RACIST FRAMING IN THE CRIMINAL JUSTICE SYSTEM:

POWERFUL WHITE OFFICIALS

A Dissertation

by

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ABSTRACT

In this qualitative study, I examine the criminal justice system, specifically powerful individuals' (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and authoritative judges) mindset when interacting with people of color. I argue lumping people of color into "typical" categories — stereotyping, images, prejudice, and emotions — are compiling factors for consequences (unequitable discretionary decisions, criminalization, and mass incarceration) people of color encounter when interacting with powerful individuals in the criminal justice system. Therefore, I will demonstrate the mode of thinking by powerful criminal justice individuals in relation to people of color through relevant quotes. The quotes for this study were collected directly from interactions within court cases (court transcripts), exchanges of emails (primarily during business hours shared on company computers), and intimate interactions (everyday actions) provided by people in power. This study will analyze a vast majority of available public interactions with multiple powerful individuals within the criminal justice system.

This research has found direct results of people of color being criminalized and facing inequality, discrimination, and racist interactions with powerful individuals' in the criminal justice system. Primarily, patterns of systemic racism in conjunction with white racially framed mindsets of powerful individuals resulted in institutional and embedded practices of bias. The results of this study suggest integral to the existing body of knowledge now available, studying the criminal justice system from the

bottom-up (how the actions of minorities contribute to the system) is the incorporation of the top- down (how the actions of the powerful contribute to the system) perspective. Ultimately, people of color are criminalized in multiple facets of the criminal justice system, influencing how they formulate appropriate counter narratives. Thus, the concluding chapter describes the creation of a resisting counter frame by people of color. These resistance forms include active individual aspects coupled with community action — National Association for the Advancement of Colored People (NAACP), and activists —and resistance to racism. Consequently, the cases of activism are connected to specific instances in relation to the quotes provided in this study. Demanding actions against powerful individuals' abuses of power.

DEDICATION

To God, my husband (Chris), my children (Jylah, Jazlynn, and Jakobie), my mother (Mary), the memory of my grandfather (Lonzo) and the memory of the best grandmother in the entire world (Jeanette). Grandma I know you were up there in heaven cheering me on and making sure all of the obstacles moved out of my way! I never wanted to complete this without you watching me walk the stage and that was one of the hardest realities to live with. However, because you taught me so well about who GOD is I know you are here with me! To the memory of my father (David), my family, and all of the people that have played a major role in helping me to reach my goals.

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CONTRIBUTORS

Work completed independently by the student

Part 1, faculty committee recognition

This work was supervised by a dissertation committee consisting of Professor Joe Feagin [advisor] and Professor Holly Foster of the Department of [Sociology] and Professor Edward Murguia of the Department of [Sociology] and Professor William McIntosh of the Department of [Recreation, Park, and Tourism Sciences].

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CHAPTER I

INTRODUCTION: BACKGROUND OF THE PROBLEM

> Law was used at each step in the conquest and enslavement of African and other native peoples. Nothing has been done without the laws guiding hand to regulate, manage, and control. Whenever European American majority in the United States desires to ostracize, control, or mistreat a group of people perceived as different, it passes a law (Nunn, 1997 p. 190-191).

For much of our justice system's history, people of color have been dominated by powerful social actors (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and authoritative judges) as the method of regulation. As early as 1721, laws were in place to mandate control of disorderly slaves (Reichel, 1988). Slave patrols (similar to powerful police today) were created to capture, punish, and prevent Negroes from running away, uprising, bearing arms, or possessing stolen goods. Consequently, slaves were supervised and if suspected of committing an illegal act, were to be brought to the nearest magistrate (powerful judges) (Reichel, 1988). Following the slavery era (after the end of the Civil War) the justice system adopted black codes to manage people of color, specifically stating, "We have the power to pass stringent police laws to govern the Negro this is a blessing— for they must be controlled in some way or white people cannot live among them." (Cohen, 1991, p.28). The laws maintained at this time by the powerful in the criminal justice system were at the center of control, thus continuing to maintain people of color who were viewed as lawbreakers. Ultimately, the black codes were replaced by the birth of Jim Crow. During this time,

powerful social actors vigorously enforced vagrancy laws and other laws against people of color without being reprimanded because these behaviors by powerful actors were considered to be normal. According to Douglas Blackmon (2008) in *Slavery by Another Name*, many people of color were arbitrarily arrested (by high-ranking police officers), aggressively charged with criminal offenses (by district attorneys), and hit with court fines (by authoritative judges). These powerful individuals (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and authoritative judges) of the criminal justice system established the mindset that people of color were criminal in nature and literally slaves of the state. In the Virginia Supreme Court's landmark decision *Ruffin v. Commonwealth,* the courts (powerful justice officials) defined the status of convicts (specifically people of color) as not legally distinguishable from that of slaves.

> For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is civiliter mortus; and his estate, if he has any, is administered like that of a dead man. (Ruffin v. Commonwealth, 1871)

Consequently, the system was strategically employed as a structure for powerful individuals to extremely repress, maintain, and control people of color. The death of the Jim Crow era is typically traced to Brown v. Board and the NAACP’s influence

challenging these laws in federal court. In the 1950s, a civil right movement was brewing, thus creating a tactic of law and order.

"The law and order perspective, first introduced during the civil rights movement by rapid segregationists, had become nearly hegemonic two decades later" (Alexander, 2010, p. 56). Therefore, powerful individuals in the criminal justice system continued the existing racial order. The absence of reprimands for racialized maltreatment created a sense of normalcy for viewing people of color as criminal in nature and bodies to be controlled. The following examples of interactions of people of color with powerful individuals in the criminal justice system during this time support this statement. On September 27, 1994, there was a police shooting of a black child. Nicholas Heyward Jr., a black 13-year-old, was playing cops and robbers in his Brooklyn apartment stairwell when Officer Brian George shot him in the stomach, killing him. The officer mistook his toy gun for real. Katrell Fowler, a friend, playing with Heyward, stated, "I heard Nick say, 'We're playing,' and then I heard a boom." (Sexton, 1994, p.1) Nicholas Heyward was found with his toy gun held up by his right ear. The district attorney in the case who declined to bring charges against Officer Brian George for the shooting is a controversial figure; we will discuss his racial name-calling later in this study. Following the shooting, New York formed teams of white police officers known as the "elite street team" that were similar to slave patrols (discussed in the opening paragraph). In February 1999 Amadou Diallo, an African immigrant, was gunned down by the police. Four white plainclothes police (members of the elite street team) followed Mr. Diallo to his apartment and ordered him to stop. Mr. Diallo took a few steps into his apartment to

retrieve his wallet; it is suspected that he wanted to retrieve his identification. Based on historical beliefs of the criminal black man, the officers assumed that Mr. Diallo had a gun and fired forty-one times. Instead of reprimanding the officers' actions, the New York police department officials increased the number of stops of pedestrians and began frisking blacks at grossly disproportionate rates. These two accounts point to a string of racist actions historically (beginning as early as the slavery era) representative of people of color's interactions with people of power.

Currently, the nature of interactions between people of color and powerful individuals within the criminal justice system remains the same. Unlike the past, however, tracking the thought processes of the powerful is now more covert (hidden). New technology has afforded us the advantage to view these interactions from a behind the scenes perspective. Here, we will look at a current case that is filled with the racialized mindsets of powerful officials (expressed through e-mails) and the lack of punishment for deadly decisions by officers (no indictments), all leading to consistent patterns (criminalizing people of color) of our justice system.

In 2014, the Department of Justice conducted a complete investigation in Ferguson Missouri following the shooting death of Michael Brown on August 9 of that year. Brown, an 18-year-old black man, was fatally shot by a white police officer Darren Wilson, 28. The shooting sparked weeks of riots and protests in the area. On Nov. 24, the St. Louis County prosecutor announced the grand jury's decision not to indict Mr. Wilson. The shooting and the grand jury's decision were controversial, sparking a Department of Justice investigation. The investigative report dealt with residents'

encounters with high officials. The full release of the report by city officials revealed the contents of racially charged and religiously insensitive e-mails, thus shedding light on powerful officials' inner thought processes. The recipients and senders of these emails were three high-ranking and powerful officials: Mary Ann Twitty, the city's former court clerk, and William Mudd and Rick Henke, two former police department supervisors. In 2011, Ferguson Police Sergeant William Mudd sent an e-mail to his friends from his work account. Sergeant Mudd was the supervisor of Sergeant Darren Wilson, the officer whose case was heard before the Grand Jury resulting in no indictment for the shooting of Michael Brown. Mudd was also a key witness in Wilson's defense at the Grand Jury hearing. The May 2011 email forwarded by Sergeant William Mudd stated:

> An African-American woman in New Orleans being admitted to the hospital for a pregnancy termination. Two weeks later she received a check for $5,000. She phoned the hospital to ask who sent the check. The hospital said, 'Crime Stoppers.' (Karoli 2015, p.1).

He made assumptions through this e-mail. This e-mail expresses expectations about the black community. Mudd asserts abortion can stop crime, leading to multiple assumptions of blacks linked to criminality. Research conducted by social scientists and others has found whites automatically connecting African Americans and crime. For example, in 2005 (prior to Mudd's forwarded e-mail), killing minorities to reduce crime was publically discussed by Republican William Bennett. He was once secretary of education for President Ronald Reagan and was said to be one of the "big brains" of the

Republican Party. Bennett said on his radio show: "If you wanted to reduce crime, you could, if that were your sole purpose; you could abort every black baby in this country, and your crime rate would go down." (Faler, 2005, p.1). Ultimately, it seems this school of thought has caught on through the minds of the powerful. This is significant to connect both the social and political contexts.

Here, a pattern seems to be present. In all of the above instances, both in the past and currently, we have seen the actions of the powerful resulting in the death of minorities. We have also seen powerful figures' stereotypical views of minorities as inherently criminal conveyed.

Significance of current research

In early 2000 I watched as my cousin was brutally beaten within inches of his life by police officers. My family, grandmother included, could not make sense of this inequitable treatment. I knew my cousin to be an upstanding citizen. The officers attacked him for "speaking out of turn," and at this point I became curious. I could not wrap my head around the reason that he was being treated as a "common criminal." He did not have a weapon, a record, or a history of violent behavior. Thoughts of the lessons taught by my parents filled my head. I was advised that power differentiation in the criminal justice system meant that I should act in a particular manner as a person of color in order to stay "safe." People of color were not to speak loud or out of turn when encountering people in power. We were instructed to act in a non-threatening fashion as much as we could. As an inquisitive child, I was notorious for "why" questions. I

yearned for an understanding of daily interactions with the law within my poverty-stricken neighborhood. I knew I was not alone; children around me had similar curiosities. I would consistently witness my loved ones, primarily the men in my life, being treated in an inhumane manner when interacting with powerful people within the criminal justice system. I watched my uncles encounter lawyers as they fought for their freedom. I also witnessed the sentencing of my cousins, uncles, and friends. These encounters always involved them being spoken to in a way that made them feel less than human. Ultimately, they questioned their abilities to take a strong leading role in the family unit. As I entered college, I began to study sociology. This provided me with the freedom to explore my childhood passions. I had an avenue to answer my "why" questions related to criminal justice system encounters. My personal experiences are where this research is formulated.[1]

An important dimension added by this project is a glance into the mindsets of powerful individuals. Ultimately, my contributions to the field offer a view of the powerful social actor's mindset when interacting with minorities within the criminal justice system. The powerful mindset is indicative of thinking of people of color in a negative way; this is at the forefront of this research. This manner of thinking also leads to consequences for people of color. I will examine powerful social actors' thoughts in

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[1] These personal accounts are included as an example for the necessity to extend the literature adding systemic racism theory to the criminal justice system equation to inspire future inquisitive students with a passion to study powerful lawmakers.

the depth of both conscious and unconscious racism. This study seeks to explore the mode of thinking of powerful social actors (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and authoritative judges). I also seek to explore people of color's encounters with these actors within the criminal justice system. I will provide a view of "Who" these social actors are and what positions they hold in the criminal justice system. I will also provide examples of relevant quotes used by powerful social actors to demonstrate their mode of thinking in relation to people of color. These quotes depict actions in everyday moments with powerful social actors (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and influential judges). In this project, quotes provided will offer insight into the explanations given by these power holders followed by the speaker's admission to making these offensive statements. The manner of lumping people of color into "typical" categories — stereotyping, images, prejudice, and emotions — will be discussed as a compiling factor for consequences encountered by persons of color. These modes of thinking will also go beyond adverse views of persons of color based on racial/ethnic identity. These opinions will also represent the sexualization, subordinate nature, and negative views held towards women of color.

Consider the example of former Ferguson county clerk Mary Ann Twitty. On March 1, 2010, she delivered messages to Rick Henke, former Ferguson police captain, and former police sergeant William Mudd that included a short story titled "Leroy's last child support payment." (Lowry & Kindy 2015, p.1). The story consisted of "broken English" commonly referenced as "Ebonics." The content of the message included

information regarding final child support payments. In response, the mother, who was the recipient of the payments, asserted "he was not the father." This excerpt expresses the negative views of powerful criminal justice officials regarding people of color as well as women: the stereotypical, always absent and deadbeat black father and the stereotypical and historical over-sexualized black women.

In addition, this study has the potential to impact the current discussion in the disciplines of sociology and criminology by focusing on the relationship between powerful figures in the criminal justice system and people of color. There is a significant gap in the literature. Currently, there is a limited amount of literature available that looks into the social interactions and thinking of people in power. I will theoretically contribute to the literature by providing an understanding of people of color's encounters with powerful figures. This study will help to fill this gap by providing insensitive e-mails, interactions in the courtroom, and interactions outside of the courtroom that involve powerful social actors (high ranking police officials, district attorneys and judges) interacting with people of color within the criminal justice system. Moreover, this study will provide accounts of the mindset of powerful people when invoking particular sentences, attitudes when dealing with individuals of color, and adverse effects on people of color when interacting with powerful entities within the criminal justice system.

> Moreover, despite assertions that the now majority far-right Supreme Court decision-making setting is diverse, the current elite bar – the lawyers who argue

very important cases before the Court – is blindingly white and unbalanced (Feagin & Ducey, forthcoming article).

To better explain my reasoning for studying powerful whites in the system, a quick review of the positions they hold in the Supreme Court, the highest court, is necessary. Historically, the majority of our Supreme Court justice offices were occupied by segregationists and slaveholders. The Supreme Court handed down a level of overt roles of maintenance for Jim Crow segregation and racial slavery for people of color through the white racial frame from the 1790s to the 1930s. (Feagin, 2010). According to court documents, the decisions passed down through the Supreme Court on rulings of oppression — 1624 in Virginia defendant John Phillips referenced as a Negro, 1690 South Carolina slavery laws, 1856 Dred Scott v. Sandford, 1896: Plessy vs. Ferguson — and pleas for redress for African Americans have been rejected. As of 2009, out of a total of 110 Supreme Court justices, 108 were men and 2 were women. Ninety-eight percent of the Justices have been white, and 96 percent of these positions have been held by white men (Feagin, 2010). Supreme Court Justices have upheld a strong patriarchal version of the white racial frame through handing down decisions for more than two centuries now (Feagin, 2010). For example, interpretations of the United States constitution have been made by judges (usually all white men) who have their own people's stakes at heart. From the late 1700s until the 1960s, decisions made by the courts on racial matters provided an interpretation of the Constitution through a white racist frame (Feagin, 2010). The white racial frame of mind is embedded in the minds of elite white individuals today.

Historically, powerful individuals in the criminal justice system have played a major role in shaping the future of our society. Their decisions have impacted the life course of people of color, launching decisions that are life changing. A prime example is the Supreme Court era of Justice Earl Warren. Notably, this was a time when decisions on a myriad of critical cases involving the future of people of color demonstrated the power of the court.

From 1953-69, the highly controversial chief justice of the U.S. Supreme Court, Earl Warren, was an influential, powerful figure. Following his controversial reign, President Dwight D. Eisenhower, who appointed Warren, regretted his decision, stating that this choice was "the biggest damn fool thing I ever did." (Cray, 1997, 10). During Chief Justice Warren's tenure, his court was known as "a revolution in race relations." (Horwitz, 1998. P.1). One of the most notable cases involved overturning school segregation, known as Brown v. Board of Education. Chief Justice Earl Warren called a meeting with the justices. He argued that allowing segregation suggested an honest belief that African Americans were inferior beings. Chief Justice Warren further explained that the court needed to overrule the Plessy v. Ferguson decision. He stated that the decision should be unanimous in order to avoid Southern resistance. The ruling found that "separate but equal" was unconstitutional and in direct violation of the Fourteenth Amendment. Earl Warren, Chief Justice of the U.S. Supreme Court stated:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting

> the inferiority of the Negro group...Any language in contrary to this finding is rejected. We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

This decision ultimately paved the way for future integration and catapulted the civil rights movement. The power exercised by Justice Warren to persuade the entire court to vote unanimously to overturn the decision was remarkable. This verdict illustrates the power of elite whites in the criminal justice system. As stated by a civil rights attorney, "The big deal about the Warren court is that it made states toe the mark on constitutional rights." (Cray, 1997, p.1). As with Chief Justice Warren, many decisions passed down by powerful whites have paved the way for race relations.

Introduction of research questions

The principle focus of this dissertation is to provide insight into the thinking of powerful social actors (primarily high-ranking police officers, district attorneys [also referenced as prosecutors], and powerful judges) in the criminal justice system. I seek to answer the following questions.

- What are the lived experiences of people of color in the criminal justice system?
- What role does systemic racism and the white racial frame (to assist in making sense of how systemic racism works) play in connection with the actions of these powerful social actors?

- To what extent do people of color suffer when negative interactions in the criminal justice system occur?

Outline of remaining chapters

Chapter II is the literature review section and focuses on the power of discretion held by high-ranking criminal justice system officials. This chapter will discuss the theoretical framework of systemic racism as the original black radical theories —e.g., Oliver C. Cox, Derrick Bell, Black Power— as well as Joe Feagin's theoretical contribution of the white racial frame. Several key concepts that are central to understanding the theories coupled with the experiences of people of color will be conceptualized. Through detailing systemic racism and multiple elements and dimensions of the white racial frame, I will provide a connection to the power of discretion molded from collective thinking of powerful actors and expressed through quotes in this project. In chapter III, I discuss my methodological approach with the provisions of discussions for taking an exploratory analysis approach versus using a more conventional method. In this chapter, I will discuss the importance of studying powerful social actors, provide a biological analysis of these actors, and examine the lack of current research on elites, making this project's contribution critical to the present state of sociological and criminal justice research's future. In chapter IV, I will provide a glimpse into elite offenders who use derogatory slip-ups as a way to define people of color as a racialized "other." I will also discuss the punishments, or lack thereof, for the use of offensive terms. Finally, an in depth look into the criminalization of people of color will be at the height of the inequitable discretionary decisions made by these

powerful officials. This chapter will find, this is the power they possess. In Chapter V, I will explore power holders as the creators of a system that supports ideas of white virtuousness and purity. Pro-white elements and narratives which stand on positive stereotypes of whites and negative stereotypes of people of color will be explored as important factors when thinking from a white centered frame. I will also provide examples of power holders' misuse of discretion when their thinking is based on these tenets while maintaining membership in the "clique." In chapter VI, I will provide a detailed summary of the current study.

CHAPTER II

THEORETICAL/ FOUNDATIONAL ADDITION

> Thus grew up a double system of justice, which erred on the white side by undue leniency and the practical immunity of red-handed criminals, and erred on the black side by undue severity, injustice, and lack of discrimination. For, as I have said, the police system of the South was originally designed to keep track of all Negroes not simply of criminals; and when the Negroes were freed and the whole South was convinced of the impossibility of free Negro labor, the first and almost universal device was to use the courts as a means of reenslaving the blacks. It was not then a question of crime, but rather one of color, that settled a man's conviction on almost any charge. Thus Negroes came to look upon courts as instruments of injustice and oppression, and upon those convicted in them as martyrs and victims (Dubois, 1903).

Dubois has an enlightened theory of the structural racism that has plagued people of color for decades. The double system of justice of which he speaks describes the unequal hands of lady liberty. He theorizes that the experiences of people of color within the criminal justice system are remarkably different from the experiences of their white counterparts. Dubois speaks of a system of racist principles, policies, and practices within the justice system. He finds that the injustices and discriminatory acts that are perpetrated through the courts work together to reenslave people of color. Overall, Dubois theorizes that the color of a person's skin and not the content of the person's

character, famously spoken by Dr. Martin Luther King in his infamous “I have a dream” speech, determines the person’s ultimate fate within the criminal justice system.

Dubois’s quote and his theoretical stance provide a historical description of the criminal justice system and its relationship with people of color. Currently, the system has seen little change in the manner in which the powerful treat people of color in the areas of detention, punishment, and discrimination. The culture of systemic racism as expressed through teachings and other avenues of justice follows the white racial frame of thinking. The experiences of people of color within this system become a process of normalized racism. These beliefs tie the system together, resulting in consequences for people of color who are dehumanized by the system. Our criminal justice system has made changes to the outer structure. The system, however, doesn’t operate from the appearance of the laws, socially acceptable talk, and social rhetoric. The true issue lies within the familiarity of the historical cultural ways of being that still engulf the system. Power holders’ behaviors are based on their familiarity with the culture. Basically, an outer change doesn’t develop into a system change when the inner beliefs of a culture remain the same. Power holders’ actions still result in suffering for people of color.

In this chapter, I seek to conceptualize my work by providing a connection to the theoretical underpinnings of multiple critical theorists including the theoretical propositions of systemic racism and the white racial frame as well as other sociological theories. Research has been conducted on the criminal justice system and racial disparities. However, there is a major gap in the literature regarding the reasons behind these disparities. Herein, I will examine the theoretical perceptions or frame from which

white actors behind the scenes (high ranking police officials, attorneys, and judges) view crime, the role of the criminal justice system, and how these views affect their discretionary decisions.

Systemic racism addition

My study of powerful social actors' (high ranking police officials, attorneys, and judges) criminalization of people of color in the criminal justice system will help bridge the gap between systemic racism theory and the criminal justice literature. This project will extend the literature by incorporating systemic racism theory. The incorporation of systemic racism theory to the literature will assist by examining "why" injustice exists when decisions are made. This study will make a crucial contribution to the field of sociology and criminology by incorporating systemic racism theory as a construct of the criminal justice system. Much current research, including work by Alexander, Tonry, Wacquant, and Nunn, examines racism in the criminal justice system. However, most of these researchers do not incorporate systemic racism theory.

Systemic racism is built on the ideas of a number of black theorists, including W.E.B. Dubois, Ida B. Wells- Barnett, Charles Hamilton, Stokley Carmichael, and Oliver Cromwell Cox, who argue that white on black oppression is embedded in today's institutions— political system, mass media, educational systems, labor markets, and the criminal justice system— and has foundational groundings in our society. The following example of a popular theorist's relevant metaphor helps explain this phenomenon. Theorist Iris Marilyn Young uses the "birdcage" metaphor to explain structural racism. I believe this metaphor can also be applied to the systemic racism within the criminal

justice system. If we think of the criminal justice system as one individual single wire, it is difficult to imagine why the bird is trapped in the cage. However, if we imagine that the cage is comprised of a number of wires arranged in a way that connects them to one another in order to ensure that the bird remains enclosed in the cage, the racist component becomes a factor. The wires of the cage, in this case, the criminal justice system, are the power holders (high ranking police officials, attorneys, and judges) who operate together for the purpose of trapping the birds (people of color) in order to restrict their freedom.

Feagin (2006) examines the driving forces of systemic racism's staying power. It relies on the long term dependency of white Americans on African American labor. The central component on which systemic racist principles stand focuses on white economic domination: wealth, status, and privilege generated at the expense of racialized others. This study will examine the systemic racist aspects of the criminal justice system that go beyond economic dominance. Whites' control and livelihood are maintained through the policies and practices in the criminal justice system—a system that makes it possible for powerful whites to maintain their substantial control over the lives of people of color. The preservation of powerful whites' control is achieved by high ranking police officials, attorneys, and judges along with the policies and practices of the criminal justice system.

For the sake of the current study, the central component of the systemic racist criminal justice system is the maintenance of white power. As I look at systemic racism, my study goes beyond whites' economic wealth and focuses on the status and privilege

they achieve at the expense of others in order to maintain their position in the racial hierarchy. In the criminal justice system, economic wealth is only a portion of the systemic racist dynamic. The system is powered by the need of those in power to maintain a certain level of control and status. Inequitable policies designed to keep others at bay are required in order for those in power to maintain their privileged status. "The operation of systemic racism involves the recurring exercise of coercive power by white Americans over black Americans, as well as over other Americans of color" (Feagin, 2006, p. 21). Although economics are a factor in the criminal justice system, the emphasis lies on the maintenance of the positions of power. This study will focus on the role of the powerful and how these roles affect people of color.

One of the major tools of people of power within the criminal justice system is their ability to inject discretionary decisions in the justice process. In the succeeding chapter, I will provide an explanation of this power and elaborate on the consequences for people of color.

The theory of discretionary abuse is an important aspect when identifying just where the ball of justice has been dropped. When the powerful perform discretionary discriminatory acts, the unequal treatment of people of color in relation to their white counterparts is apparent. Current criminology statistics show that African Americans are more likely than whites to experience discrimination when being arrested. Seventy percent of African Americans have reported an experience of a discriminatory nature during their lifetime compared with 36% of their white counterparts (Kaufman et.al, 2008, p.428). The role of power to make discretionary decisions is central when

analyzing statistical evidence on differences in outcomes for blacks and whites accused of crimes. The San Jose Mercury News matched more than 700,000 criminal cases by crime and history of the criminal defendant. This study found "similarly situated whites were far more successful than African Americans and Latinos in the plea bargaining process; in fact, at virtually every stage of pretrial negotiation, whites were more successful than non-whites" (p. 115). This study found an astronomical difference when people of color come in contact with power persons holding positions designed to ensure social order.

In Van Cleve's research (2016), she provides an example of an interaction with people of color by power holders in the system. While conducting her research, she had an interaction with a prosecutor during which they discussed the power of discretion. The prosecutor stated, "the judge in that case allowed a two-time white offender to get away with a reduced sentence on the same day; for the black defendant who confessed, the punishment was not just a berating and an exorbitant bond but a harsher sentence than a white defendant with a dirtier record" (Van Cleve, 2016, p. 142). In this interaction, the prosecutor notes the subjective justice used by judges when making a discretionary sentencing decision. This is the stage in which judges have the most discretionary power. I will discuss this in greater detail in the succeeding chapter. This example included two defendants with the same charges. Although the white defendant had a worse record, the judge gave two very different sentences. The black defendant was sentenced to the largest extent of the law while the white defendant received a pass.

This case provides an example of the theory of discretionary abuse as well as a glimpse into the critical nature of this process when people of color interact with the powerful.

"Racial oppression has involved discrimination against women, men, and children of color in many institutional arenas besides the economy; these include education, politics, housing, health care, policing, and public accommodations" (Feagin, 2006, p. 23). Tribe and Matz (2014) discuss the state of equality in the Roberts court. They find that many disagreements erupt because of the justices' differences in eras of birth, where we are, and, ultimately, where we should go. They find that the decisions of this court will ultimately define "Equal protection of the Laws" within the twenty-first century. They find that the court's reluctance to agree can be viewed as supporting and at times failing to hear appeals based on the differences in beliefs. Tribe and Matz (2014) expand on the discriminatory actions people of color face when interacting with powerful figures in the criminal justice system. They find that equality for people of color is an explosive principle that resulted in divisions and eruptions in the Roberts court. The Calhoun case is an example of a case that is filled with anti-other framing leading to the unequitable treatment of a person of color. During this case, the justices failed to reach the stage of an appeal being heard. This anti-framing debate leads to inequality and discriminatory actions. In Calhoun v. United States, a 2011 federal drug case, forms of discrimination seem unmistakable. During cross examination, the prosecutor asked a startling question: "You've got African Americans, you've got Hispanics, and you've got a bag full of money. Does that tell you—a light bulb doesn't go off in your head and say, this is a drug deal" (Tribe & Matz, 2014, p. 18). The Supreme Court refused to hear an appeal in

this case. However, in a rare move, Sotomayor wrote a statement of emphasis. "Such argumentation is an affront to the Constitution's guarantee of equal protection of the laws." She continued addressing the prosecutor, warning that they "tapped a deep and sorry vein of racial prejudice and I hope never to see a case like this again" (Tribe & Matz, 2014, p. 18). In this example, the prosecutor's use of a racial stereotype when describing a person of color in this incident could have swayed and inflamed a conviction verdict from the jury. This type of stereotypical and anti-other framing by power holders within the system is critical for this study. In subsequent chapters, we will expand in great detail on Tribe and Matz's view of the many discrimination struggles that are faced by people of color when interacting with the powerful—misuse of discretion, racial profiling, Eurocentric system, lack of power, and succumbing to "clique" behavior.

White racial frame

> A white racial frame is more than cognitive, for it also includes racialized emotions that are linked to cognitive stereotypes and visual images. Whites typically combine racial stereotypes (cognitive aspect), metaphors and concepts (the deeper cognitive aspect), images (the visual aspect), emotions (feelings like fear), and inclinations (to take discriminatory action) within a racist frame that is oriented, in substantial part, to assessing African Americans and other Americans of color in everyday situations, as well as to assessing white Americans and white institutions (Feagin, 2006, p. 27).

The above list provides an explanation for the strong operation behind the white racial frame of thinking that has encompassed our criminal justice system for centuries. This study will expand on each of the premises to provide a closer examination of the mind and manner of thinking of the powerful within our criminal justice system.

Racial subframes

Feagin's theory of the white racial frame is not a frame among many; it is, however, a frame from which two powerful subframe are birthed. "Once a frame is utilized by a person, it often activates related frames and subframes" (2006, p. 15). I will discuss the anti-other frame and the pro-white frame at length in the following two analysis chapters of this work. These white racial subframes operate under two main principles—"a positive orientation to whites and whiteness and a negative orientation to those racial "others" who are exploited and oppressed" (Feagin, 2006, p. 11). These subframes involve the old European great-chain-of-being idea, in regard to an emphasis on white virtuousness in the pro-white subframe and an emphasis on the inferiority of people of color in the anti-other subframes.

> A Pearland Justice of the Peace in 2003 was caught on tape speaking to jail inmates stating "Hey! Don't fuck with me! I'm the judge!" "You're going to act like a fucking 'nigger'. Is that what you're doing?" He then realized the suspect was white, not black. He remarked "I thought he was a black guy," (ABC13 Eyewitness News, p.1).

This judge is speaking from a pro-white center of power. His retraction of his comments after learning that the inmates were white unmistakably confirms that he

viewed black people as “niggers.” He shows his view of whites being virtuous and pure in spite of these individuals presence in jail. He commanded respect as a white man. When he realized that he was speaking to “virtuous” white individuals (whom he viewed as virtuous in spite of their current incarceration), he recanted his statement. In his view, to be white is to be pure.

This white racial frame was developed as a concept of “race” by early European American leaders. “The elite white leaders such as judges, ministers, merchants, doctors, slaveholders, and government officials have generally been the most important figures in developing, codifying, and propagating strong social categorizations such as that described by the term ‘race’” (Feagin, 2006, p. 50). The ruling elite have maintained this great-chain-of-being since at the least the mid-1600s. Powerful criminal justice figures have always played a pivotal role in the hierarchical positioning of whites vis-a-vis people of color. Thus, the idea of the hierarchical great-chain-of-being has historical roots.

Pro- white frame

The white racial frame of mythological thinking has a historical background according to Feagin’s theory. Powerful whites ultimately positioned themselves as a part of the great-chain-of-being hierarchical scale. They often saw themselves as exceptional based on their spiritual and innate calling as superior beings. This manner of thinking was also created as a frame from which the powerful within the criminal justice system think. Theorists Lovejoy & Descola describe this theory as follows.

> Infinite number of links ranging in hierarchical order from the meagerest kind of existence, which barely escapes nonexistence, through "every possible" grade up to … the highest possible kind of creature, … every one of them differing from that immediately above and that immediately below it by the "least possible" degree of difference(Lovejoy, 1973, p. 59, & Descola, 2013, p. 203).

The idea for the great-chain-of-being is based on the idea of a supposed "natural order." This chain of being was believed to be a God-given natural order of society. "Persisting social inequalities are viewed as natural, legitimate, and moral" (Feagin, 2006, p. 39). Once these views are engrained, the manner of viewing people of color as inferior is an assumed "birth right." This allows power holders a sense of comfort when viewing people based on the natural hierarchical society. This factor of pro-white thinking has substantial consequences for people of color.

The great-chain-of-being is not a new phenomenon. We have seen this racial categorizing in the thoughts of some thinkers during the Enlightenment period. For example, the frame of thinking employed by many of today's powerful figures in the criminal justice system can be found in the writings of Carolus Linneaus, an influential thinker in the 1730s. In both cases, people of color are viewed as bottom feeders on the hierarchical chain as well as criminal in nature rather than law abiding beings while whites are viewed as law abiding citizens. Linneaus theorized a categorical placing of humans into specific "races"—white, black, red, and yellow. Even Though Linneaus did not use the specific term "race," he placed individuals on a hierarchical scale based on skin color. He argued that Europeans are governed by laws, full of integrity, orderly, and

inventive," but he viewed people of color as "unable to be governed by laws, lazy, disorderly, and disingenuous" (Tucker, 1994, p.8). Since as early as the Declaration of Independence, many colonial governments were dominated by elite white processes and elements that rationalized the white racial frame process of the criminal justice system. Historically, colonial laws viewed Africans and African Americans as the personal property of Europeans. Feagin writes (2006), "European American lawyers, judges, and other high officials did much to create this dehumanized framing of African Americans" (p. 47). The powerful figures in the criminal justice system thrive from the anti-colonialism process, and this allows for a rationalization of the criminal justice system as a white oriented institution.

Leon Higginbotham, a leading expert on colonial law, revealed the group concept of inferior and superior positions. He found that hierarchical positions were firmly entrenched and established early. Higginbotham noted that "the superior English position in relation to the inferior "Negro" position was incorporated in societal institutions. Using social framing, notions of color, and Christian religious ideas, power holders of the criminal justice system functioned to ensure public punishment of violators" (Higginbotham, 1996, p. 32). High ranking officials played a major role in rationalizing these views. "European American lawyers, judges, and other high officials did much to create this dehumanized framing of African Americans" (Feagin, 2006, p. 47). The following example sheds light on this historical dehumanized frame.

The city of White Plains, New York, police department was facing a lawsuit in a case in 2012 involving the shooting death of a 68-year-old African-American veteran. He

accidently set off his medical alert bracelet and was shot to death by police officers in his home. The Police responded from a pro-white perspective once they acknowledged using racial slurs against the veteran. They described this use as a "tactic" to distract him as they sought entry into his home. The life alert company called the police when they could not contact the veteran. The police departments were to respond to a medical emergency and not a crime. The veteran was awakened by the police department banging on his door; although the life alert company notified the police they were no longer in need of any aid. He called the Life Aid Company and voiced his concerns due to the police banging on his door. The veteran was in his bed in his boxers and shirt and did not want to open the door to the police. The Life aid operator instructed him to go to the door and let the police know he was alright. The veteran voiced concerns and stated the police were going to kill him or beat him; he has a heart condition and is on medication, he was nervous and afraid to open the door. The police had pulled out stun guns and shot guns. He told police numerous times that he was ok and did not require assistance. The police broke down the door and began to shoot the veteran with a stun gun before another officer, who was never indicted on charges after a grand jury hearing, walked in and shot him dead. The police released a camera recording and the officer was on record using the word “nigger” two times. The officer says, “Open up the damn door, ‘nigger’.” There’s another part in the clip where he’s at the window, and he says, "Stop. We have to talk, ‘nigger’." (Democracy now, 2012, p.1). The officer used in his defense that he was using the word “nigger” as a “tactic.” The use of this word as a form of a “tactic” was directly from the white racially framed mindset of the “pure” and

“virtuous” white man in power whom has the right to dehumanize and humiliate a person of color.

In this situation, the veteran was dehumanized and ultimately killed by the power holders. In spite of his lack of criminal involvement, he was viewed as lawless and inferior and was treated accordingly. The historical makeup of the criminal justice system allowed the powerful to use the defamatory and demeaning word, “nigger.” Using the excuse of a “tactic” based on their superior status, these officers faced no consequences. They were not charged. The above example also lays out an outline for the pro-white center discussed throughout this study. Higginbotham and Linneaus point to the power holders’ positions in pushing for a great-chain-of-being as an inherent right. The idea of the powerful role of creating, maintaining, and believing in superiority will be revisited in detail in the subsequent chapters.

An education regarding and transmission of the privileges inherent in pro-white beliefs are a critical part of the maintenance of this system within the criminal justice system.

During her research, Van Cleve, 2016, found manuals that were provided to assist in training for attorneys, in particular, a Manual titled “Making sense of 26th street: A guide for law clerks of the Cook county public defender.” Van Cleve reports that this manual “warned new law clerks about the nature of defendants” (p. 168). This guide is in place to teach powerful figures in the criminal justice system how to view people of color as objects without human complexity. “In situations like this we see that the socially inherited racial frame is a comprehensive orientating structure, a “tool kit” that

whites and others have long used to understand, interpret, and act in social settings" (Feagin, 2006, p. 13). In Van-Cleve's research, the powerful attorney provides an explanation for discriminatory actions within the system. "You can see the white skinny kid charged with a gun crime [he gets a lighter sentence than a black kid]; you have to be super human not to categorize people" (Van Cleve, 2016, p. 102). He viewed things based on the education provided in the manual. They are instructed to "categorize" people. Another form of stereotyping using a more socially acceptable term. The manual is full of hidden lessons to ensure the survival of the white racial frame of thinking. I would have to disagree with the powerful attorney's speculation of categorizing people as a human action. I would suggest that this manner of thinking when you are intended to be in an impartial powerful position is based on the cultural views of the system. In multiple arenas, power holders are taught to view people of color in a dehumanizing manner. The entrenched culture of the systemic racism system requires that power holders be educated in a particular way. This manner of thinking is explored more deeply in the pro-white chapter in which I will look at its generational transmission through education.

Another strong aspect of pro-white thinking is the ability afforded to whites to collectively remember and forget. We will see ways in which this form of power allows whites to reinterpret racialized experiences.

Feagin's white racial frame theory embodies collective memories and collective forgetting as a power that whites possess. Regarding collective memory, Feagin writes, "how we interpret and experience our racialized present depends substantially on our

knowledge of and interpretations of our racialized past" (Feagin, 2006, p. 17). The collective memories within major groups such as the power holders in the criminal justice system consist of these officials' shared experiences and racialized pasts. Collective forgetting is as important as collective remembering, especially in regard to the prevailing narratives of this country's developmental history (Feagin, 2006, p. 17). Collective forgetting includes the overt choices of the power holders which allows these memories to deteriorate. The use of this sense of collective memory and forgetting is best explained in the work of Tribe & Matz (2014). On January 6, 2011, the new Republican House of Representatives read aloud the United States Constitution. This was the first time in American history that this document had been read aloud in this chamber. However, this moment in history was marred by the House's choice to exclude multiple sections that have been amended. The omission included Article I, section 2, which includes the "Three-Fifths Clause," which refers to counting black slaves as only "three-fifths of a person. This collective forgetting of our nation's history clearly neglected the powerful racist truth of our history. The omission of these racialized realities can be attributed to the court system's power holders' attempt to collectively forget the past.

The deletion of these segments of our history from the constitution leads to a difficult manner of connecting and understanding African Americans actions today. In response to the 2013 trail of Trayvon Martin, President Barak Obama stated, "I think it's important to recognize that the African American community is looking at this issue through a set of experiences and a history that doesn't go away" (Presidential remarks,

2013). Tribe and Matz (2014) follow this sentiment: "This is true for all Americans: our national experience of race, past and present, partakes of a history that doesn't go away" (p. 17). These quotes reflect the effects of collective forgetting by the powerful. The findings of Tribe and Matz suggest that courts as high as the Supreme Court consist of power holders who intentionally delete information in an attempt to reconstruct our country's history. Their note that our history doesn't go away even when power holders choose to omit certain events. These experiences along with current interactions involving power holders mark the strength of the white racial frame. I will expand on the consequences for people of color when the pro-white sentiment of collective memory and forgetting are an active part of the criminal justice system.

This study will expand the findings of Tribe and Matz. A more current theory that provides a connection to the historical mindset of the white racial frame includes the cultural make-up of a system enveloped in systemic racism.

Van Cleve (2016) theorizes that the criminal justice system is maintained by a continuation of the culture of the powerful. This view allows for "a system comprising and defined by a social arrangement of lawyers whose actions affect how justice and racism are experienced in practice" (Van Cleve, 2016, p. 132). Van Cleve notes that the cultural practices between the powerful in the criminal justice system are an important dynamic of the clique culture. She reports, "If prosecutors do not comply with the police officers' version of the truth on cases, they face cultural consequences—shunning, tarnished reputation, and the types of humiliation that keep the Cook County Courts in check" (Van Cleve, 2016, p.150). Van Cleve notes that when the powerful do not

participate in “the clique” behavior, they suffer consequences, which include powerful police officials turning their backs on prosecutors, a collective forgetting of court appearance dates, no response to subpoenas, and no reports written regarding the incidents being received by the prosecutors. The consequences for judges are similar when they do not comply with “clique” cultural mentality. For example, they can experience loud and disparaging talk in the courtroom. Van Cleve provides an example of a judge being called a “fucking liberal” within his earshot when powerful figures in the judge’s courtroom decided to penalize him by disrespecting him. Van Cleve notes that this “clique” mentality is culturally normative. Individuals find that there is a huge price to pay when they step outside the systemic racist views and no longer abide by “clique” rules. Because no power holder wants his “clique” membership revoked, most subscribe to and support the beliefs of the “clique” mentality. The feeling of being a part of the powerful club is discussed in the pro-white chapter. For some power holders, the system supports their deeply rooted beliefs and functions as an addition to their true feelings. As we will see in the current study, this theory will show the benefits of maintaining membership into the “clique” culture. This study finds that the connection to a “clique” mentality is an essential part of the system. The pro-white chapter will explore multiple examples of power holders in the criminal justice system as a part of an organized "clique."

These theories are a taste of the experiences and practices that this study will expand on. The other aspect of the subframe of the white racial frame system consists of a strong subscription to an anti-other view. The “clique” culture, with its great-chain-of-being

aspects, education, and pro-white foundation, is only one component. The inferior view of people of color is also required to support power holders' mindset when interacting with those considered to be less than human.

Anti- other frame

The anti-other perspective is described in the following example by legal scholars Gross and Barnes (2002):

> As the level of the police officer's interest increases, the cost to the innocent citizen escalates rapidly. Its one thing to get a speeding ticket and an annoying lecture… it is quite another to be told to step out of the car and to be questioned… The questions may seem intrusive and out of line, but you can hardly refuse to answer an armed cop. At some point you realize you are not just another law-abiding citizen who is being checked out… like everyone else. You have been targeted. The trooper is not going through a routine so he can let you go… he wants to find drugs on you… Those of us who have not been through this sort of experience probably underestimate its impact. To be treated as a criminal is a basic insult to a person's self-image and his position in society. It cannot easily be shrugged off…. (pp. 745-46).

The above example provides a clear example of interactions between people of color and powerful figures. When viewed from an anti-other perspective, such interactions will prove to have an extremely negative impact on people of colors' self-image. The officers' aim is to portray themselves as dominant while creating a self-image of

criminalization and shame for blacks. These instances create great disparities in arrests for blacks compared with whites.

Feagin's theory of the anti-other is based on the views of powerful elite white commentaries including a number of emotion-laden stereotypes and images. Black Americans and later other groups of color are alleged to be anti-others. For the sake of this study, the primary focal point of the stereotyping and imaging as lazy, criminal, bestial and apelike, and un-American is of importance.

When viewing the laziness of blacks, one topic is the idea of "social welfare." The idea of social welfare came about in the 1960s and early 70s. George Wallace, Barry Goldwater, and Richard Nixon set the stage and the attacks for the welfare state (Gilliam, 1999, p.1). However, Ronald Reagan successfully encapsulated the perceived notion of the "welfare queen" analogy. Political scientist Franklin Gilliam theorizes that the stereotype of the "welfare queen" has roots in both gender and race. According to Gilliam's theory, one of the key images is portraying women on welfare as primarily African American. This narrative got its voice during Ronald Reagan's 1976 presidential campaign trail. Reagan recites a story of his idea of welfare fraud:

> She has 80 names, 30 addresses, 12 social security cards and is collecting veteran's benefits on four non-existing deceased husbands. And she is collecting social security on her cards. She's got Medicaid, getting food stamps, and she is collecting welfare under each of her names (Gilliam, 1999, p.2).

This idea relayed by Reagan is filled with racially stereotypical coding. Gilliam (1999) states, "This story line taps into stereotypes about both women (uncontrolled

sexually) and African-Americans (laziness)" (p.2). These ideas are engrained in the minds of people as a black narrative imprinted within the white racial frame. Patricia Hill Collins echoes this interpretation of the lazy welfare queen. "She is portrayed as being content to sit around and collect welfare, shunning work and passing on her bad values to her offspring" (Hill Collins, 2000, p.79). Gilliam conducted a study showing a video news cast on a welfare report. He alters the women's race portrayed in the reform T.V. story. In one clip, he uses a woman named "white Rhonda." In another clip, he uses a woman he calls "black Rhonda." Gilliam found those viewers who were exposed to the black Rhonda attributed causes of welfare to individual failings. He found that attitudes and perceptions of African Americans as lazy, sexually promiscuous, not law-abiding, and undisciplined were reflected in viewers' descriptions of blacks as "not trying hard enough, needing to pull themselves up by their bootstraps, and not experiencing much discrimination these days" (p.5). One of the profound findings of Gilliam's study was that nearly 80 percent of his white subjects accurately recall viewing the black Rhonda while only 50 percent recall seeing the white Rhonda. The white racially framed narrative of blacks and laziness can be clearly seen in this study. Viewers' interpretation of lazy blacks' individually failing to work hard as a connection to welfare is telling. This white racial frame idea is detrimental to people of color not only in relation to the welfare state but to the lazy criminal undertones we see within our criminal justice system.

In another major study, a white professional was asked, "What do you think blacks need to do to become truly equal?" He responds,

> For them to be as successful as we are, they are going to need to adopt our values. Be a part of our system or whatever…. Like wanting the money but not wanting to actually show up, being reliable. The basic things we try to teach clients, or a high school kid about work, you know, like you need to be there, you need to work hard, so I guess it is the work ethic (Feagin et al. 2001, p. 203)

This quote expresses the general assumption among whites that blacks have a weaker work ethic than their white counterparts. These views are in stark contrast to the historical reality of blacks' labor to build our society. The perspective expressed in this quote is based on a traditional white racial frame that associates blacks and laziness. The theories of Gilliam and Patricia Hill Collins and the major study conducted by Feagin all reveal whites' stereotypical frame of people of color as lazy, views that are prevalent among powerful whites such as the one in the above quote. Throughout this study, we will find that this is the identical mindset from which power holders in the criminal justice system think.

Victor Rios (2011) theorizes a youth control complex. According to Rio, this complex is " the combined effect of the web of institutions, schools, families, businesses, residents, media, community centers, and the criminal justice system, that collectively punish, stigmatize, monitor, and criminalize young people in an attempt to control them" (p.40). This complex system plays a major role in the criminalization of people of color. Rios finds that criminalization is composed of two distinct forms: material and symbolic criminalization. Material criminalization is a form of physical treatment that people of color endure and includes exclusion, unequal policies, discrimination, and incarceration.

In this study, material criminalization will be explored in vagrancy laws, slave codes, and the 1924 immigration act, among other contexts. Symbolic criminalization includes the constant surveillance, racial profiling, and stereotypical stigmas attached to being a person of color. In this study, symbolic criminalization will be examined through an exploration of events that view people of color as inferior, including the Willie Horton case, the imagery of blacks as lawless, and the stigma of the historical rapacious black man, the foreign and illegal tag for Latinos, and the racial profiling consequences of Latinos. The material and symbolic forms of criminalization as theorized by Rio are concepts I agree with and discuss through my examples throughout this study. One example of the criminalistics view of people of color involves a report from the 1940s. A white police officer, with the support of his superior on the Los Angeles sheriff's department, made allegations regarding Latinos. He alleged Mexican Americans had an "inborn characteristic" to engage in street violence. These views were backed by other prominent scholars, in whose writings Mexican Americans were viewed as "'lawless' and 'violent' because he had Indian blood; he was 'shiftless' and 'improvident' because that was his nature" (Feagin & Feagin, 2012, p.213). This view's relationship to the white racial frame can be seen in the bestial and animalistic tags that are part of the "criminalistic" natures that people of color are theorized to possess.

The animalistic features and imagery are also related to people of color becoming criminalized targets for discriminatory police practices and policies. Research conducted by social scientists and others have found that whites automatically connect African Americans with crime. Powerful whites, including judges, prosecuting attorneys, and

police officers, use the apelike stereotype of African Americans as a link to criminality and the "criminalblackman," a term coined by legal scholar Katheryn Russell in her book, *The color of crime*, *in the wake of blackness and crime becoming one*.

For centuries, the emotion-laden stereotypes and images of anti-other criminality have remained. Adhering to these stereotypes provides white minds the ability to react accordingly in the criminal justice system. "If the defendant is black, the charge triggers historical fears and tropes about the dangerous predatory black man leaving the ghetto and invading an imagined white space" (Van Cleve, 2016, p. 119).

Feagin (2010) argues there are at least 10 emotion-laden stereotypes and images of Black Americans in the white racially framed foundation. They are distinctive color, hair, lips, bestial and apelike, unintelligent, disagreeable smell, uncivilized, alien, foreign, immoral, criminal, dangerous, lazy, oversexed, ungrateful, rebellious, and having disorganized families. The first half of these stereotypes deal with differences in physical appearance. The last half of these stereotypes are presented as an overall rationalization of the criminal nature of African Americans. This view carries social meaning: this is what it means to be black. A critical connection to anti-other framing is based on the physical appearances of people of color. The connection between the black man and the highly dangerous ape creates a mental image. Psychological studies have shown that not only do these apelike stereotypes still exist but that they prevail in the racial stereotypes for the criminalization of black men. The criminal label is essential because forms of explicit racial exclusion are not only prohibited but are now widely condemned.

These sentiments are agreed upon by Michelle Alexander. "Thus black youth must be made, that is, labeled, as criminals. This process of being made a criminal is, to a large extent, the process of "becoming" black" (Alexander, 2010, p. 195). A psychological study conducted that analyzed the willingness to accept police violence against a suspect showed that whites were more willing to accept violence toward the black man when subliminally primed by ape-like (animalistic) words presented to them in the description of the incident. This is a clear example of how the relationship between African Americans and crime is deeply engrained in the minds of whites.

The view of groups of color as animalistic has extended to most groups of color. The connection to an animal provides a parallel to the criminal nature that people of color are assumed to possess. Power holders use an animalistic description as a catalyst to identify the assumed criminality of others.

This animalistic frame existed for "Indians." The term "Indian" was used to describe indigenous people, providing an excuse for whites' execution of Native Americans. In 1764, colonial John Reid referred to Native Americans as "animals vulgarly called Indians" (Silver, 2008, p.132). This connection of an animal reference presents a feeling of real danger for a strong white nation. In spite of this stereotypical tag, there was another reason that this tag was important. "Their early framing soon became systematically racialized as a distinctive white racial frame because these Europeans seemed to need that framing to rationalize and interpret for themselves and others their extensive land and labor theft from indigenous peoples and their labor theft from Africans" (Feagin, 2006, p. 38-39). The framing of Native Americans as an animalistic

threat to a strong white nation was actually an excuse for European theft. However, power holders continually use this animalistic reference to explain why they treat people of color in an unfavorable way.

Otto Santa Ana investigated the negative portrayals of Latinos. His study includes numerous articles that document how the age old animalistic view of people of color has been extended to Latinos. “His analysis of newspaper articles revealed that the mostly white editors and reporters made frequent use of negative language portraying Latino immigrants as animals, invaders, or disputable persons” (Feagin, 2006, p.117). These views have been mirrored for all groups of color as a means of creating the dangerous view of people of color. The powerful in the criminal justice system maintain these views and interact with Latinos accordingly.

Racial profiling is one of the consequences that occurs when Latinos, Native Americans, and African Americans are viewed as animals. Kelly Welch (2007) theorizes that the racial stereotype linking blacks to crime serves as a policy and practice of racial profiling by our powerful criminal justice officials. She finds that an understanding of the black typification of crime will provide insight into unequitable criminal justice practices. Welch concludes that the views of race and criminality add fuel to the racial profiling policies. Her solution is “only when criminal justice personnel recognize that the sources of these stereotypes are flawed or based on discriminatory practices themselves will the rationale for maintaining the unofficial policy and practice of racial profiling of criminal be negated” (Welch, 2007, p. 286). Welch’s theory does not directly incorporate aspects of the white racial frame link to people of color and crime.

However, her findings are on the mark in relation to the way powerful officials view people of color and crime. Thinking from a white racial framework can ultimately result in people of color being racially profiled. The addition of the white racial frame is dead on with her analysis for a need to change power holders' mindsets in order to produce change. The current study will examine the consequences of racial profiling by power holders. These interactions will examine the consequences experienced by people of color.

Another anti-other tag people of color experience is the Un-American stereotype. For many scholarly and popular analysts in the United States (and across the globe), the English word 'Americans' is routinely, if unconsciously, used to mean 'white Americans.' Terms such as "American dream" and "American culture" are typically used to refer primarily to the values, ideals, or preferences of whites (Feagin, 2006, p. 7). A non-white person is classified as an anti-other individual. The anti-other perspective in the white racially framed view sees any person that is not white as "alien," "lazy," and "inherently criminal." These common themes carry over to any race that is not defined as white. Mexican Americans have faced tremendous backlash in the midst of the Un-American concept of the anti-other.

The events of 9/11 set the course for a number of politically discriminatory practices Mexicans would face in border wars. George W. Bush developed a public discourse for national security based on these perceived threats. The new post-9/11 world would embark on old traditional views through foreign policies, based on the "Latino Threat" as the potential gateway to allow terrorists to enter. Chavez (2008) examines this idea.

He finds, in April of 2004 in the Foreign policy issue, Huntington claimed Mexicans were rejecting assimilation into mainstream culture (forcible Anglo-assimilation) and instead forming their own individual political and linguistic enclaves (Chavez, 2008). This called into question the legal status of numerous Mexican Americans. The fight over whether to allow Mexicans equal rights such as driver's licenses, publicly funded education, medical care, and housing became the contemporary political debate. "The history lesson is that "legality" is socially, culturally, and politically constructed." (Chavez, 2008). Determinations of whether or not Mexicans become legal are based on the decisions of government officials. The governmental call to protect the United States from illegal immigration, illegal drugs, and terrorists' attacks is at the political forefront. Although these were the reasons provided for harsher border control, President Bush left out one fact. None of the terrorists involved in the 9/11 attack crossed the Mexico border.

In 2006, Jim Gilchrist (founder of the Minutemen project), revisited the Mexican American theme of "the Trojan home invasion." Today, numerous deportation strategies and laws still exist. The minuteman project has resulted in a political divide with the majority of Republicans fighting to end immigration and the majority of Democrats fighting to bring about reform. In 2012, Obama halted Homeland Security's deportation of Latinos. As of 2014, President Obama is seeking to find "humane" ways of deporting Latinos who are in the country illegally.

An example of the anti-Indian as equivalent to being "alien" will be provided here. In 2013, a man identified ethnically as Indian, religiously as Hindu, and racially as South

Asian filed a complaint against a Federal Houston judge, suing for alleged employment discrimination. In a November hearing for this case, *Jitendra Shah v. Texas Department of Criminal Justice*, the complaint alleged that the judge questioned the role of diversity directors, stating in a hearing on the record, "Why don't they just hire people on ability and let diversity take care of itself? And what does the diversity director do? Go around and painting students different colors so that they would think they were mixed" (motion to recuse, 2013, p.6). The judge's connection between people of color and the painting of faces provides a closer view of the lack of respect for the Native American plaintiff. The judge's reference to painting whites' faces to make them see themselves as "other" shows his separation from and lack of knowledge regarding the plight of the Native American defendant. He is continuously showing his views of Native Americans as an insignificant part of "American" society, which does not include them because of their "alien" nature. He then takes this racialized thinking further by stating that whites only need to paint their faces to connect with the plaintiff's struggle.

Another example involves a member of the United States Supreme Court at a function in 2014 at which an Oklahoma congressman was in attendance. Upon hearing that the Congress member was from the Chickasaw Nation, The Justice member stated: "Don't forget you belong to a conquered race" (Newcomb, 2014, p.1). This quote shows the visible framing of Native Americans, referenced as a race in his quote, as foreign and alien to this country. Viewing the Congressman's heritage as conquered points to the uncivilized, criminal nature of American Indians and the need for whites to step in and tame and civilize these criminals, because of their foreign existence.

Another example sheds light on how multiple minority groups have similar un-American experiences. One example includes the Motion to Recuse against a judge on Houston's United States district court. While presiding over a case in 2013, he made racially offensive remarks regarding two Vietnamese lawyers. "Judge: Do you do a lot of labor law? Vietnamese lawyer: Yes, Judge. Judge: Okay. Why don't you guys move to North Korea? Because this is the entire body of North Korean labor law. The Vietnamese lawyer: Are you serious" (Motion to recuse, 2013, p.14). Here the judge is clear about his connection to the national origin of the lawyers, who are practicing law in the United States which they call home. He views them as un-American; in spite of their citizenship status, he sees them as illegal. He encourages them to go back to their country and help their people because, based on his definition, they are not American. These un-American views will prove relevant in this study's analysis of the detrimental nature of anti-other perspectives within the criminal justice system.

Conclusion and summary

Theoretical underpinnings as a conceptualization of this study are provided. Feagin's systemic racism theory is described as a foundation for the criminal justice system. The dependency of the system's existence is found to be based on the maintenance of power. Power holders in the system place an emphasis on maintaining policies and practices that were discussed as resulting in discriminatory practices. One of these practices includes powerful officials' discretionary power. Van Cleve's research provides an example of unequal discretion at the price to people of color. The theory of Tribe and Matz provides a policy practice of discriminatory protection that is lost within the highest courts of the

law. Feagin's theory of the white racial frame provides insight into the frame of thinking of the powerful in a system of racism. This theory was discussed as activating subframes of thinking. The pro-white theme is discussed as encompassing a great-chain-of-being, historical colonial law, including Higginbotham's hierarchical views, educational transmission of white racial frame views, collective forgetting and memories of the powerful, and membership into the cultural "clique." These concepts lead to theoretical support of the pro-white center of the criminal justice system. The anti-other subframe was described to explain the mindset of the powerful when viewing others outside of their pro-white state of being. The views of the anti-other as lazy, apelike (from the black perspective, Native American perspective, and Latino perspective), criminal nature of non-whites, and the Un-American aspects are given. Multiple theorists' findings of the anti-other culture are found to be a relevant aspect of the criminal justice system. This chapter ultimately provides a theoretical layout to the analysis of the chapter which will follow.

CHAPTER III

METHODOLOGY: INTRODUCTION

This chapter lays out the methodological approach I have used to examine power holders, including high-ranking police officials, prosecutors, and judges. I am guided by the theory of systemic racism to explain the inequality ingrained within the criminal justice system. I am also guided by the white racial frame theory to provide an explanation for the frame of thinking through which these power holders operate. The combination of these two theories is imperative for this study, as Feagin (2001) documents:

> Systemic racism includes a diverse assortment of racist practices; the unjustly gained economic and political power of whites; the continuing resource inequalities; and the white-racist ideologies, attitudes, and institutions created to preserve white advantages and power (p.16).

My current research provides a forefront examination of the power, advantages, and unjust racist attitudes demonstrated when people of color interact with criminal justice officials. The manner of viewing people from a white racially framed mindset will provide the missing piece to explain racist interactions.

Much of social science research on the criminal justice system discusses people of color and their individual experiences, yet much of the research fails to include a serious and in-depth examination of the role of the powerful when these interactions occur. To delve into the structural scope of the system, it is appropriate to add an examination of

the powerful. To more adequately analyze inter-racial interactions within the criminal justice system, I utilize in-depth quotes, e-mails, and court transcripts. For this project, these in-depth interactions are appropriate to delve into the frame of thinking when discretionary decisions are made within the criminal justice system. Interactions of people of color with white power holders that are examined in this project will provide an opportunity to examine the everyday realities of people of color. I will first provide a justification for the use of the qualitative method.

Justification for using qualitative method

The exemplary methodological approach (qualitative method) used in relation to this research will be discussed. This chapter will examine the strengths of using this particular method that will allow the processes, data, particular behaviors, and certain information to go unexamined. This project will provide insight into why this method of choice (qualitative) will allow interpersonal processes and experiences to be unpacked and interrogate the complexities that accompany the inequalities of the criminal justice system. The use of a good methodological practice (qualitative) will be viewed as useful for this project as the essay provides a discussion of the linkage to a better provision for theoretical interpretations through the use of this method in relation to the use of quantitative methods. The weaknesses of using this particular method will be provided. The struggle of interpreting data objectively will be discussed. This essay will provide reasons this method was chosen in a mission to de-colonize minds and attempt to effectively guide others (for the sake of this project specifically whites in power) in a search for liberation from the engrained view of stratification. This essay will provide

insight into the use of qualitative methods as an attempt to separate race related research from the already grounding reification of race that we experience through the production of quantitative research.

Methods commonly used

Overwhelmingly sociological studies of powerful elite white men have been conducted using the qualitative method this project continues in this vein. An earlier book using field interviews in 2003 by Joe Feagin and Eileen O'Brien. Titled, *In White Men on Race: Power, Privilege, and the Shaping of Cultural Consciousness,* examines powerful elite white men. The authors inspect the racial views of 100 North American men. They range the thinking of powerful business leaders and explain how privileged white men think of others. In the book, an interview with an attorney points to numerical changes to see racial unity. Feagin & O'Brien, 2003 Affirms,

> I believe that that will be a very good thing for our society. In recent years I have become more aware of how poorly the races relate to each other in this country. And I think that if the population numbers are such that whites do not dominate in numbers, that it might be the best chance we have for improving the divisions among races (p.91).

This acknowledgment in the root of our society's racial problem lying substantially in the dominance of powerful elite whites is a critical finding. In order to understand the racial conflict in our society, a study of the people that hold the reigns, social power, and highly powerful positions in major systems in our society is needed. The question of

white domination is a critical piece of our society's racial reality. In order to get to the beginning of the problem, we must examine the root. The current study will partially provide a gap filler for the field of sociology.

The book also provides another reason the study of power holders —high-ranking police officials, prosecutors, and judges— from a qualitative method are important. In my study and through the use of this method I plan to "provide a critique of the ways in which African Americans have been racialized as pathologically non heteronormative" (Ferguson, 2004, p.24). People of colors' interacting and opinions are of importance. When examining injustice in the justice system, white attorneys acknowledge the system being stacked against blacks. This is where discretionary examination is critical. One lawyer in particular states,

> If there were ten black guys and ten white guys, and all twenty of them did the same crime, they would prosecute all ten of the black guys, and they would prosecute two of the white guys. And then of ten black guys that they prosecuted, they all would be convicted. And of the two white guys only one would be convicted…. (Feagin & O'Brien, 2003, p.125).

Quotes such as these would be missed if a quantitative study was used. This acknowledgment of inequalities faced by people of color when interacting with the criminal justice system is significant. The need to study the power holders that pass the rules to the enablers on the police force can result in damage when the gatekeepers are unfair. The fact that they (the white attorneys in this study) are aware of inequality in the system supports the need to examine the system from the top down.

In White Men on Race: Power, Privilege, and the Shaping of Cultural Consciousness, a professional legal analyst points to other powerful positions within the criminal justice system. Insisting,

> I think the system is still white-run, and there is a bias against blacks…. They are perceived to live in high-crime neighborhoods, so there are police [in those neighborhoods], so there's more likelihood that they're going to get apprehended. There's more sense of a need to prosecute…. The natural consequence of all of that is there're going to be more black people in jail. I also think that judges and juries are racist… I think we're guilty of not [doing] enough to ensure that justice is fair and equal and that people of all colors are treated equally …. I don't think the issue is availability. I [think] there [are] sufficient lawyers available, I just don't think they're being [as] conscientious about justice as they should be (126).

According to the quote whites govern an unjust system. The participant also expresses powerful figures as often discriminatory. In light of this quote, a much-needed examination of powerful lawmakers is essential. Hence, the current study seeks to examine lawmakers' role through a qualitative examination. The best way to shed light on these individuals is to examine their own words.

Making direct connections with power holder's statements when interacting with people of color makes qualitative methods the most appropriate method for my study. My project is dealing with personal interactions that are not easily quantifiable. It is imperative to provide a voice to people of color by examining verbal interactions and

allow the opportunity to interpret and express their real life experiences. Dealing with the use of a qualitative method I will explore social identities that will be missed through a quantitative method approach. For example, I have provided detailed work such as the work conducted by Feagin & O'Brien in their work examining powerful individuals. Their research relied on in-depth interviews, while extending Feagin's theory of systemic racism and the white racial framework I engage similar methods to provide consistency with his theories. However, my study will take more of an exploratory analysis approach to the qualitative method.

Exploratory analysis approach

In an attempt to conduct interviews with individuals of power, I sent numerous e-mails, called local Texas judges, left many messages, and also called district attorneys to inquire about their availability for interviews. I also looked into current social media accounts of present and previous judges (also known as fan pages monitored by individuals with a close vested interest in the judge). I spoke with one well-known judge in the College Station area for my preliminary/exploratory pilot interview. During our discussion, I was informed of the difficulty in accessing judges and learned that arranging interviews would be virtually impossible. The judge also told me that in the event an interview was approved, access to clear and correctly formulated answers would be challenging. Upon examining judicial quotes, this advice relating to the defenses used by powerful individuals proved correct. I also gained access to the phone number of an attorney. Following several messages left for a response, the return phone call resulted in advice for my study. I was informed that access to pure answers and

information for my project would be difficult if not impossible. I was informed that the information given would more than likely consist of politically correct answers to my questions rather than the honest responses I sought. I also gained access to a fan page of a prominent judge who has written books related to the trials of the problematic criminal justice system. The attorney managing this judge's account offered similar advice regarding the difficulty of obtaining thoughtful, honest answers. Most interviewees would assume that I was seeking to discover problem behaviors of people in power and would thus be unwilling to be open and honest during interviews. Finally, I discovered an additional confirmation of the futility of my efforts to gain useful information through interviews in the 2012 book *Crook County; Racism and injustice in America's largest criminal court* by Nicole Gonzalez Van Cleve:

> Interviews were conducted by young (early twenties) white women who had never practiced law or clerked in the criminal courts in Cook County. As described in the introduction of the book, being a white woman had privileges. The mostly white attorneys and judges were especially inclined to let their guard down and respond candidly to interviewers who were viewed as "nonthreatening" (in terms of gender, race, and age) and were outside the insular culture of the courts (p. 197).

Mrs. Van Cleve found being a white woman to be an advantage in her experiences using the qualitative method. Thus, I would not only lack access to the individuals I wished to interview, I would also be viewed as "threatening" to their culture.

Despite the above challenges and stumbling blocks, my passion for shedding light on current struggles and holding people in power accountable for their actions outweighed the road blocks. I found the best way to examine the minds of the powerful was to find discussions and quotes directly from interactions within court cases and intimate interactions provided by people in power. My goal was to find answers to problematic encounters people of color face when interacting with a powerful social actor in the criminal justice system. Through this study, I will investigate the criminal justice system's history of problematizing people of color. This research is necessary based on placing an equal value on all human lives. Loss of control of their own lives by people of color is more than substantial; instances are numerous and require an open discussion of the reasoning behind the actions of the powerful and the critical mishaps people of color are currently encountering within our criminal justice system. A discussion piece for the "Black lives matter" initiative will be examined.

Ultimately, we will find that "empirical results may be a way to understand what is happening; however these same data tell us little about why it happens" (Zuberi & Bonilla-Silva, 2008, p. 9). My choice to investigate this specific issue of inequality within the criminal justice system will provide the opportunity to examine the structural criminal justice system (meso-level). This project will also provide an explanation of why we are experiencing an increase in the number of minorities in the prison industrial complex which has led to inequality through mass incarceration. Through the use of qualitative methods, I will focus on my research through the eyes of a meso-level interrogation of the structure in order to open the eyes of the discourse through a

connection to the discretionary decisions being made and the negative outcomes for minorities.

"Failing to place statistical patterns in broader sociohistorical context, such quantitative methods-driven research often reproduces unchallenged racist theories and methodologies" (Zuberi 2001; Zuberi & Bonilla-Silva 2008 p. 218). By producing knowledge on a qualitative level, I will be able to address this flaw in conducting research through the incorporation of critical race theories (white racial frame, Eurocentric law, and systemic racism) leading to the option to interrogate the underlying premises on which research methods have historically been based. Qualitative research provides the shift we do not see in quantitative research when looking at inequality.

Participants and sampling

In order to identify the relevance of this study, an explanation of "who" represents powerful social actors — high-level police officers, district attorneys, and high ranking judges— is of importance. In order to provide concrete evidence to answer my research questions, studying power holders in the criminal justice system is important. An examination of power holders is critical in an attempt to answer the following questions:

One, what are the lived experiences of people of color in the criminal justice system?

Two, what role does systemic racism and the use of the white racial frame to assist in making sense of how systemic racism works play in connection with the actions of these powerful social actors?

Three, to what extent do people of color suffer when negative interactions in the criminal justice system occur?

Following this examination, I will provide statistical findings (racial makeup) for the individuals who are holding positions of power.

According to 2010 Census Bureau data, white's represent 72.4 % of the national population, blacks represent 12.6%, Asians represent 4.8%, and Hispanics represent 16.3%. In the above findings, blacks represent a large percentage compared with other power holder positions in this study. However, they face a difficult feat when occupying these positions. Despite African American police officers being employed as powerful social actors, they face pressure to act according to the white racial frame. However, the majority of state-level as well as federal criminal justice institutions and courts remain extremely white. And the number of blacks does not represent a critical mass. A critical mass can exist only when the presence of blacks in a position that embodies power is sufficient to encourage whites to listen to them. Only then can some level of change be realized. Research for the book *Black in Blue (2004)* found that white, black, and Asian officers were forced to conform to the "blue culture" of thinking. The "blue culture" is usually very active and thereby creates a pressurized environment where conformity to the white-determined informal norms is highly valued" (p.121). Existing hierarchies are

maintained through pressure that stems from police occupational culture in which officers of color are expected to conform to white-determined racial categories. These categories inform relationships among police and contexts with the public. Affirming officers of color are required to maintain a white dominated level of thinking when making decisions. This level of thinking as discussed in this project incorporates tenets of the white racial frame.

According to the United States Census Bureau, in relation to the population as a whole, blacks are significantly underrepresented in the occupation of civilian attorney. While whites represent 88.9 percent of civilian attorneys, blacks represent only 4.3 percent, Asians represent 3.4 percent, and Hispanics represent 3.4 percent. These statistics clearly indicate that these powerful and critical decision maker positions are dominated by whites. These figures are representative of attorneys in general and are not specific to the position of district attorneys. I have searched extensively to find an accurate number of black attorneys. I think it is fair to say at this point that no one keeps these specific numbers separated for prosecutors and district attorneys. I have been provided a rough estimate from a few prosecutors that hold knowledgeable positions. One prosecutor provided figures for the district attorneys in Dallas at roughly 1%. Another knowledgeable source provided an estimate stating that out of approximately eight dozen prosecutors at his firm, five are black. This number is equivalent to a total of about 4% African Americans employed by his company. Another knowledgeable source stated that out of 7 dozen prosecutors at his firm, only two were African-American. As a percentage of African Americans in his firm, this equals 3%. According

to an estimate by Wayne McKenzie, a former prosecutor from Brooklyn and the past president of the National Black Prosecutors Association (NBPA), the number of black prosecutors nationwide is about 40. This does not include U.S. attorneys who work for the federal government (Valbrun, 2012).

In my extensive search for the percentages of African Americans among judges, I found the numbers to be astonishing. "Only 3.8% of all state court judges are African American. Among state trial court judges, only 4.1% are African American. In jurisdictions with large African American populations, the figures are disturbingly similar. In New York State, for example, only 6.3% of the state's judges were African American in 1991, although African Americans constituted 14.3% of the state's population. In Georgia, where 27% of the population is African American, only 6% of the state's judges are African American." (Ifill, 1997, p. 95). These findings provide a glance into the lack of equal representation of trial judges in relation to the population of African Americans.

Weaknesses of my method

In qualitative research, "the researcher is supposed to be a neutral recorder, revealing nothing in return about his own life, feelings, or opinions – this might "bias" the data" (Ladner, 1973, p. 316). Although this condition would be ideal in this research project, finding an adequate level of objectivity will be problematic. When the time approaches to interpret the data, there is a possibility that a level of bias may be present. The attempt to provide a level of critical distance when interpreting the data received from powerful

white actors in the criminal justice system will be problematic. Although Zuberi and Bonilla-Silva (2008) find that "researchers reach beyond the data when they interpret their statistical results. Data do not tell us a story. … Data may indeed speak to some users of statistics; however, it only speaks to the rest of us in the voice of the research" (p. 7). I think this interpretation can also be attributed to qualitative research. When choosing to employ this methodical approach, the possibility of interpreting the collected data in a manner that supports the researcher's already determined racial views remains. No researcher is really "objective." The goal is to be accurate and honest, and open about your point of view. This leads us back to the impossibility that the researcher will be able to conduct work objectively. Researchers' social positions and views provide a specific lens through which they may choose to interpret their data. Although I seek to obtain objectivity when choosing this method and I acknowledge the strengths in my method, true and complete objectivity will not be possible.

Conclusion and summary

To provide a brief summation of my methods chapter, I provided reasons why the use of the qualitative method was imperative in order to provide the most accurate results for this project. Previous sociological studies conducted on power holders have used a similar method in order to obtain true and honest results. I continued in this vein and used exploratory analysis to provide an in-depth analytical view. This project took a more exploratory approach; I used this method as a way to provide an accurate examination. The ultimate goal to explain why and to expand on the use of theory through the use of qualitative analysis gave more insight. Finally, I gave a detailed

account of the statistical makeup of the power holders discussed throughout my study and followed this with a discussion of my weakness. Ultimately, this chapter goes beyond explaining the importance of the use of the qualitative method and emphasizes why an examination of white power holders is essential.

CHAPTER IV

INTRODUCTION: JUSTICE OFFICIALS' POWER

Analysts of the criminal justice system, like analysts in most institutional entities, rarely study the role of the powerful. The current dominant paradigm makes studying outside the dominant "paradigmatic box" problematic. This project seeks to allow the reader to think outside the box by exploring the level of power held by elite individuals in this system—high-ranking police officers, prosecutors, and judges. These people possess the power to determine one's ultimate fate. An examination of judges, district attorneys, and high-ranking police officials will provide a bird's eye view into the mindset of decision makers. In this chapter, I will examine derogatory and racially framed statements used in personal and professional settings by major power holders in the criminal justice system. The overall declarations of these power holders will provide a heavy emphasis on their racialized mindsets. After chronicling these experiences in the succeeding chapter, I will provide a glimpse into the explanation given by the elite offenders who use these derogatory slip-ups. Afterward, I discuss the punishments, or lack thereof, for the use of offensive terms. Finally, the overall consequence for thinking and acting in this manner will be shown to result in making inequitable discretionary decisions. That is the power they possess.

Great discretionary power

Research has been conducted on the discretionary power of these power holders (Fletcher, 1984, Davis, 2007, Senna & Siegel, 2009). However, not much research has

focused on the frame of mind of the powerful when making discretionary decisions. To remedy this, this project seeks to tell the story of the “racialized” thinking that often pervades the minds of influential people. Of significant importance is my effort to add to the existing literature. I will focus on the racialized actions of the powerful in the criminal justice system as exercised through their power of discretion. Specifically, I delve into powerful whites’ white racially framed thoughts about people of color. To accomplish this task, I first examine the power of discretion maintained by high-ranking police officers, prosecutors, and judges. For example, during the sentencing phase of a 1997 case, a prominent judge chose to sentence the woman to community service. The defendant produced a note stating that she could not work for a year because of a duodenal ulcer. At this moment, the judge snapped: “I know many people with duodenal ulcers who work like ‘niggers’” (Harrison, 1997, p. 9). This quote makes reference to the historical slavery of people of color and suggests that a common work ethic separates these people from whites. It is important to note that many of the stereotypical beliefs that help make up the white racial frame came about during the slave era. For example, people of color were portrayed as good enough to work in spite of any ailment. The stereotype is still evident today based on the judge's reference to "niggers" as work mules. This judge had the discretionary power to sentence this defendant as he did with racial prejudice. He used racial beliefs to hand down a sentence, based on his discretionary power that negated the human nature of the defendant and sentenced her to work in spite of her disability. Forthcoming examples will provide further examination of power holders’ discretionary mishaps when thinking from an anti-other paradigm.

Discretion is a necessary process. However, it can lead to unfair outcomes under the following circumstances. Research suggests the lack of discretionary power can have negative results. "A system without discretion that limits police, judges, and prosecutors to take into account the individual facts, circumstances, and characteristics of each case, would undoubtedly produce unjust results" (Davis, 2007, p. 19). However, this research will show these decisions are unfair and discriminatory. In spite of the requirement in the system to use discretion, this discretionary process is tainted. Fletcher (1984) finds the characterization of discretion leans towards the notion of a "black hole" in the language when studying processes of the criminal justice system. He also noted that the initial understanding of discretion is "exercise of wisdom" or "managerial authority" (p. 269). Additional meanings remain from modern usage as "personal input into decision-making" and the "exercise of power." The "black hole" Fletcher is describing refers to the lack of holding powerful individuals accountable through non communication of the system's problems with discretion. When looking at these descriptions of discretion, it becomes clear how thinking through a white framing modeled view can result in inequality for people of color. This study will illustrate discretion used as an exercise of power. When coupled with negative personal biases, discretion has serious consequences for the anti-other.

This system allows discretionary authority for high-ranking police officers, prosecutors, and judges who are principal actors in the criminal justice system. The main players' views, actions, and decisions are from a mindset that regards whites as superior. This will be discussed in detail in the subsequent chapter, "Pro-White." Herein I also

delve into the racialized framing of blacks as inferior and the anti-other framing of people of color. The actors' views are critical for this study in order to fill a significant gap in the literature--providing an insider view of power makers' manner of thinking when making these decisions.

It is important to discuss the level of power held by each group within the criminal justice system. According to Senna and Siegel (2009), there are four stages of decision-making for police officers. These include initial contact, investigation, arrest, and custody. In this project, I will focus on the last step in this process. The last step of the process for the officer is custody. At this stage, the police officer has made the decision to detain the suspect. The police then have the option to interrogate, search, and bring in personal witnesses to testify against the suspect. Then, if the arresting officer and his supervisor find sufficient evidence, they may charge the individual with a crime. This gives these officers a great deal of power. For example, in DeKalb County in 2009, a detective was caught on videotape using the word "nigger" during his interrogation, thus revealing the detective's frame of mind when describing the defendant. During the interrogation, the detective stated, "referring to a still image from the security cameras at the convenience store, "... next to your photo lineup and you know what they're going to see? They're going to see a straight-up 'nigger'!" (Fehely, 2013, p.1). This same officer had the discretionary power to make a decision on the defendant's next step in this process, and the detective chose to advance the case to the prosecutor's desk. This case is a clear example of how the power holders in the police department have the authority to move the case forward within the system. The detective's use of "nigger" during this

interrogation phase speaks to his view of people of color. He unequivocally shows his opinion of the defendant. He speaks from an anti-other perspective—suggesting that the defendant being a person of color is the equivalent of what it means to be a “nigger.” At this point, the negative potential of the police officer’s power to make a discretionary decision regarding the defendant’s next move within the criminal justice system is clear. When thinking from a white racially framed perspective, the defendant will be viewed throughout the system from an anti-other perspective. The detective’s discretionary decision to move the defendant to the next stage is based on this picture that permeates his mind. The detective does not state that he has sufficient evidence to convict the defendant. The detective is basing his perception of guilt on the photo of the defendant being viewed as criminal from an anti-other perspective. In this chapter, I will provide multiple additional examples of racially derogatory terms used by powerful officials during this stage. The power these officials have to move the case further in the system makes their view an important aspect of my study.

Once the case has found its way to the desk of the prosecuting attorney's office, prosecutors have the discretionary power to decide whether or not to bring charges. Prosecutors choose how to proceed with the case—whether to negotiate a deal or bring the case to trial. According to Senna and Siegel (2009), the prosecutorial process has five steps: charging, preliminary hearing/grand jury, arraignment, bail/detention, and plea-bargaining. With the option to decide the fate of the defendant through all stages of the decision-making process, the prosecutor (district attorney) holds nearly all the power. The focus of this project is the charging stage. The charging stage involves leeway for

attorneys' biases to become factors in their decision-making. Attorneys apply this process to both minor and serious crimes. Minor crimes (misdemeanors) are handled through a motion filed to try the case before the court. Serious crimes (felonies), depending on procedures, allow the attorney to make the decision to either bring the matter to the grand jury or conduct a preliminary hearing. Prosecutors can decide whether charging a suspect is warranted. Prosecutors' decisions are based on discretion and other factors, including case pressure, political issues, or a decision based on the prosecutor's individual bias or personal interests. In this process, the prosecutor can decide that the case warrants no further action. Taking an action of nolle prosequi (the decision by a prosecutor to drop a case after making a complaint) may be based on either insufficient evidence, witness reluctance to testify, police error, or office policy (Senna & Siegel, 2009, p. 14).

Here, I will provide an example of the misuse of discretionary power from the prosecutor's perspective. When making the decision to sanction or penalize a judge in Howard County's Circuit Court in 2001, the public defender said that she had no plans to seek a sanction or other penalty against the magistrate, although she had hoped the decision had made him more sensitive. The Judge made remarks using racially offensive code words during sentencing. For example, he referred to the defendant as a rotten apple, said he was acting ghetto, and claimed he was behaving like an animal. They claimed his comments "give rise to an inference that race was inappropriately considered in sentencing" (Roig-Franzia, 2001, p. B01). Although the court did infer the comments were racist, they did not say the words used were racist in nature. According to Roig-

Franzia (2001), the court of appeals found that, "Although we cannot determine whether the sentencing judge's comments were based on race, the sentencing judge clearly was not alert to avoid comments that may be so perceived" (p. B01). The decision of the attorney to not bring charges in this case is an example of discretionary power. The prosecutor has made the discretionary call to not bring charges against the sentencing judge in spite of his use of racially charged words. The prosecutor has the power to drop all charges in this phase of the case. The prosecutor's choice to not file charges speaks to the exercise of discretion in a way that negatively impacts people of color. The prosecutor is looking beyond the offense of the white judge's remarks. The judge describes the defendant from an anti-other perspective. He defines the defendant from an animalistic view which gives inference to the anti-other bestial view as described from the white racial frame anti-other perspective. The decision to not bring charges against his colleague speaks to his discretionary decision being based on the view of the defendant in this case from a less than human perspective. However, the prosecutor does view his white colleague as his equal, making his treatment of people of color acceptable. Therefore, no punishment will be rendered for his unequal treatment towards a person of color.

If the prosecutor decides against negotiating a plea or any form of settlement, the next step that will follow is the criminal trial. According to Senna and Siegel (2009), this process has three steps: trial/adjudication, sentencing/disposition, and appeal/post-conviction remedies. The sentencing/disposition stage is the critical juncture for judges' use of discretionary power. Defendants found guilty at the trial must return to be

sentenced. While sentencing a black defendant for a robbery conviction in 1999, a Howard County judge's remarks during sentencing were laced with racially offensive code words. He stated, "A number of communities in the lovely city of Columbia have attracted a large number of rotten apples . . . and they live and act like they're living in a ghetto somewhere. And they weren't invited out here to [behave] like animals" (Roig-Franzia, 2001, p. B01). These visual images of people of color as animal’s shows the mindset of the judge during sentencing where they are allowed a certain amount of discretionary power. Judicial discretionary power includes the authority to sentence defendants inequitably. This clear viewing of people of color from a white-framed mindset and imagery as "animals" leaves defendants at the mercy of someone who views them as inhumane. According to a report by Roig-Franzia (2001), this judge went on to say "That's why people moved out here. To get away from people like the defendant. Not to associate with them and have them follow them out here and act like this was a jungle of some kind" (p. B01). Here we see another connection to people of color as wild, uncivilized, and animalistic by nature. Had the same crime been committed by a white individual, the defendant would not be subjected to this type of reasoning. In addition, white defendants receive vastly different sentences because their crimes are not related to their animalistic nature and because they are not persons of color. Judges are aware of bias at this stage. The judges can decide to give a more lenient sentence for a white defendant versus a harsher sentence for people of color. In this case, the magistrate made the discretionary decision not only to punish the defendant harshly but to degrade him in the process.

Now, we have discussed who these power holders are and what discretionary authority they hold to affect people of color from an anti-other standpoint. Next, we will look at the anti-other view and the effects of discretionary misuse based on the standard anti-black paradigm.

Anti- other framing of Blacks

Powerful whites have alluded to the laziness of blacks since the early days of our democracy. Letters written by President George Washington that included references to his slaves supported notions related to blacks that were set forth by powerful whites. One of these letters included the idea that blacks are lazy in spite of their ability to work daily on a plantation. These examples show how slaves were viewed as profit-makers for Washington. Slaves were expected to not only support Washington's household but also contribute to his financial gain. Slaves' work included washing his linens, sewing his shirts, polishing his boots, saddling his horses, cooking his meals, powdering his wigs, serving his table, lighting his lamps, sweeping his porch, making his beds, and a myriad of other domestic chores (Henriques, 2004). In the abovementioned letters, Washington stated, "If pretended ailments, without apparent causes or visible effects, will screen her from work, I shall get no service out of her, for more lazy, deceitful and impudent huzzy is not to be found in the United States than she is" (Pearce, 1795, p.1). Powerful whites within the criminal justice system are still basing their decisions on the initial frames of our founding fathers. The assistant state's attorney who prosecutes criminal cases in Orange and Osceola counties mirrors this perspective. She made a claim in 2011 based on an often used stereotype connected to people of color: "In one offensive incident, she

indicated to another SAO employee that she was 'leaving a division with one lazy 'nigger' to go to a division with another lazy "nigger"'" (Gore, 2011, p.1). This reference was based on the white racially-framed view of people of color as lazy. Viewing people in this fashion is critical to interacting with powerful officials and shapes the attorney's perspective. This explains why there remains an overrepresentation of African Americans in the state's prisons. When powerful whites consider people of color in this highly racialized manner, it is detrimental, creating a justice system that is unfair and unbalanced, based on our knowledge of the growing power of prosecutors' discretion.

The view of people of color as lazy can also be explored in the following correspondence among powerful police officials: Upon receiving an e-mail from an outside sender, the sergeant at the Sangamon County Sheriff's Office in Illinois in 2013 forwarded the email to other employees. This correspondence also shows the power and importance of white social networks in sustaining systemic racism. The correspondence was sent to another sergeant, a detective, and a lieutenant. The image read as follows, Effective September 1, 2013, aspirin will be HEAVILY TAXED under Obama care. The only explanation given was that they are white and they work. No other reason was given, but I thought you would want to know (Springfield Exposed, 2015, p.1). The problem with this message goes beyond what is stated; it is important to note what is implied. The view of people of color as unemployed and lazy takes front stage. This e-mail garnered interest from a pro-white centered view, suggesting that whites are the only ones who are affected by taxation because they are the only race of people that are

employed. It is also important to note that powerful criminal justice officials, seeing from this perspective, affect the everyday lives of people of color. Imagine encountering these powerful officials with the underlining assumption that you are lazy. How fair of a chance is a person of color provided during the discretionary process?

The following aspects of the anti-other perspective promote a subjective view of blacks. Blacks are subjected to being viewed in a negative light according to the anti-other perspective. Another active component of the anti-other frame is visual images. These pictures are engrained into powerful justice officials' mindsets, leading to tags associated with visuals. The visually ingrained stereotypes about African Americans lead to negative stereotypical labelling of African Americans.

In the book *White Racism: The Basics (2001)*, a college student explains her first experience when interacting with a black child at her school:

> I switched from a . . . school which had no blacks to a public school, and I was thrown in the middle of a bunch of apes, no I'm just kidding . . . And I don't know, my parents have always instilled in me that blacks aren't equal . . . (p.215).

Emotion-laden stereotypes emphasize the bestial and apelike appearance and the uncivilized, alien, foreign, criminal, dangerous, and rebellious aspects of African Americans. The above quote provides an example of how white children associate blacks with bestial imagery. These views are ultimately transferred through interactions

with the criminal justice system. Adhering to these stereotypes allows white minds the ability to react accordingly in the criminal justice system at their discretion.

A chief U.S. district judge found himself under fire in 2014 for a racially-loaded joke that he sent to friends from his court email. The email was titled “A MOM’S MEMORY.” He added in an opening statement “Normally I don’t send or forward a lot of these, but even by my standards, it was a bit touching. I want all of my friends to feel what I felt when I read this. Hope it touches your heart like it did mine” (Reilly, 2014, p.1). The “joke” that followed was this: “A little boy said to his mother, ‘Mommy, how come I’m black and you’re white?’ His mother replied, ‘don’t even go there Barack! From what I can remember about that party, you’re lucky you don’t bark’” (Reilly, 2014, p.1). The judge views black men as dogs; this is an example of a white racial frame through which people of color are viewed as animalistic. When officials are provided the chance to exercise their discretion in sentencing a person of color, this animalistic view will be at the forefront of the decision-making process. Throughout my study and data collection stage, this e-mail was forwarded to many judges, prosecutors, and high-ranking police officials. This shows a consistent view of people of color as equivalent to animals and provides a view of the mindset of white actors in our criminal justice system. Sadly, however, little progress has been made to enlighten the mindsets of people in power. There is a noticeable similarity between the treatment of humans and animals during the discretionary sentencing phase, and people of color are ultimately punished to the same degree as animals. For example, when a pit bull bites a person, the bull is euthanized. People of color are sentenced in a way that is disproportionate to their

actions because of stereotypes about black people as dangerous—similar to the way that pit bulls are viewed as inherently dangerous. Here, I will analyze the animalistic view of people of color that leads to stereotypes of black people as criminal and dangerous. Powerful criminal justice figures punish criminals. When someone enters the system and finds themselves viewed in this manner, they will pay!

Black criminality

In this chapter, I will take a look at the common themes used by power holders in the criminal justice system when viewing people of color from an anti-other perspective. "These views are historically engrained in our minds and these assertions of black criminality date back to at least the early slavery era of the mid-seventeenth century" (Feagin, 2010, p.184).

In addition, blacks who attempted to leave during the era of slavery in the U.S. were defined by the law as criminals. Vagrancy laws come into play at this stage. "Vagrancy laws and other laws defining activities such as 'mischief' and 'insulting gestures' as crimes were enforced vigorously against blacks" (Alexander, 2010, p.31). These views in conjunction with multiple studies conducted by Gould, Broca, Morton, and Lombroso labeled minorities as inferior (a criminal trait). Following the Civil War, whites feared that "An angry mass of black men might rise up and attack them or rape their women" (Alexander, 2010, p.28). This allowed white people to view blacks as criminal, dangerous, and capable of hurting defenseless white women. This draws a connection also from a label black men received as a scare tactic long ago. The slave codes in 1705

described blacks as rapacious sexual creatures who preyed upon whites (Higginbotham, 1996). Historical connections can be made for the lens from which blacks should be viewed. Another prime example is the case of Willie Horton in 1988. Horton was convicted earlier of a particularly gruesome murder in Massachusetts. Upon early release, he broke into a suburban Maryland household. Horton proceeded to assault the man of the house, tied him up, and raped his fiancé´. A photograph of the bleary-eyed and disheveled Horton, taken shortly after his arrest, became a prominent image in the campaign to represent Dukakis's softness on crime during the Bush-Dukakis presidential election. This picture was used to draw attention to the idea of the criminal black man. The mere photograph of a disheveled black man became the lens from which we are to view black men as a whole.

According to historian William Cohen, whites felt they should "have the power to pass stringent political laws to govern Negroes, this is a blessing, for they must be controlled in some way or white people cannot live among them" (Alexander, 2010, p.31). During this period, tens of thousands of African Americans were both arrested and fined. "The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder" (Alexander, 2010, p.31). The low economic status of blacks required them to work off their fines to secure their release from prison. "With no means to pay off 'debts,' prisoners were sold as forced laborers" (Alexander, 2010, p.31). This connection between blacks and criminality led to a new slavery system to reinforce the racial order. "Convicts had no meaningful legal rights at this time and no effective

redress. They were understood, quite literally, to be slaves of the state" (Alexander, 2010, p.31). The practice of arresting and fining blacks who had no means of financial gain set the stage for the criminal justice system we have in place today. Alexander states that blacks ultimately become slaves of the state with no rights and were defined quite literally as inherently criminal.

In spite of the thirteenth amendment's abolishment of slavery, the exception to this law was the appropriation of slavery as a form of punishment for a crime. The historical association between blacks and criminal nature is a strong factor when explaining the anti-other perspective. Whites' views of the criminal nature of actions of people of color led to the creation of laws and policies to assist powerful whites in the taming of the criminal black man.

More current research conducted by social scientists and others has found that whites automatically connect African Americans and crime. The criminal stereotype provides powerful whites in the legal system (judges, prosecuting attorneys, and police officers) with an image of African Americans as the link to criminality and the "criminal black man." One case (2013) that includes this stereotypical view is that of the former Brooklyn district attorney in Kings County. He was the district attorney for this district for twenty years prior to this election. He ran his campaign for reelection based on a name-calling foundation. As with many elections, this is not a new campaign strategy. However, what makes this campaign different from most is the name-calling used compounded with racial slurs and criminal innuendos when referencing his black opponent. His African American political opponent was called a racial slur, "thuggish,"

and tagged as a gun dealer. Racist ads were run indicating the former district attorney lost the election in the Democratic primary to "the minority element that seeks lawlessness" (Kene, 2013, p.1). In part, the ad states:

> Will we allow an 8 percent minority of Brooklynites to determine who should keep Brooklyn secure?......". "The communal leaders and activists know that his opponent was only successful because a very small percentage came out to vote, and then of that small percentage he brought out the minority element that seeks lawlessness (Kene, 2013, p.1).

The candidate demonstrates his view that black men are inherently criminal. Therefore, they are not to be trusted. Kene also states in his article, "The communal leaders and activists are watching in pain how the opponent put together a coalition of dangerous people" (Kene, 2013, p.1). Following his loss in the primaries, the former District Attorney decided to run on the Republican ticket. His campaign reportedly distributed fliers in primarily white areas in Brooklyn that read: "He put a corrupt political boss in jail. His opponent let the same convicted felon run his campaign. Don't let a convicted felon run the district attorney's office" (Kene, 2013, p.1). This representation of his black opponent as criminal is not a new phenomenon. Within the criminal justice system, black men are alleged to be immoral, illegal, and dangerous. The campaign run by the former district attorney was filled with this white racially framed concept in mind. He was seeking to pull on voters' emotional heartstrings, urging them to rise up and look at his black opponent from a historically grounded perspective. To be criminal is equivalent to being a black man regardless of one's lack of criminal activity.

This line of thinking also suggests that, as a black man, in spite of your position, you must have connections to lawlessness. The discretionary mindset of the district attorney is clear. In spite of this individual's lawful behavior, to be black means to be criminal.

How would the view of people of color as criminal affect the discretionary sentencing process? A State Supreme Court justice in Queens (1984) was cited as having used a racial slur in court during the sentencing phase. In an attempt to elicit information from a defendant in order to implicate another man involved in the robbery, he used a slur as a reference. "I know there is another 'nigger' in the woodpile'' (Shenon, 1984, p.13). The state commission on judicial conduct quoted the judge as having said. "I want that person out. Is that clear?" (Shenon, 1984, p.13) The judge was making an explicit reference to the criminality of people of color. The defendant, being a black male, was viewed by the judge as guilty and in a criminalized manner capable of harboring a fugitive. The judge is directly drawing on the white racially framed anti-other perspective. He views the defendant as one of many wicked black men and not on an individualized basis. The judge's reference was in part also based on the white racial framed perspective of people of color as rebellious. In this case, the judge made the remarks at the sentencing of the defendant—a last ditch effort of power to push the defendant to provide the name of another individual of color who was possibly involved. These encounters during the discretionary sentencing phase of the trial are detrimental to the sentence given to the defendant. In this case, a harsh sentence was given.

Continuing with the common theme of the Un-American and criminal anti-other view, I will next delve into the anti-Latino view from the white racial frame through the

mind of criminal justice power holders. Based on the common themes used to label people of color discussed above, we will see the anti-other commonality between blacks and Latinos. From this perspective, all people of color are connected to criminality and viewed as alien, foreign, lazy, and ungrateful. This project seeks to provide a connection between the historical views of people of color by powerful criminal justice officials as ever unchanging and having developed into a current socio-political issue that is still faced by people of color from an anti-othered perspective. The more things change, the more they stay the same.

Anti- other framing of Latinos

Another critical piece of the anti-other framing surrounds anti-Latino framing. Since the early 1600s, whites, through the white racial frame, have insisted that people of color (initially Indians, then Africans) are inferior, uncivilized, dangerous, and foreign (Cobas et al., 2009). The addition of Latinos to that group was soon to follow. Coining Latinos as "illegal aliens," whites incorporated "foreign and dangerous" as regular descriptors of Latin American immigrants (Cobas et al., 2009). The anti-other perspective is anchored in the portrayal of people of color as foreign criminals seeking or needing to be saved by powerful whites. The criminal view of Latinos in particular, however, includes the added element of deportation based on the assumed illegal status of all Latinos. These illegal perceptions were perpetuated to criminalize Latinos and to provide a reason that they must be saved and contained by white Americans. According to Cobas et al. (2009), "During the nineteenth century, Latinos and Latin Americans were often considered inferior 'mongrels' that had to be saved by the Anglo-Saxon race" (p. 8) based on their

perceived status as menaces to society. In twentieth century public discourse, Latinos' status became that of "illegal aliens" (Chavez, 2008), thus magnifying their perceived criminal aspect.

The 1924 Immigration Act did not include Mexicans and thus allowed employers to exploit them for low-wage farm labor. Mexicans' exemption from this act was based on the need for farmers, and they were excused from entry quotas. In spite of the importance of Mexican laborers for U.S. farms, white natives were becoming increasingly hostile to the influx of Mexicans. Similar to their racist feelings toward African Americans, whites had a fear that Mexicans would be a threat to "white purity" as Negroes had been in the past. At this time, Mexican immigrants were immediately associated with the term "illegal alien," which became a new legal and political subject (Chavez, 2008). The increase in measures by the border control made illegal immigration a felony (white racially framed as criminal and comparable to the racial framing of African Americans). The border patrol was in place then, as well as now, to enforce government-prescribed discriminatory actions. However, in times of need, whites have hired Latinos to do racialized work that comes with a price.

A judge from the Southwestern region of the United States made a statement regarding work on his house for which he had hired Mexican laborers in 2011. Upon completion of the job, the judge was not pleased with the work. During a conversation with the judge, a defense attorney asked him about hail damage to his home. In reply, the judge began spouting complaints, allegedly stating that he had learned that the workers were illegal immigrants and that they "deserve to all be taken south of the border with a

shotgun to their heads” and “if they needed volunteers that he would be first in line” (Weiss, 2011, p.1). He also referred to his Mexican workers as "wetbacks." This slur continues a long history of racial tensions and claims regarding the racialized other. During the economic recession of the 1950s, the U.S. Immigration and Naturalization Service launched "Operation Wetback" to find and return all undocumented Mexican "aliens." The judge’s use of this term reveals a connection to the full power of the racialized slur. Based on this frame, Latinos are viewed as foreign and "Un-American." The judge’s identification of his workers as undocumented and illegal aliens has a strong connection to the anti-others perspective and the position occupied by all people of color in the United States. This historical glance into the criminal justice system’s creation of the anti-Latino frame leads us to the views still held in place today. We will discuss the “Un-American” view and the lumping of illegal and criminal beings as one defining entity of the anti-Latino frame.

Latinos as un-American

I will now cite a few more recent examples of powerful officials' views from an anti-Latino (Un-American) frame. In 2014, a U.S. Department of Justice trial uncovered the circulation of emails within the North Carolina Alamance County Sheriff's Office. These emails, which included jokes based on ethnic stereotypes, were forwarded to some of its highest-ranking supervisors. According to the source (Abernethy, 2014), records show that the emails contained stereotypical views of many Hispanics, including the idea that Latinos who come to the United States are landscapers or construction workers. Others stereotypes related to the border issue and people coming into the United States illegally.

More specifically, an email titled "The Dallas Solution" reported that civilians put on hats bearing Immigration and Naturalization Service initials to scare away nuisance construction workers in a Texas neighborhood. Another e-mail, titled "Rules for Kicking ---," encouraged recipients to assault people who, among other things, talk during the singing of the national anthem, burn the U.S. flag, don't thank veterans, or sing the U.S. national anthem in Spanish (Abernethy, 2014). Recipients of this forwarded message were instructed to pay attention to the line about singing the national anthem in Spanish. These messages allege that all people of Spanish descent are in the U.S. illegally. As a collective whole, Hispanics were referred to as foreign, uncivilized, and alien. The reference to the singing of the national anthem in Spanish as un-American in nature also speaks to the lack of diversity of culture. Singing the national anthem in Spanish is viewed as offensive, based on the view that being white is equivalent to being a real American. Based on Latinos' "Alien" nature, these anti-Latino views make unequal discretionary decisions not only an option but a right.

Court documents from a 2014 Department of Justice investigation report another example of a racial slur from an anti-Latino-frame made by a jail captain in the Alamance County Sheriff's Office in North Carolina. This official referred to Hispanic jail inmates who were being transported by Immigration and Customs Enforcement officials as "beaners" and "tacos" within their earshot. Other examples report high ranking officials' frequent use of the terms "beaner," "wetback," and "spic" to refer to Hispanics and their instructions to inmates to "go back to your country" (Abernethy, 2014, p.1). The complaint of an Alamance County Department estimated about 30

percent of the officers used those terms. Based on the negative connotation of their words, these officials were thinking from a Pro-White frame, which is discussed in detail in the following chapter. In these instances, Hispanics were viewed as un-American and in need of returning to their homelands. These experiences with powerful criminal justice officials speak to the negative encounters many people of color have faced. The view of Latinos from an un-American anti-other frame is beyond detrimental; rather, it is a link to another strong anti-Latino frame. The view of Latinos as "illegal aliens" is loaded because of the strong connection between the term *illegal* and the anti-other perception of Latinos' inherent criminality.

Latino criminality

The inherent criminal tag from the anti-Latino frame is apparent in interactions with powerful justice officials. These interactions ring true in the following case that involves a powerful police official's action leading to real consequences when viewed from an anti-Latino frame. In 2012 in Arizona, a white sheriff who was the local police department's power holder attracted public attention based on his racist rants, racial profiling, and racially charged statements about immigration. His criminalization of minorities was a key component in a complaint filed against him with the Department of Justice. Information reported in the case revealed the ramifications for simply being present and Latino. According to the records (Millhiser, 2012),

> During raids, Arpaio's Criminal Enforcement Squad typically seizes all Latinos present, whether they are on the warrant or not. For example, in one raid CES had a search warrant for 67 people, yet 109 people were detained. Fifty-nine people were arrested and 50 held for several hours before they were released. Those detained, but not on the warrant, were seized because they were Latino and present at the time of the raid. No legal justification existed for their detention (p.1).

This example is one among many accounts of how minorities suffer when being viewed from an anti-other, criminal perspective. The sheriff has internally incorporated notions of Latinos' criminal nature into his decision. His actions clearly show that his mindset is to treat Latinos as dangerous criminals in spite of the absence of their names on a warrant. The only crime at this time was being "present" and being "Latino." The statement quoted above clearly shows that these are considered to be crimes in and of themselves.

During a speech in Austin, Texas, in 2013, a conservative federal judge made comments that were allegedly discriminatory in nature. According to Weissert (2013) she said,

> Certain racial groups like African-Americans and Hispanics are predisposed to crime, and they are prone to commit acts of violence and be involved in more violent and "heinous" crimes than people of other ethnicities. The judge also allegedly said, "Mexicans would prefer to be on death row in the U.S. than serve

prison terms in their native country and that it's an insult for the U.S. to look to the laws of other countries such as Mexico" (p.1).

It is important to note here that this Texas judge made these remarks while addressing the University of Pennsylvania law school. The statements spewed by the judge are immersed in the racially framed view of criminal nature of people of color. These comments leave us to question the judge's integrity and her ability to be impartial. In addition, the comments leave no doubt regarding her views of Hispanics as immoral and dangerous as this relates to their readiness to appear on death row. Her assumption that Hispanics are more likely to commit heinous crimes comes from her racially framed notions of the dangerous nature that is believed to be inherent in people of color. This judge has a unique appearance of impropriety. However, her use of discretionary power will undoubtedly be affected by her views.

Here, I will provide examples of some certain effects of high ranking officials when seeing Latinos from the Anti-Latino frame.

High ranking police officers have a great deal of discretion when determining whom among the many traffic-law violators should be stopped and arrested. Reports shows that many police officers stop speeding drivers based on a racial profile, suggesting that Latinos on that interstate are more likely to be trafficking in drugs.

Another example of the racial profiling faced by Latinos in the United States can be seen in the case of the Arizona sheriff, discussed earlier in this chapter as a participant in racist rants, racial profiling, and making racialized statements about immigration.

According to a complaint filed by the Department of Justice in 2012, the sheriff and his staff were engaged in violent, demeaning, and overall mistreatment of Latinos. One claim referred to widespread racial profiling. It is not surprising that the racial profiling literature documents excessive and poorly justified stops of Latinos. Millhiser (2012) reports the following regarding the findings in the complaint filed against the Arizona sheriff,

> In the southwest portion of the County, the study found that Latino drivers are almost four times more likely to be stopped by MCSO officers than non-Latino drivers engaged in similar conduct. . . . In the northwest portion of the County, the study found that Latino drivers are over seven times more likely to be stopped by MCSO officers than non-Latino drivers engaged in similar conduct. . . . Most strikingly, in the northeast portion of the County, the study found that Latino drivers are nearly nine times more likely to be stopped by MCSO officers than non-Latino drivers engaged in similar conduct (p.1).

More random profiling claims included,

> MCSO officers stopped a car carrying four Latino men, although the car was not violating any traffic laws. The MCSO officers ordered the men out of the car, zip-tied them, and made them sit on the curb for an hour before releasing all of them. The only reason given for the stop was that the men's car was a little low,' which is not a criminal or traffic violation. (Millhiser, 2012, p.1)

These views of Latinos during profiling procedures are an additional factor regarding why people of color have suffered tremendously during the reign of "America's toughest

sheriff," a self-selected nickname for the sheriff. The above findings are relevant in other studies as well. The same results of inequality in discretionary decisions made by police officers were found in, but not limited to, the following cases, to name only a few: Fuchilla v. Layman (1988), State v. Pedro Soto (1996), Lundman and Kaufman (2003), and Smith and Petrocelli (2001). The criminal aspect of the anti-Latino frame leads to unjust tactics and experiences when interacting with power holders. These links to criminality have allowed and continue to allow a typical traffic stop or violation to go beyond a simple course of action. A Latino being stopped in this circumstance is likely to pay an astronomical price. At times, these simple stops, when conducted by an official who views people of color as criminal in nature, can leave the victim D.O.A (Dead on Arrival).

Conclusion and summary

Overall, this chapter has sought to provide insight into the common subjects used when people of color are viewed from common anti-other themes. This section has focused on the common themes used by power holders when viewing people of color from an anti-other perspective. The common racialized themes discussed herein include, but were not limited to, criminal nature, inferiority, lack of civility, laziness, ungratefulness, and foreign and alien labels. Next, the role power holders played in defining people of color in this fashion was explored. This chapter sought to provide readers the opportunity to think outside of the box and concentrate on powerful individuals (judges, district attorneys, and powerful police officers) in this system as the subject. The discretionary power they possess to enforce anti-other views was then

provided. The power of discretion was discussed as the powerful entity persons of power possess to determine the ultimate fate of people of color. Examples of unjust and discriminatory decisions made by power holders were provided. An examination of police officials' power to make decisions regarding custody, prosecutors' power in the charging stage, and judges' power during the sentencing stage provided insight into avenues available to misuse discretionary power when interacting with people of color within the system.

Finally, the views from both an anti-black frame and an anti-Latino frame were examined. Blacks were presented as being lazy "niggers" by powerful figures as far back as President Washington, and the examples presented showed powerful justice figures who mimic these beliefs when making discretionary decisions in today's world. A psychological view of blacks as lazy, coupled with the visual images that are engrained into powerful justice officials' mindsets, lead to tags such as "niggers," criminal, dangerous, and foreign. The framing of blacks as criminal demonstrates how black individuals are seen as one of many wicked men and not as individuals. A view of the anti-Latino frame was also discussed. The criminal justice system's history of framing Latinos as alien, foreign, criminal, and dangerous "border-flooders" was given. This chapter provided a historical lens from which Mexicans are viewed, leading to powerful officials increasing measures of border control and thus making illegal immigration a felony as a way to connect Latinos to the criminal tag. Examples of powerful criminal justice officials' quotes of Latinos as alien, "beaners," Un-American, and criminal were also provided. Powerful figures provide a common consequence of

Latinos being profiled as criminal without any wrongdoing or guilt. As with all minorities we discuss herein, Latinos were lumped into one category and viewed as criminal and "alien," terms that are run together to encompass the definition of Latino. Overall, this chapter has provided a connection between the historical views of people of color as defined by powerful criminal justice officials as ever unchanging, having developed into a current issue still faced by people of color from an anti-other perspective, and how the power of discretion has led to consequences for all groups.

CHAPTER V

INTRODUCTION: PRO-WHITE FRAMING

This chapter will evaluate the criminal justice system's power holders and the white racial frame—particularly its pro-white centered perspective. "White elites are especially important in crafting and perpetuating ideological and structural racism, as they were in previous historical epochs" (Feagin, 2006, 230). This chapter will examine the historical structure that places whites at the top of the racial hierarchy and decrees that people of color will fall in line below. I will provide insight into both the central component of the criminal justice system and the historical linkages of this oppressive system to the current regime. Power holders are discussed as creators of a system that interprets and generates ideas of white virtuousness and purity. An incorporation of the white racial frame's tenets will be displayed. Pro-white elements and narratives put into play the mindset of a system that stands on positive stereotypes of whites and negative stereotypes of people of color. I will provide examples of power holders' misuse of discretion when their thinking is based on these tenets.

Next, I will explore reasons that this manner of thinking in the criminal justice system is deemed warranted. Social inheritance will be used as a platform for thinking about how this system stands. For centuries, whites have enjoyed white privileges that reinforce their power and their unfairly high social status. White privilege functions as a proxy for what it means to be white and has allowed whites to hold a commanding position within the criminal justice system. I will discuss how whites' education beyond

the scope of the home is used as a tool of learning at conferences and for training. I will provide examples of consequences for people of color that are inherent in this process. I will then provide a glance into the development and maintenance of the pro-white school of thought, including a detailed discussion of the creation of law within our system as a development of Eurocentric values, beliefs, and practices. I will provide examples of ways that whites have used Eurocentric interrogation, white privilege, the power to decide what is offensive, collective practices of memory and forgetting, and backstage talk to reinforce this well-developed frame and gain power in the process. The power to form an alternative society, dubbed "the clique" by this project, will be added as a foundational tool to interpret power, segregated memberships (powerful whites), and activities from which our system operates. I will provide specific case examples of "clique" behavior to show how this manner of thinking goes beyond the mindset of the powerful. These practices explain the day to day life of defining power, privilege, and practices as a normative way of life in a pro-white based system of society. This chapter seeks to go beyond the mindset of thinking from an anti-other perspective, as discussed in the previous section, to examining where pro-white ideology was formed.

Pro-white centered system

Theoretically, linking racial disparities to the minds of power (whites) through historical existence is important. Historically, racial issues are not new to the United States. They have been especially present for about 346 years of slavery and Jim Crow, which is 83% of our country's existence. African Americans have been officially free for only about 17% of the country's total history. Functioning as racial oppressors required

whites to lock into a mindset that denied the cruel realities of everyday systemic racism. Whites felt the need to defend their white privilege and power. Slaveholders used illogical myths and feelings to help them rationalize the institution of slavery. When North American slavery was established in the early 1600s, whites developed an interpretive perspective that attempted to justify the institution of African-American slavery. These racist issues can be interpreted through all establishments in a systemic manner. The criminal justice system is one of those major institutions. The slavery era is critical because this was the time when the founding era (the first American colonies followed by the United States) was constructed materially and socially. The system was developed as a white racially framed system.

The white racial frame of mind, which reflects the mindset of those in power (usually white men), provides the theoretical framework of our present day society. From the first decades of American history, slavery and later Jim Crow segregation were responsible for fundamentally shaping our society, and these influences continue to the present day. Our society continues in this manner because the dominant white racial frame is legitimized through the racist systems and embedded in many bureaucracies in this country. The white racial frame has been a part of society since as early as the seventeenth century. In the late 1600s, people who called themselves "white" socially constructed the racial hierarchy which is faced today by all Americans. They created a hierarchical society centered on slavery and, later, Jim Crow segregation and created a white racial frame to interpret and rationalize this oppression (Feagin & Cobas, 2008). From the seventeenth century to the present, whites have had privileges, resources, and

opportunities to solidify their high position in the current racial hierarchy. Development of pro-white framing as the central component was mandatory.

The fabrication of a color line in U.S. society has led to the steering of incoming racial-ethnic groups into socially constructed racial categories. These categories range from white to black and are based on the white racial frame created by European Americans. The artificially produced hierarchy is based on white privilege, with lighter skin at the top and darker skin at the bottom. The hierarchy defines a white perception of a renewed great-chain-of-being. This idea of the great-chain-of-being has not disappeared from the mindset of whites in the U.S. This hierarchical chain orients the belief back in place. Whites as a group are currently at the top and are likely to remain in this position. This chain of command provides a general feeling of insecurity and "an incessant need to control, dominate, or be better than others" (Nunn, 1997, p. 333).

The white-centered perspective stems from the historical connection that states that to be "American" is equivalent to what it is to be "white." "As with canonical scholars like Max Weber, the language chosen to describe a society demographically or sociologically often reveals white perspective" (Feagin, 2006,p. 7). This white-centered perspective supports thoughts of a positive nature in reference to "white" people. Also, any discussion of whites' role as "Americans" in connection to racial issues—inequality in the criminal justice system, slavery, or racial prejudice—is countered with a positive view from a white-centered perspective. In a 2013 case, a U.S. district court judge was quoted using this kind of positive counter opinion to support a racist act. The judge was conducting a pre-trial hearing and in an attempt to understand why the defendant's race

was of importance, the judge asked the following question: “What is the defendant’s race?” His attorneys stated his race was Hindu. To this, the judge replied, “All right, so he’s Caucasian” (Motion to recuse, 2013, p. 7). The lawyers respond, "no he’s Indian.” The judge says, “they’re Caucasian that's where we come from." The judge continued by also stating, "That's why Adolph Hitler used the swastika, because it was a symbol of good luck, in going back in Sanskrit to the Aryan people who he claimed a bunch of Germans were. They act a lot like Germans" (Motion to recuse, 2013, p. 8). This comment supports a pro-white sentiment--coming from a positive place in spite of the negative racial connection. The judge’s previous statements can also be interpreted as uncritical and gratuitous references to the acts of "Adolf Hitler" during the Holocaust. His references to the use of the symbol "Swastika," which represents heinous acts of mass murder based on ethnicity and national origin, are questionable. These statements are clearly insensitive to acts of discrimination and victims of prejudice. In spite of the negative connotation of the "swastika," the judge interprets the use of the symbol as a positive white symbol which negates the fact this is a negative symbol for many people of color.

Law scholar Kenneth Nunn (1997) asserts,

> European Man can do what he wants with his law. Within his world, there is no higher authority than that of the law, which is his own creation. With the creation of the law, the European male has become a self-policing entity—one that needs answer to no other (p.182).

Nunn's assertion was intended to distance humans from the creator and provide the option for them to look out for their own self-interest. A system of white superiority above any other creates a brotherhood of sorts. Over time, this school of thought has been elaborated upon and forced on the minds of Americans through the prevailing dominant culture (whites). In a DeKalb County case, mentioned in the previous chapter, a detective was caught on videotape using the word "nigger" (Fehley, 2013). In 2009, the black male defendant was accused of carjacking a woman in DeKalb County and then using that stolen car in the violent armed robbery of a convenience store in Rockdale County. He was tried, convicted, and sentenced to life in prison for the robbery based on being identified by eyewitnesses, even though the actual robber was wearing a disguise. He spent more than two years behind bars before DNA evidence found in the stolen car convinced a judge to overturn his conviction. During a blistering police interrogation, the then 21-year-old adamantly maintained his innocence. The police, however, were convinced they had their man and turned up the heat in hopes of getting a confession. In stark, unflattering terms, the detective painted a picture of the defendant's chances before a jury. "We're going to get a whole jury -- a whole jury full of white people" (Fehley, 2013, p. 1). "I'm not confessing to nothing I didn't do," the defendant interjected. The detective continues, "I'm going to put this picture," referring to a still image from the security cameras at the convenience store, … next to your photo lineup and you know what they're going to see? They're going to see a straight-up 'nigger'" (Fehely, 2013, p.1)! The detective received only mild punishment thanks to judicial discretion. Although the jury was not shown some of the interrogation videos, the white

defense attorney or the white prosecutor showed the portion of the interrogation in which the investigator used the term "nigger." This particular action speaks to the protection provided to the powerful police officers from their peers through self-policing laws. Supportive actions by whites' peers serve an important function in maintaining a white superior system. Support for the detective took place in spite of the defense attorney's responsibility to protect his client. In this white Eurocentric system, people in power look out for the best interests of their peers. The pro-white detective's actions to uphold the self-policing entity of the law supports the pro-white narratives. In a system of white superiority, whites support the actions of other whites in spite of the negative effects these actions have for people of color.

The white racial frame is composed of many elements that accent the virtues, privileges, and power that whites possess. According to the beliefs in the white racial frame, whiteness and the status of being are viewed positively both by people who consider themselves white and by people who do not. This perspective of the white racial frame is unidirectional. Whites see their position of whiteness as being virtuous and pure. A prominent attorney in New Orleans was recorded by his client following an auto incident. The client wanted to know why his case was tried in St. Tammany instead of New Orleans. The attorney responded,

> It's a decision I made early on to file it in St. Tammany instead of Orleans because, guess what? New Orleans is "niggers," you're white, you go down there, they say fuck you. That's why, that's what it was, to put it bluntly, ok? I mean, it's

> Orleans Parish, it's corrupt, it's left-handed, it's black-oriented and, you know, we the white people coming down there with a bullshit story (Zurik, 2014, p. 1).

Our source reports that, when his actions were challenged, the attorney responded in writing (Zurik, 2014),

> The words in the recording do not reflect the feelings and compassion in my heart. In a moment of frustration, I used indefensible language during a private conversation concerning a private matter. I'm terribly sorry for the embarrassment I've caused my friends, colleagues, and clients. My hope is that I'm judged by my lifelong body of work for justice and fairness (p.1).

His response comes from the pro-white frame that states I am "virtuous" and "pure." I am incapable of making an intentionally negative claim. In his defense, his heart is "pure" as a white man in spite of his words. However, this is simply a reiteration of a very monotonous apology used by whites to excuse their behavior for extreme actions.

Next, I will examine a common trend among powerful whites. White power is part of whites' normal sense of self. White children are taught that, as whites, they are at the center of the social system. These feelings and beliefs as discussed above are central components of whites' social inheritance.

Social inheritance

For centuries, attitudes encouraging anti-black feelings have been part of the dominant (white) racial narrative in the United States. This racial narrative, which is linked to social and political power, has become an essential part of the country's

cultural frame and a key element of American social inheritance. For most whites, racial privilege is intergenerational; children from all backgrounds are taught to accept values, views, and societal standards that advantage white people and disadvantage blacks.

This transmission of beliefs, values, and standards that glorify whiteness at the expense of black culture is often conveyed during criminal trials. One example of this can be found in a southern Illinois courtroom in 2011. When trying a murder case in a rural county, a white district attorney was arguing before an all-white jury. The defendant and both eyewitnesses were black. During his closing argument, the prosecutor used the following phrase to explain why the witnesses recanted their testimony: “Now in our white world, ladies and gentlemen…,” (Owens, 2013, p. 1). He continued:

> And you will see, ladies and gentlemen, that there are some, not-all-there are many good people in the black community, but basically, you will see that there are a few in the black community who refuse to cooperate with the police even when a murder happens right under their nose, and those people have a habit of intimidating, harassing, sometimes threatening anybody who they think is cooperating with the police. That's what makes this case so difficult, ladies and gentlemen (Illinois board commission, 2014, p.1).

The district attorney also claimed that "carrying guns in waistbands is a thing that black people just normally do" (Owens, 2013, p. 1). His statements referred to a presumed shared understanding of white jurors about black people and black culture. The prosecutor’s use of these racial images and stereotypes was based on whites’ self-

image as a superior race. As Feagin (2006) notes, "a majority of white Americans view the continuing racial hierarchy of white over black as legitimate because they believe whites are culturally and morally—and still, for many, biologically—superior…"(p. 230). These over-generalized racialized statements were officially transmitted to the all-white jury as reasons for the black witnesses' recantation: their community's negative morals and values were reflected in their behavior. A similar dynamic can be seen in the case of a Newton County commissioner's apology for derogatory remarks that appeared on a Facebook post in 2015. The commissioner had seen a photo of an African-American woman with an American flag "up her backside, wiping her backside with it" and extending her middle finger toward the camera. The caption under the photo contained profane statements about the flag. This provocative image elicited the following comment from him: "[S]he is just a cheap street walker knee grow who lays down for white men" (Beck, 2015, p.1). Prior to a meeting of the board of commissioners, a news reporter questioned the commissioner about the posting. The Newton County commissioner entered the meeting and informed his colleagues that his Facebook posting would be the subject of a TV news spot. According to our source (Beck, 2015), he told his colleagues, "I made some very insensitive and derogatory comments. I did use a word that was common in the language 40 years ago and is not used now, although it was not what is commonly referred to as 'nigger'" (p.1). He based his defense on his use of a socially inherited word in an apparent attempt to explain why he was vindicated in spite of the offense taken rather than to actually apologize for his response. He stated,

> If anyone is offended, I am very, very sorry for using the wrong word in that posting, but having said that, I am not sorry for coming to the defense of our flag. And seeing it used like that in a time when we should be coming together in honoring our flag … I lost my common sense for a few minutes before I took it back down (Beck, 2015, p. 1).

The commissioner continued, stating

> He was particularly incensed by the depiction of the flag because of his background as a retired Army officer and former chair of the state Senate Veterans Committee. During the Iraq War, he attended 25 to 30 funerals throughout the state of young men who were killed while in service (Beck, 2015, p.1).

This "apology" was a means of excusing his behavior more than presenting the public with an actual apology. It can be connected to rhetoric surrounding socially inherited privilege.

Systemic racism includes a complex array of anti-black practices that unjustly maintain and reinforce the political and economic power held by whites and promote racially-based inequalities in the distribution of resources. Key to the reproduction of systemic racism is the emotion-laden racist framing used to rationalize and continue the maintenance of whites' privilege and power (Feagin, 2010). For centuries, the attitudes encouraging white actors to support anti-black feelings have been embedded as a part of this well-developed frame. This way of thinking was created by Europeans and can be theoretically linked to the minds of power. White society has dominated for centuries.

Most white children are surrounded by visions of intergenerational privilege. This social inheritance is a continuous element of society that is transmitted through the generations through an array of racial privileges and resources. This way of thinking provides a background as well as a rationale for continuing racial disparities in discretionary decisions. Following is an example of the historical connection between the mindset of powerful individuals, including police (investigators), prosecutors, and judges. In Fannin County Georgia in 2015, a judge, a prosecutor, and two investigators were discussing a witness they had scheduled to testify in a current case. “He is known as, am I correct, ‘Nigger’ Jim," the assistant district attorney asked. ”Ray," said an investigator from the Fannin County sheriff's office. "Nigger" is what the DA asked, according to the transcript. "Ray," the investigator said. "Ray sorry all right he's known as ’Nigger’ Ray" (Jett, 2015, p. 1). The discussion was based on how the witness was "referenced" in his neighborhood. The use of "nigger" in spite of witness’s nickname is irrelevant and inappropriate to be used by people of power. In a court setting, a witness‘s full name should be used. The fact that the powerful individuals in this situation make a point to call a witness by a derogatory racialized name speaks volumes to the amount of respect they feel people of color deserve. In this particular scenario, the comfort with which these powerful whites refer to a person of color in a derogatory manner provides a clear example of the racial privilege that whites see as their social inheritance.

How are people of color to believe that they will receive fair and equitable treatment in these situations with pro-white powerful individuals? Davis 2007 asserts,

> Prosecutors are the most powerful officials in the criminal justice system. Their routine, everyday decisions control the direction and outcome of criminal cases and have greater impact and more severe consequences than those of any other criminal justice official (p.5).

"Scholars have long recognized that prosecutors operate within a courtroom community in which decision making is the product of courtroom social contexts and shared norms" (Stemen & Frederic, 2013, p. 4). Following are some examples of a prosecutor's use of racialized terms regarding people of color within the courtroom community. Based on the education received at conferences, a prosecutor in Orange and Osceola counties who prosecutes criminal cases was reprimanded for the use of racial slurs. "At least five employees have heard a state attorney in the ninth judicial circuit use terms such as 'nigger,' 'nigeritis,' and 'niglet' in the workplace in relation to members of the public" (Gore, 2011, p.1). This state attorney had the power to prosecute criminal cases and subject people of color, who are grossly overrepresented in prisons, to her racist framing. Because her thoughts and language stem from a stereotypical and negative perspective of people of color, a defendant's case that comes across her desk is less likely to be handled fairly. Her internalized view of blacks as "nigger," "nigeritis," and "niglet" stems from the white racial frame that is part of her social inheritance. Her use of words that assume blacks' status of inferiority reveals her attitude that blacks are not worthy of equal treatment. This leaves little doubt that she will do what it takes to ensure that the "others" remain in line. The punishment that people of color will receive is likely to be based on her socially inherited beliefs.

Next, this study will provide a connection to the development of socially inherited beliefs. In practice, the universal inheritance of white power is maintained and controlled by the criminal justice system. The development of a criminal justice system that stands on pro-white premises will be discussed herein. The manner in which elite white men went about creating a legal system that is Eurocentric in nature will provide a clearer understanding of the systemic racist criminal justice system that exists in the United States today.

Development and maintenance

The laws of the land are essential for the white-centered development in the criminal justice system and its various institutions. European culture offers the belief that law is universal. However, we find that law is distinctly a factor of the white produced legal tradition. Nunn (1997) describes legal tradition as,

> A set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught(p.2).

This legal tradition deals with the way laws are made, the people who administer the laws, and the way in which laws operate. My project's focus is to express the ways in which the laws are interpreted and how this interpretation can result in unequal rights for people of color. The role of law can best be understood by viewing it through the eyes of the powerful. As Nunn asserts, the law is Eurocentric: the legal system is a product of

the construction of law combined with people of European origin who make discretionary decisions.

Nunn describes the law as a Eurocentric enterprise, by which he means it is part of a broader attempt to promote the interests, values, and beliefs of Europeans at the expense of all others. These laws also ensure the promotion of European ways of life, which are described by W.E.B. Dubois as a "wage of whiteness." The historical view of law as a Eurocentric enterprise will be discussed herein to reveal the usually hidden relationship between white supremacy and law when making discretionary decisions. For example, during the sentencing of a white defendant for the killing of a black teen, a Hinds County judge revealed his Eurocentric based reasoning. The case involved a white patron leaving a bar to go home on December 28, 2005. The patron returned shortly after and asked the bartender to help him call the police. He also stated he would need a police report for his insurance company and that he would need to file his insurance claim to have his broken window replaced. His concern was getting his window replaced. However, the white patron had already killed the black teenager by shooting him in the back after the teen had thrown a rock—not a beer bottle—at his truck. The judge blamed the dead victim, who was black, for the killing. He explained that the white defendant had fired at the teenagers after somebody threw a rock through his truck window. The judge argued,

> Those three young men were looking for trouble, (the defendant) was not looking for trouble. He was on his way home. The judge continued to say In this case it is undisputed that three young men, including the victim, were throwing rocks at

> the defendant's car with the intent to hijack the vehicle of the accused. I use the term hijacking, but I mean car-jacking (Lynch, 2007, p. 1).

However, there was no way for the judge or the defendant to know the teens 'intentions' when they threw rocks at the truck. The defendant responded to the broken window by shooting at the teens and hitting one in the back. Lynch (2007) notes, "He asked the bartender to help him call the police to fill out a case report so his insurance company could replace the window" (p.1). He failed to mention any reference to the teens' attempt to carjack the vehicle. The judge made this inference and the connection to the criminal intent of the black teens based on the racially framed assumption that the teens were criminal. He assumed that when the rock was thrown, the black teenagers had underlining criminal intentions. However, the teenage boys were throwing rocks in the street and were not aiming at the truck. When the rock hit the truck, the boys began to run away. The patron made a U-turn and followed the kids. He hung his .45 handgun out the window and fired eight times--emptying the gun and shooting one of the boys in the back. The defendant qualified for up to 20 years in prison. However, because of the image of black teens as immoral and criminal beings, the judge gave the defendant a light sentence. The judge used his discretion to sentence the defendant to eight years with six years suspended; the defendant ultimately served two years in prison. The judges' decision was based on the assumption that the "criminal" black teens intended to carjack the "pure" and "virtuous" white defendant. The sentencing demonstrates that this judge's actions were supported by the Eurocentric basis on which our justice system stands. The judge has the power to hand down this light sentence based on the

Eurocentric laws that are in place. In this case, the white man is on the receiving end of the promotion of white ways of being through the Eurocentric laws and practices that were being administered from a white racial frame.

Criminal justice education

Within our criminal justice system, powerful social actors are given instruction and educated to understand that they are inherently privileged. For example, during a Wisconsin prosecutors' education training conference, the talk was clearly racially distinct. A Wisconsin attorney general candidate had videotapes of the attorney general making potentially racist and sexist remarks. These videos, which were recorded in 2009 and 2013 during statewide prosecutors' education conferences, had previously been ordered not to be shown to the public. According to prominent Wisconsin Democrats, the videos show the future attorney general making "offensive racial remarks and ethnic slurs, including but not limited to stereotyped accents, as well as sexist remarks" (McAuliffe, 2014, p.1). These comments by the Wisconsin attorney general, made at five sessions during the conference, were intended to educate current and future prosecutors attending the conference. Remarks shown on the videos illustrate the generational transmission of racial beliefs within the criminal justice system. Providing "educational" information at the conference that supports white superiority and views people of color from an anti-other perspective is an example of the transmission of beliefs to prosecutors through the educational platform. When people of color encounter powerful figures who have been educated in this manner, they will instantly feel a level of inferiority and be treated in the anti-racial, anti-ethnic, and stereotypical manner that

powerful people have long treated "others." In this case, the attorney is expressing her racist beliefs during this conference to ensure that pro-white views are passed along from one attorney to the next.

Another example of the law's Eurocentric nature is the leeway granted to powerful police officials during the interrogation process. In Virginia, a Dinwiddie County sheriff used a racial slur and described it as an interrogation technique, stating that he was attempting to obtain a confession from the murder suspect. Although the defendant was visibly nervous during the interrogation, he did not confess. He did say that "he saw a group of black men attack Northington" (Schmidt, 2015, p.1). When the sheriff pressed him for more, the defendant raised his voice, saying that "this would get him in a bunch of more shit with these 'niggas.'" The sheriff responded "no, it's not." "We're gonna protect you, man, we're gonna protect you, these 'niggers' are not going to get to you, you're not gonna be in no hot water with those 'niggers,' tell me what happened, man" (Schmidt, 2015, p.1). As he used the racial slur in this example, the sheriff was in a clear position of power. In response to being caught saying "nigger," the Dinwiddie Sheriff stated that he used the slur just once behind closed doors during the interrogation. He stated that the defendant used the word first, "and then I repeated what he said because any police officer knows that when you're in an interrogation, you have to use their words in order to get on their level to get a confession" (Schmidt, 2015, p. 1). The sheriff continued, "I used his words, that wasn't my words, I had him at a certain point, and I didn't want to break that thought" (Schmidt, 2015, p.1). The sheriff stated that "he has not and never would use the slur in any other scenario, public or private, and that his

interrogation resulted in the defendant's conviction" (Schmidt, 2015, p.1). The sheriff said, "I was able to get a confession, and the man is in the penitentiary now as a result of it. What more can I say about it? I just can't believe they would resort to this" (Schmidt, 2015, p. 1). However, the defendant did not confess. The use of "nigger" is unacceptable at any point. Yet the sheriff excused himself for the use of the word. He felt that it was acceptable to use the word as a means to justify an end. This example illustrates whites' use of Eurocentric power to make decisions based on white supremacy views within the criminal justice system. The law excused the detective's use of "nigger" as long as he was doing his job.

A system of white privilege

Most white people, in my experience, tend not to think of themselves in racial terms. They know that they are white, of course, but mostly that translates into being not black, not Asian- American, and not Native American. Whiteness, in and of itself, has little meaning (Wellman, 1993, pgs.194-95). The absence of a need among white people to view themselves in racial terms is an essential component of white privilege. This may be compared with the role of bus drivers. Drivers are oblivious to their role because it is obvious that they are driving. They feel they require no title. The ideology of white privilege has been created and developed to defend whites as meritorious and to accent the inferiority of people of color.

A crucial part of white privilege is its focus on the views of whites and whiteness. One central component of white privilege is the view of white beauty as a prize. These

views of white beauty as a prize come at a considerable price for people of color; looks and other physical characteristics of blacks are viewed in a very negative way. For example, during jury selection, a Waterloo judge made racially offensive comments related to "looks." Describing the varying strategies behind jury selection, the judge explained that "one of her former law partners picked jurors based on lips – finding those with 'big lips' are more generous" (Reinitz, 2007, p. 1). These words were offensive to the black woman who was the plaintiff in the case who was suing the county over an injury she had received in 2004 while being arrested. According to the Commission Director, "the comment may have inferred that those with thicker lips -- a black stereotype -- are to be weeded out of jury selection and thus have an impact on the makeup of the jury" (Reinitz, 2007, p. 1). Negative views of blacks' physical features, including images of blacks' large features, are embedded in stereotypes of blacks that are part of the white racial frame—stereotypes that whites transmit from one generation to the next. When explaining her comment, the judge stated, "the statement wasn't meant to be racial and is part of a story she tells potential jurors to break the silence when attorneys for both sides are considering which jury candidates to strike" (Reinitz, 2007, p.1). Visual connections play a powerful role in the maintenance of white privilege. The judge's ability to justify the comment as a simple expression that was intended to provide comfort in a stressful situation portrays whites as meritorious even as it accents black inferiority. Using "big lips" as a means of weeding out potential jurors goes beyond the insinuation that only white people possess small, and thus beautiful, lips. Reference to this physical characteristic implies that blacks are incapable of making intelligent

decisions. They are seen as "generous" jurors, lawless by nature and inclined to make decisions based on generosity rather than on facts presented to them. Powerful whites view themselves as beautiful, honest, and meritorious—elements of the privileged status that is only afforded to whites.

Finally, we will look at the privileges provided to whites through a system that deems them powerful. The power of the criminal justice system to function in as a racist entity is extensive. Whites have the ultimate ability to define individuals of color. This includes the power to control how people of color should think, the power to forget things that the white elite finds undesirable, and the power to adjust memories to appeal to themselves (whites). This power includes permission to talk in an offensive manner amongst themselves without fear of reprimand. A "clique" is created to provide an invisible band of protection for their actions.

White provided power

Central to the pro-white frame and concept are the persistent and organized beliefs whites consciously and unconsciously express. Today, white racism remains normal in current institutions such as the criminal justice system. "Every such institution is still substantially whitewashed in its important norms, rules, and arrangements" (Feagin, 2010, p. 259). These sentiments are supported by the explanations provided by powerful white figures when confronted with their use of racial epithets. For example, a superior court judge in Middlesex County defended his inappropriate remarks from the bench in 2008. During a nomination hearing for a tenured position, the judge admitted to the

senate judiciary committee that he told a woman her ex-husband “should not be treated as a cash register, that this is not a free lunch" (Rothman, 2008, p.1). He also admitted to saying, “no tickee, no laundry," a racial slur that mocks Chinese laundry services that require a ticket to pick up clothing. In response to these claims, the judge stated that he "had a bad day" but that he did not believe the comments were inherently racist" (Rothman, 2008, p.1). He continued, stating that "The litigants were African Americans and the racial slur, I think, was a slur against Asians, again, there's no excuse for it all I'm saying is there is a difference, at least in my mind there is" (Rothman, 2008, p. 1). The judge is thinking from a pro-white center in which he feels free to express his views in a racialized manner and mean no harm. His thinking also shows a common manner of deflecting by whites, one that insists they are essentially "not racist" and, in essence, "colorblind."

A 1997 case, discussed in detail in the previous chapter, involved a judge's comment regarding a defendant who produced a note stating that she could not work for a year because of a duodenal ulcer. The judge said, "I know many people with duodenal ulcers who work like 'niggers'" (Harrison, 1997, p.1). Harrison reports the judge’s defensive narrative: "I wish to apologize. I intended no slur against anyone; I very much regret if my inadvertent use of this expression caused offense" (Harrison, 1997, p.1). The judge's attempt to backtrack and tell the court his intentions stems directly from the aspect of the pro-white frame that incorporates the "I spoke from my head and not my heart” claim. In his defense, the judge wants the people to believe he is not coming from an old narrative to defend himself. He claims to have used the word inadvertently. The judge’s comment

is supported by his lack of understanding based on being raised in the context of white supremacy. He is claiming that his use of the word was an unconscious Freudian slip. Once again, a powerful figure is insinuating that people of color are merely over-sensitive and that he meant no harm. This type of framing of defendants is significant because, in essence, it affects the decisions of the powerful. The judge shows that he has the power to defend his comments based on the fact that he did not mean to offend anyone. As people of color, we should believe him because he is a virtuous and pure white man.

In 2008, a black man sued the Fort Bend Independent School District ("FBISD") alleging that the district's decision to hire a Caucasian woman rather than promoting him amounted to racial discrimination in violation of Title VII. In a published court decision, the claimant testified that the superior stated, "[i]f President Obama's elected, they're going to have to take the Statute of Liberty and put a piece of fried chicken in his [sic] hand" (Autry v. Fort Bend Independent School District, 2013, p.8). The presiding district court judge rejected this comment as political, observing that "no black individually and no blacks collectively owns [sic] the sensitivity rights to fried chicken or anything else" (Autry v. Fort Bend Independent School District , 2013, p.8). He referenced the case of Ash v. Tyson Foods, Inc. (2006) (holding that the term "boy" may be evidence of racial animus, depending on the context in which it is used). When the claimant's lawyer tentatively suggested that the use of Johnson's reference to fried chicken was "a long-standing racial slur," the judge replied, "[t]hat's really surprising to Colonel Sanders." The U.S district court judge's comments embody a sense of collective memories and

collective forgetting, both of which are additional aspects of white racially framed narratives.

The above complaint embodies fiction-laden interpretations, collective memories, and collective forgetting. Fiction-laden interpretations are connected to mythological narratives. The reference to Colonel Sanders as the original and more relevant connection to chicken is indeed a positive visual image of whiteness. The Colonel Sanders image depicts a bearded older white man who created a secret recipe for fried chicken. The image of fried chicken in relation to "the Colonel" is seldom, if ever, used. In this case, referencing him as the connecting factor rather than using a racially insensitive comment, is fictional at best. The case the judge references in his defense for this ruling is Ash v. Tyson Foods, Inc. (2006) involved two African-American men, Anthony Ash and John Hithon, who were superintendents at a poultry plant that was both owned and operated by Tyson Foods, Inc. The two superintendents sought promotions to fill two open shift manager positions. Tyson elected to hire two white men instead. Therefore, Ash and Hithon alleged Tyson discriminated based on race and sued Tyson Foods under 42 U. S. C. §1981, and Title VII, 42 U. S. C. §2000e (Reuters, 2015). At the trial, evidence was presented that Tyson's plant manager, who made the hiring decisions, had referred to each plaintiff as "boy" on some occasions. On February 21, 2006, the Supreme Court held that, although the disputed word will not always be evidence of racial animus, the speaker's meaning is dependent on a variety of factors. These factors include context, inflection, tone of voice, local custom, and historical usage (Reuters, 2015). The use of the term "boy" outside of the racialized context must

involve both collective memories, creation of an often fictional racial record of memory, and collective forgetting, slowly deteriorating hurtful meaning through overt choices of powerful people (Feagin, 2010). The ruling of the Supreme Court in the Ash case and the decision of the U.S. District judge in the case mentioned above are parallel. Both found that the reference to fried chicken and the term "boy "did not hold a historically hurtful connection. Both cases require forgetting the narratives of the past while simultaneously remembering these narratives in a current and more positive light from a virtuous, pro-white center.

Backstage racism has been defined as any setting in which whites are the only present participants. These settings provide an explicit representation of the association between the tenets of the white racial frame and the use of these terms when no one else is listening. Making backstage use of these derogatory terms seems commonplace and a privilege whites are afforded socially. In another case, a Liberty County commissioner is caught on tape using "nigger" in a conversation with his brother in June of 2015. The phone conversation was recorded and reviewed because his brother was in jail. It is standard policy in prison and jail administration to record all phone calls. The commissioner said, "last week they run everybody out but one ... then they let two 'niggers' walk in there and sit right in front of us" (Montanaro, 2015, p.1). His brother responded, "Right." The commissioner went on to say, "That was a slap in the face" (Montanaro, 2015, p.1). The recording was brought to the attention of the African American sergeant mentioned in the conversation. The two were discussing a recent jail visit in which some folks were asked to leave early to make way for other visitors. Using

the word "nigger" in backstage conversations seems commonplace among the brothers. Using derogatory terms in private speaks to the person's true feelings. Whites' power to talk in a derogatory manner against people of color is not a new phenomenon. For some, it is a clear connection to a trait that is socially inherited, as discussed above.

When powerful criminal justice officials are called out for their comments, many apologies stem from the exposure of these mishaps by the media. The case of a Pearland judge is a perfect example of the media's power. In 2002, a local news team, ABC thirteen eyewitness, exposed a video of the judge at the jail who was caught on tape using a racial slur. "You're going to act like a fucking 'nigger' is that what you're doing?" (ABC13 Eyewitness News, 2003, p.1). Upon realizing that the suspect was actually white, the judge responded, "I thought he was a black guy" (ABC13 Eyewitness News, 2003, p.1). In an interview with the news station, the judge remarked, "I did not know he was not a black man at the time." When the reporter asked him if it mattered, he responded, "Not really because it was unjustified" (ABC13 Eyewitness News, 2003, p.1). Unfortunately, the story does not end here. The judge denied treating white suspects differently than blacks. However, six months following this incident when he was presiding over the case of a black burglary suspect, the suspect asked, "Who are you?" The judge responded, "you're the one that's in the fucking jail, you just say, yes, sir no, sir, that's all you have to do. Right now you don't have any fucking rights. If you piss me off, I'll have him lock you up, and you won't see me until tomorrow" (ABC13 Eyewitness News, 2003, p.1). In response to this allegation, the judge claimed of his actions, "I don't know, and that's the gospel truth. I don't know why I reacted that way."

The judge insisted he was suffering medically from the public release of these tapes. "I deeply regret those incidents occurred. I will seek any professional help I need to make sure those incidents do not occur" (ABC13 Eyewitness News, 2003, p.1). Here we see the judge backtracking based on the exposure of his backstage racist comments, a privilege only afforded to whites. Had the media not exposed his views, the judge would have continued his actions in the backstage environment, as we see in the events that followed. The judge did seek professional help for his behavior. His actions, although viewed as racist by some, were nothing more than a broad way of being. However, he did seek help, but only because others are offended. An explicit representation of the association between the tenets of the white racial frame was provided. The judge explained his actions as coming from a good and virtuous place from which some took offense in spite of his true feelings.

Case of the clique

When we consider the term "clique," we usually imagine an exclusive group of persons who share a common interest. We can also connect a "clique" to a group of individuals with questionable behaviors and activities. For the sake of this study, let's imagine that the power holders in the criminal justice system are a part of an organized "clique." Typically, members of a clique work together to meet a common end. "Responsible members must nevertheless try to fit the department, or firm, to inescapable conditions" (Dalton, 1959, p.53). Power holders in the criminal justice system are working to support an organized mindset, or racial frame, to protect one another in spite of the negative undertones of their actions and derogatory terms that

negatively affect people of color. Their connection is based on the pro-white good ol' boy system. In the all-too-often repeated case of drug offenses, this highly racialized frame of mind is present and pervasive when investigating a case from a prosecutorial discretion point of view. For example, Michelle Alexander (2010) notes a former U.S. attorney's explanation for dropping gun charges against a defendant:

> I had an [assistant U.S. attorney who] wanted to drop the gun charge against the defendant [in a case in which] there were no extenuating circumstances. I asked, why do you want to drop the gun offense? And he said, He's a rural guy and grew up on a farm. The gun he had with him was a rifle. He's a good ol' boy, and all good ol' boys have rifles, and it's not like he was a gun-toting drug dealer. But he was a gun-toting drug dealer, exactly (p.118).

This experience depicts a case in which the prosecutor used his discretion to excuse a white defendant because he did not fit the description of the "typical drug dealer." Defining a drug dealer based on "clique" mentality is a description derived from the perspective of the frame--a black man. The defendant was given a pass based on the common "clique" mentality.

The clique behavior extends beyond this case. I will now demonstrate the lack of punishment provided to power holders in the criminal justice system. This relief is based on being a card holding member of the pro-white "clique."

An ACLU investigation stated,

> Principally, the Government charges that Alamance County Sheriff's Office ("ACSO") disproportionately subjects Hispanics to unreasonable searches, arrests them for minor infractions (in lieu of issuing warnings or citations), targets them at vehicle checkpoints located in predominantly Hispanic neighborhoods, uses ethnically-offensive epithets to refer to Hispanics and otherwise tolerates activities of deputies that evidence anti-Hispanic bias, automatically and selectively refers Hispanic arrestees to U.S. Immigration and Customs Enforcement investigators for deportation, and otherwise engages in deficient policies, training, and oversight that facilitates discriminatory enforcement (Mccloskey,, 2015, p.1).

The case relied on statistical evidence and witnesses' testimonies regarding powerful individuals in the sheriff's department. The community claimed that the office had continuously and negatively impacted Hispanics through the use of racial slurs leading to profiling. The court decided to drop charges because of "vague, isolated statements attributed to the Sheriff" (Mccloskey, 2015, p.1). The decision of the court stated that the findings

> Cannot be read to approve or condone all the conduct presented as evidence at trial. Indeed, some of it — for example, the use of ethnic slurs by a few officers largely in the county jail — demonstrated the offensive and reprehensible activity that should not be tolerated in any civil society, much less in a law enforcement environment. Other evidence showed potential internal weaknesses in ACSO, such as lack of a system to monitor the selection of checkpoint locations,

> weakness in internal reporting and condemnation of conduct that violates ACSO's internal policy manual, and a lack of substantive review processes for stops and post-stop outcomes. The absence of a finding of a violation of federal law should not be construed as approval of the status quo, and such matters deserve immediate attention (Mccloskey, 2015, p.1).

The department received a mild form of punishment in spite of the court’s admission, based on its decision, that they made racial slurs and racially profiled Hispanic Americans. Pro-white "clique" behaviors are built on these premises. In spite of the department’s admission that it had made racially reprehensible actions, the court used its powerful discretion to not punish the department in spite of statistical proof.

According to Court House News, a Wisconsin attorney general candidate had videotapes made in 2009 and 2013 during statewide prosecutors' education conferences. According to Wisconsin Democrats, the videos show the future attorney general making "offensive racial remarks and ethnic slurs, including but not limited to stereotyped accents, as well as sexist remarks" (McAuliffe, 2014, p.1). The case, as discussed earlier in the chapter, which involved the Wisconsin attorney general candidate who made potentially racist and sexist remarks, received relief from the judge. The tapes, although they were initially approved for public release, would remain private. The judge from Dane County in Wisconsin originally ordered the videos to be released. The state's Justice Department, however, appealed the order. Following this decree, the judge canceled his original order to have the tapes released. The Judge said that "he found no evidence of any off-kilter remarks on the videos and the remarks were not earth-shaking

in any respect" (McAuliffe, 2014, p.1). The statements were found to be racially charged and sexually charged. The judge's comments defining the statements as innocent speak to his views of people of color and women. Members of these groups may be spoken to in an offensive manner as long as the statements do not include earth shattering words. Offensive remarks that are part of "normal" or "regular" speech are acceptable. The move to not release the tapes to the public benefitted the attorney general who received no punishment for his actions because they were not sufficiently derogatory to offend the judge. In this example, the "clique" stood together for a common goal.

A prominent judge in Milwaukee County appalled many in his courtroom by his description of his old neighborhood. During this encounter, the judge used phrases such as "niggers," "wapps" and "Jews" on June 14, 2010. The defendant told the judge that he, the judge, lives in a different world and doesn't understand where he, the defendant, is coming from. The judge responded, 'I grew up with 'niggers,' wapps (sic), and Jews" (Bice, 2010, p.1). Others in the courtroom do not deny that the judge uttered the derogatory and inflammatory words. They state that the bigger picture is whether or not he is quoting the use of those words by others or using them himself. A lawyer for the judge came to his defense, saying the judge is not racist or bigoted. The lawyer continued, stating, "I'm certain if he could take those words back, he would" (Bice, 2010, p.1). The judge responded by saying that he did not mean to offend anyone. Furthermore, the judge and his inner circle are clear in their view that, no matter when these racial slurs are used, they are acceptable and the speakers are not guilty of offending people of color as long as they claim that they don't have bad intentions. The

attorney's defense of the judge's offensive comments also reveals the presence of the good ol' boy "clique."

In a 2015 case that was discussed in the previous chapter, an employee sent the following email: "Effective September 1, 2013, Aspirin will be HEAVILY TAXED under Obama care. The only explanation given was that they are White, and they work. No other reason was given, but I thought you would want to know" (Exposed Publishing, NFP, 2015, p.1). In defense of the accused sergeant, the Sangamon County Department who interviewed him stated,

> He didn't think the email's subject matter was racially sensitive when he originally forwarded it to several coworkers but now looking back at it, after the investigation had been going on, he could see how some people may think it is, the right of the virtuous white man to define what is and is not racially offensive….. (The sergeant's) contention is that until he learned of the investigation, he did not think he had done anything wrong. (Exposed Publishing, NFP, 2015, p.1)

By stating "some people may think this is racially sensitive," the officer is asserting the right of the virtuous white man to define what is and is not racially offensive, as discussed in detail earlier. The investigation did find the sergeant liable for breaking work policy. His punishment resulted in three days' suspension. His membership in the "clique" ensured that his punishment was mild.

A circuit court judge received complaints after the Florida Times-Union published an interview in which he blamed school violence on integration and opposed interracial marriage while simultaneously claiming that most welfare recipients are black (The Washington post, 1992, p. A24). The Judicial Qualifications Commission conceded that his remarks lessened public confidence "in the impartiality of the judiciary" (The Washington Post, 1992, p. A24). However, they stopped short of calling for the judge's dismissal. He was viewed as a vital part of the “clique,” and no boundaries were imposed in spite of his offensive remarks.

Finally, in a 2001 case discussed in the previous chapter, a Howard County judge received backlash for the following comment that he made during sentencing, "A number of communities in the lovely city of Columbia have attracted a large number of rotten apples . . . and they live and act like they're living in a ghetto somewhere. And they weren't invited out here to [behave] like animals" (Roig-Franzia, 2001, p.1). Maryland's highest court overturned the judge's sentence, stating that "although we cannot determine whether the sentencing judge's comments were actually based on race, the sentencing judge clearly was not alert to avoid comments that may be so perceived." The courts, however, stopped short of identifying the judge’s comments as racist. When asked about his punishment for this miscarriage of justice during a powerful discretionary situation, the state public defender's office said they have no plans to sanction or punish the judge. Even though no charges were brought, the public defender said, "not only are these remarks hurtful to a large segment of our population, but we all know they are buzzwords" (Roig-Franzia, 2001, p.1). The use of "buzzwords" provides

the judge an out based on a defensive narrative that claims that this was the way in which he grew up. This is a standard white "clique" defense mechanism. No punishments were given.

The cases mentioned above support the project's claims. In a normative, pro-white base system, power holders (judges, prosecutors, and high-ranking police officers) receive little, if any, punishment for their offensive actions within the criminal justice system, illustrating and confirming the benefits of membership in the "clique."

Conclusion and summary

This chapter sought to shed light on the foundation of a system that is based on a pro-white central frame. I examined how the pro-white ideology was created. In doing so, this project explored aspects created or reformulated by the legitimizing frame. This frame demonstrated the perception of whites as superior and full of virtue and moral goodness. The central white component was conferred as a worldview to define a routine way of being and acting. These aspects provided a theoretical association with the white minds behind the scenes (judges, prosecuting attorneys, and powerful police officials) in the criminal justice system. Power holders' thinking was described as affecting their use of discretion. The examples provided a vantage point for whites to view and interpret society. This system of white superiority encompasses elements of positive stereotypes of whites and negative stereotypes of people of color through the incorporation of white superiority and a belief in the inferiority of racialized others. Social inheritance through generationally embedded power and privilege, maintenance, and an educational basis to

support white supremacy were discussed as reasons that whites are unapologetic for their views.

Next, the manner of maintaining and developing a system with historical roots (social inheritance, historical pro-white center) was discussed. The development of a legal system based on English common law as universal served as a vantage point for the system's upkeep. Examples of racially insensitive interrogations and white privileged decisions based on white merit supported a Eurocentric system in practice. Finally, this study looked into the power whites possess based on this foundation (pro-white center), the reason of normalization (social inheritance), and the development and maintenance of a pro-white center (Eurocentric laws). The power of whites to define offensive statements, collectively remember and forget racial history, and use backstage racist talk are a few ways powerful whites receive the ultimate prize. The lack of punishment when making discretionary decisions based on racial premises gave inference to our pro-white system. The sample cases demonstrating little to no penalties granted to judges, prosecuting attorneys, and powerful police officials summarized this chapter perfectly. A blueprint of who (powerful whites), what (a pro-white center), where (English common laws), why (social inheritance and white privilege), and how (Eurocentric practices) our system works with whites was provided as a central component.

CHAPTER VI

CONCLUSION: WRAP-UP

> Comedian Dave Chappelle noted, the premises of reasonable doubt for a black person and a white person are two separate things. For a white person, the idea that the police planted evidence is ridiculous: 'the police are here to serve and protect us!' Yeah you. But to a black person, it's not ridiculous. The FBI followed Martin Luther King around! Was he a threat to America? (Russell-Brown, 2006, p. 67)

In this final chapter, I summarize the main findings of the current study regarding inequality within the criminal justice system through the minds of the powerful, followed by solutions and areas for future research. I begin to draw attention to the research that has been conducted in the areas of the system while providing insight to this project's contributions. There is a great deal of work to be done on this subject. I provide avenues for future research projects that will open the conversation and seek further exploration. The inclusion of workshops, activism, and making ourselves knowledgeable about the role of the powerholders is a critical start in our fight for equal justice for all.

Powerful systemic racism

The current research on systemic racism relies heavily on the theory developed by Feagin in his work, *Systemic racism: A theory of oppression.* This theory expanded the past works of a number of black theorists, including W.E.B. Dubois, Ida B. Wells-Barnett, Charles Hamilton, Stokley Carmichael, and Oliver Cromwell Cox. In their research, they introduce us to a theory that has groundings in our society based on white on black oppression. This theory refers to oppression as being embedded in today's

institutions. The systemic racism theory was discussed as relying on the long term dependency of white Americans on African American labor. By researching labor dependency, Feagin examines the unequal distribution of wealth as a primary focus for systemic racism to survive and continue to thrive. In this, he documented well the central component on which systemic racist principles stand. He finds that the primary focus relies on white economic domination: wealth, status, and privilege generated at the expense of racialized others. Because of this, the reproduction of a system that maintains a great-chain-of being with whites at the top and people of color at the bottom remains in our society. This maintenance yields a different experience within our criminal justice institution for whites and for people of color.

There is much research that examines the criminal justice system and racial inequality from this vein, including but not limited to the works of Alexander (2010), Tonry (2011), Wacquant (2010), and Nunn (1997). These authors document a variety of differential experiences for whites and African Americans when interacting within the criminal justice system. This literature highlights negative consequences for people of color when interacting in the criminal justice system. Indeed, as this research provides great insight and awareness into the oppressive experiences of people of color, there still remains much to be done on the examination of powerholders' role in these encounters. My research has added tremendously to this body of research by incorporating powerful white officials as the gatekeepers for the maintenance of the systemic racist criminal justice system. I have found that their role is critical to the lack of advancement for people of color. In short, although the maintenance of wealth and racism is a critical

piece, there are longstanding racial images maintained by powerholders that promote differential outcomes for people of color. Within the criminal justice system, we have to take the individuals at the root at the problem into account in order to find a viable solution and commitment to a real liberty and justice for all frame.

Powerful white racial frame

Much of the work on the white racial frame defines a frame that is not one frame among many. Rather, it is a frame from which inequality is birthed. The frame was a concept developed as a concept of "race" by early European American leaders. Thus, much of this work finds that the idea of the hierarchical great-chain-of-being has been created to produce two subframes: pro-white and anti-other. For example, prominent theorists Lovejoy (1973) and Descola (2013) describe the great-chain-of being idea as an idea of a supposed "natural order." Moreover, whites at the top of this hierarchy are seen as more suited to be examples for living and being. From thinkers during the enlightenment period, this white racial frame has been persistent. For example, the frame of thinking employed in the writing of Carolus Linneaus provides a frame of mind from which most powerful criminal justice thinkers operate. People of color are viewed as bottom feeders on the hierarchical chain while their white counterparts are viewed as inherently great beings. Much of the research examines the white racial frame in this way, but considering that this is a historical mind frame created by whites, factoring in how this frame is embedded in the criminal justice system is much less clear.

It has only been recently that researchers have begun to uncover how positions of superiority and inferiority are produced in the criminal justice system. The work of Leon

Higginbotham found that white racially framed hierarchical positions were established and entrenched early. Higginbotham noted that "the superior English position in relation to the inferior 'Negro' position was incorporated in societal institutions" (1996, p.32). Similarly, Van Cleve found that educational manuals that are provided to powerholders in the criminal justice system define the superior white frame of thinking from which our system operates. Feagin's white racial frame theory exemplifies a sense of collective memories and collective forgetting as a part of the process. Ultimately, finding collective forgetting is as important as collective remembering, especially in regard to how the power structure of our justice system works. My research also uncovers the mindset that is engrained within powerholders in our system. First, the powerholders have enormous discretionary power to maintain a system that thrives from a hierarchical chain. Second, I examine the consequences for people of color when they face these officials within our justice system. Lastly, my research finds that the mindset of powerful officials is detrimental to people of color and beneficial to powerful whites as these officials are the gatekeepers of each group's fate.

Powerful anti- other

What emerged through my research of powerful justice officials suggests that there are many more dimensions than proposed by the examinations of current theorists, including Fletcher, 1984, Davis, 2007, Senna & Siegel, 2009. To get a more accurate view of the inequality faced by people of color in the criminal justice system, this project relies heavily on the accounts of the misuse of powerholders' discretion. The research I have collected from court documents, interviews, emails, and recorded interactions

found that the system allows discretionary authority for principal actors in the criminal justice system. The main players' views, actions, and decisions are from a mindset that regards people of color as inferior. This contributes to the idea that discretionary power can be detrimental to people of color in the criminal justice process. Within this notion, the anti-other view and the effects of discretionary misuse are based on the standard anti-other paradigm. Here, I find that the overall imagery associated with people of color as lazy, visibly unattractive, criminal, and foreign represents what justice looks like for nonwhite people. For this reason, I chose to examine how the mindset of these powerholders serves to block the liberty and justice that people of color were promised.

Powerful pro- white frame

What has emerged from my research is that thinking from a pro-white center is at the forefront of our system's continued maintenance. While the earlier literature relies on the aspect of wealth as a central component, my research expands these thoughts. Finding the mindset of the powerful is the central component. As Nunn (1997) asserts, "European Man can do what he wants with his law. Within his world, his own creation of the legal system embodies narratives, elements, and imagery that views whites at the top and people of color at the bottom" (p.182). In a system of white superiority, whites continue to support the actions of other whites. These actions have negative effects for people of color. The narrative told relies on the belief that whites are naturally superior and deserve the power they have, and this requires a thought process of racist framing that supports their positions of power as divine destiny. The white racial frame is composed of a unidirectional belief in multiple elements whites possess—many of which

accent whites' virtues, privileges, and power. The belief in this frame finds that whiteness and the status of being white are viewed positively both by people who consider themselves white and by people who do not.

The grounding of this theoretical thinking is engrained in the socially inherited status that whites acquire. For centuries, encouragement of attitudes engulfing anti-black feelings has been part of the dominant (white) racial narrative in the United States. For most whites, racial privilege is intergenerational. These attitudes are taught as acceptable values, views, and societal standards that advantage white people and disadvantage blacks. My research finds that social inheritance is no different when we examine the teachings of high ranking criminal justice officials. My research reveals that thinking from this pro-white frame is a strong problem within our justice system. The comfort with which these powerful whites handle persons of color in derogatory ways reveals a belief in the racial privilege that whites see as their socially inherited right.

Solutions and implications

Historically there has been a linkage between the criminal justice system and the counter-resistance strategies used by people of color. There have been many attempts to revolt against the systemic racist system. Both in the past and today, these acts have been an intricate part of finding a solution.

Audre Lorde suggests, "The true focus of revolutionary change is never merely the oppressive situations which we seek to escape, but that piece of the oppressor which is planted deep within each of us" (Collins, 2000, p. 76). Resilience as well as numerous

changes have come from African Americans' struggles. Resistances against discriminatory acts by African Americans have provided a voice for opposition. During non-violent revolts, slaves' forms of resistance were strikes, slower working paces, and fleeing through the underground railroads. In 1852, Fredrick Douglas led abolitionist organizations to work toward the liberation of African Americans from discriminatory practices. In the mid-1800's, another influential abolitionist, Sojourner Truth, lectured against slavery and became an advocate for women's rights.

In the mid-1950s to the 1960s, there was a sudden rise in movements for civil rights as a call to law and order. The up-rising of blacks during the civil rights era began around the 1960s and 1970s. African Americans were angry and showed their willingness to raise up against racial oppression and discrimination related to economic problems (Feagin & Hahn, 1973). These types of non-violent revolts would serve as a starting point to obtain freedom from the powerful in the criminal justice system. This research suggests that a call for action tactic against powerholders would be a perfect start to promote change.

Another solution to changing these systemic institutions and mode of thinking from the white framing model is the provision of a critical mass of people of color in powerful social acting positions. When significant numbers of individuals of color are in discretionary decision-making positions, they will gain a level of influence in decision-making. This influence will allow for some level of resistance resulting in a change to white framing decisions. A critical mass will require whites' attention to the need for

change in the criminal justice system and encourage them to look at discretionary judgments in a more significant manner. A former Brooklyn prosecutor and past president of the National Black Prosecutors Association (NBPA) states, “diversifying and increasing the ranks of prosecutors of color, particularly in supervisory positions that carry greater discretionary power, will have a more significant impact on fighting disparities and promoting equal justice than the election of state attorney’s general of color” (Valbrun, 2012, p.1). This quote supports the need for an increase in the critical mass of African Americans in order to realize a change in the disproportionate number of African-Americans in the criminal justice system. Another black district attorney also agrees there is a need for a critical mass to promote and obtain change. She states, “One of the fundamental requirements in building a fair and just criminal justice system is ensuring that from top to bottom that system is representative of the communities it is mandated to protect" (Valbrun, 2012, p.1). An increase in the number of people of color in powerful social acting positions will provide resistance and result in change for people of color across the board. The addition of people of color into the "clique," discussed in detail in the previous chapter, will allow for the inclusion of people of color into a club of powerful white exclusivity.

One of the major ways that we can approach a deframing strategy for powerful justice officials would be the implementation of an annual deframing workshop. This workshop would be a mandatory training for all justice system powerholders and would allow justice officials to have a clear glance into today’s current white racially framed experiences. The trainings would have a section of the course centered on a full

examination of current events. This would require participants to review the cases from behind the scenes and not simply based on the media's perceptions of the case. They would be obligated to go beyond the actual case files and review the department of justice's investigative reports. These workshops would also include follow-up investigations of cases in which the court found and argued that a defendant's civil rights were violated. This will provide the powerholders with a chance to explore cases beyond the headlines.

These workshops are not exclusive to criminal justice officials. We have seen these sorts of required workshops in other professions. For example, physical therapists are required to take and pass a refresher course annually in order to maintain their positions. These two professions are related in that workers in both are required to guard and protect the lives of others. Another important government position that requires members to attend an annual training is the United States Army. Active duty, reserve, and National Guard members must attend an annual training for a threat awareness program. Army personnel as well as our powerful justice officials are here to protect and to serve. We should in fact require that all justice officials have an awareness training annually.

The purpose of these workshops would be to show our powerful justice officials how thinking from a white racial frame is wrong and can have grave consequences for people of color. The instructors for these courses would be fellow attorneys who have a history of understanding the systemic nature of the system and the consequences people of color may encounter. A Houston defense attorney and city council member has complained

about the system for years. She has noted since 2003 that practices ranging from the plight of minorities when being struck from the juries unfairly to the harsh punishment being administered to minorities are intolerable. She states, "There is absolutely an undercurrent of racism," she says" (Newsweek staff, 2008, p.1). "The story is bigger than the district attorney's office. It's systemic. They're racist and classist. If you're poor or a minority, there is no justice" (Newsweek staff, 2008, p.1). She would be a great candidate to educate the powerful in the criminal justice system. The program would promote a reframing of the system into a system of real fairness and justice.

Future research

During the phase of my project that involved gathering quotes and data on judges, prosecutors, and high-ranking police officials, I came across multiple cases in which the defense of racist comments was found.

> In 2003, a well-known Houston prosecutor sent an office wide message congratulating his colleagues on winning a case. He stated they won "despite the presence of several "Canadians" on the jury. He later said he was unaware that "Canadian" is sometimes used as a racial slur for a black person" (Newsweek staff, 2008, p. 1). Former prosecutors in the same office were quoted as having referred to Hurricane Katrina evacuees as "NFLs," or "Niggers From Louisiana" (Newsweek staff, 2008, p. 1). These email message are among many to be perceived as both racist and sexist. A chief of District Attorney's integrity division and the highest-ranking black prosecutor in Harris County, says "he's

> never felt as if he works in a racist atmosphere-and he defends the offices judges and prosecutors for encouraging minority hiring. Other black former prosecutors say they never heard racist comments either" (Newsweek staff, 2008, p. 1).

Noteworthy in this exchange is the defense of racist lingo by fellow prosecutors and judges. As the black prosecutor noted, he defends them based on the premise that they encouraged the hiring of minorities. This speaks to the belief that black prosecutors are in positions of power based on the idea of the "white savior" providing them available positions, not that they were hired based on their own merits. Consider the numbers of black prosecutors who do not speak out in defense of other people of color because they buy into the white racially framed ideas of the system. This is indeed an area that should be pursued in future research.

In another example, a judge's lewd comments in 2014 reference to women were as follows,

> He also opines on relations post-marriage, makes that same "joke" about bulges many times, why a man should sell Mary Kay, repeats the wisdom about "golden vaginas", explains why women generally shouldn't get alimony, thinks that you should "raise your own kids" instead of paying for childcare, refers to "Vitamin P", implies that American education is failing because all the easy girls major in education, laughing about "riding" bi-polar women, talks about gynecology, says women are ridiculous because they want husbands who don't work all the time, refers to wives as "chattel", references his own sexual shortcomings, and . . . whatever the hell this is (Hope, 2014, p.1).

Noteworthy in this exchange are the remarks the judge made about women as they are viewed from an inferior point of view. This speaks to the judge's idea of women as inferior beings. This would be a great avenue for expanding this project. Consider viewing the criminal justice system as not only a racist entity but as a sexist entity as well. An area to be examined in future research relies heavily on the unequal standards from which women within the system are viewed. These differential standards could be examined through gender and racial/ethnic identities as a form of intersectionality.

Much more is needed in reference to the experiences of maintaining a culture of white dominance. The current sample could be expanded to include both of the above entities to build on the existing theory. This vein of research must not be limited to the treatment of people of color from the mindset of powerful whites only. We must examine the maintenance of a systemic system that is also upheld by people of color for various reasons, primarily the white racially intergenerational frame embedded in their mindset as well. We must also examine how these frames of thinking can effect women when they come into contact with justice officials who are predominately white and male. Moreover, by entering a variety of viewpoints, this research could begin the process of deframing a system and instituting policies that will be beneficial for all. This literature would also fit well in a variety of disciplines from the social sciences to the legal profession.

In conclusion

People of color have made significant progress in the criminal justice system. The slave patrols and current methods of patrolling are in fact similar but not completely

equal. As duly noted by the great Dr. Martin Luther King, Jr., “Injustice anywhere is a threat to justice everywhere” (King, Jr, 1963, p.1). As shown clearly throughout this project, people of color are still experiencing inequality at the hands of the powerholders. Because this industry remains dominated by whites, the system is maintained through white racially framed monikers. If advancements are to be made, we must educate, advocate, and increase the number of people of color who hold powerful positions. The goal is to debunk the premises of the systemic racist system and shed the white, racially framed thought process. Recall those accounts of circumstances people of color faced when interacting with powerful justice officials. The systems frame of inequality remains in place as the system used by those in powerful institutional positions.

In summation, the current research works to advance the disciplines of sociology and criminology. The emotional, physical, and mental consequences faced by people of color are executed by the powerful. This type of strain is heavily influenced by the systemic and white racially framed notions of the system. In spite of these negative experiences, we can take solace in the fact that change can be made. Although all of the pain people of color have faced cannot be erased, we can move forward. Knowledge about the justice system’s structure was turned on its head through my project. The first step has been completed because, going forward, we are acknowledging that a problem exists. Putting the suggested solutions in place will be the next crucial step to ensure that people of color will have the same rights as whites to experience civil liberties as our nation’s democracy has promised for centuries.

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