. After these steps are accomplished, a fact-oriented, individualized, sympathetic strategy may be possible. If it is, then the lawyer can consider releasing the concept of a black rage defense to the media, and can explain the defense in that specific case to community activists.

An alternative, which should be considered seriously, is to avoid the media, maintain the element of surprise, and test the strategy in the crucible of the courtroom. Throwing the media the bone of "black rage" instead of preparing a thorough, personalized strategy based on the potential for empathy will result in a spectacle that cheapens the black rage defense and sets back the cause of racial understanding and equality.