TO: Zachary W. Carter, Corporation Counsel

FROM: Central Park Jogger Case Litigation Team

DATE: Friday, April 11, 2014

RE: Response to Plaintiffs' Settlement Position Letter, dated March 6, 2014

Pursuant to your request, please find a response to plaintiffs' settlement position letter, dated March 6, 2014. We have analyzed each of plaintiffs' main points in sequential order and have provided a detailed response and, where applicable and necessary, a counter-argument to the assertions made by plaintiffs.

1. Matias Reyes's Credibility

Plaintiffs assert that a jury will ultimately credit Matias Reyes's statements that he raped and assaulted Patricia Meili, the Central Park Jogger ("the Jogger"), and that he did so alone. Plaintiffs further claim that Reyes's claims not only includes "reference to details that only one who was present [at the rape and assault] would know about," but that Reyes's claims withstand "even the strictest scrutiny." (Plaintiffs' Letter to the Corporation Counsel, dated March 6, 2014 ("Pls' Ltr."), at 2.) We believe, however, that the multiple inconsistencies in Reyes's recounting of his actions in Central Park on April 19, 1989, as well as his inability to recall numerous significant details of the rape and assault will lead a jury to seriously question his credibility.

As a starting point, Reyes has historically been unable to remember or recall with specificity numerous significant details of the rape and assault of the Jogger. For example, Reyes cannot recall whether or not he bound the Jogger and, if so, in what manner. (*Compare* Affirmation of Nancy Ryan, dated December 5, 2002 ("Ryan Aff."), at 18 *with* Deposition of Matias Reyes, taken September 10, 2010 ("Reyes Dep."), at 345:13-21.) In addition, when Reyes was taken to the crime scene in the vicinity of the 102nd Street transverse, he could not recall certain elements of the crime and where those acts occurred. (*See* Ryan Affirmation, at 36-37, ¶ 65.) Reyes also could not remember whether or not he anally raped the Jogger. However, a rectal slide taken from the Jogger was positive for the presence of spermatozoa. (*Compare* Reyes Dep., at 387:9-387:22 *with* DANY001270.) Moreover, certain information that he did remember was demonstrably false.[1]

Reyes's recounting of his actions in Central Park on April 19, 1989, has changed with each re-telling. Changes made by Reyes in his various statements include the following:

- Where Reyes first saw the Jogger and what he was doing in Central Park at that time (*Compare* Reyes Dep., at 365:21-368:3; 411:13-20 *with* Transcript of the Interview of

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[1] For example, Reyes could not remember how he dragged the Jogger from the 102nd Street Tranverse into the brush. Reyes further claimed that the Jogger ran from him after he raped her, a fact that ADA Ryan acknowledged was probably not correct."

Matias Reyes by ADA Nancy Ryan, dated May 23, 2002 ("Ryan Interview"), at 18:35-18:37)[2];

- Whether the Jogger resisted or fought back during her rape and assault (*Compare* Ryan Interview, at 19:05-19:06; Prime Time Interview, at 18:36-18:54 *with* Reyes Dep., at 389:3-19);
- Whether Reyes ejaculated during the rape (*See* Reyes Dep., at 388:18-389:20);
- What clothes, if any, Reyes removed from the Jogger and himself during the rape (*See, e.g.*, Reyes Dep., at 390:17-390:20; Reyes Dep., at 402:23-404:6; Ryan Interview, at 19:06-19:08; Reyes Dep., at 344:7-13); and
- Whether the rape and assault of the Jogger took place at one or two separate crime scenes (*Compare* Reyes Dep., at 338:15-340:6; Ryan Interview, at 9:43-10:25 *with* Deposition of Luis Bauza, taken December 18, 2013, at 96:11-99:13; Deposition of Vern Fonda, taken January 10, 2013, at 185:24-187:14).

In addition, many aspects of Reyes's recounting of the rape and assault of the Jogger do not make logical sense. For example, Reyes's claim that he (admittedly out of shape at the time) was able to follow, catch up with and overtake the Jogger (an experienced runner), while he ran in a zig-zag pattern and carried a branch so large that he needed to hold it with two hands, is patently unbelievable.

Lastly, even Reyes's claim that he committed crimes alone cannot stand up to the "strictest scrutiny." When Matias Reyes was interviewed by the NYPD after his arrest on August 5, 1989, he told the police about a friend named "Steve" who was with him, looking for someone to rob, when Reyes committed the July 19, 1989 rape. Reyes later changed his story and claimed that Steve was just someone that he made up. (*See* Reyes Dep., at 247:7-11.) However, the description of Steve that Reyes gave to the police on the day he was arrested was very similar to the description of a delivery person who was seen entering the victim's apartment building shortly before the rape took place, but was never actually witnessed exiting the building. Though Reyes said he always committed his crimes alone, Reyes also admits to having committed robberies with a group of kids from housing projects located on the Upper East Side of Manhattan. (Reyes Dep., at 229:24-231:13.)

Again, while it is undisputed that Reyes raped the Jogger, we do not believe, as plaintiffs assert, that a jury would ultimately credit his account or that his account can withstand the "strictest scrutiny."

2. Reyes's Pattern of Criminal Activity

Reyes's account of the rape and assault of the Jogger is inconsistent with his *modus operandi* in his other known crimes. Indeed, if anything, the rape and assault of the Jogger was dissimilar from Reyes's established criminal pattern and is an outlier. (*See* Chart with Comparison of Wounds Suffered by the Jogger and Reyes's June 14, 1989 Homicide Victim,

[2] In his interview by ADA Ryan, Reyes indicated that he entered Central Park and saw the Jogger. However, during his interview by Vern Fonda and during his deposition, Reyes stated that he had been in Central Park for a period of time and while exiting Central Park, he saw the Jogger.

annexed hereto as Exhibit "A"; Chart with Comparison of Reyes's Crimes – Victims' and Eyewitnesses' Accounts, annexed hereto as Exhibit "B.") Several significant differences between the rape and assault of the Jogger and Reyes's "other crimes" are set forth below:

- Of Reyes's five known victims *in 1989*, four reported the crime occurring much earlier in the day;
- Reyes's four known rapes *in 1989* all occurred in controlled environments (i.e. indoors in apartments)[3];
- None of his other victims were beaten as severely or extensively as the Jogger. Even the violence used against the homicide victim, did not rise to the level of the brutality used during the attack on the Jogger (*see* Exhibit A);
- Only one other victim (of the ten presently known victims) was left bound; and
- Reyes's claimed "blitz approach" to the Jogger attack differs from his documented pattern of engaging his victims *before* his attack, usually through conversation.

While plaintiffs often claim, citing the Ryan Affirmation, that Reyes used the same distinctive ligature to bind and gag both the Jogger and one other victim, that claim is without merit. The woman who was raped and assaulted on July 19, 1989, was bound and gagged, but her legs and arms were hogtied with an extension cord and she was separately gagged with a telephone wire. (*See* NYC005798-5799 and NYC005848.) This is completely different from the method used to bind and gag the Jogger, whose long sleeved shirt was wrapped around her head, crisscrossed through her mouth, and then used to tie her hands up in front of her face, in a praying position. Again, unlike the binding of the July 19th victim, the Jogger's ankles were not tied, as they were free and kicking violently when she was discovered. (*See* Testimony of Police Officer Joseph Walsh, People v. Richardson, at 1164:15-1169:22; *see also* Ryan Aff., at 4, ¶ 8.) Certainly it cannot be said, as the Ryan Affirmation asserts and plaintiffs parrot, that these two means of binding were "strikingly similar."

One other important difference to note with regard to the treatment of the only other victim that Reyes left bound and gagged, is that after leaving that victim on July 19th, Reyes called 911 to request an ambulance for her. (*See* NYC005796-5799.) This is a drastic departure from what purportedly happened on April 19th, where Reyes claims that he severely beat the Jogger and left her die, without making any efforts to get her medical assistance.

In addition, contrary to plaintiffs' assertion in their March 6th letter, Reyes did not strike all of his victims in the face or head. In fact, Reyes did not beat in the face or the head at least two of his other rape victims, specifically the women he sexually assaulted on July 19, 1989 and August 5, 1989. (*See* NYC001139; NYC001137-1138; NYC005796-5799.) Although Reyes did strike some of his other victims in the face or head, none of Reyes's other victims suffered head trauma nearly as severe as that suffered by the Jogger. (*See* Exhibit A; Exhibit B.)

Lastly, although Reyes did not show any concern about leaving evidence behind after the rape of the Jogger, he took significant steps after most of his other known sexual assaults to eliminate or reduce any trace evidence. The only other sexual assault where he did not seem to

[3] The fifth crime was an attempted rape that Reyes initiated in the foyer of an apartment building and attempted to direct into the apartment stairwell.

take such precautions was the June 14th sexual assault that ultimately ended in the murder of the victim. For each of his other crimes, Reyes forced the victims to shower after his assault, and in at least one of those crimes, Reyes attempted to wipe away any fingerprints that he may have left.

3. Forensic Evidence Connecting Plaintiffs to the April 19, 1989 Crimes

In their March 6th letter, plaintiffs claim that there is "absolutely no credible forensic evidence that connects any of our clients to any of the crimes that took place in Central Park" on April 19, 1989. (Pls' Ltr., at 4.)

We disagree with the notion that there was *no* physical evidence connecting the plaintiffs to the commission of *any* of the crimes that occurred in Central Park on April 19th. For example, there was blood recovered from Santana's sweatshirt that was determined to be type "A," consistent with that of John Loughlin. This forensic evidence, coupled with Santana's admission in 1989 that he committed this crime, connected him to the assault of John Loughlin. Moreover, the semen stain on the outside waistband of Santana's sweatshirt was circumstantial evidence consistent with Santana's participation in, at least, the simulated rape of the Jogger. Moreover, there were multiple hairs – including pubic hairs – found on Kevin Richardson's person, which, *at the time*, connected him to the rape of the Jogger.

With respect to their discussion of the pubic hairs found on Kevin Richardson's person, plaintiffs rely upon a NYPD Reinvestigation "Memo" dated June 21, 2002. (*See* Pls' Ltr., at 4-5.) This document appears to summarize FBI Agent Douglass W. Deedrick's report, dated June 14, 2002, in which he concluded that the hairs found on Richardson were "not suitable for meaningful comparison purposes." (*See* DANY03076.) However, the FBI report itself states only that the hair was not suitable for meaningful comparison in 2002, *not* that it was unsuitable for comparison in 1989. Indeed, contrary to plaintiffs' assertion, neither the FBI report nor the Ryan Affirmation concluded that Detective Petraco – a non-party – presented any "false evidence" against Kevin Richardson at his criminal trial. In any event, what Agent Deedrick was referring to was a *visual* comparison, not a *DNA* comparison. Notably, ADA Nancy Ryan specifically instructed the FBI not to conduct any DNA comparisons of the hair evidence in 2002. (*See* DANY03075.)

On July 26, 2002, more than a month *after* Agent Deedrick's visual comparison, LabCorp concluded, based on a *DNA* comparison, that the Jogger and her maternal relatives *cannot be excluded* as the source of "one hair indentified as a pubic hair" found on Richardson. (*See* DANY03053–55.) It is unclear, therefore, what, if any, impact Agent Deedrick's visual conclusion had on LabCorp's DNA results. Moreover, it is particularly specious for plaintiffs to rely on the Armstrong Report's description of the forensic evidence since the Armstrong Report itself states that: (a) its description of the test results concerning the "hairs found of Kevin Richardson" were based on the tests "described in the Ryan Affirmation;" and (b) the Panel did not have access to the "lab reports from the private laboratory" (LabCorp) that conducted the new forensic tests. (Armstrong Report, at 37.)

Lastly, in their March 6th letter, plaintiffs fault ADA Lederer for *an argument* she made to the jury in her summation regarding the hair (to which none of the criminal defense attorneys objected). (*See* Pls' Ltr., at 4.) Summations are not evidence, and, indeed, the jurors were so instructed by Judge Galligan before summations began. (*See* Jury Instruction by the Honorable Thomas B. Galligan ("Jury Instruction"), People v. Richardson, at 3953:7–3954:2.) Judge Galligan specifically told the jurors that if they disagreed with an attorney's argument, they could "put aside that argument and substitute your own conclusion and your own recollection. Because it is your recollection of the testimony that governs in every case." (Jury Instruction, People v. Richardson, at 3954:3–6.) Moreover, even if this statement was improper, there could be no claim arising from it as it was made in ADA Lederer's prosecutorial capacity for which she is entitled to absolute immunity.

4. The Statements Are Not Evidence of Coercion

A. The Statements Are More Similar than Dissimilar

Plaintiffs argue that the statements, themselves, are evidence of coercion and malfeasance on the part of defendants due to their dissimilarities. (*See* Pls' Ltr., at 5.) However, an objective review of the statements, while revealing dissimilarities, yields the conclusion that the statements are generally more similar than not.

The following facts concerning the rape of the Jogger are similar throughout the statements made by the five plaintiffs:

- Of the four plaintiffs that describe the Jogger's clothing, two (McCray and Richardson) indicate that she was wearing a white shirt and shorts, Santana indicated that she was wearing jogging clothes and Wise described her as wearing a shirt and biking pants;
- All five plaintiffs indicate that the Jogger was struck in the facial or head area;
- All five plaintiffs stated that the Jogger was raped and fondled;
- Four of the five plaintiffs described teenagers holding the Jogger's arms and legs during the rape;
- Four of the five plaintiffs indicated that the Jogger struggled against her rapists and that, consequently, she was struck by at least one of the teenagers; and
- Four of the five plaintiffs name Richardson, McCray, Santana and Lopez as being at the rape.

While we do not discount the fact that the names of the individuals who perpetrated many of the above described actions are inconsistent throughout the statements, we would expect that to be the case where the rape was committed by multiple assailants over a short period of time in an unlit area. The fact that the plaintiffs are inconsistent concerning names and instrumentalities used in the physical assault and rape does not, in our minds, somehow automatically stain the statements as the fruit of coercion.

The below facts are examples of notable similarities between the plaintiffs' accounts of the other crimes that occurred in Central Park on April 19th:

- All of the plaintiffs describe the attack on Antonio Diaz;
- All of the plaintiffs indicate that one of the teenagers in the group took Diaz's food;
- Four of the five plaintiffs indicate that the group tried to stop the tandem bikers;
- All of the plaintiffs indicate that the tandem bikers were able to get away;
- Four of the five plaintiffs provide facts concerning the assault of John Loughlin and describe him as wearing a green army jacket;
- Four of the five plaintiffs indicate that at least one other male jogger was assaulted in Central Park; and
- All of the plaintiffs indicated that a metal pipe was used in at least one of the assaults that occurred in Central Park.

Again, although there are discrepancies with regard to who was involved in each assault and what weapons, if any, were used, the statements are still generally similar with respect to the crimes that occurred on April 19th.

In support of their argument, plaintiffs assert – incorrectly – that none of the plaintiffs mention the following facts, among others, in their statements: (1) how they happened to first catch sight of the Jogger; and (2) what direction the Jogger was running in; and (3) the robbery and the "headset" that the Jogger was wearing. (*See* Pls' Ltr., at 6.)

With regard to how they happened to first catch sight of the Jogger, all five plaintiffs indicated where the Jogger was when they first saw her. For example, Salaam indicated that the group he was with left the vicinity of the reservoir, and walked up a hill and across a road when they first saw the Jogger. McCray stated that he first saw the Jogger on a road near the tennis courts. In addition, at least one of the plaintiffs – Kevin Richardson – indicated the direction in which the Jogger was running when first seen. (*See* Kevin Richardson's Handwritten Statement) ("everybody start running to the west drive, then we saw this lady jogger...she was on the road running from east to west.") Lastly, Wise referenced the robbery of the Jogger and described a "walkman" that was taken from her. At approximately 4:50 a.m. on April 21, 1989, Korey Wise stated the following: an individual named "Rudy" was present at the rape, and that this individual "played with [the Jogger's] tits [and] took [a] walkman." This statement was made well before the Jogger regained consciousness and would have been able to tell detectives what property she may have had in her possession when she left her apartment and entered Central Park. Moreover, to the extent plaintiffs argue that the Jogger had a radio headset, as distinguished from a Walkman tape player, plaintiffs are certainly aware that in 1989, "walkman" was a generic term used to describe a portable personal stereo, such as either a cassette player *or* a headset.

B. Plaintiffs' Allegations Concerning the Motives of the Defendant Detectives are Unsupported by the Evidence

Plaintiffs argue that the defendant detectives who took the confessions from plaintiffs were motivated to do so because of their prejudice or due to "vitriol that coursed through their veins." (Pls' Ltr., at 7 and at 7 n.3.) In support of this contention, plaintiffs refer to the memoranda of interviews conducted by DANY in 2002. Plaintiffs consistently cite only to those portions of the DANY memoranda that support their positions, and, at the same time, either

vehemently deny, or simply ignore, those portions of the memoranda that do not. (*Compare* Pls' Ltr., at 9-10 n.4 *with* Pls' Ltr., at 7-8 n.3.) Notably, virtually every single person who was asked about these memoranda at his/her deposition has denied significant portions of the statements attributed to the interviewee by DANY. This is true for plaintiffs (Richardson and Santana), non-parties (Jerry Harris and former Detective Eric Reynolds) and defendants (Detectives McKenna and Hartigan). Thus, pointing to these memoranda as evidence of the defendant detectives' motives is not persuasive.[4]

5. The Defendant Detectives Acted Reasonably and Prudently

In questioning the reasonableness of the actions of the defendant detectives in this case, plaintiffs again point to inconsistencies in the statements, the "lack of physical evidence" and the 16 through 18 inch "drag mark" that was at the scene of the crime. (Pls' Ltr., at 8.) As stated above, we dispute plaintiffs' contentions regarding the statements and the physical evidence.

A. The "Drag Mark"

With regards to the "drag mark," plaintiffs often cite the Ryan Affirmation in support of their claim that its characteristics indicate that the Jogger must have been dragged by a single attacker. However, all that was said in the Ryan Affirmation was that the drag mark, which was 16 to 18 inches wide, "appears to be more consistent with a single attacker dragging an inert form than with a group." (Ryan Affirmation, p. 34, ¶ 64(4).) However, even assuming that the Ryan Affirmation was correct, that statement does not preclude the possibility that the drag mark was the result of the Jogger being dragged by more than one attacker or even that others were present but were not involved in dragging her. As former Detective George Gillner – who was one of the first responders to the crime scene – testified, grass has a tendency to rebound. (Deposition of George Gillner, taken July 26, 2011, at 122:22-123:11.) In other words, while dragging a body might produce a lasting path by breaking grass and moving debris, such a path may not be produced by people walking over other areas of the grass. (*See* Deposition of Detective George Gillner, taken October 6, 2011, at 260:12-261:3.) Therefore, the width of the

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[4] Specifically, plaintiffs point to the memorandum that was generated by ADA Peter Casolaro after an interview of Detective Hartigan in 2002. The statement in question concerns a 'blueprint" that Detective Hartigan allegedly created after the interview of Richardson and which was supposedly utilized for others interviews that he either conducted or sat in on. (*See* Memorandum entitled "Interview of retired Detective John Hartigan," written by Peter Casolaro, dated September 10, 2002, at 2.) Notably, this statement, unlike other "quotes" attributed to Detective Hartigan, is not in quotations, which logically infers that it was, at most, paraphrased by ADA Casolaro. At his deposition, Detective Hartigan testified that he did not remember ever saying that he developed a blueprint to elicit the confessions from the plaintiffs. (*See* Deposition of Detective John Hartigan, taken November 10, 2010, at 253:11-254:10; 320:24-322:9.) Even if Detective Hartigan did say this, it does not indicate any unconstitutional activity on his part. Moreover, if such a blueprint did, in fact, exist, it would have been used with other suspects who did not then confess to a crime and who were not ultimately prosecuted.

Similarly, even to the extent former Detective McKenna did tell DANY that the fact that Salaam pretended to be 16 years old "enraged" him (which he also denied at his deposition), this does not establish any sort of "vitriol" and/or a motive to falsely arrest Salaam, as plaintiffs suggest. Indeed, what it points to, if anything, is McKenna's frustration that a confession elicited from a suspect might be suppressed due to that suspect's lies concerning his age. Moreover, it is unclear how any purported aggression from Detective McKenna during his "re-interview" in 2002 could possibly suggest his "motive" in April 1989.

drag mark is not conclusive evidence, either way, of how many people walked along the same path[5] or dragged the Jogger.

B. No Connection between the April 19th and April 17th Crimes

Plaintiffs further argue that the defendant detectives should have identified Reyes as a suspect in the rape of the Jogger, simply because he was a person of interest in the investigation of the April 17th case. (*See* Pls' Ltr., at 8.) However, in April of 1989, there was no apparent connection between the April 17th and April 19th rapes.

First, there were 28 other first-degree rapes or attempted rapes reported across New York City in the very same *week* as the attack on the Jogger. Multiple rapes and sexual assaults took place in or around Central Park from 1988-1989, as documented by the UF-61s collected and analyzed during the NYPD reinvestigation. (*See, e.g.*, NYC018339-NYC018426.) Thus, in 1989, the April 17th and April 19th rapes, or the subsequent Reyes "pattern," were not the only sex crimes then under investigation by NYPD.

Second, based on the information the police possessed in 1989, the April 17th attack was markedly different from the April 19th attack. The April 17th victim was attacked in broad daylight, after a lone man approached her, introduced himself as "Tony" and talked about boxing. The Jogger, on the other hand, appeared to have been subjected to a "blitz" attack. In addition, while the victim in the April 17th case was punched in the face during the attack, she ultimately did not suffer the kind of injuries that required hospitalization. In comparison, the Jogger's facial and head injuries were so severe that she was deemed "likely to die." Another notable difference between the two cases was that the April 17th victim was raped vaginally, while evidence indicated that the Jogger was raped vaginally and anally. Lastly, the April 17th victim was able to provide a description of her attacker. The Jogger, on the other hand, had no recollection of her attack. Accordingly, the only information available to officers about the April 19th attack was from suspects and witnesses, which pointed to a gang assault.

Third, there was hardly a "treasure trove of information [available in 1989] which pointed squarely to Reyes as the attacker" of the April 17th victim. Rather, the name "Matias Reyes" was the identity of *one* of *three* males who received stitches on his chin in the days prior to April 17, 1989, per non-party Detective Irma Rivera-Duffy's contacts at local hospitals. Reyes could not be located, however, because he did not reside at the address he gave to the hospital. Further, when the April 17th victim viewed CATCH photos, she picked out another individual as someone who most closely resembled her attacker (no photo of Reyes was available, because at the time he had no criminal record). With respect to the sketch which was prepared by Barros, plaintiffs' claim that the sketch bared "a remarkable resemblance to Reyes" is wholly unfounded. The "sketch" has never been located, and no one can say whether it was in any way accurate in its depiction of Reyes. Even at that, under no circumstances could a "sketch" prepared by a

[5] Moreover, pursuant to the hearing testimony of Crime Scene Unit Detective Robert Honeyman, at the time the "drag mark" was documented, a disturbance had been caused in the area by police personnel "walking back and forth parallel to the drag mark." (Testimony of Detective Robert Honeyman, People v. McCray, at 1726:9-10.) Thus, it would have been incredibly unlikely that any conclusive determination could have been made concerning the number of individuals who had dragged the Jogger.

civilian witness, without any other positive identification, provide probable cause to arrest Reyes for this crime. Importantly, neither the victim nor Barros responded to detectives' attempts to contact them to further the investigation.

Fourth, with respect to the DNA evidence, there was no way in which DANY could have requested or facilitated the testing of the April 17th Vitullo kit against the April 19th Vitullo kit, as plaintiffs suggest. There was no federal or local DNA database in existence in 1990. The FBI was just beginning to accept a limited number of cases each year for confirmatory DNA in *ongoing* prosecutions. Probable cause, and an arrest and prosecution, were prerequisites to any DNA testing by the FBI in 1989 and 1990. Plaintiffs are well aware of this procedural hurdle, since their own DNA was obtained and tested pursuant to court order issued over plaintiffs' objections during their own prosecutions.

Similarly, ADA Casolero obtained a court order to take a DNA sample from Matias Reyes during his prosecution, and then requested that the FBI test Reyes's DNA against the evidence recovered from Reyes's other crimes, for which he was already under indictment. Thus, while it was scientifically possible, in 1990, to compare two DNA samples, the FBI simply did not do comparative case-to-case testing at that time. Because there was no probable cause to arrest Matias Reyes for the April 17th rape, and, therefore, no prosecution connected to that DNA evidence, the FBI would not have tested it, even upon DANY's request. In any event, it was still solely in the purview of DANY – *not* NYPD – to request DNA testing from the FBI.

6. Plaintiffs Now Deny Participating in Any Criminal Activity on April 19, 1989

The most recent iteration of plaintiffs' claims, as articulated in their March 6th letter, is that while they were present in Central Park on April 19, 1989, they did not participate in *any* of the crimes that occurred therein. (*See* Pls' Ltr., at 9.) Plaintiffs claim that they only witnessed criminality, but did not take part. Even disregarding the statements made by plaintiffs in April 1989, this new theory of their involvement is demonstrably false.

Raymond Santana, Jr. made statements to the New York State Department of Corrections *and* the Parole Board regarding his participation in the assault on John Loughlin. Further, in 2002, both Santana and Kevin Richardson admitted to DANY that the group of teenagers went into Central Park on April 19th with the intent to rob and assault innocent bystanders and that both Santana and McCray were involved in the assault on Loughlin. In their March 6th letter, plaintiffs attack the questioning of Santana in 2002 as "done as part of the NYPD's effort to undermine the credibility of Reyes and to continue to stigmatize and defame the plaintiffs..." (Pls' Ltr., at 9-10, n.4), however, this interview – while conducted by a NYPD detective – was done at the behest of DANY with ADA Casolaro present. Furthermore, not only had the statute of limitations run on these crimes, but the use of a ruse, a lawful investigative technique, does not automatically result in an untruthful statement. In addition, contrary to plaintiffs' assertion, there was no obligation on DANY to provide counsel for Richardson and Santana before interviewing them in 2002 regarding crimes for which they had already been convicted and sentenced.

Plaintiffs also argue, in the alternative, that even if these later statements did connect them to the perpetration of various other crimes that occurred in Central Park, the attack on the Jogger, not these other crimes, was the impetus behind their lengthy prison sentences and their ultimate "vilification." (*See* Pls' Ltr., at 10.) In making this argument, plaintiffs discount and disregard the vicious nature of the attacks on the other innocent victims on April 19th. McCray, Salaam, Santana and Richardson were each found guilty and sentenced for crimes against the Jogger, as well as robbery of John Loughlin.[6] The sentence for each crime for which they were found guilty, including the robbery charge, was 3 1/3 to 10 years of incarceration. (*See* Conviction Chart, at Exhibit "C.") Accordingly, even if these plaintiffs had not been convicted of any crimes related to the Jogger, they could still have served a sentence of 3 1/3 to 10 years in prison.[7]

7. The Purported "Stigma" Plaintiffs Have Been Forced to Carry

Plaintiffs claim that as a result of their arrests, convictions and incarcerations in this case, they have been forced to carry a "stigma" that remains with them today. (Pls' Ltr., at 10.) However, while this may have been the situation prior to the vacatur of their convictions, the objective facts since that time belie this allegation.

Plaintiffs have become pseudo-celebrities as a result of the media attention that they have voluntarily sought and received since the vacatur of their convictions. All five plaintiffs participated in the making of the Burns film, *The Central Park Five*. With the exception of Antron McCray, plaintiffs routinely participate in lectures and events in connection with the film's release. Yusef Salaam has been compensated for speaking engagements and appearances in connection to this case, and has also accepted all-expenses paid trips to destinations such as St. Croix and St. Thomas, along with his domestic partner, to appear at case-related events. Raymond Santana has traveled to Toronto and Chicago, among other cities. Korey Wise often speaks in public on behalf of the Innocence Project and travels around the country attending Innocence Project events, with the organization footing the expenses. Additionally, Wise has given interviews to NY1, The View, *Time*, *The New York Times*, and *The Los Angeles Times*, among others. Even McCray, who is generally reclusive, has appeared in public to promote the film.

Plaintiffs actively publicize their involvement in this litigation, not just by protesting on the steps of City Hall and at the federal court house with their attorneys, and soliciting attention from traditional media, but most are active on social media, such as Twitter and Facebook. Raymond Santana, Jr. answered questions for several hours in connection with an AMA ("Ask Me Anything") on Reddit, which he described as an "awesome experience." Santana also frequently re-tweets (or puts on Facebook) information concerning upcoming court conferences exhorting supporters to attend. Plaintiffs frequently receive public messages of support via

[6] Although found guilty of other crimes against both Loughlin and David Lewis, including robbery and assault, the verdicts for those other offenses were set aside due to the plaintiffs' juvenile offender status and the fact that they were being sentenced on the more serious crimes. (*See* Exhibit B.)

[7] Korey Wise, on the other hand, was only found guilty of one crime unrelated to the Jogger – Riot in the First Degree – which carried a potential sentence of 1 to 3 years. However, Wise ultimately spent approximately 13 years in prison. Thus, plaintiffs' argument is stronger with regard to Wise.

social media. At his deposition, Salaam characterized himself as "one of the most loved persons in New York City." Essentially, they have lionized themselves, and, most recently, have been lionized by others as a result of their connection to this litigation. Plaintiffs' acceptance of this attention and willing participation in these events mitigates their claims of ongoing emotional damages, and undercuts any claim of an alleged "stigma" related to this case.

8. Cases Cited by Plaintiffs in Support of Their Settlement Demand

In response to the litany of cases referenced by plaintiffs in support of their settlement demand (*see* Pls' Ltr., at 11-13; Chart of Cases Provided by Plaintiffs' with Their March 6, 2014 Letter), defendants have provided a chart analyzing these cases and providing additional relevant information. (*See* Chart with Awards in Wrongful Conviction Cases, annexed hereto as Exhibit "D.") This chart includes relevant facts that may have affected the dispositions, since plaintiffs, for the most part, do not include such details in their March 6th letter. In addition, also included in this chart are additional cases from the same jurisdictions as the matters cited by plaintiffs, which have settlements at levels lower than those in the cases cited by plaintiffs, or in which there was an outright dismissal of the claims.

9. The Reference to Reyes's Ring in the Ryan Affirmation

Plaintiffs' repeated reliance on statements made in the Ryan Affirmation rather than on the original underlying documents is troubling considering the instances where the Ryan Affirmation does not accurately portray and/or interpret the facts set forth in these documents. An example of this failure by the Ryan Affirmation was discussed in Section 4(A) of this memorandum, in the context of the similarities or lack thereof between the plaintiffs' handwritten and video statements. Another stark example is found in the Ryan Affirmation's conclusion that the injury to the Jogger's cheek was caused by a ring that Reyes was purportedly wearing at the time of the attack. As a starting point, there is no evidence that we are aware of that establishes that Reyes was, in fact, wearing this ring on April 19, 1989.

In addition, while Paragraph 68 of the Ryan Affirmation affirmatively states that the opinion of Dr. Charles S. Hirsch is that "[t]he patterned injury over the prominence of the victim's left cheek bone is consistent with a left fist blow, striking at an acute angle, partially imprinting the image of approximately half of the prominent parts of Mr. Reyes's ring on her skin" (Ryan Aff., at 38-39, ¶ 68), the underlying documentation of Dr. Hirsch's conclusions is significantly less definitive.

Dr. Hirsch evaluated the "cheek/ring relationship" based only upon a *naked eye* comparison of the ring with photographs of the injury. The Medical Examiner Scientific Assessment Training Team (MESATT), however, conducted experiments that produced exemplars that exhibited "certain features consistent with the wound pattern while other aspects were *dissimilar*." The team could not produce adequate exemplars for comparison given the unknown variables of the amount of force involved in the actual impact, the angle of impact, and the relative motion of victim and assailant at the moment of impact. The ultimate finding of the Medical Examiner's Office was only that the ring "cannot be excluded as a source of the pattern on the left cheek of the victim." (*See* NYC001309-1312.)

In re McCray, et. al
03 Civ 9685 (DAB) (RLE)
Comparison of Wounds Suffered by the Jogger and Reyes's June 14, 1989 Homicide Victim

	4/19/89	6/14/89
Head	Four major lacerations on left side of head One deep laceration on right side of head from temporal region to back of head Outer table of bone crushed under laceration on right side of skull (detectible by touch) Fractures on left side of skull (detected by x-ray) Severe injury to the brain	One incised wound in the right forehead Skull intact No evidence of trauma to the brain
Face	Small lacerations over left eyebrow Star shaped laceration over the left cheekbone Multiple fractures to the bones supporting her left eye, including a blow out fracture caused by blunt force trauma against the eyeball and the surrounding bone Eyes swollen shut Large contusion on left cheek Lips bleeding Scratch marks on chin with torn skin	Two incised wounds above right eye Blunt impact to left side of face with contusion Blunt impact to right side of lower eyelid with laceration and contusion
Body	Relatively superficial scrapes, cuts and bruises on the front of victims' body	Seven stab wounds inflicted by knife to chest, abdomen, back & breast, some of which penetrated the chest cavity, lungs and liver Blood stained fluid found in the abdominal cavity and both lungs
Significant Other	Signs of severe brain dysfunction present at scene Lost function of both vertebral hemispheres of brain before reaching hospital Extremely low blood pressure (Systolic was 70 & Diastolic was unmeasurable at hospital) Weak pulse and low body temp (cold to the touch)	Still conscious upon arrival at hospital Died at hospital

Sources: Information regarding injuries to CPJ from criminal trial testimony of Dr. Robert Kurtz and Estelle Paris (EMT at the scene).
Information regarding the injuries sustained by the June 14, 1989 victim was obtained from certain medical records in our possession.